LEGISLATIVE COUNCIL

Wednesday 26 September 2007

The PRESIDENT (Hon. R.K. Sneath) took the chair at 2.17 p.m. and read prayers.

LEGISLATIVE REVIEW COMMITTEE

The Hon. J. GAZZOLA: I bring up the seventh report of the committee for 2007.

Report received.

OLYMPIC DAM

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development): I seek leave to make a ministerial statement.

Leave granted.

The Hon. P. HOLLOWAY: This statement is identical to that made today in the other place by the Premier. I am delighted to inform the council today that South Australia is, in mining terms, the land of the giants. This morning, BHP Billiton informed the Australian Stock Exchange that the size of the resource at its Olympic Dam Mine has virtually doubled over the past two years. By having the largest and most intensive drilling program in the world, with 18 drilling rigs operating in 2007, the company now believes that Olympic Dam has copper, uranium, gold and silver resource of almost 8 billion tonnes. The new resource estimate of 7.855 billion metric tonnes is a virtual doubling of the 3.98 billion tonnes estimated in the 2005 annual report. It is now, quite simply, the world's largest base metal resource.

This means that Olympic Dam is now the largest known source of uranium in the world, by a country mile. At 2.2 million tonnes it is nearly 10 times the next largest resource, the Elkonsky Gorsk mine in Siberia; the fourth-largest copper resource in the world, eclipsing even the giant Escondida mine in Chile; and the fifth-largest gold resource in the world, and the biggest in Australia, overtaking Kalgoorlie's Golden Mile.

The ore body covers an area of 6 kilometres by 3.5 kilometres, with ore still being found at depths of 2 kilometres below the surface. In the past 12 months, 270 holes have been drilled, totalling 170 000 metres of additional drilling. BHP Billiton informs me that it has yet to discover the limits of this massive ore body and is continuing its drilling program until the end of this year. The president of BHP Billiton's Uranium Customer Sector Group, Graeme Hunt, has been discussing the latest results of the drilling program with the South Australian government because, of course, this resource is not owned by the company; it is owned by the people of South Australia.

The results so far clearly confirm Olympic Dam as a unique base metals deposit and positions it as an outstanding world-class mineral resource. The South Australian government is continuing to work closely with BHP Billiton to develop Olympic Dam into one of the world's greatest mining operations. clearly, it is the intention—indeed, the responsibility of this government—to maximise the number of jobs and economic benefit from this project that it can.

The Gawler Craton, where Olympic Dam is located, really is the land of the giants. As many members would be aware, the Prominent Hill mine is a similar world-class mine located in the Gawler Craton. It recently advised that its known resource has the potential to increase the mine life from the current plan of 10 years to at least 20 years, and that the company has yet to find the full limits of the ore body.

Teck Cominco has been working on the Carrapateena gold and copper discovery 100 kilometres south-east of Olympic Dam. The discoverer of that deposit, Rudi Gomez, was recently honoured at the Excellence in Mining Awards for making 'The Discovery of the Year.'

WATER, RECYCLED

The Hon. G.E. GAGO (Minister for Environment and Conservation): I lay on the table a copy of a ministerial statement relating to recycled water made in another place by my colleague the Minister for Water Security.

QUESTION TIME

VICTORIA PARK

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 Victoria Park.

Leave granted.

The Hon. D.W. RIDGWAY: The current Adelaide City Council has deferred a decision on building a grandstand in Victoria Park and, as I am sure all members are aware, a vast number of the prospective councillors, including the Hon. Mr Xenophon's candidate who we heard speaking this morning on radio, Mr Ralph Clarke, have indicated that they will not be supporting the construction of a grandstand. The government has been quite vocal, as you know, Mr President, about its wish to build this particular grandstand and, in fact, it has indicated that it will introduce, if need be, some special legislation. Given the media-driven bent of this government and its passion to have the grandstand built before 20 March 2010, my questions to the minister are: what discussions has the minister had in relation to this proposed legislation; and when will it be introduced, if necessary?

The Hon. P. HOLLOWAY (Minister for Urban Development and Planning): The government has not made any decision at this stage. Obviously, the preferred outcome, from the government's perspective, would be that the city council honours the decision that it made earlier this year, but I think we can all see that the politics that are taking place within the city council at the moment—as many commentators have observed, from business and elsewhere—do not bode well for the future of the Adelaide City Council.

Members interjecting:

The Hon. P. HOLLOWAY: Yes; exactly. What will be more interesting is what will happen if legislation is introduced here and the attitude of members opposite. I think I can answer that already: they will play politics, just like they have with every other piece of legislation introduced in this place. They will look around and sniff the wind to see which way the politics are going. The one thing we can be certain of is that members opposite are incapable of taking any stand on principle or consistency; they are not capable of that, but they will be playing politics. As I have said, this government has considered all the options and, if it is necessary to introduce legislation, we will do so.

SOLID WASTE LEVY

The Hon. J.M.A. LENSINK: I seek leave to make a brief explanation before asking the Minister for Environment and Conservation questions about the solid waste levy.

Leave granted.

The Hon. J.M.A. LENSINK: I am in receipt of a document that refers to the doubling of the solid waste levy. The document states:

> The genesis of the doubling of the zero waste levy was the 2006-07 budget process in which government department (sic) were asked to develop savings.

My questions are:

1. Can the minister confirm that this document is correct?
2. Can the minister confirm that a number of councils are experiencing an increase in illegal dumping as a result of the increase in the levy?

The Hon. G.E. GAGO (Minister for Environment and Conservation): I have previously spoken at length in this place about this issue, but I am quite happy to go through it all again. I have made no apology for doubling this waste levy. The main reason behind that—

Members interjecting:

The PRESIDENT: Order! If honourable members want to know the answer, they might want to listen.

The Hon. G.E. GAGO: As I have said in this place before, we are very keen to make sure that we drive our recycling initiatives to a higher level. I have explained in this place before that there is currently not a level playing field between waste to landfill versus recycling initiatives. It is much cheaper to simply dump our waste—our precious resources—into landfill rather than recycling it. The government has a strategic plan target, and that target is to reduce waste to landfill. This initiative is one of the prongs for achieving that.

The government and its departments are always looking for opportunities to improve efficiencies, and in this instance we have an opportunity to do that. We have been very open and clear about our strategic target, which is about the reduction of waste to landfill, and the doubling of the levy is an important part of one of the strategies to try to achieve that. To simply put our waste into landfill is a disgraceful waste of our precious resources. We know that recycling involves an added financial burden, so the doubling of the waste levy was to help offset some of those discrepancies between the two.

As I have said, I have never apologised for the doubling of the levy, and I do not resile from this very important initiative. We know that the increase in the waste levy has resulted in a very small impost on individual households. We never expected local councils to absorb that impost; it was always expected that it would involve a 'polluter pay' policy. I have always been very open about the fact that a 'polluter pay' policy principle was the way we were heading, and we expected that the doubling of the solid waste levy would be passed on to individual households. As we have said in this place before, it results in a very small impost per household. It is about driving equities in terms of waste management, and it is about not wasting our precious resources. Further, we know that recycling helps to reduce greenhouse gas emissions and, again, we have important targets around that issue as well.

The overall impetus behind this policy decision is in line with the government's strategic targets. Illegal waste dumping has been an issue for a number of years; it is not anything new. It has been suggested that increasing the waste levy could act as an impetus for increasing that type of behaviour. To the best of my knowledge, to date I have not had reported to me or to my office any increase in that rate. I certainly accept that the issue has been put on the table and, again, we have acted responsibly in relation to it. We have looked at a number of initiatives. We have engaged local councils to look at what they have in place and what works best for them. We have looked at a number of initiatives relating to the setting up of tapes and so on around sites that have been used for illegal dumping in order to do thorough investigations into the waste material. Usually, you can gain a lot of evidence from waste.

One of our strategies is publicly to make a big deal about it and approach it in a way that this is observable and evident to the general public. So, we put tapes around the site, and people go in to investigate and go through the rubbish carefully to see whether we can find some evidence about the originators of the waste and who might be responsible for dumping it. We have also looked at mechanisms such as recorders installed on those sites that are renowned for illegal dumping. Hidden cameras are put in place and recordings are made, and we have also looked at those as an option. So, again, we have listened to the concerns of local government and responded in a responsible way.

The Hon. R.D. LAWSON: I have a supplementary question. With reference to the minister's statement that the government has examined empowering inspectors to inspect the rubbish of householders, has the government reached any decision in relation to that matter? Does the government support empowering local government inspectors to inspect householders' rubbish?

The Hon. G.E. GAGO: It has not been brought to my attention that there is a lack of inspectors; it is not an issue that has been raised with me. I am happy to look into the matter and see whether it is, in fact, warranted to increase their number. I am happy to look into the issue.

CALL RECEIPT AND DISPATCH CENTRE

The Hon. S.G. WADE: I ask a question of the Minister for Emergency Services. Did the minister decide that 1 July 2007 would be the date for the transfer of the CFS call receipt dispatch function to the MFS communications centre? Did the minister or any of her staff direct or advise the board of SAFECOM, any officer of SAFECOM or any officer of the CFS that 1 July 2007 would be the transfer date?

The Hon. CARMEL ZOLLO (Minister for Emergency Services): I am pleased that the Hon. Stephen Wade has had the opportunity to spend some three hours, I am told, at the MFS call receipt and dispatch centre on behalf of all the agencies and see the new CRD at work. I think that it is important that he was able to do so and appreciate why all three SAFECOM agencies will, in the future, form part of the South Australian Computer Aided Dispatch (SACAD) system in the state. If my memory serves me correctly, the 2002-03 budget was the first occasion on which funding was made available to SAFECOM to see it respond from that one call centre.

A decision was made with respect to call, receive and dispatch in South Australia from three nodes (and I am fairly certain that the honourable member opposite has been provided with this information already): SAFECOM, at the Wakefield Street site; SAAS; and, of course, SAPOL. When

I became the minister some two years ago now, at one of my first briefings (and, again, I am fairly certain I have placed this on record), I was informed that my three agencies would be dispatched from the MFS because, of course, the MFS had the most up-to-date technology for all three services to be dispatched and to respond from there. Probably in briefings on three or four other occasions at that time that date was provided to me by the agencies themselves. Indeed, I have also answered other questions in this council to that effect.

ENCOUNTER BAY BOAT RAMP

The Hon. R.P. WORTLEY: I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning a question about the upgrading of the Encounter Bay boat ramp.

Leave granted.

Members interjecting:

The Hon. R.P. WORTLEY: One of the important functions of an opposition is to keep the government accountable, and one of the processes it has is question time. Consistently the opposition wastes question time by abusing—

The PRESIDENT: Order! The honourable member will stick to his question.

Members interjecting:

The Hon. R.P. WORTLEY: Here we go!

Members interjecting:

The Hon. R.P. WORTLEY: Have you finished?

Members interjecting:

The Hon. R.P. WORTLEY: I will sit down, Mr President, until there is order in the council.

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Wortley has the call.

The Hon. R.P. WORTLEY: Thank you, Mr President. I seek leave to make a brief explanation before asking the Minister—

The PRESIDENT: You have been given leave.

An honourable member: We've done that.

The Hon. R.P. WORTLEY: Well, I lose track with all the ridicule from the other side. On 12 June 2007, an application was lodged by the Department of Transport, Energy and Infrastructure (DTEI) on behalf of the City of Victor Harbor to upgrade the existing boat launching ramp at Rosetta Head, Encounter Bay. Will the minister provide the chamber with details of the upgrade?

The Hon. P. HOLLOWAY (Minister for Urban Development and Planning): I thank the honourable member for his most important question. The proposed upgrade of the boat ramp was a Crown development public infrastructure project proposed by the Department of Transport, Energy and Infrastructure on behalf of the Victor Harbor Council. The application was supported and specifically endorsed by the Office of Major Projects and Infrastructure. The estimated cost of the development is $1.25 million. The Environment Protection Authority, the Coast Protection Board and the Transport Services Division of DTEI were all consulted as part of the assessment of the application.

No objections were raised in relation to the proposed redevelopment by the agencies; however, they did individually request that certain conditions and advisory notes be included with any approval granted in relation to this application. After having regard to the comments raised by the above agencies and following an assessment of the proposal against the relevant provisions of the council's development plan, it was considered that the subject development displayed sufficient merit and was supported by the Development Assessment Commission (DAC).

After considering the advice from DAC, I have given the go-ahead to an upgrade of the boat ramp off Franklin Parade near the Bluff at Encounter Bay. The subject land comprises road reserve and is located between Franklin Parade and the foreshore at the western end of Franklin Parade. The reason for the redevelopment of the existing boat ramp and launching facilities is to modernise the facilities in line with current standards and to increase safety and provide more functional service to support increased user demand. My colleague the Minister for Emergency Services some months ago now approached me on behalf of the local Sea Rescue Squadron expressing serious concerns about the state of the current facilities.

I understand that, in terms of the very difficult entrance to that ramp, a tyre on one of the trailers burst because of some of the problems with the current location, and that is not what you want to have happen if there is an emergency and you need to get boats quickly into the water. I should also say that the Mayor of Victor Harbor, Ms Mary Lou Corcoran, has also been a very strong supporter of improved and safer facilities at the site. The upgrade will include:

- the widening and dredging of the main basin area at the end of the boat ramp (1 200 square metres in area) and the creation of a sand beach area for the beaching of small craft;
- the provision of two double lane ramps measuring 7½ metres in width and 46 metres in length, and three floating pontoons (to be restrained by guide poles) each two metres wide and between 32 to 45 metres in length;
- a modified car parking area providing 26 spaces with one-way anticlockwise traffic flow, formal angle parking for trailers in the main car park area, overflow trailer parking along the foreshore (14 spaces and turning area) and the creation of a rock revetment wall designed to protect parking areas;
- the provision of a ticket machine for facility use, together with associated lighting, rubbish bins, bollards and additional landscaping.

The revamped boat ramp will not have wash down facilities, and no open air flushing of boat motors will be allowed, in response to the concerns of local residents about potential noise problems. The revamp will include upgraded lighting. The lighting has been modified to minimise the impact on neighbouring residents following feedback from those residents. This new boat ramp at Victor Harbor will significantly improve safety and, in particular, I am pleased that those volunteers who give their time as part of that volunteer rescue service will have much safer facilities to work with in the future when this ramp is completed.

The Hon. D.W. RIDGWAY (Leader of the Opposition): Sir, I have a supplementary question. Have the appropriate coastal sand movement studies been undertaken, and was the Coast Protection Board consulted prior to this boat ramp being built, unlike the boat ramp at Beachport?

The Hon. P. HOLLOWAY: I said in my answer that the Environment Protection Authority, the Coast Protection Board and the Transport Services Division of DTEI were all consulted as part of the assessment of the application. As I said, no objections were raised in relation to the proposed development by those agencies, which include the Coast

Protection Board, but they did individually request that certain conditions and advisory notes be included, and they will be.

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: The member did not listen to the answer, did he? Let me repeat the answer that I gave. The upgrade will include the widening and dredging of the main basin area at the end of the boat ramp. It is 1 200 square metres in area. There is a very narrow channel, and it has been dredged. However, what is important is that we have a greater degree of safety than we have at the moment.

The Hon. D.W. RIDGWAY: Sir, I have another supplementary question. The Beachport boat ramp is continually having to be dredged by the local council after it was poorly built by this government. Will ongoing dredging be required, and who will pay for it?

Members interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: The local government body concerned will have the ongoing responsibility for the boat ramp. As I said, there will be significant improvements to safety in relation to this. Of course, the location of this ramp, which is really in the lee of the land near the Bluff, is an ideal site for a boat ramp in relation to any coastal movements.

COUNTRY FIRE SERVICE VOLUNTEERS

The Hon. A.L. EVANS: I seek leave to make a brief explanation before asking the Minister for Emergency Services a question about Country Fire Service volunteers.

Leave granted.

The Hon. A.L. EVANS: I note that there have already been numerous declarations of total fire bans this year, which is very early in the season. Even though we are only in September, I understand that the CFS has already had a large number of call-outs for grass and scrub fires. Tied with this imminent threat is a steady stream of volunteers leaving the CFS. Family First recently had the privilege of speaking to Wendy Shirley, who is Executive Officer of what was previously the South Australian Volunteer Fire Brigades Association and is now known as the Country Fire Service Volunteers Association.

As the minister would be aware, the organisation represents some 15 500 firefighters across the state, and it is a strong advocate for the rights of these volunteers. Concerns regarding the retention of volunteers were raised with us, along with initiatives such as a proposal to exempt all emergency services volunteers from payment of the emergency services levy. My questions are:

1. Does the minister have concerns regarding the upcoming bushfire season?

2. What proposals or incentives are being considered by the minister to stem the tide of volunteers leaving the CFS ahead of this season?

3. Given that the CFS and other emergency services volunteers are putting their own considerable time and resources into protecting the community, would the minister consider exempting them from payment of the emergency services levy?

The Hon. CARMEL ZOLLO (Minister for Emergency Services): Clearly I am aware of the very good work of the South Australian Volunteer Fire Brigades Association because the government funds it as an advocacy group for our very important volunteers. We certainly recognise that our CFS and SES volunteers and MFS retained firefighters always require special support and recognition, which is why we have SAFECOM as leading the sector in the provision of support services to all three of my emergency services agencies. We have business support officers who have been placed in regions to assist with administrative functions, and further changes will be made to ensure that the administrative burden of government policies and procedures is always reduced. I join with everybody in this chamber in praising the tremendous commitment of our volunteers. I have always said that one cannot put a price on what such people do for us and the fact that they are prepared to lay their lives on the line.

I have asked SAFECOM to be tasked in the next 12 months to further focus on supporting volunteers, to recognise their efforts and to promote their contribution in the community. To this end I have asked the SAFECOM advisory board, which has great volunteer representation, to make recommendations to me. It also involves employers. Volunteers will always be engaged and fully consulted on any decision-making process we have that impacts on the ability to support their communities, which is why they are represented on the various forums within the SAFECOM agencies and the boards themselves. I have already placed that information on the record for the benefit of the chamber.

In relation to payment, the CFS Board, prior to SAFECOM's coming into being, undertook a survey, the results of which indicated that people saw volunteerism for what it was: service to one's community. They did not want to be paid, but we need to strongly recognise what our CFS volunteers do for our community. Following the phasing out of what was then honorarium payments, which ended on 1 July 2006, the CFS developed out-of-pocket expenses guidelines, which were endorsed by the SAFECOM Board in June 2006 for application within the CFS only. The SES decided to consult further prior to adoption. The guidelines allow for payment—subject to normal accounting and taxation requirements—of motor vehicles allowances and reimbursement of telephone and other expenses incurred in carrying out the voluntary activity.

I have been told that the new out-of-pocket guidelines are working well within the CFS, with a strong take up by volunteers in the new system, particularly for motor vehicle allowances. The issue of payment of emergency services volunteers can polarise the volunteer ranks, with many volunteers being passionately opposed to any type of payment or concession for their volunteer work. Many calls for payment or financial support for volunteers very often come from outside the volunteer ranks by people who wish to recognise the valuable work done by those volunteers.

As mentioned, I tasked the SAFECOM advisory board to come up with further recommendations and suggestions in recognition of volunteers because I recognise that we should do it better than we are doing. Various recommendations are being made by the board and they are under consideration by SAFECOM, the CFS and myself currently. One matter raised by the CFS and the Volunteer Firefighters Association was a CFS medal, which we are progressing at the moment, as it did not have its own medal.

Of course, the training of volunteers in the emergency services sector is very important, and the government is always tasked with ensuring that our volunteers are well resourced and well trained. Arising from the Premier's volunteer commitment, we developed a framework called Advancing the Community Together, which is really a

partnership between the volunteer sector and the South Australian government to give volunteers a more direct voice to government. July 2006 saw the CFS Volunteer Summit, which was a forum for CFS volunteers to suggest means of further improving the provision of contemporary emergency services to our South Australian community.

Again, the SAFECOM Volunteer Management Branch works with volunteers within the sector to develop and implement strategies to recruit and retain volunteers. I know that we have an exit poll when volunteers leave us, and I know that the chief officer Euan Ferguson works very hard to ensure that we take account of what people have to say to us. I have mentioned employer recognition already. In relation to personal injury, every effort is made to ensure the safety of our volunteers on duty. Should any injury occur, however, our first priority is always to assist the volunteer actively to achieve timely compensation, rehabilitation and a safe return to work.

As I have outlined to the honourable member, our volunteers are very well respected and they are very well recognised but, as I have mentioned, I have tasked the SAFECOM advisory board with further recommendations and we are working through those. In relation to any counselling services, when our CFS volunteers attend major incidents we provide support services to all the emergency services sector volunteers in terms of peer support services and all professional services. In relation to motor vehicle allowances, our volunteers are entitled to claim motor vehicle allowances at the rate of 64¢ per kilometre in cases where the distance to be travelled to attend an approved operational activity is greater than that required to attend the brigade (or unit, if they are SES members) of which the volunteer is a member, and a group unit vehicle is not available to be used at the time, or a car pooling option has been maximised, and a valid claim has been authorised on the relevant form.

I hope that answers the honourable member's questions in relation to what this government does for volunteers, because we very much appreciate the fact that they put their lives on the line for the community of South Australia. Indeed, I am at the moment looking at further recommendations and working with both the CFS and SAFECOM to further progress that recognition.

FREEDOM OF INFORMATION

The Hon. R.I. LUCAS: I seek leave to make a brief explanation before asking the Leader of the Government a question on the subject of freedom of information and future ICT.

Leave granted.

The Hon. R.I. LUCAS: On 9 August of this year the Under Treasurer Jim Wright wrote to chief executives of government departments and agencies a memo which at that stage was obviously confidential and which was titled 'Future ICT budget adjustments'. In that memo Mr Wright said:

> On 18 June 2007 cabinet approved budget adjustments associated with Tranche 1 of the future ICT arrangements. Since that time further work has been undertaken to distribute those adjustments at the agency level within portfolios. Attachment 1 sets out cabinet approval and any further breakdown at the agency level. This information has been used to prepare journals reflecting cabinet's decision.

That—at that time confidential—memo then proceeded over one and a half to two pages to outline the cabinet decision and the potential impact on agency budgets.

Mr President, as you are aware, the Budget and Finance Committee has been pursuing the issue of savings to various departments and agencies and it has been an issue of some public interest, certainly in some sections of the IT medium in particular. My questions to the Leader of the Government are:

1. Can he confirm that the Under Treasurer wrote to his department (PIRSA) six weeks ago outlining the cabinet decision and, in particular, can he confirm that Treasury has claimed that his department's share of the supposed $30 million in annual savings the Treasurer is claiming from the future ICT process for his department of PIRSA was $800 000?

2. If he can confirm that that is, in fact, the case, can the minister indicate whether or not executives from PIRSA have disputed the alleged level of savings of $800 000 claimed by Treasury for his department?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development): I do recall there was a letter sent in relation to the impact of future ICT by the Under Treasurer some weeks ago; it probably was six weeks ago. However, as for the specific details in relation to the department, I would have to take that part of the question on notice. I do not have those documents with me.

MUSLIM COMMUNITY

The Hon. B.V. FINNIGAN: My question is to the Minister Assisting the Minister for Multicultural Affairs. Will the minister tell the council what the government is doing to improve public understanding and awareness of Islam and Muslim communities in South Australia?

The Hon. CARMEL ZOLLO (Minister Assisting the Minister for Multicultural Affairs): I thank the honourable member for his important question. Multicultural SA works with Muslim community organisations and public event managers to facilitate increased Muslim community participation in the state. The state government has also been encouraging the media to provide balanced reporting so that we read and hear about positive events.

Most recently, Multicultural SA worked closely with the Islamic College of South Australia in promoting support for community activities such as Red Nose Day and, with *The Advertiser*, organised a photoshoot and story of the college's involvement and donations to SIDS and Kids. On 22 June 2007, a photograph was published in *The Advertiser* of students from the Islamic College of South Australia wearing red noses in support of the SIDS and Kids initiative, Red Nose Day.

On 20 September 2007, in appreciation of their support for the initiative and as a memento of their involvement in Red Nose Day, I had the pleasure of attending and co-presenting a framed copy of the photograph to the Islamic College at a school assembly. It was a welcome opportunity to thank the college for its support for Red Nose Day and to further strengthen links between the government and the Muslim community.

The Islamic College raised over $1000 in donations for Red Nose Day through colouring-in competitions, cake sales, and the purchase of Red Nose Day merchandise. I would like to congratulate and thank the members of the Muslim Reference Group, the Islamic College, *The Advertiser* and Multicultural SA.

I was also delighted last Friday evening to attend the premiere screening of *Beyond Beliefs: Muslim and Non-*

Muslim Australians Deliberate in the Adelaide Town Hall. The screening was jointly presented by Issues Deliberation Australia-America and the Bob Hawke Prime Ministerial Centre, the University of South Australia, and supported by the Equal Opportunity Commission.

Beyond Beliefs: Muslim and Non-Muslim Australians Deliberate has been a project of Issues Deliberation Australia-America, a not-for-profit, nonpartisan public policy think tank. The project explored the views of a cross-section of Australian society about Muslims in Australian society. Members of the council would be interested to know that the research showed a major shift in attitudes. Many people who previously had strong concerns about Muslims in our community had quite different views when they had been given the opportunity to gather some facts and interact with those about whom they were expressing their opinions.

The speakers at the premiere of *Beyond Beliefs* were the Hon. Bob Hawke AC; Professor Peter Hoj, the Vice-Chancellor of the University of South Australia; Dr Pamela Ryan, the managing director of Issues Deliberation Australia-America; and Mr Ray Martin, who hosted the evening.

SWIMMING POOLS

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Minister for Environment and Conservation, representing the Minister for Water Security, a question about backyard swimming pools.

Leave granted.

The Hon. SANDRA KANCK: Last week the *Southern Guardian Messenger* reported that Mitcham and Onkaparinga councils are approving more pools not fewer pools, despite our problems with climate change. They approved 291 pools in 2006-07 and 271 the previous year. Apparently the average in-ground swimming pool contains 50 000 litres of water. By contrast, it would be rare to find a backyard water tank that held more than 5 000 litres in most Adelaide backyards. The number of swimming pools being removed is also dropping. The *Messenger* article reported that one company which specialises in removing swimming pools has had a 75 per cent drop in business since last year.

SA Water issues a permit for new pools to be filled if the owners use a pool cover and can show evidence of using water saving methods at home, such as water-efficient shower heads. A $400 rebate is being offered elsewhere in Australia for home owners to cover their existing swimming pools because a cover can reduce evaporation by 97 per cent. My questions are:

1. Given that we are in what is titled the most serious drought on record, does the minister have any plans to tighten controls on the construction of new pools? If so, does the government intend getting an early indication on any new regulations so pools owners, purchasers and the pool industry can prepare for that change?

2. Has the minister considered following the example of other states by offering a rebate to pool owners for the cost of covering an existing pool?

3. Given that new pools can be installed if people show evidence that they are using water saving methods at home, will the government now consider relaxing restrictions on watering gardens where home owners can demonstrate the use of in-home water saving devices, water wise gardening practices and plantings?

The Hon. G.E. GAGO (Minister for Environment and Conservation): I thank the honourable member for her important questions. Indeed, these are very urgent and pressing matters, given the severe drought that we are currently facing and we continue to face. It does not look at all good for us in the next 12 months or so. However, these are matters in terms of responsibilities for the Minister for Water Security, but I am aware, in respect of at least one of the questions asked, that the Minister for Water Security has requested SA Water to review the water saving initiatives regime and to bring back advice and consideration for her, and I understand that process is underway. In relation to the other matters, I am happy to refer those questions to the appropriate minister in another place and bring back a response.

POLICE, EMPLOYEES

The Hon. T.J. STEPHENS: I seek leave to make a brief explanation before asking the Minister for Police a question about police numbers.

Leave granted.

The Hon. G.E. Gago interjecting:

The Hon. T.J. STEPHENS: You are very trying. We sit and listen to your ridiculous answers day in and day out. According to the minister's media releases dated 28 March 2007 and 23 May 2007, there are more than—

Members interjecting:

The PRESIDENT: Order!

The Hon. G.E. Gago interjecting:

The Hon. T.J. STEPHENS: Just ignore the President.

The PRESIDENT: Order! The honourable member will ask his question.

The Hon. T.J. STEPHENS: There are more than 4 071 South Australian police officers on the beat to facilitate and provide a broad range of police and community services to ensure the safety and security of the South Australian community. The number, the minister boasts, is the biggest in the state's history, and I am sure we will get a bit more of that in a second. My question to the minister is: of these 4 071 police officers who are part of the biggest police force in the state's history, how many are currently on light duties and for how long have these officers been on light duties; what is the current total cost accrued in WorkCover payments; and, in fact, how many police officers are currently not suitable for patrol duties?

The Hon. P. HOLLOWAY (Minister for Police): I obviously do not have those details in my head and, in any case, I am sure they vary from day to day. There are a number of police officers who, from time to time, are on light duties. Unfortunately, in some cases, that comes about as a result of assaults made upon police officers when they are making arrests. I will take the question on notice and get the information for the honourable member.

The Hon. D.W. RIDGWAY (Leader of the Opposition): I have a supplementary question. Given that injuries sustained while on active duty are not recorded separately from injuries elsewhere in SAPOL, how does the minister know that a number of those injuries are sustained whilst on duty?

The Hon. P. HOLLOWAY: How do I know that police officers are injured while on duty? Well, because I have actually met some of the officers. What the exact number is,

I am not sure. I have actually met the officers, so that is why I know they occurred.

The Hon. D.W. Ridgway: They can't tell you.

The PRESIDENT: Order! There is too much explanation with supplementary questions. Members have been here long enough to know that they must get to the question.

SMOKING, INDOOR BANS

The Hon. I.K. HUNTER: I seek leave to make a brief explanation before asking the Minister for Mental Health and Substance Abuse a question about indoor smoking bans.

Leave granted.

The Hon. I.K. HUNTER: Over the past three years, the Rann government has been introducing anti-smoking measures. From 1 November, smoking will be banned indoors at pubs, clubs, bingo venues and the Adelaide casino.

An honourable member interjecting:

The Hon. I.K. HUNTER: That's 1 November. Will the minister inform the council of moves to ready the general public for this change?

The Hon. G.E. GAGO (Minister for Mental Health and Substance Abuse): I thank the honourable member for his most important question. I am pleased to announce today an important advertising campaign which will run in the lead up to this ban, which will have effect from 1 November. About 1 200 South Australians die each year from tobacco-related diseases and disorders. It is the single biggest cause of premature death in this state, and it is devastating that it is one of the most preventable conditions as well. I am very proud that this government has been taking action for the sake of our public health.

I am pleased to advise the chamber that, since we introduced the ban on smoking in cars where children under the age of 16 are present (again, we were the first state to introduce such a ban), we have had quite remarkable results. As at 31 August 2007, which is about four months after we introduced this ban, 40 notices have been issued, comprising 29 expiable penalty notices and 11 cautions. Obviously, people are realising how harmful the effects of passive smoking can be in enclosed spaces.

Today, I can inform the chamber that I have launched an advertising campaign in respect of the complete ban on indoor smoking in pubs, clubs and the casino and that the ban will come into effect on 1 November. The advertising campaign, which is entitled 'Nobody smokes here any more', kicks off on Saturday, Grand Final day. The campaign will include television, radio and print advertising and also advertising on the internet, because the whole community, not just smokers, need to be aware of these important changes.

About 80 per cent of adults are nonsmokers. When the bans are introduced, everyone who goes to a pub or club will be able to enjoy a smoke-free environment. Like many members here, I am currently one of the four out of five people who do not smoke. We often avoid a whole range of venues because we find it difficult to put up with smoking. For many for us, it will be a wonderful opportunity to revisit a wide range of venues we have not visited in the past. I also believe that these measures will be well received in the community. Recent research indicates widespread support for the state government's smoke-free legislation, with 86 per cent of the public supporting smoke-free bars and 88 per cent supporting smoke-free gaming rooms.

As members are aware, South Australia's Strategic Plan has a specific target for reducing youth smoking. Research shows that young people believe that smoke-free indoor areas mean that it is more likely that they will smoke less and perhaps even go all the way and give up. Therefore, we believe that these bans will also, potentially, help us to reduce smoking amongst young people. Similar commercials in Queensland have been very successful in raising consumer awareness. Surveys show that the awareness rate in Queensland is 93 per cent for smoke-free laws.

The laws have been phased in over three years to allow the hospitality industry to prepare for the bans. Over this period, many have made provision for outdoor smoking areas. I am pleased to report that, over this time, awareness of the dangers of passive smoking in the hospitality industry has increased. A survey shows that 91 per cent of bar owners or managers understand that passive smoking is an important occupational health and safety issue. These measures are great news for the hardworking people of the hospitality industry, as well as their customers.

Many groups have raised with me the potentially adverse effect of increased butt litter as a result of the new smoking regulations. I have written to all licensees to remind them of their obligations under these new laws and to look at new ways to address butt litter outside their premises. A resource pack, which includes information and publicity material on the bans and a brochure from KESAB with advice on reducing butt litter, is also being sent to all licensees.

The Hon. NICK XENOPHON: I have a supplementary question. Will the minister indicate what resources will be available to ensure that the bans are enforced? Will the minister take on notice how many hotels have received expiation notices in relation to breaches of the existing smoking bans in the past 12 months?

The Hon. G.E. GAGO: I need to take those questions on notice and bring back a response. In terms of the specific figures the honourable member requests, one of the things we have done as part of the changes is increase the licensee fees in relation to smoking licences. I believe that we have doubled them, but I will need to check that; however, we have increased them significantly. One of the things we will be doing is to use those funds to contribute towards enforcement resources. So, there are at least some extra resources available.

The Hon. SANDRA KANCK: I have a supplementary question. Given that the minister anticipates patrons moving out onto the footpath, thus transferring the side-stream smoke issue to that area, does the government have any long-term plans to deal with that issue?

The Hon. G.E. GAGO: Given that the government allowed three years' lead-in time for the complete banning of smoking in pubs and clubs, what has occurred during that time is that many of these venues have spent considerable sums of money designing, in some cases, some very attractive outdoor alfresco-type areas for their patrons. So, it is actually quite incorrect to say that the patrons will be on the footpath.

Lots of these designated outdoor areas are being set aside and, in accordance with the licensee's regulations, they will be well managed. Members know that, in relation to footpath traffic, drinking is not allowed on footpaths. Alfresco dining and drinking is allowed to occur on footpath areas where that area is a designated part of the licence for the particular publican. I have addressed the issue of butt litter in terms of

providing extra assistance to these venues to try to address that in a proactive way. I have asked the department to look into evidence-based material on the impact of smoking in outdoor areas. I have asked the department to look at both international and interstate data, as I said, to look at an evidenced-based approach and what the impact of passive smoking in outdoor areas may be. I will receive that information in due course and take appropriate action accordingly.

ANANGU PITJANTJATJARA YANKUNYTJATJARA LANDS

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

Leave granted.

The Hon. R.D. LAWSON: In the budget handed down last year, the government announced that two courthouses were to be built on the APY lands: one at Amata and the other at Ernabella—or, more correctly, Pukatja, which is its indigenous name. In the budget papers handed down this year, the courthouse at Ernabella has been omitted. When pressed about this, the Attorney-General said that that is a matter for the police, that these are police initiatives and the explanation would be provided by the police. My questions to the minister are:

1. What role did the South Australia Police play in the deferring of a proposal to build a courthouse at Amata?
2. Why was that project deferred?
3. When will it be resuscitated?

An honourable member: Resuscitated?

The Hon. R.D. LAWSON: Revived, perhaps.

The Hon. P. HOLLOWAY (Minister for Police): The answer to this situation was given in some detail during the estimates committees. Originally, two budgets back, the government provided a certain sum for police stations at Amata and Pukatja. What happened was that, when they were let, the tender in respect of one of these police stations was significantly in excess of the money that had been allocated for both. I indicated during estimates committees for those who cared to follow them (and the Police Commissioner also elaborated on this) the difficulties of getting work done in remote areas, such as the APY lands.

I suppose that, to some extent, we are victims of the success of the mining industry because the demands on those contractors who specialise in remote areas do have a lot of work at the moment. I guess that is a good thing in one sense, but the down side is in relation to the cost of these budgets. Following on from that, my colleague the Minister for Aboriginal Affairs in another place has had lengthy negotiations with the commonwealth government and minister Brough in relation to commonwealth support for police services within the APY lands. As a result of his efforts, the commonwealth has agreed to contribute $7.5 million towards the cost of police stations at both Amata and Pukatja. As a result of some negotiations, that funding will enable not only the police station but also some police housing to be incorporated as part of a compound to provide services within those communities.

We are grateful for the commonwealth assistance in relation to providing funding to improve the police facilities in those regions. I assume that the court facilities will just be additions to existing facilities. As I said, the original money set aside was about $1.5 million, if I recall correctly, for both stations. So, members can see that, with the latest provision of $7.5 million for two stations (although, as I said, this also includes the housing and the compound components), it is a very expensive exercise to provide facilities in these remote regions. With that commonwealth assistance, we hope to be able to complete those facilities over the coming year or so.

TANTANOOLA CAVES

The Hon. J. GAZZOLA: I seek leave to make a brief explanation before asking the Minister for Environment and Conservation a question about conservation park management.

Leave granted.

The Hon. J. GAZZOLA: The cave systems that exist in the South-East are world renowned for their unique formations and their ability to be explored with relative ease. However, just as they are beautiful, they are also fragile. This is particularly the case with the Tantanoola caves (with which I am sure you are familiar, sir), near Naracoorte. Will the minister please inform the council of moves to better manage the Tantanoola caves?

The Hon. G.E. GAGO (Minister for Environment and Conservation): I am pleased to announce the release of a draft management plan for the Tantanoola Caves Conservation Park, which proposes to better manage visits to the park while ensuring its adequate protection. The main attraction of the cave is a large dolomite cavern filled with a spectacular array of geological formations known as speleothems, including stalactites and helictites. Those who have visited the cave will know that it is a very beautiful but extremely fragile environment.

Public access to the cave is potentially damaging, because the cave environment evolved in almost total darkness, without any vertebrate animals using the cave as habitat. Artificial light, which is required for people to tour the cave, encourages the growth of algae in the cave. Visitors add carbon dioxide to the cave's atmosphere through breathing and they also introduce dust, lint and rubbish. Earlier this year, DEH made some important changes to the way in which tours are conducted in the caves. Before these changes, visitors could only take tours of the caves in groups at specified times. This often meant large groups touring through what is a very fragile environment. However, now tour guides are available to take anyone through the caves at any time between 10 a.m. and 4 p.m. Not only does this mean a more intimate cave experience but it also enables DEH staff to ensure the least possible impact on the fragile environment. Visitors can stay as long as they like.

Through these changes alone, we are now seeing 25 per cent more visitors—about 13 500 visitors a year—which is great news for the region's economy. By reducing the number of visitors in the caves at any one time, we are reducing the stress on this fragile environment and ensuring its long-term survival. The draft management plan brings the visitor access arrangements in line with the current arrangements for the nearby Naracoorte Caves National Park, and a consistent approach is obviously important. Public submissions on the draft management plan close on Friday 21 December, and copies of the plan are available from the DEH website.

ADELAIDE GAOL

The Hon. G.E. GAGO (Minister for Environment and Conservation): I seek leave to make a personal explanation about the Adelaide Gaol.

Leave granted.

The Hon. G.E. GAGO: Yesterday in this council, the Hon. Michelle Lensink asked a question that arose from concerns raised about minor works being undertaken at the Adelaide Gaol. She chose to refer to a staff member from my office, and she suggested that the staff member had failed to act as a liaison with the department. Members of the Public Service should not be besmirched under parliamentary privilege, either by name or innuendo. It is a cowardly thing to do.

The Hon. R.I. LUCAS: On a point of order, a personal explanation is a device available for a member to explain where he or she has been misrepresented. The minister needs to outline where she has been misrepresented. If the minister wants to embark on a debate, other devices are available—certainly not a personal explanation, as I am sure you would be aware, Mr President, with your knowledge of the standing orders.

The PRESIDENT: The minister is making a personal explanation. I understand that it is an explanation with regard to the minister's office, of which she is in charge.

Members interjecting:

The PRESIDENT: Order! If the Hon. Mr Wade keeps making remarks regarding the chair or the President, I will have him removed from the chamber.

The Hon. R.I. LUCAS: On a point of order, will you, Mr President, outline to the council on what grounds the member is making a personal explanation if she has not yet outlined where she has been misrepresented?

The PRESIDENT: The minister indicated in her opening remarks that she was making a personal explanation and she then mentioned a person who works in her office. She being responsible for her office is entitled to make that explanation. So far I have not heard the minister say anything other than what constitutes a personal explanation.

The Hon. R.I. Lucas interjecting:

The PRESIDENT: It is as the President sees it and not as the Hon. Mr Lucas sees it.

The Hon. G.E. GAGO: The case the Hon. Michelle Lensink raised involved an officer in my department. Public servants are not able to defend themselves in this place. We know they are not able to do that because of their position, but in this case I understand that the employee in question informed the person who rang (the person the Hon. Michelle Lensink referred to yesterday in her question) of the identity and contact details of the relevant staff member who would be able to address her questions and encouraged her to have direct and ongoing contact with that person as the appropriate manager of the works project. My officer also stated that if the caller had any further problems that they were welcome to call her back as a form of follow up. If you are going to raise questions of officers—

The Hon. R.I. LUCAS: On a point of order, sir, I refer you to standing order 173, which says:

> By the indulgence of the Council, a Member may explain matters of a personal nature, although there may be no question before the Council; but such matters may not be debated.

I draw your attention to the aspects of this particular statement, rather than a personal explanation, which certainly constitutes debate. I seek your ruling on whether or not you will implement standing order 173 of the Legislative Council.

The PRESIDENT: Standing order 173 talks about debate. I ask the minister not to debate the issue but to get on with the personal explanation.

The Hon. G.E. GAGO: My officer then contacted the DEH employee to inform that person that an inquiry was likely to be made. Not one call was further received from the person making that original inquiry—not by the DEH manager nor by my staff member. So, any suggestion that there was a failure in my officer is ludicrous, unsubstantiated and quite clearly offensive. The staff member in question is diligent and hard working and did the right thing in this case.

Members interjecting:

The PRESIDENT: Order!

Members interjecting:

The PRESIDENT: Order! I have just called the minister to order.

The Hon. R.I. LUCAS: On a point of order, Mr President: the minister is clearly flouting standing order 173 and your ruling.

The PRESIDENT: The minister will not debate the issue and stick to the personal explanation.

The Hon. G.E. GAGO: Thank you, Mr President, and I appreciate your guidance in these important matters. The staff member did in fact follow all appropriate procedures and protocols in relation to this matter, as she always does. She did the right thing, and the Hon. Michelle Lensink owes her an apology. In relation to the gaol, I can inform the chamber that the $100 000 worth of works, being 37 items of work, are planned to be completed by late December 2007. As of today—

The PRESIDENT: The minister should make a ministerial statement if she wants to put that matter. It has—

Members interjecting:

The PRESIDENT: Order! Those remarks really belong in a ministerial statement.

The Hon. G.E. GAGO: Thank you, Mr President. I will leave off by saying that the staff member in question has followed all appropriate procedures and protocols, as she always does, and I believe she should be afforded an apology by the Hon. Ms Lensink, who provided inaccurate and incorrect information to the chamber.

The Hon. J.M.A. LENSINK: I seek leave to make a personal explanation.

Members interjecting:

The PRESIDENT: Order!

Leave granted.

The Hon. J.M.A. LENSINK: I believe that the minister has misrepresented what took place in question time yesterday.

The PRESIDENT: Order! The Hon. Ms Lensink may not debate either; what is your explanation?

The Hon. J.M.A. LENSINK: Can I just refer to the question which was just referred to?

The PRESIDENT: Otherwise, you will have the Hon. Mr Lucas calling points of order on you.

The Hon. R.I. Lucas: Not on this; this is actually a personal explanation.

The PRESIDENT: In your opinion.

The Hon. J.M.A. LENSINK: I directly quoted an email word for word; they are the words of a constituent.

Members interjecting:

The PRESIDENT: Order!

The Hon. J.M.A. LENSINK: I did not name a staffer, as the minister—

Members interjecting:

The PRESIDENT: Order! The opposition will come to order.

The Hon. J.M.A. LENSINK: I did not name the staffer, as the minister has tried to impugn, and on many occasions I have complimented her staff.

The Hon. G.E. Gago: The words were 'have failed'.

The Hon. J.M.A. LENSINK: Those are the words of the people from the Old Adelaide Gaol. Perhaps the minister has a communication issue with the people who are trying to restore the Old Adelaide Gaol.

The PRESIDENT: Order! The Hon. Ms Lensink will resume her seat. That is enough; the disgraceful debate across the chamber between the Hon. Ms Lensink and the minister will cease. Does the honourable member have anything further to say?

The Hon. J.M.A. LENSINK: No; I've said it all, I think.

REPLY TO QUESTION

EYRE PENINSULA BUSHFIRES

In reply to **Hon J.S.L. DAWKINS** (22 February).

The Hon. CARMEL ZOLLO: I advise:

The Independent Review into the fires on the Lower Eyre Peninsula in January 2005, undertaken on behalf of the Government by Dr Bob Smith, identified recommendations for improvement within the State's fire fighting capabilities. The Government has accepted all of the recommendations made by Dr Smith.

A complete list of the recommendations and their status is attached.

Substantially complete recommendations are those with significant issues having already been addressed and primarily requiring further engagement with external stakeholders or involving long term or recurrent actions.

Recommendation—Dr Bob Smith	Comment
The CFS, in collaboration with MFS, investigate and determine the effectiveness of bushfire awareness, education and direct engagement programs in sustaining an individual commitment to *"being bushfire ready"*.	Complete—Ongoing process
The CFS select and implement, on a regional basis, the most effective mix of programs to increase probability of an individual *"being bushfire ready"*.	Complete—Ongoing process
The CFS sponsor through national bushfire forums, a project to investigate and disseminate to the community, the cost/benefits of prevention and mitigation activities, covering investment and return at an individual and community level, adjusted for varying levels of risk of bushfire.	Complete—Ongoing Process Bushfire CRC Project C 7.1 *"Evaluating Bushfire Community Education Programs";* and Project C 5.1 *"Bushfire Economic Costs"* are directly relevant to this recommendation. CFS is a Bushfire CRC Stakeholder and has initiated dialogue with researchers to address aspects of Dr Smith's recommendations.
The State Emergency Management Committee (SEMC) review the effectiveness and appropriateness of programs to sustain individual and community commitment to being *"bushfire ready"*.	Substantially Complete SEMC has established a Mitigation sub committee that will incorporate this into its Terms of Reference and agenda.
The CFS, in partnership with Local Government, examine the utility of developing a code of practice for the responsibilities of individuals, community and organisations in bushfire prevention and mitigation. If the exercise proved to be of benefit, the code of practice could be inserted, with the desired local conditions, into District Bushfire Prevention Plans.	Complete Addressed in Bushfire Management Review.
The CFS review the effectiveness of current auditing/monitoring activities associated with District Bushfire Prevention Plans in terms of delivering their goals and programs and the effectiveness of programs in enhancing bushfire prevention.	Complete Addressed in Bushfire Management Review.

The Minister for Emergency Services commission a project to examine the effectiveness and appropriateness of current institutional and program arrangements for the regional development, delivery, performance and management of bushfire prevention and mitigation activities for South Australia. It is recommended the project be conducted in two stages: Stage 1: Develop an Issues Paper to: Explore the efficacy of current institutional arrangements and delivery mechanisms for bushfire prevention and mitigation activities; Explore options to deliver enhanced bushfire prevention activities, taking into account the experiences of other States to strengthen bushfire protection incorporating new developments and legacies from past developments. Stage 2: Following extensive community consultation on options raised in Issues Paper, the Government determine an appropriate response.	Review Completed Review Completed Will inform legislative change.
The CFS in association with National emergency service organisations and the Australian Insurance Council (ICA), give priority to finalising a position paper of impacts on varying property insurance premiums subject to the insurer implementing agreed bushfire prevention activities.	Substantially Complete Proposal for a meeting has been directed to the Australasian Fire Authorities Council (AFAC) and ICA. AFAC also requested to refer to the Community Safety Working Group for consideration. Further action not possible at this time by CFS. CFS continues to monitor individual arrangements in place with specific insurers.
The CFS (Region 6) investigate and implement effective and appropriate arrangements for ensuring strategically located water resources are available to support initial response to bushfire on LEP.	Complete
The CFS as a matter of priority complete and distribute new map sets to Brigades in Region 6.	Complete
The CFS (Region 6) incorporate into audit and monitoring programs checks that information and comprehensive contact details of organisations (for example, local government and private contractors) able to supply resources to fight bushfire are kept up-to-date.	Complete
The CFS (Region 6) enter into memorandum of understanding with local government for the use and conditions of use of their plant and equipment.	Substantially Complete SAFECOM project progressed through LGA and Crown Law. Expected completion prior to FDS 07/08. Agreed arrangements built into the Regional and Group Operational Management Plans.
The CFS supplement current AIIMS Guidelines with the actions the IC should take to ensure that IMT is resourced not only to manage current bushfire but resourced to undertake the comprehensive assessment of known future risks which, if not addressed, could increase the unintended consequences through continuance of bushfire.	Complete
The IMT should be continually reminded by prompts in the system to plan and resource for "*worst case scenario*", not to assume the most likely outcome based on their experience of past outcomes in managing bushfire. It is expected that addressing the prompts will generate more appropriate and effective resourcing of IMT.	Complete
The CFS to assist the IMT develop a culture of comprehensive and unbiased risk assessment, build in authoritative "*devil's advocate*" processes by RCC and SCC to ask the 'what if' questions for bushfire which have the potential to expand outside acceptable outcomes.	Complete

The CFS implement a program for potential members of IMT's, from area where opportunities to obtain experience in fully functional IMT is limited, to gain experience in observing fully functioning IMT's. For illustration purposes volunteers willing to undertake IMT duties in LEP could be offered opportunities to observe/ participate on IMT's for major bushfire incidents in Adelaide Hills. Individual certification in ICS needs to be supplemented by practice and application of the skills learnt.	Substantially Complete—Ongoing process
The CFS review the criteria and timing of the parameters to be considered in setting and adjusting the level of preparedness, with the purpose of strengthening the alignment between levels of preparedness and risk factors.	Complete
CFS re-endorse its commitment to comprehensively and consistently apply AIIMS (ICS) to all bushfire incidents	Complete
CFS, in addition to certifying competencies for personnel to apply the ICS, undertake large scale exercises, involving the three levels of control and coordination to give personnel practice in applying a fully operational ICS.	Complete
The CFS clarify the chain of command, control and coordination functions and responsibilities which operate under ICS and for routine activities; in particular the roles, inter-relationships, responsibilities, and authorities of IMT, RCC and SCC.	Complete
The CFS adjust the duty statements of regional staff to reflect the actual roles and responsibilities of staff in chain of command and control and coordination functions in the discharge of routine functions (prevention, mitigation, preparedness and response) and when working under ICS.	Complete
Please refer to the earlier recommendation on strengthening information sharing between decision makers and reliability of information and testing of the strategic awareness of IMT.	Complete
The CFS, through SEMC, continue to support the *"Stay and Defend or Go Early"* policy and work with all emergency agencies to ensure consistent application.	Complete
The State Emergency Management Committee continue to give high priority to completing and implementing an effective bushfire warning system for SA which is consistent with National Standards.	Complete
The CFS develop contractual frameworks which could be used to engage regionally based aerial services, with the requirement for extensive local knowledge, to provide bushfire surveillance/intelligence services during the bushfire season	Complete—Ongoing process
The CFS review the utility and efficacy of contracting the use of locally based aircraft capable of undertaking water bombing, benchmarked against current centrally located water bombing services, particularly to cover initial response.	Complete—Ongoing process
The CFS, subject to positive assessment of work in Recommendation (ii), trial the implementation of these contracts for the provision of aerial surveillance services during the 2005/6 Bushfire Season for the Eyre Peninsula.	Complete
The CFS examine and communicate to the community the utility/practicality (eg in terms of benefits, liability, operational aspects) of entering into contracts for the provision of aerial bushfire surveillance and intelligence, with the aircraft concurrently performing water bombing activities as a private fighting unit.	Complete
The CFS, with the purpose of strengthening the community's uptake of the *"Stay and Defend or Go Early"* evacuation, utilise case studies on how to avoid having to use roads with burning vegetation for evacuation.	Complete

Evacuation. No recommendations are made on the basis that an appropriate policy position is well advanced and is expected to be implemented in the near future.	Complete
The State Emergency Management Committee review the performance of whole of government model, with leadership by SA Minister acting as Cabinet, with the view of incorporating the disaster recovery model into disaster recovery systems for South Australia.	Complete
The CFS incorporate into performance management system, criteria to measure the effectiveness of training and on-ground performance of required competencies during major bushfire events.	Substantially Complete—Ongoing process
The CFS review the effectiveness of current training and on-ground practice systems, in particular the basic fire fighting skills training, to more effectively meet the diversity of cultural dimensions of volunteers.	Substantially Complete—Ongoing process
The Wangary Bushfire has highlighted the importance of further developing and implementing systems for the better working of farm fire units into the community's response to bushfire mitigation management activities.	Complete
The CFS undertake a study to review the strategic factors which will challenge the sustainability of the CFS and recommend actions to address challenges.	Substantially Complete—Ongoing process

MATTERS OF INTEREST

ELECTORAL LAWS

The Hon. I.K. HUNTER: We are only weeks away from a federal election. It is timely then to remind members of recent unfair changes to this country's electoral laws. In most cases, people enrolling to vote for the first time in this election will have until 8 p.m. on the day the writs are issued. Until these changes were introduced, such new voters had seven days to enrol and complete their enrolment. Similarly, those who have changed address since the last poll, often people who are renting, who are from a lower socioeconomic background or who are from a non-English speaking background, have had their window of opportunity reduced from seven days to three days only. On top of this, there are now excessive and unnecessary identity requirements simply to enrol or change one's enrolment details. To add insult to injury, changes to the electoral disclosure provisions have increased the disclosure limit for private political donations from $1 500 to $10 000. In fact, it is somewhat more, because I understand that that figure is indexed.

In short, it is now much harder for ordinary people to vote but much easier for individuals and businesses to secretly donate to political parties. What a distortion of democratic principles. It seems clear to me that the changes to the law have simply been a cynical attempt to disenfranchise the young and the vulnerable and to increase the potential vote for the coalition.

In 2001, the Joint Standing Committee on Electoral Matters conducted an investigation into the integrity of the electoral roll. The AEC testified that it had compiled a list of all possible cases of enrolment fraud for the decade 1990 to 2001, a list which included 71 cases in total or about one per 200 000 enrolments. Despite this, the minister responsible, Gary Nairn, has claimed that the changes are about 'integrity of the roll. . . It is really about ensuring that the roll is as strong as possible so that our great democracy can be assured'.

The 71 known cases of false enrolment, over a period in which five federal elections and a referendum took place, amounted to less than one vote per million being cast by a person who had knowingly enrolled at a false address—hardly any evidence of an electoral system that needs fixing.

The government has justified the changes to the enrolment time period with a claim that the AEC does not have time to adequately process the details of people enrolling to vote or updating their details in the period between the issuing of the writ and the polling date. The AEC, however, has claimed that, in fact, the contrary is true. In the year 2000 submission to an inquiry into the integrity of the electoral roll, the AEC claimed that if the rolls closed earlier they would be less accurate because (its quote):

> There will be less time for existing electors to correct their enrolments and for new enrolments to be received.

The government's changes will make the roll less accurate than it otherwise would be. At present, the AEC estimates approximately 380 000 young Australians between the ages of 18 and 25 are currently not enrolled to vote. That equates to about four federal electorates' worth of voters who will be disenfranchised under the federal Liberal government's enrolment changes. If the writs are issued tomorrow, these people will have less than 12 hours to enrol.

The second change to the act relates to new and unnecessary proof of identity requirements for new enrollees and those updating their details. I do not have the time to detail them all here, but these changes essentially mean that many young Australians and those from non-English-speaking backgrounds or, indeed, anyone who (for whatever reason) does not hold a driver's licence now has to go to great lengths to prove their identity. Combined with the 8 p.m. deadline, once the writs are issued, it is clear that many of these people will not be able to satisfy the enrolment requirements. Of course, while they have made it more difficult for ordinary people to enrol, the federal government has made it simultaneously much easier for political parties to receive massive amounts of money secretly.

The disclosure threshold for donors and political parties has skyrocketed from $1 500 to above $10 000. When this is applied to the 2004-05 political donation disclosure figures, only 58 per cent or $60 million of the $103 million received by the major parties in private funding would have been revealed. This is down from 75 per cent of $78 million under the previous $1 500 regime. Where nearly half of the private donations to a political party can be made in secret, it makes a mockery of transparent accountable government.

We have another three instances where this corrupt Liberal government has used its control of the Senate to ram through self-serving changes to the electoral system at the expense of our democracy and the rights of potentially hundreds of thousands of young Australians.

Time expired.

MEMBERS' FREQUENT FLYER POINTS

The Hon. R.I. LUCAS: I think what we just heard from the Hon. Mr Hunter is the first public sign of very considerable dissent within the state Labor caucus. The legislation that he has just complained about is being supported by legislation introduced by the Rann Labor government and his Attorney-General (Mr Atkinson). Mr Atkinson is trying to ram through parliament, in the last two days of this sitting week, legislation to support that. I am informed that a significant number of people within the caucus were very unhappy when they heard of that particular set of circumstances, and the statement we have just heard from the Hon. Mr Ian Hunter is the first public manifestation of that.

I advise journalists and commentators to look at those statements. They are not being directed just to the federal Liberal government; they are being directed at the state Attorney-General (Mr Atkinson) and his own government. It is interesting to note that, when this matter was debated earlier today in the House of Assembly, evidently Mr Kris Hanna raised almost exactly the same issues as the Hon. Mr Ian Hunter. It is a curious coincidence that the same arguments were used. I am not suggesting any collaboration, but it is a curious coincidence of arguments. The Attorney-General closed down the debate.

I am not sure what is now intended by the Attorney-General and the government. Evidently there are a number of members in this council who are unaware of this piece of legislation and the government's intentions. They have not been briefed on it, and it is quite clear that there is again very significant dissent within the Labor caucus in respect of the Attorney-General. It appears that the Attorney-General has made a fundamental mistake in terms of his own colleagues.

I am not putting forward an argument in relation to the legislation because I do not even know what the legislation entails, but what I do know is that there is very significant unrest from the Left in particular—and, of course, the Hon. Ian Hunter and co. represent the Left—and, as I said, a curious coincidence of agreement in the sort of arguments that Kris Hanna used (as an Independent) in the House of Assembly today and the arguments that the Hon. Ian Hunter put very passionately in the council this afternoon. Stay tuned in relation to this issue. Members of the council need—

The Hon. I.K. Hunter interjecting:

The Hon. R.I. LUCAS: We do not know. We have not seen the bill. We have not had a briefing. Clearly, the Rann Labor government wants the bill to be supported, but we now know that members of the Left, like the Hon. Ian Hunter, are rebelling—they are revolting. They are revolting—in more senses than one—and their spokesperson, the Hon. Ian Hunter, has stood up this afternoon and has articulated their arguments against the position of the Attorney-General in relation to the issue.

What I wish to mention this afternoon, very quickly, is the issue of frequent flyer points. Since the start of this year I have been pursuing the accumulation of frequent flyer points by government ministers as a result of taxpayer-funded travel. In particular, I refer to an answer from the Hon. Carmel Zollo, who, when I asked her how many frequent flyer points she had accumulated under taxpayer-funded travel, gave this cute response:

> No points accrued as a result of my official travel have been utilised by myself or any person since March 2005.

That was, indeed, part of the answer to the second part of the question. So, my question to the minister is: what has she got to hide? Indeed, that question could be asked of all ministers, but in particular, I ask minister Zollo: what are you hiding and why are you not prepared to say how many taxpayer-funded frequent flyer points you have accumulated?

Time expired.

CROC FESTIVAL

The Hon. J. GAZZOLA: I bring to the council's attention the annual Croc Festival recently held at Port Augusta. This festival, celebrating its 10th year, is an educational, motivating and aspirational experience for indigenous and non-indigenous youth in remote and regional Australia. Unlike that other aspirational experience recently held in Sydney under the auspices of APEC, the Croc Festival delivers tangible benefits for those disadvantaged by distance, opportunity or circumstance.

The history of this cultural and educational festival is of interest. It first started in Weipa in 1998 for 350 students and has since been staged in 50 rural and remote communities across Australia from Geraldton to Kempsey and from Thursday Island to Shepparton. Currently, seven to eight festivals are staged annually cross the country, with an estimated annual number of 20 000 students from 500 schools participating—the number of students and communities proof of the growing appeal and relevance of this event.

The festival, an alcohol, drug and smoke-free event held over three consecutive days, promotes health, education, aspiration and reconciliation through a variety of events, with the help and presence of sports stars, musicians, dignitaries, and the assistance of sponsors. One sporting star warrants special mention. Evonne Goolagong-Cawley, a two-times Wimbledon champion and a French and Australian Open winner, has been an avid supporter and attendee at the Croc Festival since its inception, through her tennis workshops, her effort and example providing inspiration for the 15 000 students who have attended her workshops. The importance of role modelling and the enthusiasm it generates for participants is seen in her reflections as a youth. She said:

> I stayed at school working as hard as I did on the courts. I never, ever lost sight of my dreams. And I learnt to believe in myself—three things that the Croc Festivals promote today.

The importance and effect of these community visits by indigenous icons on the dreams and aspirations of students cannot be underestimated, nor can its role be ignored in breaking down stereotypes and enhancing social cohesion.

The festival also serves as a one-stop shop for career, health and self-development information, while also providing host communities with the opportunity to bring together

like-minded organisations and businesses on issues and concerns affecting indigenous and non-indigenous peoples. In regard to future skills, students have access to a range of trades, practical tasks, or contact with local trades people, while career information can be gained through TAFE representatives, from indigenous ambassadors from the Department of Education, Science and Training, or from stalls organised by the Armed Forces, to name just a few of the many representations provided.

At each Croc Festival, a health expo is run by local health organisations, with support from commonwealth and state health departments. One example of the fine work undertaken is that of Luxottica Community I-care, which conducts free eye tests and provides free prescription glasses, where possible. Since 2003, Luxottica volunteer optometrists have screened 2 800 indigenous children and dispensed 1 200 free pairs of prescription glasses at the Croc Festival. The self-development events and offerings are numerous and varied. Beyond Blue, Questacon and the Australian Red Cross are just some of the non-government organisations represented, together with poetry and music workshops too numerous to mention, and even dancing and music performances by performing schools are the glue that further binds the event together.

Mention should also be made of the sponsors: the Friends of the Croc Festival, and a cross-section of government, corporate and philanthropic organisations. Thanks must be extended to the Department of Education, Science and Training, various state government and local government agencies, Luxottica Community I-care, and Questacon, and the list goes on—a wonderful conglomeration of helpers who provide the significant clout to make life better for indigenous and non-indigenous people in rural and remote communities. Recognition and thanks must also go to the members of the Board of Indigenous Festivals of Australia Ltd, the Croc Festival team and the production crew.

In conclusion, an accolade and an observation are fitting tributes to this festival: the Croc Festival is being used as an educational model in South Africa to educate students about the dangers of HIV and AIDS, while this festival is recognised as the most effective method of getting indigenous and remote kids to attend school. I wish this important event continuing success and support.

JUDICIAL APPOINTMENTS BOARD

The Hon. R.D. LAWSON: I want to raise the question of the establishment of a judicial appointments board or some other body to advise the government in relation to the appointment of judges. It was quite some years ago (in fact, 1997) that the then chief justice, Sir Garfield Barwick, proposed an independent mechanism for the appointment of judges. He pointed out that it was necessary to maintain public confidence in the judicial process and that, in the absence of such a body, full confidence could not be maintained. It may be true that Sir Garfield Barwick was prompted by the appointment in 1975 of Senator Lionel Murphy to the High Court of Australia. However, whatever his motivation, I think it is fair to say that his idea did not then take root.

For many years thereafter, although there was occasional academic comment, and some political comment from time to time, no action was taken or sufficient support obtained for the executive's yielding up some of the power it had enjoyed for a long time over the complete control of the appointment of judges

However, more recently greater attention has been paid to this important matter. When we hear, as we did last year, Justice Ruth McColl of the New South Wales Court of Appeal (one of the most senior judges in that state) urging governments to adopt the British style of Judicial Appointment Commission, and when one hears the President of the Queensland Bar Association (Peter Lyons) say that in that state, as a result of a number of appointments to state courts, particularly the District Court and the Magistrates Court, there is a growing concern within the profession and the community that governments are appointing inappropriate persons (albeit persons who have the necessary statutory qualifications) not for the reason of finding the best appointee but, on some occasions, for the purpose of rewarding political associates and, in other cases, for the purpose of gender balance, for example, one needs seriously to re-examine this question.

In Australia, in a forum held last year on this subject, a very experienced retired Queensland judge, Justice Davies of the Supreme Court, strongly recommended the establishment of a judicial appointments commission, and I commend to members the paper prepared by Mr Davies. The idea that one should appoint only persons of maximum merit has been a longstanding principle. According to Mr Davies, what we are now finding in Australia is that the approach being taken by governments is not of maximum merit but of establishing some minimum standard—that is, all legal practitioners who achieve that minimum standard are eligible for appointment—and, thereafter, making selections based on political and other considerations, and this is undesirable.

The United Kingdom has established such a body, and it has just published its first annual report. I believe that it is improving judicial standards in England. A number of other countries—in fact, most other countries in the world—have judicial appointment commissions, and it is time that we again examine an appropriate mechanism in this country and state.

GAWLER RIVER

The Hon. M. PARNELL: On Monday evening, I attended a meeting at Angle Vale that was called by the City of Playford to discuss some new information about the risk of flooding in the Gawler River. This new information concludes that previous flow rate predictions for a one in 100-year flood in the river had been greatly underestimated. The report by Dr David Kemp of the state Department of Transport, entitled Hydrological Study of the Gawler River Catchment, uses historical data and a rainfall run-off model to predict water flows in the Gawler River.

Although the study also took into account the effect of the North Para flood mitigation dam (which is currently under construction), it still found that, in the event of a one in 100 year average recurrence interval (ARI) flood, flow rates at the Gawler River junction would be as high as 662 cubic metres of water per second. This is far higher than earlier predictions which were only a quarter of that amount—154 cubic metres per second. That information was provided by consultant engineers in 2003 in the planning of flood mitigation works. The predictions in the Kemp report suggest that the proposed North and South Para flood mitigation works will be effective only at flood events below about a one in 40 year event.

So, what are the implications of this new information? One implication is that local councils and the state government need to redo their flood plain mapping, and they must

redraw the boundaries for the one in 100 year flood. Development is very likely to have to be restricted in the new flood zones, and expenditure on flood mitigation works is likely to be a major concern for local councils. I think that there is a tale of two cities at work here. At the Playford meeting, when residents were asking what it meant for them, the council provided information that it recommended that no development occur in the area until new flood mapping was received.

A number of people were caught out by having signed contracts for the building of their home, yet the council was suggesting to them that they hold off. People were running the risk of losing quotations they had received and losing their deposit. I acknowledge the efforts of Playford council in talking to some of these builders and convincing at least one major builder to extend a number of these contracts so that we have the certainty of the future flood maps when they arrive in mid December. The approach at Playford is very different from the approach at Gawler council.

At the Playford meeting I specifically asked the council, 'Will you let people sign waivers to accept full responsibility for the flooding? In other words, agree not to hold council liable if they build on the flood plain and their house floods?' The council, I think quite reasonably, said no; it was not prepared to do that. It might seem a harsh response given that people are looking at building houses in areas where there are already plenty of houses, but council, I think, saw that its role was to help protect people from themselves. However, the response just across the council boundary in Gawler is very different.

I note from the council agenda of 24 July that it was considering—and I understand it has now approved—the idea of land management agreements that precisely allow people to assume the risk of flooding themselves. The council meeting agenda states:

> The council has authorised in principal the concept of land management agreements as a method to allow land predicted to be at flood risk to be developed for residential purposes. The land management agreement is based on the landowners:
> 1. Acknowledging that the land is at risk of flooding; and
> 2. Excluding all liability of and waiving any legal right of action that might be brought against the council in the event of any loss or damage suffered whatsoever by the landowner or occupier as a result of the land being inundated by flooding.

So, two very different approaches: Playford saying, 'No, we are not going to allow people to put themselves at risk'; yet Gawler, apparently, happy to allow people to assume that risk themselves. I raise this today because this is the future, whether it is flooding resulting from increased storm events or sea level rise resulting from climate change. As a community, we need to plan for these types of eventualities, and I urge the government very seriously to consider this particular issue and the more general issue of flooding.

Time expired.

AUSTRALIAN SEAFOOD COOPERATIVE RESEARCH CENTRE

The Hon. R.P. WORTLEY: I rise today to speak about the Australian Seafood Cooperative Research Centre, the launch of which I recently attended on behalf of the Premier. Based in Science Park at Bedford Park, the Australian Seafood Cooperative Research Centre is the second largest cooperative research centre in Australia. Opened in August, the establishment of the cooperative research centre in Adelaide reinforces South Australia as the most significant seafood industry and research state in the nation and puts Adelaide in the spotlight as a world leader in seafood industry development.

Of the 40 participants across Australia, the South Australian participants who led the bid for the cooperative research centre to be located in Adelaide include Marine Innovation South Australia, the South Australian Research and Development Institute, Flinders University and the University of Adelaide. The establishment of the cooperative research centre in Adelaide has created up to 1 000 local jobs in areas of seafood production, processing, distribution, marketing and education. Over the next 10 years, the cooperative research centre aims to double the value of the nation's $2.1 billion seafood industry and contribute $700 million to the South Australian economy.

The state's regional and rural producers and industry participants are expected to benefit from having first access to many of the technologies developed. The centre will also attract significant research for Eyre Peninsula—and Port Lincoln, in particular—involving yellowtail kingfish, hatchery reared tuna, marine scale fisheries, abalone, oysters, rock lobsters and prawns. We recently had the pleasure of viewing many of these industries with the Environment, Resources and Development Committee, during which time we swam with the seals at Sceale Bay, which was a great experience.

The establishment of a seafood cooperative research centre is long overdue. Ranked as Australia's sixth most valuable food-based primary industry, the seafood industry of late has been struggling with pressure to keep up with surging demand, with the industry meeting only 40 per cent of Australian demand, and there are fears that that could decrease to 25 per cent by 2020. A lack of modern harvesting methods has also contributed to the downfall of the industry.

The cooperative research centre aims to equip the Australian seafood industry to keep up with escalating demand by looking at new methods of fish farming, adding value to wild catch fish, examining the scientific links between health and seafood, improving the quality of seafood products and responding to consumer demands. To make significant improvements along the entire seafood chain, the cooperative research centre has identified five key areas on which it focuses its research. These areas include value chain profitability; product quality and integrity; health benefits of seafood; education and training; and commercialisation and utilisation. Research conducted by the cooperative research centre will assist end users to profitably deliver safe, high quality, nutritious seafood products to premium markets domestically and overseas. Marine Innovation SA chair and SARDI Executive Director, Mr Rob Lewis, recently said:

> A prime driver for our work will be responding to consumer demands, understanding the national and international markets, and helping industry deliver safe, high quality seafood to the premium markets, as well as developing seafood products.

The first of its kind in Australia, the seafood cooperative centre will stimulate and provide comprehensive seafood related research and development and industry leadership on a national basis.

The seafood cooperative research centre is one of five cooperative research centres supported by the state government. The state government has invested $4.2 million over the next seven years in these cooperative research centres. The other four cooperative research centres to win funding include Future Farm Industries CRC, CRC for Biomarker Translation, the sheep industry and rail.

Time expired.

GAMBLING, TWO SIDES OF THE COIN CONFERENCE

The Hon. NICK XENOPHON: Last Wednesday 19 September I attended a conference in Launceston, Tasmania, organised by the National Council of Women Launceston. It was a forum on gambling called Two Sides of the Coin. The convener of the forum was the immediate past president of the National Council of Women Launceston, Mollie Campbell-Smith, who is a remarkable woman with enormous energy and drive. She did a tremendous job of organising the conference. Whilst it would have been rude for me to ask Mollie Campbell-Smith how old she was, I did manage to glean from her that her eldest child was 60 years old. I hope that I have half her drive and energy when I am anywhere near her age. She really was an inspiration to all who attended the conference.

The conference was also attended by Gabriela Byrne from Victoria, a former problem gambler, who has developed the Free Yourself program, which is a program of self-help for those who have a gambling problem. Some 10 000 copies of her book have been sold nationally, and it has helped many with a gambling problem. It is an abstinence-based program and has proved to be very effective in giving people the confidence and strength to beat their gambling problem, in association with other forms of treatment and help. The conference was also attended by Dr James Doughney, who is a lecturer at the School of Applied Economies at Victoria University and the author of *The Poker Machine State*, which has a subheading 'Unethical governance and its implications for policy and social activism'.

Mr Doughney's research is based on not only conclusions of the Productivity Commission in relation to problem gambling but also leaked secret documents from the gambling industry in Victoria, where Tattersall and Tabcorp researchers have cause to believe that they receive 80 per cent of their revenue from 20 per cent of their customers, that is, 80 per cent of total losses are derived from 20 per cent of poker machine users.

We know from leaked documents, according to the research of Dr Doughney, that close to 60 per cent of pokies' losses come from some 15 per cent of heavy users, who could be described as problem gamblers. That is a frightening proportion of losses coming from problem gamblers. He raised the issue that this is an untenable state of affairs in terms of public policy. It indicates that it is an unethical state of affairs and it is unconscionable for the state to rely so heavily on problem gamblers for so much of its revenue.

Unfortunately the industry decided not to provide a representative there, which was woeful on its part. They would have been given a fair hearing, yet there were no representatives from the Hotels Association or the casinos to put across their points. One feature of the Tasmanian gambling laws worth looking at is the fact that ATM machines are not allowed in venues where there are poker machines—not just in the poker machine room but in the venue at all—with some exceptions for the two casinos.

It is interesting to note that the average comparison of losses per machine in 2005-06 in South Australia is in the vicinity of $59 600 versus some $29 470 for Tasmania. That indicates that there is a real benefit in not having ATMs at poker machine venues. The conference was useful in that it indicates widespread concern on a national basis about the impact of poker machines. It was a springboard for further work to be done, at least in Victoria, South Australia and Tasmania, to share resources, to share ideas and to do more work to reduce the impact of problem gambling in Australia.

WATERWORKS (MAKING OF RESTRICTIONS) ACT AMENDMENT BILL

The Hon. A.M. BRESSINGTON obtained leave and introduced a bill for an act to amend the Waterworks Act 1932.

The Hon. A.M. BRESSINGTON: I move:

That this bill be now read a second time.

These amendments to the Waterworks Act relate to restrictions and how those restrictions can actually be implemented in the future. Although I do not want to have a shot at minister Maywald for the 'bucket rule' a few weeks ago which instigated the need for a lot of these amendments that are being put forward and the Hon. Nick Xenophon's recommendation that the constitution of SA Water be changed, it was an example of how information coming from the corporation directly to the minister may not be in the best interests of the residents of South Australia and is not actually in the best interests of water conservation measures for this state. The people who vehemently opposed the bucket rule included the Nursery Industries Association and Dr Schwertzberger from Flinders University, who is a prominent water expert. Mr Colin Pittman, who is the project manager for the Salisbury wetlands project, was critical of that, and many others saw that it was a useless regulation to bring in.

This bill merely proposes that, when restrictions or water conservation measures are needed because of a water shortage or this one in 1 000 year drought or whatever it is, the parliament has the opportunity to debate the restriction itself to make sure that when information goes out to the people of South Australia it has actually been well thought through and it is not just a recommendation from the corporation, which seems to be quite reluctant to implement or adopt any water conservation measures at all that will be effective for this state.

I will ask the council to contemplate the need for a stakeholders water advisory committee, which would sit between the corporation and the minister to hand to both houses a report based on its expertise so that we have information in front of us to make a well balanced decision on behalf of the people of South Australia. People who would be included in this stakeholders advisory committee are those with knowledge and experience in water management in an urban or regional setting; practical knowledge and experience in the protection and management of the environment; practical knowledge and experience in water conservation; practical knowledge and experience in the plant nursery and garden industry; practical knowledge and experience in the storage and supply of bulk water; practical knowledge and experience in community affairs; and practical knowledge and experience in industry, commerce or business.

One of the main gripes, if you like, that are coming forward in this debate about water shortage is that business, commerce and industry are not required to take any measures at all to recycle or collect stormwater and that what they are being asked to do is minimal compared with the sacrifices

that normal, everyday citizens are being required to make. Given that it is 1.7 per cent of the water coming out of the River Murray that people are consuming, it seems quite unreasonable that they should bear the entire brunt of conserving water in this time of drought. What we need to do is basically get this right.

One of the other provisions in this bill, contained in clause 33B(4)(a), is that the minister must consult with a City of Salisbury consultant—a technical adviser, if you like—on the water conservation and wetlands projects to see whether there is a better way to actually implement a restriction or whether a better system could be established in the long term to prevent tough measures like the bucket rule even needing to be contemplated.

It was also during this debate that we saw some 15 000 people who were prepared to march in a rally against the bucket rule, for the simple reason that it was not going to conserve much water at all and that many people had gone out and had dripper systems installed last summer because they were told that drippers would be acceptable, and a great way of watering gardens.

The Hon. R.P. Wortley interjecting:

The Hon. A.M. BRESSINGTON: You did that? I did that, too, Mr Wortley; good on you.

The Hon. B.V. Finnigan interjecting:

The Hon. A.M. BRESSINGTON: Shame on you! People did go to some expense also in buying tanks. They took measures to conserve water, to catch water and to be able to utilise and recycle water which has been quite amazing. It shows that the people of South Australia are taking this seriously and are prepared to behave in a responsible manner where and when they can afford to.

Then, of course, the next summer the bucket rule comes in and drippers are out. There was no explanation and we were basically told, 'This is not negotiable and this is what you have to comply to.' That enraged, as I said, about 15 000 people who were prepared to rally against it.

Salisbury has a wetlands project, which I have been to see twice now. Mayor Tony Zappia and Colin Pitman took me on a tour about 11 months ago and explained how it works. Really and truly, the science behind this is so simple but so effective and I believe that councils should be encouraged, where possible, to introduce wetlands and wetlands projects at every opportunity. I believe Salisbury council is now in a position where it is storing water in an underground aquifer that it has harvested from its wetlands project, and it estimates that the amount of good water that it has is about a four-year supply.

I believe that in the long term, if the state was to adopt this project amongst various councils, we could go part way to solving the water shortage in South Australia. I have asked parliamentary counsel to include this as a stipulation in this amendment whereby a person of Colin Pitman's knowledge and experience (or some such person) be included in the Stakeholders Advisory Committee and be a direct adviser to the minister, to work with the minister and SA Water to ensure that the minister receives the best possible advice in times of crisis.

This is a pretty simple bill. The report that the Stakeholders Advisory Committee would hand down would include information such as the efficiency of the water conservation measures, environmental, social and economic impacts associated with the restriction or the variation, and various strategies or practices that may be adopted or applied to promote or achieve greater efficiencies in the use of water.

This environmental study also has social impacts which need to be included in the report. One of the major concerns for a lot of people was not only the fact that they were going to let parts of their garden die but that their houses were going to crack and there would be damage caused by not keeping the ground around their homes moist enough. That was quite a concern to people. I know that during last summer we restricted the amount of water that we were using to water our garden quite a bit. For the first time in many years we now have cracks appearing inside our home that are going to take quite a bit of money to fix, with no guarantee that those cracks will not return again next year if we continue to lessen the amount of water we put on our garden. Also, for older people, gardening is sometimes a great outlet. People take pride in their homes and invest a lot of money in their homes, and they should be able to have water conservation measures which also allow them to care for their plot in the world and make sure that their investment is looked after to the best of their ability.

I present this amendment to the council. I do not believe that it is complicated, and I do not believe that it is not doable. I think the formation of a Stakeholders Advisory Committee, with people from industries involved with gardens, water conservation and whatever else, would be of great assistance to the minister in making decisions and could possibly help to avoid any embarrassing situations, such as that experienced a couple of weeks ago. I await hearing members' contributions.

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

NATURAL RESOURCES COMMITTEE: ANNUAL REPORT

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

That the annual report of the committee 2006-07 be noted.

The annual report of the committee summarises the comprehensive work that the committee was engaged in over the past financial year. It details the principal functions as set out in the Parliamentary Committees Act 1991, and summarises the other two very specific obligations under the Natural Resources Management Act 2004 and the Upper South-East Drylands Salinity and Floods Management Act 2002.

There are four other reports that have been tabled that will detail the scrutiny of natural resource management levies as proposed by NRM boards under the provisions of the Natural Resources Management Act 2004. Very briefly, those NRM plans were referred to the committee because the proposed increase in the levy exceeded the CPI rise. The committee thought that there was room for considerable improvement in the process of determining levies. We felt that undue pressures and unrealistic expectations could be avoided if we could examine, even in draft form, levy proposals as early as the consultation phase.

We have also recommended that the consultation period be extended to include not just local government but also the public. The committee now monitors the drainage program being constructed under the Upper South-East Dryland Salinity and Flood Management Act 2002. Our first report on the drainage program will be tabled in parliament later this year. Our annual report contains a summary of our findings into two inquiries. The first of these was on mineral resource development in South Australia. South Australia's strength in this industry is its capacity to facilitate exploration and

mining, and we have been advised that we are regarded as being the benchmark state in Australia in this regard. Among our findings we concluded:

- that significant investment in infrastructure, such as road, rail, power and water supply, to support the expected mining boom will be required;
- that there are unprecedented opportunities for the industry and remote communities alike;
- that there are other significant opportunities, particularly with the development and application of ground-breaking technology, such as the use of geothermal energy and new water treatment technology;
- that the high demand for skilled works will require facilities through which workers can gain the necessary skills;
- that we need to address the convoluted mechanism in place to deal with the management of native vegetation issues; and
- that there are far better ways to deal with indigenous matters such as sacred sites and native title.

Our second inquiry was into the impact of forestry on Deep Creek, a once perennial stream that eventually flows into the Deep Creek Conservation Park. The park is regarded as having high conservation value, as do a number of swamps within the Deep Creek catchment. From the evidence presented to the committee we concluded that there has been an appreciable reduction in stream flows that are causally related to the expansion and growth of the local forestry. Although the committee is generally supportive of the forestry industry as a whole, it has an obligation to take into consideration and minimise the impact of the industry on the environment.

The committee felt that the manner in which the issues raised in this report are managed will clearly signal the values that this community and government agencies alike place on the preservation of this unique environment for future generations. The looming prospect of carbon trading and what it may mean for forestry proposals in sensitive environments needs urgent consideration. We see these as broader issues in relation to water use and forestry. Perhaps in the near future we will inquire into forestry and its impact on ecosystems and waterways.

The committee's annual report also details all other aspects of our work, from field trips to the conferences that members have attended. Towards the back of the report members will find a schedule of our meetings, and it includes the names of some 80 witnesses. In addition, members will find that we met with more than 30 people on our site visits. I believe that all members of the committee will agree that we have had a productive year and through the recommendations in our reports have shown that collectively we can pursue matters in a bipartisan way. On behalf of the committee, I would like to thank all of those who have contributed to our endeavours, including the many witnesses who have appeared before us, giving up their valuable time to put to us their views and understanding of the issues before us.

I would also use this opportunity to express my gratitude to the members of the committee—Mr John Rau, Presiding Member, the Hon. Graham Gunn MP, the Hon. Sandra Kanck MLC, the Hon. Steph Key MP, the Hon. Caroline Schaefer MLC and the Hon. Lea Stevens MP—for the cooperative way in which we have been able to work together. I would also give thanks to our administrative support, Mr Knut Cudarans, whose great work has made the work of the committee much easier. I commend the report to the council.

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

NATURAL RESOURCES COMMITTEE: KANGAROO ISLAND NATURAL RESOURCES MANAGEMENT BOARD LEVY

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

That the report of the committee on Kangaroo Island Natural Resources Management Board levy proposal 2007-08 be noted.

After considering all of the levy proposals that came before the committee—

The Hon. R.I. Lucas interjecting:

The Hon. R.P. WORTLEY: Well, that is it. It actually looks quite well, does it not? After considering all of the levy proposals that came before the committee, it is clear that there was one common area of concern, and that was regarding consultation. Although all of the proposals proceeded in the manner prescribed by legislation, the Kangaroo Island Natural Resources Management Board was the exception. We were particularly impressed with the comprehensive consultation processes that were held over five weeks, engaging the community, holding public meetings and advertising in the local media.

The committee formed the view that consultation only with local government is inadequate. It certainly provides local government with the opportunity to put forward its concerns, but ultimately it is the community that pays and local government is merely a collection agency. Those paying the levy should be given a real opportunity to provide input about what their NRM board is proposing to achieve and why, and at what cost to them.

Boards should be required to engage directly with the public in order to be able to sufficiently gauge public sentiment and encourage a response. The committee sees the comprehensive consultation process associated with developing a regional plan as being equally valid when setting an NRM levy. It is our recommendation that section 81(7)(a)(ii) of the Natural Resources Act 2004 be further amended to require a natural resources management board to consult with the public, as well as with any constituent councils. We know from the examination of other levy proposals that there has been an apparent disregard of comments received from local government.

The submissions we received show that both the community and local government are equally dissatisfied with the current consultation process. This does not appear to be the case with the Kangaroo Island NRM Board. I say again: this board went well beyond its statutory requirements regarding consultation. Incidentally, we were told that the board did not receive a single submission of complaint regarding the operation of the levy rate proposed by the board. There appears to be general dissatisfaction with the prescribed minimum 21 days of the consultation period.

One of our recommendations is that the minimum consultation period of at least 21 days, as required under section 81(7)(a)(ii) of the Natural Resources Management Act, be increased to 35 days to facilitate a more comprehensive consultation process that includes the public and the Natural Resources Committee. The committee has also recommended that section 81(7)(a)(ii) of the Natural Resources Management Act 2004 be amended to require a natural resources management board to consult with the Natural Resources Committee, as well as constituent councils.

The Kangaroo Island natural resources management region is the only one which shares a common boundary with its only constituent local government, the District Council of Kangaroo Island. All of the other NRM regions have a number of local government areas within their boundary, either entirely or in part. It is clear that having to work with one local government has made the task of getting community acceptance of the NRM plan much easier than would otherwise have been the case. Unlike other regions, only one levy rate needs to be struck and applied across the entire region. This coincidence of jurisdictions may provide an opportunity to share some administrative functions that are currently being duplicated.

The committee would like to see whether a cost-effective administrative arrangement between the board and the council could be achieved. Such arrangements could then enable money to be directed away from administration and towards more on-ground work to improve service delivery and more efficient utilisation of scarce funds available to the Kangaroo Island community. Our recommendation is that consideration be given to the rationalisation of functions and services given by the Kangaroo Island Natural Resources Management Board and the Kangaroo Island council.

I would like to briefly touch on the quantum of the levy. We need to bear in mind that the island has only 4 000 rateable properties. There is 540 kilometres of coastline and associated marine environment that needs to be managed, which is quite large considering the number of ratepayers. However, the board proposes to achieve its objectives with a relatively modest levy rate of about $25 per rateable property, up from $10.25 in 2006-07. We realise that this represents an increase of about 144 per cent, but the committee accepts that the proposed levy rate for 2007-08 has community acceptance.

I thank those who gave their time to assist the committee during its consideration of this levy proposal and, in particular, I extend my thanks to Janice Kelly (Presiding Member), Jeanette Gellard (General Manager), Frazer Vickery, Rodney Bell and Jayne Bates, all from the Kangaroo Island Natural Resources Management Board, for appearing before the committee. I also take this opportunity to acknowledge the members of the committee: Mr John Rau (Presiding Member), the Hon. Graham Gunn MP, the Hon. Sandra Kanck MLC, the Hon. Stephanie Key MP, the Hon. Caroline Schaefer MLC, and the Hon. Lea Stevens MP, who have worked so cooperatively throughout this inquiry. I commend the report to the council.

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

NORTHERN AND YORKE NATURAL RESOURCES MANAGEMENT BOARD

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

That the report of the committee on Northern and Yorke Natural Resources Management Board levy proposal 2007-2008 be noted.

Due to the fact that the committee was bipartisan and that there was unanimous endorsement of the report, I seek leave to have it inserted in *Hansard* without my reading it.

The Hon. R.D. LAWSON: I rise on a point of order, Mr President. Have we just incorporated the report? The member said that he wanted the report to be incorporated in *Hansard*. He meant to say, I am sure, his speech supporting the report.

The PRESIDENT: Leave is granted to have the Hon. Mr Wortley's speech inserted in *Hansard* without his reading it.

Most of the background to this report has been stated in noting the Kangaroo Island Natural Resources Management Board Levy Proposal 2007-08.

Just to very briefly reiterate, the Committee finds that the consultation required under the *Natural Resources Management Act 2004* is totally unsatisfactory and we have recommended that the consultation period be extended from 21 days to 35 days and that it include consultation with the public and the Natural Resources Committee. These recommendations are consistent throughout all of our NRM reports.

However there are a number of issues specific to the levy proposed by the Northern and Yorke NRM Board that I would like to raise.

From the submissions received by the Committee is apparent that there has been an apparent lack of meaningful public consultation employed by the Board. The Board appears to have had little regard to concerns raised by local government during the mandatory consultation period. In our opinion such an apparent lack of consideration it is unacceptable.

The submissions clearly demonstrate that the local governments have shown a genuine regard for their constituents and we commend them for their efforts in bringing the matter to the attention of the Board.

We were not satisfied with the process by which the board determined or attempted to justify the division 2 levy. On our recommendation to the Minister for Environment and Conservation the division 2 was removed from the Northern and Yorke NRM plan. The Committee acknowledges that all Boards are just emerging from transitional arrangements and felt that Mr Lewis, Presiding Member gave a fair account of the direction of the Board.

With respect to the proposed levy it represents a three fold increase on the levy raised last year, however the Committee considered that the average levy of $37 was not unacceptable. The Board needs to put more efforts in securing State and Commonwealth funds because the notion of simply increasing levies to compensate for the loss of these funds will not be met favourably with the Committee.

On behalf of the Committee I would like to thank all those who gave their time to appear before the Committee and to those for their submissions.

Finally thank you to the Members of the Committee Mr John Rau, Presiding Member, Hon Graham Gunn MP, the Hon Sandra Kanck MLC, the Hon Stephanie Key MP, and the Hon Caroline Schaefer MLC for their due diligence while working through this inquiry. I commend the report to the council.

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

SOUTH-EAST NATURAL RESOURCES MANAGEMENT BOARD

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

That the report of the committee on South-East Natural Resources Management Board levy proposal 2007-08 be noted.

I seek leave to have my speech inserted in *Hansard* without my reading it.

Leave granted.

This report contains recommendations found in the previous reports on NRM levies, that is, with the exception of the report on the Kangaroo Island Natural Resources Management Board Levy Proposal 2007-08 which contained one additional and quite specific recommendation.

Briefly I will reiterate those findings and recommendations. The Committee found that the current statutory provisions under the *Natural Resources Management Act 2004* are totally unsatisfactory and we have recommended that new consultation provisions include consultation with the public and the Natural Resources Committee. We also concluded that the consultation period should be extended from 21 days to 35 days. As with our other reports on NRM levies this report also contains recommendations to this effect.

There are a couple of issues specific the region that we found during the consideration of the levy proposed by the South East NRM Board.

Not unexpectedly the Committee found that the Board had carried its consultation as required by statute. Of the eight constituent councils within the region only, the Tatiara District Council, made a submission to the Committee on the levy proposal. They expressed concerned at the extent of levy rate rise and noted the reduction in funding from governments both state and federal seemed to raise the prospect of a re-allocation of NRM funds.

The Board demonstrated some measure of public consideration through the commissioning of a comprehensive impact assessment and we were advised that the Board's actions are consistent with the conclusions of that report.

A Division 1 (land based) and a Division 2 (water based) levies for 2007-08 are proposed by the Board. The basis of the Division 1 levy remains unchanged as a fixed rate across the region but will rise by 15% from $30 per in 2006-07 to $34.50 per ratable assessment in 2007-08.

Their Division 2 levy will rise by about 20% in the coming year for water-taking allocations from $2.08 per megalitre of water allocated last year to $2.39 per megalitre this coming year. The levy is variable across the region because it is assessed on a sliding scale and based on demand.

The Committee advised the Minister that it did not oppose the levies proposed by the South East NRM Board.

On behalf of the Committee I thank those who gave their time to assist the Committee during its consideration of the levy proposed in the South East Natural Resources Management plan. In particular I would like to thank David Geddes, Presiding Member and Hugo Hopton, General Manager, both of the South East Natural Resources Management Board and the Tatiara District Council for their written submission.

And finally thank you to the Members of the Committee Mr John Rau MP, Presiding Member, the Hon Graham Gunn MP, the Hon Sandra Kanck MLC, the Hon Stephanie Key MP, the Hon Caroline Schaefer MLC and the Hon Lea Stevens MP for the tri-partisan manner in which we have been able to deal with this inquiry. I commend the report to the council.

The Hon. B.V. FINNIGAN secured the adjournment of the debate.

EYRE PENINSULA NATURAL RESOURCES MANAGEMENT BOARD

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

That the report of the committee on Eyre Peninsula Natural Resources Management Board levy proposal 2007-08 be noted.

I seek leave to have my speech inserted in *Hansard* without my reading it.

Leave granted.

This is the final report that the Committee will be tabling with respect to NRM levies this year. It contains the same recommendations as all of the other reports that we have tabled on NRM levies. That is with the exception of the report on the Kangaroo Island Natural Resources Management Board Levy Proposal 2007-08 which contains one additional recommendation.

I would like to bring to your attention some of the more specific issues that arose during the consideration of the levy proposed by the Eyre Peninsula NRM Board.

The Eyre Peninsula NRM region is the most sparsely populated region in which a levy is raised and covers a substantial portion of South Australia. It has around 1 800 kilometres of surrounding coastal and associated marine environments. With a very large demand for NRM services and a population of around 65 000 this relatively small revenue base is the main reason for the large individual levies that were proposed

The Board's initial proposal for the Division 1 (land component) levy to be a flat rate of $105 per ratable property across all councils, with the exception of the cities of Whyalla and Port Lincoln was rejected by the Minister for Environment and Conservation. It was amended to include a fixed amount increase for the cities of Port Lincoln and Whyalla, with levies in all other regions being adjusted by CPI. The overall income from levies will increase by approximately 44%.

A similar rise in the Division 2 or water based levy was proposed and attributed mainly to the rise in levy per kilolitre for water used to provide a reticulated water supply from the Southern Basins Prescribed Wells Area and Musgrave Prescribed Wells Area.

The Committee was advised that the Board was exploring the possibility of securing corporate funds to finance some of the programs that cannot be carried out within the current budget.

Overall the Committee was encouraged by the Board's commitment to overcoming its funding shortfalls and its attitude towards reducing administration costs.

Once again were not persuaded that reliance on local governments to inform the community on the extent and purpose of the proposed NRM levies was satisfactory.

Submissions were received from the City of Port Lincoln, the District Council of Le Hunte and numerous individuals regarding this levy proposal. The concerns raised reflected similar concerns in other regions and included the lack of and short period for consultation and dismay at the exceptional large increases in the levies that were to be paid

The financial position of the Eyre Peninsula NRM Board and burden on ratepayers certainly presented a strong case for the introduction of some form of state wide cross-subsidy scheme. A mechanism whereby highly populated regions that are able to sustain relatively good services at a small cost to ratepayers could contribute an amount toward the maintenance of lowly populated rural areas could be investigated.

We did not make a recommendation on this issue but we have been advised that some work is being done to explore the feasibility of such a scheme.

I wish to thank Brian Foster, Presiding Member, and Kate Clarke, General Manager both of Eyre Peninsula Natural Resource Management Board for their time to assist the Committee during its consideration of the levy proposed in the Eyre Peninsula Natural Resources Management plan. And to the City of Port Lincoln, the District Council of Le Hunte, L.T and F.J Dearman, D.J. and E. A. Wiseman and Madeline M. Schoder who made written submissions to the Committee.

I would also like place on record our appreciation to Claus Schonfeldt, Director, Natural Resources Management Support and Andrew Emmett, Group Manager, Operational Policy and Legislation, both of the Department of Water, Land and Biodiversity Conservation who not only appeared before the Committee during our examination of all of the NRM plans but on numerous other occasions throughout the year.

Finally thank you to the Members of the Committee Mr John Rau MP and Presiding Member, the Hon Graham Gunn MP, the Hon Sandra Kanck MLC, the Hon Stephanie Key MP, the Hon Caroline Schaefer MLC and the Hon Lea Stevens MP for their contribution to this inquiry. I commend the report to the council.

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

OCCUPATIONAL SAFETY, REHABILITATION AND COMPENSATION COMMITTEE: WORKPLACE INJURIES AND DEATH

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

That the report be noted.

The Occupational Safety, Rehabilitation and Compensation Committee is a committee of the parliament of South Australia and established pursuant to the Parliamentary Committees Act 1991. It comprises members of both houses. Following the state election last year, members were appointed to the committee, as follows: Mr Tom Kenyon (member for Newland); the Presiding Member, Mr Tom Koutsantonis (member for West Torrens); Hon. Terry Stephens; Mr David Pisoni (member for Unley); Hon. Mr Xenophon; and me. The secretary of the committee is Mr Rick Crump, and the researcher assisting with the report was Ms Kathryn Bion. I thank them for their hard work, particularly Ms Bion, who came into the process fairly late and had some catching up to do after the previous research officer left. She did an exemplary and very thorough job and is to be congratulated on the work she contributed.

This is an inquiry of the committee into the law and processes relating to workplace injuries and deaths in South Australia. None of us likes to see injuries or deaths occur in the workplace. Of course, it is axiomatic that, when we go to work, we do not expect to suffer injury or die as a result of the work we do. Unfortunately, it happens all too often, and I am sure that all honourable members are united in working together to ensure that as few injuries and deaths as possible occur in the workplace. I know that most employees and employers, along with employee representatives and employer bodies, are very committed to ensuring that these incidents are minimised. It is the responsibility of the parliament to ensure the legislative framework that governs health and safety in the workplace and how those issues are managed.

I will discuss the various matters in the report. The recommendations mainly relate to improvement of the operation and enforcement of or minor changes to certain provisions. I will canvass other issues, namely, drug and alcohol testing in the workplace; union officials' right of entry for occupational health and safety purposes; the follow-up process after serious accidents or injuries in the workplace; and available penalties and avenues of redress via the legal system. I touch first on the areas where the committee concluded that the current provisions in the Occupational Health, Safety and Welfare Act, and the workers compensation legislation that also applies, were adequate but perhaps in need of more education, enforcement or some minor change.

Recommendation 1 relates to the employee's duty under the act; that is, it should be a matter of more enforcement and education. Recommendation 3 concerns the construction code and is directed at ensuring that special attention is paid to the needs of the residential housing industry, which is a smaller industry with more subcontractors, ensuring that the construction code, when it is implemented, is not too onerous on those parts of the industry. Recommendation 4 suggests that there be an audit of the number of health and safety representatives in the industries in which they are found; to encourage more health and safety representatives; to ensure that they have adequate training; and, in particular, to pay attention to high-risk injuries. Recommendation 6 refers to there being greater awareness of the help and intervention centre applying in SafeWork.

Recommendation 7 recommends that there be a consultative section for employers to contact regarding health and safety issues. The intent of this recommendation is that employers should be able to seek some advice about health and safety matters without feeling that they will bring on themselves a prosecution or grave consequences. Of course, this does not derogate from the employer's responsibility under the act or the prerogatives of SafeWork to address problems in the workplace or to halt work, if necessary, to ensure workers' safety. However, it is believed that a consultative section, where employers can ask someone to look at the workplace and make recommendations on how they can better comply with the legislation, would be of benefit.

Recommendation 8 is that there be greater consultation on regulations and codes and that there be more industry-specific codes. Recommendation 9 of the report states that there should be an emphasis on the education and information role of SafeWork SA. Recommendation 13 suggests that there should be a campaign regarding the provisions that protect workers from discrimination when raising health and safety issues. Briefly, those are the areas in which there was more or less broad consensus and a recognition that there needs to be better education on or minor changes to certain professions without there being a fundamental shift.

I turn now to the issue of drug and alcohol testing in the workplace. Recommendation 2 allows SafeWork SA to drug and alcohol test employees involved in and present at the time of a workplace accident. Recommendation 2A relates to the right of employers randomly to drug and alcohol test. This issue arises quite often and is the subject of much debate across a number of industries. I will read recommendation 2A as I think it summarises the position very well:

> It is a basic principle of employment law that unilateral changes to conditions, such as random drug testing, should not be introduced when employees accept an offer of employment on different terms. This does not preclude the introduction of change. However, the introduction of random drug testing in the existing workplace should be done by consultation and agreement with employees. This may be done through employee representatives or consultative structures. However, the need to prevent workplace injury is paramount. Where drug industry testing genuinely cannot be implemented by agreement, employers should have the ability to introduce random drug testing after giving employees appropriate notice, a minimum of three months.

While some committee members did favour employers having a carte blanche right to drug and alcohol test employees on a random basis, the majority of the committee believed that, where preferable, it is something that should be done by consultation and agreement. I am sure those members who have been involved in trade unions before coming into parliament or those members who have been involved in workplace safety from the employers' side would be aware of many workplaces where random drug and alcohol testing has been introduced through a consultative process.

It is not something to which most employees object or to which unions or worker representatives automatically object, but it should be done in such a way to ensure that the privacy of individuals is protected and that it is done on a basis that will not invade the privacy of the individual. Having said that, the committee does recognise that, if it is not possible to obtain it by agreement, there should be an opportunity for the employer to introduce it. Another issue considered was the question of union officials having right of entry to a workplace for occupational health and safety purposes.

The committee supported that proposition. Under strict conditions the recommendation is that properly accredited union officials have right of entry into workplaces for the purposes of occupational health and safety-related inspections, advice, and so on. Again, having come from a trade union background, I know that many trade union officials are very experienced in health and safety matters and are able to provide very valuable assistance and advice to employers and employees to ensure that health and safety is observed and improved in the workplace.

I think it makes sense that that right of entry be extended. I do not accept the argument that it is some sort of union ploy to get into workplaces they would not otherwise get into, or that it is only about unions wanting to be able to recruit. I think that is a fairly fallacious argument. The reality is that union officials who are involved in health and safety issues or in WorkCover are very well placed to be able to assist employers in meeting their obligations. Another issue considered by the committee was the follow-up by SafeWork SA after accidents. In that regard, recommendation 10 is that there be a new policy as to who needs to be interviewed in such an event.

Recommendation 11 refers to the information and liaison available to victims and their families. The committee also recommends that, where required, counselling be made available to victims and their families through SafeWork SA. The final matter that required some deliberation and debate within the committee related to the penalties that should apply in the court, the avenues of legal action that should be available to employees and the ability of SafeWork SA to prosecute employers. In that regard, recommendation 12 addresses victim impact statements and that the court should have to consider them and that, depending on the circumstances, a person from the company or the employer be required to be present when a victim impact statement is being made.

Recommendation 14 refers to non-pecuniary penalties. It is recommended that section 60A be broadened in its application so that it is compulsory for the court to consider imposing a non-pecuniary penalty and that the range of options for penalty be greater. Further, the report recommends that the court should have the discretion to impose non-pecuniary penalties on individuals, companies and any other parties the court sees fit. This would allow orders to be made with respect to company directors or others with responsible roles in the organisation. Again, that recommendation is aimed at ensuring that those who are responsible for overseeing workplace safety are the people held to account for it and, as a result, may suffer a non-pecuniary penalty.

We all know that the director, managing director or chief executive of a company will not necessarily be the person involved at the coalface in terms of overseeing the operation of a particular machine, forklift, or whatever, but we know that there are occasions when decisions are made at a senior level to ignore health and safety problems, or to take the approach that the cost of fixing a self-evident problem is greater than the potential penalties or consequences of accidents and that therefore a decision is made to ignore the problem and hope for the best.

In those circumstances, where it is able to be proved that those sorts of things have happened, it is certainly appropriate that people beyond those who might have been involved in the immediate workplace be subject to penalties, and that may include non-pecuniary penalties. Recommendation 15 recommends there be a discretion for the court to order that part of the penalty be paid to a victim or their family. Recommendations 16, 17, 18 and 19 relate to a number of provisions in interstate or other jurisdictions in relation to health and safety legislation. Recommendation 17 refers to enforceable undertaking, such as applies in the Victorian legislation.

Recommendation 18 refers to the New South Wales legislation, which places a reverse burden of proof on directors and managers in the event of an offence. Recommendation 19 refers to the imputation provisions found in South Australian legislation and recommends that they be replaced with imputation provisions modelled on the commonwealth legislation or the ACT Criminal Code. Recommendation 21 provides for higher penalties for repeat offenders. Finally, I will deal with recommendation 20 which recommends that an offence of industrial manslaughter be introduced in South Australia.

This is a contentious proposition and one the members of the committee did spend sometime considering. The majority of the committee has recommended that an offence of industrial manslaughter be introduced. As a member of the majority of the committee, I support that recommendation. It is important to note, though, that an offence of industrial manslaughter would not be introduced tomorrow with people finding themselves being prosecuted for such an offence in the next couple of weeks. It would be a fairly lengthy process to introduce such a provision. You would need to spend a lot of time on the drafting to ensure that it was a robust provision that would be able to result in prosecutions. There would not be a lot of point in having a provision which would never result in any prosecutions.

While that would mean you would have a law with an educative effect, at the same time there is not much point having a law if it does not have teeth. It would be a lengthy process to draft a law that would stand up to scrutiny and be able to result in successful prosecutions in court. It would also require great consultation with employers, business, unions, employees and the wider community, because it would be a substantial change to our health and safety law to bring in an offence of industrial manslaughter with significant penalties of incarceration for those convicted of such offences. My view would be that, while I support the recommendation, it is important to note that it is not something that would happen overnight and would need to be done carefully on a considered basis to ensure that it has the maximum effect.

The under-pinning of that recommendation is that, where it can be proved that an employer or person involved in the workplace as the person holding or overseeing the duty of care of the employer has acted in a negligent, culpable way, they should be able to face severe penalty, which is in line with what the community expects and with what is fair to employers and employees. It is important to note that such a penalty would only be used in very severe, obvious cases and it would be extraordinarily difficult I suspect, no matter how carefully such a provision was worded, to get a successful conviction under that sort of regime. It is important that such a penalty be available to send the strongest possible message that negligence—deliberate ignoring of health and safety issues that may contribute to someone being seriously injured (or in this case killed)—will be treated with the utmost seriousness by the community and can result in a severe penalty.

It is important that that recommendation be viewed in a sensible, reasonable and moderate context. When many people think of industrial manslaughter they wonder whether the entire board of a major public company will be thrown into gaol if one of their workers is tragically killed. Of course, that would not be the case: it would simply be that, where it is clear that someone has failed wilfully and maliciously in their duty of care to an employee, and that failure has led to that employee's death, that person should face a severe sanction under the law of the land. That is a sensible provision and one that would need a lot of thought and careful consideration. It is certainly an ideal rather than necessarily the perfect answer. There is never a perfect answer to these things, but when you see the sort of accidents that can happen in the workplace, as I am sure many of us have, you cannot help but think that there should be, on those occasions where there has been wilful negligence, a severe penalty, including possible imprisonment.

I thank all members of the committee for their work during this inquiry, especially those who gave oral evidence and written submissions to the committee, including a large number of people from employer and employee organisations, from the Voice of Industrial Death organisation and a number of academic people also. I thank Mr Rick Crump and

Ms Kathryn Bion for their great work on this inquiry. It has been an interesting inquiry in which to participate, albeit one in which you can find yourself confronted by some very distressing stories and incidents of death or severe injury in the workplace.

I am sure all members will be united in working to ensure that those events, incidences and tragedies happen as rarely as possible, and I hope this inquiry into the law and processes relating to workplace injury and death, undertaken by the OSR&C Committee, will benefit in that regard and make a contribution to the furtherance of workplace safety in South Australia, and in particular will play a part in setting forth the framework and legislative or statutory obligations of employers and employees to ensure as few severe injuries and deaths in the workplace as possible. I commend the report to members.

The Hon. NICK XENOPHON: I, too, commend the report to members. I am a member of this committee, which does a lot of useful work, and I endorse the sentiments expressed by the Hon. Mr Finnigan in his conclusion, that all members are united from all sides of politics in wishing to reduce as far as possible injury and death in the workplace. There is a difference of emphasis as to the best means of doing that, and this inquiry has played a useful role in producing this report and I, too, share the Hon. Mr Finnigan's sentiments in thanking the secretary of the committee, Rick Crump, and the researcher, Kathryn Bion, for their work on this inquiry.

Rather than restating the ground covered by the Hon. Mr Finnigan, I will focus on some of the key aspects of this report. I acknowledge at the outset the work of Andrea Madeley from VOID (Voice of Industrial Death), and the work of those in her organisation, most if not all have been in some way touched by a death of a loved one in the workplace. I had the opportunity to speak to Andrea Madeley earlier this afternoon to advise her as to what was occurring. She does a tremendous amount of work and fulfils a very important role in giving support to victims of industrial death. She is a woman of great strength and courage, having lost her 18-year old son, Danny, a bit over three years ago in a horrific accident.

I am pleased that the committee has agreed that employers ought to have the ability to test for drugs or alcohol in the workplace. That is something that ought to be done in consultation but, in the event of a breakdown in that consultative mechanism, employers should have the right to test for drugs. I believe it could play a significant role in changing the culture amongst some employees who feel they can go to work under the influence of drugs or alcohol with impunity.

I have spoken to a representative of WorkSafe (not to be confused with SafeWork), which provides drug testing in workplaces. The informal conversation I had with him was very illuminating about how they operate and, if a person is caught with illicit drugs in their system, the processes involved. It is not about punishing people: it is about assisting them to get off the substances that affect their lives and particularly affect their performance at work and in turn compromise their safety and the safety of their work mates.

I was very impressed with the work that WorkSafe does. Some large companies in this state use its services. It is relatively inexpensive and it is a service that can jolt those individuals who have a substance abuse problem to get help and, if there is a positive test, to be monitored on a very regular basis. It gives them a second chance to get control of their lives. I think that is something that ought to be done, and I urge the government to adopt this recommendation sooner rather than later.

It mirrors the work of the Hon. Ms Bressington on the whole issue of random drug testing. Given the alarming rates of illicit drug use, particularly methamphetamines, ecstasy and cannabis in our community, this would be a means of reducing and turning back that culture of illicit drug use, where we have prevalence rates much greater than many other places in the world.

I also note that SafeWork SA has improved its protocols in assisting victims and their families where a death has been involved, and SafeWork is to be congratulated on that, but in turn I believe the group VOID and Andrea Madeley in particular have played a key role in improving those protocols by working constructively with SafeWork SA. I also note that, in relation to the recommendation for non-pecuniary penalties and enforceable undertakings, that is something that occurs in Victoria. We know from the Leighton Holdings case in Victoria, where directors were required to do certain things and a fund was set up for the children of the deceased worker in that case, that non-pecuniary penalties and enforceable undertakings can play a useful role in improving workplace safety in the context of giving some justice to victims.

The ability in Recommendation 12 for victim impact statements to be received and read out is something that is long overdue and something that I strongly support. In fact, it mirrors a bill that I introduced last year. I note that the government has its own bill, but it is very important that victims of an industrial death of family members have the opportunity to read out their victim impact statement to the court and to require those responsible to be present. That is a very important part of the process of justice and healing for victims and their families.

I also believe that it is important that the court should be required, upon hearing the statements, to consider what is said in the statements as to penalty and other matters without such a submission being made by the Crown. That is a recommendation made by the committee, and I believe it ought to be adopted in legislation much sooner rather than later. I am also very pleased that the majority of the committee supported a recommendation that we have industrial manslaughter laws in this state. The ACT has had industrial manslaughter laws for several years now, and the sky has not fallen in, contrary to what some in the employer sector feared. They provide a framework for ensuring that there is a chain of responsibility.

As an obvious example, I note that, from your own work in the union movement, Mr President, you would be familiar with the whole issue of asbestos exposure. I am convinced that, if we had had industrial manslaughter laws many years earlier, the directors of James Hardie, for instance, would perhaps have taken a different tack in the marketing and sale of, and exposing their workforce to, asbestos products, given that asbestos products were still being manufactured and sold up to 1987, when medical evidence had indicated many years earlier that it was a dangerous product. There is clear evidence going back to the early 1900s, 1940s and 1950s, where repeated articles warned of the danger of exposure to asbestos. Industrial manslaughter laws would change corporate culture for those employers who do not do the right thing.

The recommendation that there be a discretion for the court to order that part of the penalty be paid to the victim or

their family is something for which I campaigned for many years and on which I introduced legislation in this place back in the year 2000, when it was supported by the then Labor opposition.

I note that the Hon. Ann Bressington has also introduced amendments along those lines and, obviously, she supports the proposal that part of the penalty be paid to a victim or their family. I believe that is essential; I believe that there should be a discretion there for the court to do so, and the fact that the majority of the committee supported our recommendation is very pleasing. I urge the government to carefully consider all the recommendations in this report, to consider that it took a significant amount of evidence from various interested stakeholders, and that it is a balanced report and supported by evidence.

I will conclude by referring to what some would see as a controversial recommendation to provide that union officials be granted a right of entry on occupational health and safety grounds. This is something that I support. It ought to be, as the Hon. Mr Finnigan has pointed out, strictly adhered to in the context of entering the workplace for occupational health and safety reasons but not for other reasons—not to recruit; not to spruik; and not to be on a fishing expedition for matters unrelated to occupational health and safety. It must be for the purpose of occupational health and safety.

I believe that it would enhance health and safety, and it is a measure that I believe would add another layer of protection for workers in a workplace where the employer may have an attitude to occupational health and safety that is reckless or, at least, indifferent. It ought to be mentioned that there are many good employers in this state, major employers who have a very strong commitment to occupational health and safety—Mitsubishi is one that comes to mind—and who do want to do the right thing. I believe that the majority of employers do the right thing and have nothing to fear by having stronger penalties and a stronger regime of enforcement. Many of them have led the way in improving workplace safety by working cooperatively with their workforce. I, too, commend this report to the council.

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

STATUTORY AUTHORITIES REVIEW COMMITTEE: TEACHERS' REGISTRATION BOARD

The Hon. NICK XENOPHON: I move:

That the committee inquire into the effectiveness of the Teachers' Registration Board in the exercise of its functions and powers, with respect to—

1. The welfare and best interests of children as its primary consideration in the performance of its functions;
2. The manner and process by which it ensures that a teacher registration system and professional standards are maintained to safeguard the public interest in there being a teaching profession whose members are competent educators and fit and proper persons to have the care of children;
3. The composition of the board;
4. The manner and process by which evidence is gathered and presented to the board, including the representation of parties to proceedings; and
5. Any other relevant matters.

At the outset I will indicate that I need to be circumspect in relation to the matters that I will be referring to by virtue of the nature of the allegations made in a particular case that has prompted me to move this resolution. It is appropriate that I be cautious in what I say, given the nature of the allegations and the fact that children are involved. I believe that it is quite legitimate to raise issues with respect to process in relation to the Teachers' Registration Board and that this motion is about the Statutory Authorities Review Committee inquiring into the effectiveness of the Teachers' Registration Board in the exercise of its functions and powers.

The wording of the resolution in many respects mirrors provisions in the legislation. I have done this deliberately, in drafting this motion, because this resolution seeks that the committee have a good look and inquire into the manner in which the board conducts itself in ensuring the welfare and best interests of children as its primary consideration in the performance of its functions, and the processes by which it ensures that a teacher registration system and professional standards are maintained to safeguard the public interest in there being a teaching profession whose members are competent educators and fit and proper persons to have the care of children.

It also relates to the manner and process by which evidence is gathered and presented to the board, including the representation of parties to proceedings. The catalyst for my moving this resolution relates to allegations of conduct between 1998 and 2002 involving a number of children aged between five and eight years old at a school in Mount Gambier. I mention Mount Gambier only because it has already been reported in the media that a particular school has been referred to. I will not be more specific than that because I do not think it is appropriate to do so.

I have been approached by a number of parents of children who have expressed their concerns about the allegations, obviously, and their concerns about the process. It is not my intention to go into great detail about those allegations and the process because that is a matter that—if this resolution is passed—the committee will need to inquire into. I just want to flag some of the matters that have been raised. In September last year I met a number of the parents in Mount Gambier. I know that they have spoken to other members of parliament about this. The parents I spoke to felt very frustrated by the system and the processes involved. I believe that their concerns about process are legitimate, their concerns about the way the matter was dealt with are legitimate, and they ought to be the subject of an inquiry.

The conduct alleged relates to a particular teacher at the school, and the allegations relate to issues of (I will describe them in broad terms) bullying and intimidation. It was alleged that this teacher would condemn these children, aged between five and eight, making remarks along the lines of that he was ashamed of them, calling them 'losers', 'dumb' and 'cowards'.

Other allegations relate to the locking of classroom doors, blinds and screens so that people could not look into the classroom and of not letting children go to the toilet when they requested to, and there was one incident where one child actually had to sit in his own faeces for the whole day. The allegation is that that caused enormous trauma for that child and the child's family. There are other allegations of inappropriate conduct: of children's heads being placed into the teacher's lap and physical contact of the nature of hugging and other conduct that the parents felt, on the basis of the allegations made, were inappropriate.

In relation to the issues of the Teachers' Registration Board, the parents have presented me with a number of complaints. They were concerned about the manner in which evidence was gathered. It should be noted, in fairness, that the

board, in its reasons for decision of an inquiry held in this matter, did not make findings against the teacher, that the charges or allegations were not proved for the purpose of disciplinary proceedings. But the parents have raised concerns that the principal and other teachers were not called to give evidence, even though the initial allegations were made to the principal of the school; that is, the allegation put to me by the parents.

There was a lack of communication, or inadequate communication, between the board and the police, the board and the school, the Flinders Child Protection Unit, the Department of Family and Youth Services and mental health services in that the communications were not adequate, given the nature of the allegations, and also the issue of representation of the parties and the manner in which evidence was presented. It should be said that, where allegations involve children, the courts—and this is not a court process, the Teachers' Registration Board, but it is appropriate to refer to what the courts do—are very mindful of the age of children, of their ability to give evidence and the need to corroborate evidence. There was a process involved of psychologists assessing the children and obtaining statements and providing information to the board.

This is a sensitive matter. I do not seek to judge the board or any of the individuals concerned in relation to this incident, but I think it would be fair to say that the parents whose children have made the allegations—and there were a number of them—felt frustrated and distressed by the process. I think that the committee would have a useful role to undertake to see, if there were deficiencies in the current process, whether the process could be improved and whether there could be alternative means short of disciplining a teacher. I am not referring to this particular case but in general terms; for instance, whether there ought to be powers to have ongoing monitoring or sanctions short of disciplining or de-registering a teacher in terms of allegations made or where there were some reasonable grounds to be concerned about the conduct of a teacher.

Again, it is not appropriate for me to comment on the veracity or otherwise of the allegations, but I believe that there are some legitimate concerns about the process of evidence gathering, the process by which the board considers evidence, the process by which parents and children can or cannot be represented, whether there is an ability to have independent experts giving evidence or advising the board in the context of such allegations, and the level of communication between the board and other authorities where the parents feel that the level of communication and the input is inadequate.

I believe that the parents do have concerns about the process that are legitimate and genuine and, therefore, there ought to be an inquiry by the Statutory Authorities Review Committee to look into these matters; in some respects in the same way that the committee undertook a very useful inquiry about the processes of the medical board. There are, of course, very different issues at stake, but in some respects that was similar to what this inquiry would seek to do by looking at systemic issues as to the way this particular board operates, in the same way that the medical board inquiry, I believe, made a number of very useful recommendations.

I believe that the medical board has heeded some of those recommendations itself, and the mere fact that there was an inquiry into the medical board, I believe, was a very useful catalyst for the board to re-look at its own practices under the scrutiny of a parliamentary committee inquiry. I believe that only good would come out of an inquiry into the board if it is conducted with the sensitivity that would be required, given the nature of these allegations. The primary concern for me is the issue of process, and that is why I believe we need to have this inquiry.

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

SA WATER

Adjourned debate on motion of Hon. Nick Xenophon:

1. That a select committee of the Legislative Council be appointed to inquire into and report on—
   - (a) The role of SA Water in supporting water conservation and water security in South Australia.
   - (b) The impact of the government's financial policies on the ability of SA Water to—
     - i. maintain and develop infrastructure;
     - ii. provide essential new supply capabilities;
     - iii. meet projected water demands; and
     - iv. provide network augmentation.
   - (c) The role and effectiveness of SA Water in relation to water security and water conservation measures and including—
     - i. the efficacy of water restrictions;
     - ii. SA Water's response to the 2005 'Waterproofing Adelaide' strategy; and
     - iii. education of water users and advice on water conservation measures.
   - (d) Opportunities to reform SA Water governance to assist in water conservation and water security, and in particular—
     - i. a review of relevant state legislation with respect to SA Water's functions, structure and accountability, including a review of SA Water's charter; and
     - ii. a review of SA Water's performance statements from government.
   - (e) Legislative and policy changes to address current impediments to water conservation and water recycling.
   - (f) Leakage of water from SA Water infrastructure, especially—
     - i. the accuracy of measurement and report of leakage; and
     - ii. a review of SA Water strategy to address wastage through leakage.
   - (g) SA Water policy on alternative sourcing of potable water supplies, including engagement with the private sector; and
   - (h) Any other matters.
2. That the select committee consist of seven members and that the quorum of members necessary to be present at all meetings of the committee be fixed at four members and that standing order 389 be so far suspended as to enable the chairperson of the committee to have a deliberative vote only.
3. That this council permits the select committee to authorise the disclosure or publication, as it sees fit, of any evidence or documents presented to the committee prior to such evidence being reported to the council.
4. That standing order 396 be suspended to enable strangers to be admitted when the select committee is examining witnesses unless the committee otherwise resolves, but they shall be excluded when the committee is deliberating.

(Continued from 12 September. Page 674.)

The Hon. M. PARNELL: I support the establishment of the select committee on the role of SA Water, and I congratulate the Hon. Nick Xenophon for putting this motion before us. I also indicate that I have had the opportunity to look at the tabled amendments proposed to the terms of reference by the Hon. Sandra Kanck, and I support those amendments as well; I believe they provide sensible additions to the terms of reference without unduly expanding it too much beyond its current brief.

I do not propose to speak at great length about this motion because I took the opportunity when I introduced my Statutes Amendment (Water Conservation Target and Sustainable

Water Resources) Bill recently to put on the record my concerns about SA Water and its current effective role as a cash cow for government. I put the case then for what I believe is a necessary reform to SA Water's operating charter, both through its functions in the legislation and its charter and through its service agreement with government. However, I note the ministerial statement that was presented to us on recycled water, which flowed from some questioning in the other place in relation to alleged government plans to consider recycling effluent being introduced into the mains water system and the government's denial of those suggestions. I note in the ministerial statement where minister Maywald says:

> The government did not ask the working group to investigate the reuse of non-potable water for drinking.

That is the desalination working group. I think it is important that we put all the options on the table, which includes things such as the reuse of waste water. Whether or not we need to reuse it for drinking or whether, as the ministerial statement says, its best use is probably for irrigation and for lower quality use, we need to make sure that all these options are on the table. I note that the terms of reference for this inquiry include in paragraph (g) the investigation of SA Water policy on alternative sourcing of potable water supplies, including engagement with the private sector. Whilst the government might have ruled out certain options, I think it is incumbent on us as a parliament to make sure that we do put all these options on the table and consider them. Also, in the event that this motion is successful and the select committee is established, I have indicated my willingness to serve on it. I have also indicated that, if the committee is of a mind to do so, I would be more than happy to refer my bill, which deals with SA Water and its responsibilities, to the committee. It may well be that other honourable members have bills on this topic that this committee could usefully examine.

One thing I think we do very poorly as a parliament is to use the committee structure to properly investigate complex bills. I note that at the federal level the Senate routinely sends bills to a committee for more thorough investigation. Whilst the committee of the whole does give us some opportunity to look at legislation, I think that a select committee is an even better way of doing it. With those brief words, I indicate my support for the motion and commend it to the council.

The Hon. SANDRA KANCK: I indicate that the Democrats support the setting up of this select committee, which has very comprehensive terms of reference. However, I want to amend those terms of reference, and I have circulated an amendment, which I now move:

> After paragraph 1(h)—Add new paragraphs—
> (i) Methodologies to ensure access to water for people on low incomes;
> (j) The impact of development in the urban water catchments on the quality and quantity of water available to the metropolitan area;

I have moved this amendment not only because in some cases I think it tightens up the motion a bit better but also because I think we need to make sure that, in looking at the whole issue of water availability and pricing for urban water domestic users, there is a social justice component; hence, I have asked that the committee look at methodologies to ensure access to water for people on low incomes. I am also concerned about the developments that are going on in our water catchment areas, despite all the knowledge we have and, of course, when we do that, we impact on the quality of the water. If we allow more grazing, for instance, we will have more faecal matter in the water that goes into the dams and into the reservoirs. We seem not to be capable of making sensible development decisions and to relate those development decisions to our water usage; perhaps it is because we are dealing with four different portfolios.

I recognise that SA Water is constrained to some extent by the policies that are put in place by the government of the day, and it is a very different position for SA Water to be in. One of the things I am sure we are going to see investigated is this issue of how much money is creamed off from SA Water each year into government coffers, and none of it is hypothecated to ensure that it is spent just on water.

I think that there is a very good argument for that. One of the things I also hope that the committee will look at is how we are charged. I look at my most recent water account, and 75 per cent of it has nothing to do with my actual use of water. There is a quarterly supply charge of $39.35; $26 for water use; a quarterly charge of $106.80; and $8.20 for the River Murray levy. It is pretty obvious from this that, for most people, conserving water does not result in any great reduction in their water bill. We must find a way of sending the message to people that they can look at their bill and see that it is worth while their making the sacrifice.

In this water account, my husband and I have not used enough water in the first half of the year to go up into the second tranche of charges. However, the charges are: for the first 125 kilolitres per year, it is 50¢ per kilolitre, and thereafter (once you exceed 125 kilolitres) each kilolitre is $1.16. I am of the view that we need to move towards a three-tier charge. I checked to see what they pay in Broken Hill, given that it is part of the Murray-Darling Basin. Country Water has a 2½-tier charging rate. For zero to 100 kilolitres, it is 79¢ per kilolitre (compared with our 50¢); once you go beyond 100 kilolitres, it rises to $2.36 per kilolitre. This is a much more encouraging way of making people reduce their water use. I know that my mother-in-law says that they do not need water restrictions there any more because, when they have charges like that, it is really an incentive to reduce their water use. I move:

> Paragraph 1(e)—After the words 'water recycling' add:
> , and including—
> i. water pricing; and
> ii. incentives for installation of water efficient technology devices;

This amendment relates to the opportunity to reform SA Water governance to assist in water conservation and water security. I have added water pricing and the incentives for installation of water efficient technology devices as things that should be considered. I think that this is an important committee. I understand that the government will not be supporting it, and I think that is unfortunate. Given all that we know about climate change—and we know that it is getting worse—a committee such as this is really important to give feedback to not just the parliament but also government about the way we should proceed in the future.

The Hon. R.P. WORTLEY: The select committee proposed by the Hon. Nick Xenophon addresses nothing that is not already being addressed by the government and SA Water. It would be a wasteful exercise because it effectively duplicates the existing arrangements for ensuring the accountability of SA Water through the Minister for Water Security and the Auditor-General. More seriously, however, it would result in an unnecessary and irresponsible diversion

of resources that concentrate on responding to the most severe drought this state has ever faced. For these reasons, the government will not be supporting the establishment of this select committee.

The severity of the current drought has focused the community's attention on the importance of efficient water use and the need to develop new sources of supply. The government's direct response has already confirmed in-principle support for a desalination plant and the augmentation of storage in the Mount Lofty Ranges at Mount Bold, with sign-off by cabinet expected in mid-November. These long-term measures will help ensure the security of Adelaide's water supply for the future. This is the work the government is doing, through SA Water and other agencies, in addition to managing the very limited available resources as a consequence of the most severe drought we have ever faced in this state. The state government has initiated a range of actions to manage the—

Members interjecting:

The Hon. R.P. WORTLEY: Mr President, I cannot hear myself speak. The Hon. Ms Kanck is very rarely interjected on, and I think that she should respect the fact that the government's response is being given.

The PRESIDENT: The Hon. Mr Finnigan and the Hon. Ms Kanck will come to order.

The Hon. R.P. WORTLEY: Thank you for your protection, Mr President. The state government has initiated a range of actions to manage the effect of the drought in this state. An across-agency water security task force was established last year to provide oversight of projects to secure critical water supplies for the state. Key projects include:

- disconnection of selected wetlands to yield 30 gigalitres of water savings;
- modifying the major pump stations below lock 1 to enable them to operate as the river level falls and to delay for as long as possible the need to construct a temporary weir;
- preparations to construct a temporary weir below Wellington, if necessary, including design and construction scheduling and environmental assessment;
- pumping additional River Murray water into storages in 2006-07. This will increase water in storages at the beginning of 2007-08, as well as provide a buffer in the event of algal outbreaks in the river; and
- fast-tracking water filtration facilities for 15 communities that presently receive unfiltered River Murray water at a cost exceeding $50 million. A pipeline is being constructed to supply water to the Clayton community. Standpipes for water carting have been installed at Goolwa North, Milang, Meningie, Hindmarsh Island and Narrung; and
- dredging processes have been streamlined to enable irrigators to access water as the river levels below Lock 1 recede.

The government also appointed a Water Security Advisory Group made up of recognised experts to verify that South Australia's planning is robust. Within SA Water extensive work is also underway on monitoring and protecting water quality, as well as educating the community on water conservation. Key projects include:

- work to stop leakage and reverse flows across barrages as water levels fall;
- monitoring water quality in the River Murray, including an innovative program of aerial monitoring of algal blooms to provide faster and wider scale information on the location and progress of algal outbreaks;
- increasing the ability of water storages and treatment plants to deal with water quality issues, such as algal blooms, for example, by improving facilities for using powdered activated carbon to remove taste and colours; and
- installation of algal booms to protect River Murray intake locations currently installed and being trialled at Renmark, Loxton, Cobdogla, Kingston-on-Murray and Swan Reach.

Instead of the Hon. Ms Kanck saying what she would like to do, we are out there doing it. I continue:

- fast-tracking water filtration facilities covering 15 River Murray communities that presently receive unfiltered River Murray water at a cost of $50 million; and
- contingency planning by SA Water and its major contractors in preparation for the drought.

All this work has been undertaken over the past 12 months in response to the worst drought since settlement of this state, and SA Water has been at the centre of this work. In regard to water conservation, the community's commitment to water conservation has been demonstrated by its strong support for the toughest water restrictions ever imposed in South Australia. South Australian households have saved over 23 billion litres compared to the last drought in 2002-03. This government has confidence in the public and is keen to continue working with communities across South Australia to ensure the sustainability of water supplies.

We have sought to enhance this groundswell of support for water conservation by mandating the installation of rainwater tanks in new houses and providing rebates to subsidise the plumbing in of rainwater tanks for existing houses. The government is currently looking at further incentives to help the community to build on its already impressive water conservation achievements. Our support for developing sustainable water supplies is not restricted to Adelaide. In the 2006 election the government committed itself to developing a broad waterproofing South Australia strategy for regional and rural Australia along the lines of the Waterproofing Adelaide strategy.

Waterproofing South Australia will be developed in conjunction with the natural resources management boards, regional development boards and local government authorities to identify opportunities and impediments in each region. In regard to South Australia's role in water conservation security, Waterproofing Adelaide is a 20-year strategy which sets out actions to ensure that our water is used in the best possible ways. The strategy contains 63 recommendations to be implemented by various agencies (including SA Water) over the life of the strategy. The strategy is divided into three principal areas: better managing water resources; increasing water use efficiency; and encouraging alternative water resources. SA Water is playing a part in each of these areas.

In terms of SA Water's role, members might recall that SA Water's 2007-08 budget included $5.6 million for Waterproofing Adelaide projects, including water recycling projects and water conservation programs. I will come back to that matter of water recycling projects later, but I note that SA Water has successfully implemented a number of water conservation and water efficiency projects under Waterproofing Adelaide. These are:

- the Smart Watermark Scheme has been implemented and information included in the SA Water website;
- the top 100 water use industries are currently being audited for water efficiency;
- a code of practice has been developed within industry for the irrigation of public open spaces; and

- work has commenced on the replacement of the Hope Valley aqueduct.

Public awareness and education has been pursued by SA Water with particular vigour since the government introduced permanent water conservation measures in October 2003. SA Water focused its communications on strong messages about water conservation, with an emphasis on long-term behavioural change and actions individuals can take to make a difference. For example, SA Water has worked closely with the Nursery and Garden Industry Association on ways to communicate effectively with garden centres and their customers about long-term water conservation.

Over many years, SA Water has liaised directly with schools to promote water conservation initiatives. Many teachers and students contact SA Water for materials to support learning. From 2004 SA Water has supported the development of a water resource kit for teachers, coordinated through the River Murray Urban Users Group. The use of the SA Water website has increased significantly over this time. In 2006-07 there were more than 763 000 visits compared to 250 000 visits in 2003-04. SA Water also recognises that the education of water users is often best delivered at a grass roots level and uses sponsorships and partnerships to achieve this end. Some of the key water education sponsorships include:

- the SA Water mediterranean garden at the Botanic Gardens, which showcases water wise plants and advises visitors with practical inspiration for sustainable water use in the home garden;
- Eco Smart Plumbers—a Plumbing Industry Association training program to educate plumbers and their customers in wise water use and water efficiency plumbing;
- the SA Museum's Biodiversity Gallery—assisting the museum to create a new gallery focused on biodiversity. While the gallery is being developed, we are working with the museum to facilitate public discussion on water issues and develop water-related content for a new venue;
- SA Water supported the national touring exhibition, The River (about the impact of the Murray River on the people of Australia), at the Maritime Museum, and a range of other community events and exhibitions.
- Ecoliving Expo—SA Water participated in the expo to promote the sustainable use of water at home and in the garden.

The result of SA Water's efforts is impressive. Research undertaken to date for restrictions and permanent water conservation campaigns has shown:

- consistently high levels of awareness of water restrictions and permanent water conservation measures;
- consistently strong support for water restrictions and permanent water conservation measures;
- high levels of commitment from the community to do more to save water, including specific actions to reduce water use in the home garden.

The financial arrangements of SA Water are governed principally by the Public Finance and Audit Act 1987. The financial policies that support the Public Finance and Audit Act comprise two categories:

- The core governance policies include the professional accounting standards, Treasurer's Instructions and the Treasurer's accounting policy statements.
- Financial performance policies include the annual budgeting process, annual performance statement and financial ownership framework.

The existing governance policies ensure the integrity of financial records and systems, and adherence to the policies is reviewed by the Auditor-General on an annual basis. While these policies provide guidance as to how financial data is to be recorded and reported, they do not drive SA Water's financial strategy. In particular, they do not impact on the ability of SA Water to maintain and develop infrastructure, provide essential new supply capabilities, meet projected water demands and provide network augmentation.

The financial ownership framework specifies the methodology for calculating SA Water's community service obligations, dividends and the parameters for an optimal capital structure (that is, debt levels). The principles outlined in the policies are consistent with the Council of Australian Government principles. The financial ownership policies apply prudent limits, while still allowing SA Water to invest in maintenance and infrastructure as needed. The capital structure policy provides a target borrowing range that has sufficient flexibility for SA to meet its capital investment needs, based on a detailed assessment of asset condition, legislative requirements and meeting forecast demands for growth.

The community service obligation policy ensures that, where SA Water is required to provide water services at less than true economic cost, the shortfall is fully disclosed. This achieves consistency with COAG requirements, a clear link to pricing decisions and greater transparency with respect to the level of subsidy provided by the government. The dividend policy is based on profit after tax. Consequently, the distribution is made only after deducting from SA Water's revenues the operating expenditure necessary to maintain the assets and manage the business, as well as an allowance for the ongoing replacement of the assets—for instance, depreciation.

In terms of governance and legislative reform, during the 2006 election the government committed to amending the legislation establishing SA Water to ensure that the organisation implements environmentally friendly water initiatives and policies. The legislation will ensure that SA Water's charter unambiguously supports the government's environmental policy, particularly the Waterproofing Adelaide strategy. In addition, the government committed to modernising the Waterworks Act and the Sewerage Act to ensure that they support 21st century ideals in regard to water conservation and recycling. This work will proceed in a consultative manner over the coming year. It is vital that all stakeholders have an opportunity to contribute to this process to ensure that the revised legislation delivers sustainable outcomes for all South Australians.

SA Water leads the nation in minimising leaks from its water reticulation system. The first National Performance Report for Urban Water—

The Hon. Sandra Kanck interjecting:

The PRESIDENT: Order! The Hon. Ms Kanck will stop interjecting.

The Hon. R.P. WORTLEY: It is quite amusing hearing her rabbit on while I am reading.

An honourable member interjecting:

The Hon. R.P. WORTLEY: At least. The first National Performance Report for Urban Water Utilities, which was jointly compiled by the National Water Commission and the Water Services Association of Australia, shows that in 2005-06 SA Water recorded the lowest water loss per connection of all major capital city water utilities. The report shows that SA Water recorded an average water loss of

67 litres per connection per day, compared to the national average of 88. The National Performance Report for Urban Water Utilities also records an infrastructure leakage index of 1.1 for SA Water, which is an improvement of 0.1 on previous years and which is considered excellent by international standards.

The infrastructure leakage index (ILI) is an internationally recognised indicator of water system performance in terms of leakage levels, and it has been adopted as one of the National Water Initiative indicators. The ILI is used by water utilities throughout the world to report leakage, and it takes into account factors such as accuracy of meters, water used for operational and firefighting purposes, water theft, length of main, number of customer connections and system pressure. ILI ratings between 1 and 5 are considered excellent, between 1.5 and 3.5 are considered good to fair and above 3.5 is considered below average.

While SA Water will continue to find ways to better manage leakage, these findings show that the corporation's performance is well above par. SA Water's excellent results will be externally audited as part of the NWI procedures. SA Water is not resting on its laurels and in the past year has accelerated work on identifying and fixing leaks. It has also allocated additional resources to respond more quickly to burst water mains, which have been exacerbated by the extreme drought conditions. These initiatives will continue in future years.

With respect to alternative water sourcing, this government is not a recent convert to the need to develop alternative water supplies. Although the unprecedented nature of the current drought has demonstrated the need to recalibrate the Waterproofing Adelaide strategy, the government remains committed to the broad thrust of the strategy, and SA Water has been diligent in implementing its recommendations. The National Performance Report for Urban Water Utilities highlighted the percentage of water recycled as an area of strength for South Australia. We already recycle about 20 per cent of our treated waste water in Adelaide, which is twice the average percentage of 9 per cent.

While SA Water already leads the nation in the recycling of effluent, in recent months the government has announced two important initiatives that will underline this leadership. These are a multimillion dollar expansion of the scheme to provide recycled waters to growers in the Virginia and Angle Vale areas and a major pipeline to bring recycled effluent from Glenelg to the Parklands.

The South Australian government has committed $30 million to the $60 million Glenelg parklands project, which will provide a 30-kilometre pipeline network from the waste water plant to the Adelaide Parklands to enable 4 000 million litres of treated water to be recycled. We still await a federal government commitment to matching funding. The $4.7 million extension of the Virginia pipeline scheme to Angle Vale will deliver another 3 billion litres of recycled water to be reused on market gardens on top of the current 15 billion litres already reused.

The state government has committed more than $2.5 million to the project. These key projects build on commitments already made to waterproofing the south, to which the state government has committed more than $40 million. The first phase of waterproofing the south will increase the use of recycled water to 8.8 billion litres a year by 2010. SA Water is an important partner in all these projects, which will raise Adelaide's waste water reuse to about 45 per cent, by far the highest of any capital city in the nation.

It is clear that the South Australian government, through its work with SA Water and other key agencies, is responding to the challenges of this unprecedented drought and it is putting in place long-term measures to secure South Australia's water supply. The select committee proposed by the Hon. Nick Xenophon is unnecessary and redundant and is simply a cynical response to media hype. This government opposes the motion.

The Hon. R.I. LUCAS: I rise to speak briefly. In response to what the Hon. Mr Wortley has said on behalf of the government, this is an indication of why we need the committee. Sadly, there is an attitude from the Premier down, which is evidenced by members like the Hon. Russell Wortley on the backbench, that only the government has the solution to these major issues that confront the state and nation. The reality is that, as great as they think they are, they do not have the answers to all the problems that confront South Australia and the nation.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: The arrogance of the government is again evidenced by the interjections from the Hon. Mr Hunter and the Leader of the Government. The views of anybody other than the government are not welcome. The views of anyone other than members of the Labor Party are not welcome. We have a minister responsible for water in Ms Maywald, who is sadly out of her depth in being able to handle the difficulty of the issues that confront this state in relation to the water crisis. Without going into the details of the buckets and drippers fiasco that Mr Rann and Ms Maywald inflicted on South Australians—other members have highlighted that—that was proof positive of the government's arrogance and of being out of its depth. It believes that only it has the solutions to the problems that confront South Australia.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: If anyone needed proof of why we need a committee that will take evidence from people other than government ministers and public servants in relation to this issue, the speech from the Hon. Mr Wortley was proof positive.

The last point I make is in relation to the government, the minister and SA Water. Another committee of the parliament has not been able so far to get SA Water to appear before that committee. Without going further than that, there is a noticeable reluctance from the minister to allow SA Water to present evidence to that committee.

This particular committee should not—and cannot—be hamstrung by a minister who may well seek to prevent appropriate cooperation from a government utility (SA Water) to give evidence and to provide answers to the questions that the committee puts to the minister and to SA Water. If the minister will not come to the committee—and it is highly unlikely that she would—there should be no obstacle to SA Water's senior executives presenting evidence to duly appointed and elected parliamentary committees—

The Hon. P. Holloway: When they should be out there solving the problems.

The Hon. R.I. LUCAS: Well, you have had five years and you have done nothing. You are a waste of space, you are

a waste of time and you ought to resign, as some of your backbenchers are saying that you will next year anyway.

The PRESIDENT: Order!

The Hon. R.I. LUCAS: You ought to resign, because—

The PRESIDENT: Order! The Hon. Mr Lucas will stop being baited by the government side.

The Hon. R.I. LUCAS: I am not being baited at all, Mr President. I thought it was a debate. As I said, we are seeing arrogance from the Leader of the Government, and the government overall, in relation to this issue.

The Hon. P. Holloway: By appointing a committee, you will wreck the economy and wreck the state.

The Hon. R.I. LUCAS: The Leader of the Government says that by appointing a committee we are going to wreck the state. That is his argument: by appointing a committee to look at the water issues, we are going to wreck the state and the state's economy. Sadly, that is the arrogance and the ignorance of the Leader of the Government in relation to this issue. The only point that I want to make is that this committee—if it is appointed—is a duly appointed committee with authorisation and approval by one house of the parliament. It is the responsibility of SA Water and its senior executives to appear and provide evidence before the committee, and to answer questions in relation to these issues.

I urge those members of this committee not to be diverted by ministers of the Crown or, indeed, others who may well seek to prevent witnesses from attending the committee, prevent evidence from being provided to the committee or prevent documents from being made available to the committee. If this committee is to achieve the work that it needs to, it needs the wholehearted cooperation of SA Water, from the chief executive to the technical experts and right down through the management structure. I urge members to support the proposition, and I urge at least some government members to have the commonsense to accept that they are not the only ones who have views in relation to how we should tackle the water problems that confront the state and the nation.

[Sitting suspended from 6 to 7.47 p.m.]

The Hon. P. HOLLOWAY (Minister for Police): The Hon. Russell Wortley has well outlined the reasons for the government's opposition to this motion and has indicated the significant number of initiatives that the government has taken in relation to water, and they have been taking place over many years. There is no doubt at the moment that we have an unprecedented drought in this state. It is—

The Hon. Sandra Kanck interjecting:

The Hon. P. HOLLOWAY: The Hon. Sandra Kanck keeps saying 'climate change'. Does that mean it is going to get worse every year?

The Hon. Sandra Kanck: Yes.

The Hon. P. HOLLOWAY: There you are; it is going to get worse every year. There can be climate change which has a long-term effect but within that there will be variability. I would have thought that those advocates of climate change would have—

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: So, you are not an advocate of climate change?

The Hon. D.W. Ridgway: He is your Premier. The Premier of this state—

The Hon. P. HOLLOWAY: I mean, are you or not?

The Hon. D.W. Ridgway: —stood up in this place 20 years ago and warned us about the effects of climate change.

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: Climate change is having a big impact but most of the informed scientific debates are that it will affect variability. While there may be a long-term reduction in average rainfall there will still be variability. Indeed, the Hon. Mark Parnell has told us how we will be having one in 100-year floods in one of the earlier motions today—quite rightly. I think the Hon. Mark Parnell is right in this, and let us face it, we have had climate change ever since the planet was formed, we have had a series of ice ages and other impacts. Over and above that, of course, we have now unprecedented levels of CO_2, which are having an impact. But regardless of all that, we are in a quite unprecedented situation. That is why I think that this motion is most unfortunate.

At this time there are officers in SA Water who are dealing with an unprecedented number of demands because of the measures that we have in place to deal with the current situation. SA Water is under pressure to an extent that would be unprecedented in that organisation. The last thing those people in SA Water need, who are dealing with the crisis we face at the moment and all the related issues, is to be dragged in before a parliamentary committee, to have to spend hours preparing for cross-examination and to be dragged through political shenanigans of the Hon. Rob Lucas. Is that what we need at the moment, or do we need the organisations that are responsible for water management in this state to deal with the immediate unprecedented crisis that we are facing?

If you want to play politics, and if you believe that the main purpose of the Legislative Council is not to deal with legislation but to entertain the individuals within this place, as the Hon. Rob Lucas and others do, then let us have another circus. How many circuses have we got at the moment?

The Hon. R.I. Lucas: You, the government, Maywald.

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: We have seven committees appointed under the Parliamentary Committees Act. One of those committees is the Statutory Authorities Review Committee, of which the Hon. Nick Xenophon is a member. What is SA Water? SA Water is a statutory authority. Remember that we have only 22 members in here, yet we have seven standing committees set up under the Parliamentary Committees Act, one of which is specifically to examine statutory authorities. If we are so concerned about SA Water, why isn't that committee looking at it? Why isn't that the process that has been adopted? We also have an Aboriginal lands committee, which makes eight. We have the Joint Parliamentary Service Committee and a couple of sessional committees, which makes 11. We then have half a dozen select committees, which makes 17, and we have a committee appointed pursuant to resolution of the council, the Budget and Finance Committee. So we have 18 committees when we have only 22 members in this council. We still keep setting up new ones. What does that mean? It means just one thing: the committee is here for political purposes. It is not here to look at SA Water, because there are other vehicles such as the Statutory Authorities Review Committee which are designed and have the terms of reference specifically to look at the issues in relation to authorities such as SA Water.

What I find puzzling, too, is if one is really concerned about the situation we face at the moment with this drought, it is a lot more than just SA Water that we should be worried

about. SA Water is one element in the equation. As we know, the principal source of our water, historically, has been the Murray-Darling river system. Obviously, the Murray-Darling Commission is involved in huge issues at the moment which the commonwealth is seeking to take over, but clearly whatever happens in the Murray-Darling Basin is absolutely essential to what we do here in looking at our water situation.

Also, SA Water is set up under a charter and it is a statutory authority whose charter has been unchanged essentially for some years now back into the mid-1990s—incidentally, under the previous government. If one is really serious about looking at the issues we face with water, rather than worrying about getting SA Water involved at a time when it is facing unprecedented problems within the community and rather than dragging away those public servants from trying to deal with these unprecedented issues before them, shouldn't we be looking more broadly at all the other issues facing us on water?

Just look at some of the extraordinary debate we have had. We have been told that this is a cash cow for the government. Well, for some years now—well before this government took office—SA Water has been paying dividends but, if one thinks that SA Water is a cash cow for government, as the Hon. Sandra Kanck does, what does that mean? That too much revenue is coming from water? So, what do we do? Do we cut the price of water? Is that the conservation measure they want; or does it mean that we should spend the revenue we get from SA Water solely on water conservation measures? Where do we stop? Really, it is a nonsensical argument.

What we need to do is to spend the right amount of money on water resources to address the issues before us. The price of water and how we price it is a very important issue, and that is why this government is reviewing it at the moment. It has been reviewed numerous times down the years because, as the Hon. Sandra Kanck concedes with her amendment, it needs to be equitable. We need to think about low income consumers, but also it needs to encourage conservation to meet those needs. To just throw away these cosy lines, such as 'Oh, look, it's just a cash cow for government, so let's suddenly spend it all on water measures,' is not particularly helpful.

The Hon. Mark Parnell talked about how he thinks this committee should look at utilising sewage. Well, of course, we have just had the Leader of the Opposition in another place trying to make politics by accusing this government of trying to reuse sewage. In fact, this state leads the country in terms of the reuse of sewage. We have done so for some years, and we continue to do so, and rightfully so. We have been using it, through a number of reuse schemes for agriculture, both south of Adelaide and on the northern Adelaide plains.

The Leader of the Opposition in another place is quite happy to make politics by accusing this government of using sewage, yet we are going to see a situation where the Liberal Party will be supporting a committee the Hon. Mark Parnell tells us should be trying to encourage us to reuse sewage water for drinking. I think the opposition needs to get its act together. What about all these other alternatives they want us to look at? We know the Hon. Mark Parnell is opposed to desalination and new storages, and I assume the Hon. Sandra Kanck has the same position.

The Hon. Sandra Kanck: As long as it is distillation instead of reverse osmosis.

The Hon. P. HOLLOWAY: Distillation?

An honourable member interjecting:

The Hon. P. HOLLOWAY: I do not understand the politics of it; it is pretty base, actually. I suppose I do understand it, but I do not understand the logic.

Members interjecting:

The Hon. P. HOLLOWAY: Well, of course, we are in the greatest drought. The Leader of the Opposition in the other place has been incredibly lucky. The one contribution Martin Hamilton-Smith has made to politics in this state is that he became leader during the worst drought this state has ever faced and, of course, he tried to exploit that for politics. I suppose that is politics. So, he is advocating desalination, but we are setting up this committee, where we will have people on it who are saying that we should be opposed to desalination: that is the position they will bring to the committee and that will be the outcome. So, that raises the question: what are we going to get out of this?

We have these pre-formed positions on things like desalination—some are against it; some are for it—but, somehow or other, we are told by the Hon. Rob Lucas that we need this committee to try to think beyond what the government is looking at and that we need all these other views; yet, here it is, we have these pre-formed views. What is the Liberal Party's position on new storages? The Leader of the Opposition in another place has changed his mind half a dozen times.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: I think that comment is a fair reflection on what the honourable member thinks of the Leader of the Opposition in another place, and I am inclined to agree with him. He talks about the 19 points. Well, of course, the Liberals borrowed that from the Waterproofing Adelaide Strategy, which this government introduced.

Members interjecting:

The Hon. P. HOLLOWAY: Well, it has; it is all there. The only thing is that it is a 20-year plan. If we are going to address the water issues in this country, we need lots of money over a long period of time. We are not going to quickly find the sort of money to fund the reuse schemes, the underground storages and all the things that need to be done.

We do need a long-term plan, and we have had one. That is what Water Proofing Adelaide is all about. It is a 20 year plus time frame. By next year, before this drought is over, you will not be able to introduce all of these issues, but there are big issues. What will they do in relation to new storage? Will the proponents look at it? We have heard these pre-formed views. We know that the Hon. Mark Parnell will vote against them, and presumably so will the Hon. Ms Kanck if she is on the committee. What about the Liberal opposition? I think its members have said that they are opposed to a new storage. Are you for it or against it?

The Hon. R.I. Lucas: We will take evidence.

The Hon. P. HOLLOWAY: So, you are open-minded about it, are you? They are open-minded. Perhaps they should tell some of their members who have been outspoken about this in another place. The real issue that we face in relation to water is not the statutory authority that is charged with making a lot of these decisions. In many cases, because it is a statutory authority its charter is set out in the legislation. In relation to the River Murray, we know that we are going through a situation at the moment where the Murray-Darling Basin Commission and the commonwealth government are seeking to change it, so the commonwealth will take it over. In relation to this, I think that the commonwealth government should be guaranteeing this state—

The Hon. S.G. Wade: Let the commonwealth fix it.

The Hon. P. HOLLOWAY: Let the commonwealth fix it. I happen to know a lot more about the Murray-Darling Basin than the honourable member. He should know that, under the old River Murray waters agreement and the Murray-Darling Agreement, this state has had a certain entitlement to water. It has never been tested before where the state has been below 1 850 gigalitres entitlement. I suggest that the commonwealth government is the only body that can protect the state. We are at the end of the river. Even Mexico gets a better deal than us. Mexico is at the end of the Colorado River. It is similar to Adelaide, whereby it has an entitlement of about 1 500 gigalitres. They had to build a desal plant on the border of the US to meet the guaranteed flow over the river. Mexico's advantage was that it is a country. Unlike a state in the US, Mexico was able to negotiate an international agreement. That is how it gets its standard of water across the border.

I believe that it is essential for the commonwealth government to guarantee this state a certain amount of water. One should not allow all of the current issues that we are facing in relation to this unprecedented situation to ignore the issues in relation to the River Murray and the misuse and misallocation of water that has happened over many years. The first speech that I ever made in parliament back in 1989 was about the threat that we faced from the allocation of water within Queensland, because at that time Queensland was not a member of the Murray-Darling Basin. I prophesied then that one of the great threats that we would face down the track—and it is 18 years later and, sadly, it is becoming true—is that because of those diversions in Queensland we would ultimately pay the price.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Well, the fact is that it is only the commonwealth government that can do that. This state has supported the commonwealth government in its efforts—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Well, we went from the River Murray waters agreement to the Murray-Darling Basin Agreement. The greatest improvement in the history of the River Murray since the River Murray waters agreement was first set up was in 1984 when the Hawke government expanded the old River Murray waters agreement to include the Murray-Darling Basin. Instead of having water commissioners, it included environmental and land use issues as part of that ministerial council. That was the greatest improvement that we made. The only failing that we had, because Joh Bjelke-Petersen was in Queensland, was that we could not incorporate Queensland. That has subsequently been addressed, but ultimately we cannot avoid the fact that the River Murray is crucial to this state's future. Even if we build the desal plants that have been discussed, we are talking about only 20 per cent of the state's water; we still have to find the other 80 per cent.

The Hon. R.I. Lucas: Rann says 75 per cent.

The Hon. P. HOLLOWAY: Well, whether it is 75 per cent or 80 per cent is really immaterial. What we have to do is find the great bulk of our water from the Murray. We have to ensure that the River Murray continues as a living entity. We are now facing catastrophe within our irrigated areas. Unless we get a very heavy rainfall in the catchment, a lot of the plantings in the irrigation areas will have to be let go. We will lose not just the income for this year but, if those plantings are lost, we will lose those whole industries. I suggest that what we need to do is let SA Water get on with the business of dealing with the pressing issues of the moment. The last thing it needs is the distraction of being dragged before a select committee. If we were to have a committee examine these matters, if SA Water is so important, what is wrong with the existing committees? Why do we need almost 20 committees in this parliament with 22 members? It is totally farcical. Where does it end? How many more committees will we have?

I know that the die is cast, because the politics are just simply too attractive to those opposite and the Independents, and that is why this motion was moved. I think that the Hon. Nick Xenophon was losing a bit of traction to some of the other Independents because water has become the issue. What is the solution? Since there is no ready solution to drought, let us have a committee. Another point I make is that, given the history of these committees (which, in many cases, take years before they report), let us hope that the current situation is over long before the committee reports.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Head in the sand? I am glad that the opposition interjects, as it reminds me that part of the problem is that, because it is so city-centric with its new leader, what it has done is badly let down its country members. Its solution is to talk about desal plants, but they will do nothing whatsoever for those dependent on the River Murray for irrigation. What have these people opposite proposed to deal with their constituents? With one or two exceptions, they hold nearly all the country seats in this state. What have they done? What are they promising for the people in rural South Australia?

That brings us to another point. If we are looking at the price of SA water, one of the things that needs to be said is that, like ETSA, SA Water has operated in this state for many years with a bipartisan policy of having a relatively uniform price. In other words, there is a massive cross-subsidy of small rural water suppliers from those in the city. If we are to change that, do members opposite support a change in the structure that will lead to the removal of that cross-subsidy? Will they argue for their constituents in rural areas to pay a higher price for water? These are the issues. I guess that is one thing about the select committee: it will be very interesting. Given all the different views of the members likely to be on it—there are those for and against desal plants; there are those who have all sorts of views on price—I am pleased that I will not be on it and trying to make sense of all the diverse views.

The government opposes this measure. We understand that the politics are too attractive. It is like moths around a flame: they will not be able to keep away from it. I suppose a nice, easy political substitute for not coming up with hard policy is to say, 'We'll have a select committee.' By the time it reports, the issues will be long gone, but so be it; let us go through the exercise.

The Hon. NICK XENOPHON: I thank honourable members for their contribution—some perhaps more than others. I will address some of the matters raised by the Hon. Paul Holloway. As to why the Statutory Authorities Review Committee is not looking at this issue, I think one very straightforward answer is that that committee already has a number of inquiries before it to complete, and it is appropriate—

Members interjecting:

The Hon. NICK XENOPHON: No; I am saying that there are matters before the current committee that need to be

completed. I think the more compelling reason is that there have been indications that the Hon. Mark Parnell would like to sit on that committee, and the Hons Bressington and Wade have, to varying degrees, significant interests in the issue of water, so I think it is appropriate that there either be a Greens or Democrat member on that particular committee. Also, given the Hon. Stephen Wade's background with SA Water, he would bring a significant degree of expertise to that particular committee.

Regarding the issue of resources, it does concern me whether a committee such as this takes away the resources of senior executives of SA Water but I think it is important to consider the potential outcomes. We need to put into perspective the fact that the committee will be judged in terms of its report—the recommendations made for the conserving of water, for infrastructure with respect to water in this state, the waterproofing of South Australia, picking up good ideas, and analysing how SA Water is operating. I would have thought that the time spent by those public servants would be well spent in the context of explaining to the people of this state, through an open parliamentary committee system, what is being done.

I am grateful to the Hon. Mr Wortley for outlining a number of the government's initiatives. Perhaps that allows for this committee to be forensic in its approach and focus on those areas of concern should the charter be changed, should there be a fundamental rethink, given the crisis we face with respect to water. I believe that, at the end of the day, this committee could do a lot of very useful work.

I believe that members of the government who have opposed this committee are presupposing that we will only be hearing from SA Water. One of the issues, for which we are all responsible, is the need to engage the community in the debate on this crisis in the sense that we ought to hear from non-government experts in the community regarding potential solutions to the water crisis, regarding how we could do things better, how other states are dealing with this issue—indeed, how it is being dealt with abroad. I think the research involved in that, the measures that can be brought before the committee for consideration, would be very useful.

I support the Hon. Sandra Kanck's amendments. I believe they add to the essential intent of the committee regarding water conservation and water security for this state, and I believe that including the reference to people on low incomes and incentives for installation of water-efficient technological devices gives it a broader social context that is entirely appropriate. I understand the government's position, but I think this committee could do a lot of useful work. Ultimately the people of the state will judge whether it has done good work based on the quality of the report it produces, and I would like to think we will have a number of good people coming forward, both from this and other states, to give us information and valuable insights into how we can improve what is already being done.

Amendments carried; motion as amended carried.

The council appointed a select committee consisting of the Hons A. Bressington, I. Hunter, M. Parnell, Caroline Schaefer, S.G. Wade, R. Wortley and Nick Xenophon; the committee to have power to send for persons, papers and records, and to adjourn from place to place; the committee to report on 21 November 2007.

STATUTORY AUTHORITIES REVIEW COMMITTEE: MEDICAL BOARD OF SOUTH AUSTRALIA

Adjourned debated on motion of Hon. B.V. Finnigan:

That the report of the committee on an inquiry into the Medical Board of South Australia be noted.

(Continued from 12 September. Page 677.)

The Hon. NICK XENOPHON: I think that the Hon. Mr Finnigan has fairly stated the substance of the report; and, given the rest of the business which appears on the *Notice Paper* and which is to be dealt with tonight, I want to reiterate as briefly as I can that I believe this inquiry was very useful with respect to examining the Medical Board, given community concerns in relation to the way in which the Medical Board was undertaking its functions and whether the public interest was being protected. I would like to focus on where I have differed with the rest of the committee in relation to the particular recommendations made.

First, I point out that the Hon. Mr Lucas was a recent arrival on that committee and, given that he was not part of the evidence-gathering process, quite appropriately absented himself from the consideration of this report, and I believe that was very appropriate. My belief is that the Medical Board should be stripped of its powers to deal with complaints and that there ought to be an alternative model of complaints resolution. The proposal to strip the board of its powers was adopted in an interim report of the committee when you, Mr President, were the presiding member, and I note that that interim report was tabled early last year.

I believe that, given the other function the board has, there is a fundamental conflict for the Medical Board to adjudicate these disputes. I believe it is more appropriate that another body be set up to deal with these complaints. I note that in the Northern Territory, for instance, a different system is in place—there is a licensing authority. Arguably, disciplinary action against a medical practitioner could be undertaken by the registrar of a licensing authority rather than the Medical Board. There ought to be appropriate medical professionals, and of those a medical practitioner of at least five years standing to ensure that the principles of natural justice and due process are adhered to.

Whilst the committee was of the view that there ought to be the power to randomly drug test, I believe we ought to go further. I believe that a system ought to be in place whereby all medical practitioners are randomly tested. In my dissenting statement I said that it ought to be on a twice-yearly basis, and I have been guided by the work and research into this by my colleague the Hon. Ann Bressington. The information her office has provided includes, for instance, a summation from the Narcotics Abuse Detection by Sweat Analysis with The Biosens Instrument by Per Mansson PhD and Ann-Charlotte Hellgren PhD, which sets out the nature of that analysis, the screening method and its effectiveness.

I understand that the cost is in the order of about $55 per test. That could be a good initial test to undertake to ensure that all medical practitioners can be tested, given the nature of their work and given that, in many cases, they have to make life and death decisions in relation to the patients they treat. I believe that it would send a very clear signal to those medical practitioners who are not doing the right thing to change their ways, knowing that they could be subjected to a random test at least twice a year.

The Hon. A.M. Bressington interjecting:

The Hon. NICK XENOPHON: The Hon. Ms Bressington has made the point that a recent federal parliamentary committee, as I understand it, supported that view as well. I think that is important. My concern, Mr President, as you would know from when you were chair of this committee, is that there were two horrific cases: the first involving a Dr Rabone in the Riverland who, it has been alleged, infected a number of his patients with hepatitis C. He was an intravenous drug user and the allegation was that he was using the pethidine meant for patients. He was injecting some into himself and then injecting the patients. There have been allegations that in the order of some 14 people have been infected with hepatitis C as a result of Dr Rabone. The way in which the Medical Board dealt with that and the fact that Dr Rabone had a certificate of good standing to go interstate I find quite extraordinary.

The other case involves Dr Stuart Mauro. I have had contact with the Sorensen family in relation to the death of Mrs Sorensen when Dr Mauro failed to appropriately diagnose a bowel obstruction in Mrs Sorensen and she subsequently died. He was working in the emergency room. The evidence was that this was a man who had something like a 10 cone a day cannabis habit, an addiction, and the Medical Board was aware that this person had significant problems and it was dealing with it in its own way, which I believe was grossly ineffective. The Coroner made particular findings in relation to that matter, and I believe the Coroner's inquest was very useful as an insight into the way the Medical Board dealt with that particular case. I believe the Medical Board's handling of that matter was woefully inadequate.

The Coroner stopped short of making findings as to Dr Mauro's capacity to practice and the death of Mrs Sorensen, but I think it would be fair to say that most reasonable people could make an assumption that Dr Mauro was someone who had his ability to practice medicine significantly compromised by his drug addiction and, further, that the Medical Board in the way that it dealt with Dr Mauro did so grossly inadequately. I believe it failed the public interest. It failed to protect the interests of the public in the way in which it dealt with that doctor in respect of his drug addiction. That is why I believe that not only should the Medical Board be stripped of its powers but also that the issue of random drug testing is entirely appropriate.

It would be remiss of me to comment on this report into the inquiry into the Medical Board without referring to the judgment of the Chief Justice John Doyle in the Supreme Court yesterday (25 September) in the matter of Keogh and the Medical Board of South Australia and Manock. Chief Justice Doyle made it clear in his judgment that he did not express an opinion on the merits or otherwise of Mr Keogh's matter but did confine his remarks to the process used by the Medical Board and the test that it applied for unprofessional conduct.

The 32-page decision of the Chief Justice, which was handed down yesterday, raises real issues as to whether the Medical Board was applying an appropriate test of unprofessional conduct, and it appears that it had not done so. That begs the question as to how many other matters the Medical Board has got wrong, in the context of matters that have been before it.

My reading of the decision is that real questions were raised about the manner in which the test for unprofessional conduct was applied by the Medical Board. In the end, in that case the Chief Justice ruled that the Medical Board incorrectly exercised its jurisdiction, that it committed an error in law, that it applied the incorrect test of unprofessional conduct and that it failed to ask and answer the right question, and the appeal was allowed. The decision of the Medical Board was set aside, and the matter has gone back to the Medical Board.

This is a very important decision which I believe, in a sense, highlights the importance of the work that the Statutory Authorities Review Committee did by looking into the Medical Board. We should all note the decision of the Chief Justice very carefully, and we should also note the deliberations of the Medical Board in relation to this matter when it, effectively, rehears the complaint.

It is not appropriate to comment as to the merits or otherwise of Mr Keogh's arguments, but the Chief Justice of the Supreme Court of this state has said that the Medical Board incorrectly applied the test and, to me, that is a fundamental concern with respect to process. It is another reason why I believe that we need to have a fundamental rethink about the way in which the Medical Board goes about its business and whether it ought to have the power to adjudicate these types of matters. I await with interest the outcome of the Medical Board's decision in Keogh and whether, in fact, it will be subject to any further judicial challenge by any of the parties involved.

This report is the culmination of a lot of hard work by the committee and also its research officer, Jenny Cassidy, and secretary, Gareth Hickery, and I commend them for their hard work. I believe that this report has provided us with valuable insights and salutary warnings about the way in which the Medical Board of South Australia has conducted itself in recent years—and, arguably, in more recent times.

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

INDEPENDENT COMMISSION AGAINST CRIME AND CORRUPTION BILL

Adjourned debate on second reading.

(Continued from 1 August. Page 599.)

The Hon. A.M. BRESSINGTON: I thank and commend the Hon. Sandra Kanck on her initiative in introducing this crucial bill to establish an independent commission against crime and corruption. I believe that it is one of the most important bills that may ever have to be debated in this state. I know that large numbers of constituents who contact not only my office but also the offices of all members of the parliament have great interest in observing the process by which we go about creating legislation and developing the model that South Australians will rely upon to keep parliament, the private sector, legal systems and administrative institutions honest, legitimate and, above all, accountable. It is for this reason, and with great reluctance, that I will not be supporting this bill in its current form. I want to see far greater community-driven consultation that is not determined by what lawyers, bureaucrats and politicians want for themselves but, rather, consultation that is driven by the needs of the ordinary person in the street—the shopkeeper, the plumber, the bus driver and the teacher—who is wronged by the political, government or legal systems to which we all are parties and which we can influence by decisions in this place.

Although it is important to consider the advice and input of professionals, such as lawyers who engage in the legal

administrative processes that affect the lives of our ordinary citizens, it is far more important to know why the existing complaints mechanisms are failing and how we can limit the extent to which a future ICAC may become another useless institution. I must remind this place that South Australia was the first state to adopt a whistleblower protection act in 1993. To this day it has never successfully offered any whistleblower any protections, and no-one has ever had any relief from its existence, not because no-one has ever attempted to seek out its protections but, rather, because those vested with the powers to make it work have chosen to divest themselves of any responsibilities for the same.

This is demonstrated well in the case of Angela Morgan, for example. Ms Morgan alleged fraud by the wife of a senior WorkCover auditor. The circumstances by which she came across this information are not important. However, when the corporation got wind of her knowledge of the situation—and possibly much more than she was supposed to uncover about corporate investigation activities—Ms Morgan was coerced into giving a statement about the senior auditor's wife to the fraud section on threat of fines and other sanctions if she failed to do so. Although Ms Morgan initially declined to do so, she was issued with threats by the corporation compelling her to give evidence, at which time she sought assurances of confidentiality (to which she was entitled) under the Whistleblower Protection Act. Indeed, it would be many years later that the state Ombudsman would make such a finding and table it to parliament, to no effect—not enough to enable Ms Morgan swift or timely justice.

After being promised such confidentiality, Ms Morgan met with fraud officers only, she says, to be pressured into changing the nature of her evidence against a senior auditor's wife due to the scandal this would have uncovered for the corporation. When she refused to do so, her evidence was given to the senior auditor and used by him and his wife in their private defamation action against Ms Morgan. Although she was successfully sued by the senior auditor, his wife failed in her action. However, it did not stop a chain of tragic events all but destroying this woman.

But the story does not end there. When Ms Morgan was advised of the Whistleblower Protection Act and how she might use it she was informed of the need to make a public interest disclosure to a responsible officer under the act. It was a requirement at the time that all government departments had such a person nominated and trained. WorkCover, not having such a person, promptly appointed the very senior auditor against whom Ms Morgan sought to testify. As for the courts, Ms Morgan's matter was before a judge alone for over seven years. After endless delay tactics to obstruct discovery, finally her claims were struck out in the past few weeks. One might expect that, if her case had little or no merit, these claims would have been struck out years ago.

The greater travesty to this story lies in the fact that, in addition to Ms Morgan's years of legal battles to prove her innocence, and the lies and deceit of the corporation, all these details were supplied to a parliamentary select committee some years ago—which, ultimately, did nothing also. This is not good enough.

I will in due course cite other real cases, not hypotheticals, showing what has happened to ordinary whistleblowers who have tried to use the Whistleblowers Protection Act, but I will keep my comments brief today. Suffice to say I would not be happy to find in years to come that our ICAC in this state is another whistleblowers protection act and is useless. If we are not careful, I fear that an ICAC may only uncover the genuine so-called whistleblowers as only comprising of lawyers, departmental executives, ex-commissioners and political advisers, much as we now refer to cases involving suspected corruption.

I am advised by a member of the national committee of whistleblowers of Australia that the Western Australian Criminal Justice Commission had to mutate and clean up its act three times after it had become tainted by the allegations of engaging in corruption and secrecy itself. It is now known as the Corruption and Crime Commission. Although I am advised the current model is a big improvement and early indications are promising, it remains to be seen how it will function in the longer term, and with other less high profile cases than that of Mallard currently before it.

However, in both New South Wales and Queensland there continue to be many unanswered questions into the effectiveness of the New South Wales ICAC and the Queensland Crime and Misconduct Commission respectively, with a number of unresolved Whistleblowers Australia cases of national significance having not seen the light of day. If our ministerial officers, Ombudsman, commissioners for public employment, equal opportunity, health and community services complaints, Legal Practitioners Conduct Board, Medical Board, Police Complaints Authority, court authorities, and countless other such review and oversight bodies actually worked to deliver justice, we would not be sitting here having this discussion.

Whilst it is fortunate that, on occasions, these systems work in some small measure, often the victories to be had are hollow or so long in coming that they cannot help but serve to deny justice to the aggrieved all the same. One recent example highlighting this point is found in yesterday's judgment of Keogh v The Medical Board of South Australia and Dr Colin Manock, which the Hon. Nick Xenophon has already referred to in a previous speech. In the judgment delivered by the Chief Justice on 25 September it was made clear that, despite proceedings lasting some five years before the Medical Board in relation to Dr Manock, the members of the Medical Board had failed to understand the test that needed to be applied for determining unprofessional conduct, even though it was set out and clearly defined in a simple paragraph in the relevant act.

A pathologist and member of the Medical Board, Dr Coleman, had written an internal memo to the other members just two months before the Medical Board decision in the Keogh-Manock matter stating that Dr Manock's conduct was incompetent and unprofessional and fell below the standards which had been laid down in 1908. At least two other members of the five-member board agreed with those sentiments. Why was it, then, that the Medical Board then issued an opinion which cleared Dr Manock of any wrongdoing, while a man who may have been wrongfully convicted is sitting in gaol all these years? Why does it then take a further two years of court proceedings for the Supreme Court to recognise that the Medical Board did not know what it was doing? Why is it that the Medical Board now insists upon holding its meetings in secret, as in a matter concerning Dr Ross James, when Justice Gray stated in the K-Generation case that openness and public hearings were the very essence of any judicial tribunal procedure?

But this is not the only case of its kind. These stories are commonplace. However, it is abundantly clear that our legal, political and administrative institutions are not working for the common citizen and many appear to have become white elephants over time, perhaps captured or assimilated into

becoming benign, if not malignant, in some cases. Whilst the Hon. Ian Gilfillan was on the record for many years advocating the establishment of an ICAC long before either government or opposition would support him on the idea, his inability to muster the support he needed is as much a testament to poor consultation and planning at the grassroots level as the lack of political will and support at the time.

My main problem with this bill is that it still leaves way too much power in the hands of the government, and I have consulted with a number of prosecuting lawyers, and also defence lawyers, who are saying that perhaps a completely separate commissioner needs to be established and that grievances be taken either to that commissioner or the department of public prosecutions rather than be handed to the Attorney-General for any sort of action to be taken.

That would be the idea of an independent commission against crime and corruption: that it is independent of the government and has independent bodies that would probably function a lot better than the ones we have in place now. Under the ICAC that would be established, some of those bodies themselves would perhaps come under scrutiny. I look forward to the ensuing debate and will be interested to see what happens in this regard.

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

PASSENGER TRANSPORT (DISCIPLINARY POWERS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 6 June. Page 294.)

The Hon. D.W. RIDGWAY (Leader of the Opposition): This bill makes a minor amendment to section 36 of the act by adding a provision from the Equal Opportunity Act 1984. This is an attempt to strengthen the current legislation so that taxi drivers do not discriminate against visually impaired people with guide dogs. It also provides an onus on the taxi companies, as well as their drivers, to uphold this legislation.

In his second reading speech the Hon. Dennis Hood commented on the unfortunate situation of visually impaired members of the community being refused access to taxis because of their having a guide dog. This problem exists and community feedback about this situation has spurred his introduction of the bill. We understand the Royal Society for the Blind has been very keen on and interested in this bill, and the Disability Advocate Complaint Service of South Australia has been vocal about the need for legislative change to rectify this situation. I also reaffirm that the majority of members of the taxi industry are doing the right thing and are more than happy on most occasions to assist visually impaired community members, but it is important that this legislation clearly sets out an obligation for the taxi industry to cater for people who have a working animal, and at present the passenger transport regulations do not make this clear and only clarify the right of the driver to exclude non-working animals. Often I take our family dog for extensive walks and have wondered whether, if I ran out of steam on the walk, I could call a cab to get home. On reading the legislation, I believe a driver would exclude our family dog so, not wanting to desert him on the side of the road, I would have to soldier on.

The Hon. Dennis Hood used the 2005 example, where there was a complaint before the standards committee, but the driver avoided discipline because the rule requiring guide-dogs to be allowed in taxis was not set out clearly. The Liberal Party agrees that this legislative change will complement the recent recommendations made by the taxi council task force relating to improved driver training. This bill is important to the maintenance of the dignity and quality for all visually impaired members of the community, and with those brief remarks I indicate that the Liberal Party wholeheartedly supports this bill.

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

ROXBY DOWNS (INDENTURE RATIFICATION) (APPLICATION OF ACTS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 6 June. Page 295.)

The Hon. A.M. BRESSINGTON: I am intrigued by the need for this bill. As the Hon. Mark Parnell points out, the indenture agreement must be renegotiated in the near future. From my reading of his speech in this place on 6 June 2007, it seems that the Hon. Mr Parnell accepts that when this indenture was negotiated it was necessary.

The operators opened this facility because of the security that the indenture offered. I can only assume that this bill is essentially political in nature and has been tabled with the upcoming federal election in mind. I hold to the principle that, when we enter into commercial agreements, we must adhere to them. The state has gained great benefits from the Roxby Downs mine in the form of considerable revenues and many much-needed jobs. My concern is not to prejudice future investments by legislating to alter an agreement freely entered into by a former government.

As the Hon. Mr Parnell is a lawyer, I am somewhat surprised to hear him advocating such a course of action. I know that Mr Parnell is, indeed, a man of principle and, as such, will represent truly the wishes of his party. I am sure that he feels honour-bound to support the collective decision of the Greens. I repeat that I believe that this is purely a political exercise, because the Greens are all for special subsidies to support their vision of our energy future. If the issue was about indentures for wind or solar power projects, I would expect to hear howls of protest at any attempt to change any existing agreement. Indeed, if that situation should ever arise, they could rely on me to take the same stance that I am taking on this indenture: governments have a responsibility to keep their agreements.

I found the reference to the Freedom of Information Act interesting. I am not sure what the Hon. Mr Parnell believes that would achieve. It is with good reason that most South Australians view our current law as the 'freedom from information act'. We do not have to wait long until the current agreement must be renegotiated. I would strongly recommend that the Greens—and other interested parties—lobby their respective positions with vigour, as becomes the people of a democratic society, and we shall no doubt hotly debate the issue here in this parliament. Until that time, I hold to the principle of honouring our agreement.

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

STATUTES AMENDMENT (GANGS) BILL

Adjourned debate on second reading.
(Continued from 12 September. Page 682.)

The Hon. NICK XENOPHON: I rise to support this bill and commend the Hon. Ann Bressington for introducing it. I think it is important to reflect on the background of this bill—the constituents who came to see the Hon. Ms Bressington in relation to the nightmare that they were experiencing: being harangued, harassed and terrorised by youth gangs. The Hon. Ms Bressington took the time and trouble to make her own observations and to do the hard yards to meet with members of the community in relation to this matter. This bill is as a result of those observations and getting the facts from people out there in the community.

I support this bill, because the nature of gangs is one that requires a rethink in the way that we approach criminal law in terms of evidence gathering, the onus of proof, police powers and the whole issue of antisocial behaviour orders, which the United Kingdom has had in place for some time. That is why I believe we need innovative legislation such as this to tackle this problem.

Last weekend, *The Sydney Morning Herald* of 22 and 23 September carried an article entitled 'An exercise in despair' with a subheading 'Society is at breaking point', according to the Archbishop of Canterbury. The Archbishop, Ron Williams, made a number of comments about societal factors, and he also reflected on the issue of gangs. I think it is worth reflecting on what he said, because it begs a number of other questions as to the mechanisms that we need to deal with gangs. I believe that the legislation proposed by the Hon. Ms Bressington is essential, but I also think that we need additional mechanisms to deal with some of the root causes of why gangs come into being.

The Archbishop of Canterbury said, and it was in the context of one of his key concerns as to how society damages children:

> What is lacking in children's lives is space. They are pressed into a testing culture, or even into a gang culture. They are bullied and manipulated until they fit in. They never have any time to develop in their own space.

The Archbishop goes on to say that he understands the urge to join a gang. He says:

> A lot of it is yearning for love. They want to fit in. If their families are as chaotic as some of them are, gangs give them a sense of belonging.

Many times those families are chaotic for a whole range of reasons: poverty brought about by gambling addiction, dysfunction caused by drug addiction—a whole range of societal factors. I think we need to put that in context and I think the Archbishop of Canterbury's comments are worthy of reflection in the context of a debate such as this.

I support this bill. I know that the government has spoken about the need to have anti-social behaviour orders. I think we need to learn from how they have operated in the United Kingdom. There was a report recently on the BBC (just a few days ago) where a woman who had an ASBO against a teenager who was tormenting her and tormenting her neighbours had three years of peace, but when the time for that ASBO expired the torment started again because of the way that the orders were structured. We need to look at the way that those orders have been effective, and areas where they could be more effective, in the United Kingdom, and we need to learn from what has occurred in the United Kingdom. The government should seriously consider how this bill deals with this problem of teen gangs, because I think it has a number of innovative and worthy solutions and I urge honourable members to support it.

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

SUMMARY OFFENCES (DRUG TESTING ON ARREST) AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 25 July. Page 480.)

The Hon. SANDRA KANCK: I have a few problems with this bill, and the best way, I think, to illustrate those problems is to compare it to blood alcohol testing. We test for blood alcohol because science shows that it is dangerous to drink and drive. So, our drink driving laws have a clear aim to save lives—it relates to one substance in one context, and the test is specific and it is clear. That law is one I generally support, although it does have its deficiencies, and there is a level of hypocrisy about the way we, as a parliament, tolerate a certain amount of alcohol whereas with a drug like cannabis, where the evidence does not support it, no hint of it is allowed in the drug driving test.

I want to compare the blood alcohol regime to the bill we have before us. This bill would establish a regime of testing for a wide array of drugs which have vastly different effects on the individual and on society. For instance, alcohol is a drug which can cause death if enough of it is drunk in a short enough time, but I have never heard of a fatal marijuana dose. Ice makes you dangerously aggressive but Ecstasy—and just so *The Advertiser* does not take me out of context, I am talking about MDMA—makes you friendly and cuddly. Benzodiazepines, which are doctor prescribed tranquillisers and sedatives, are legal but they can be as deadly as alcohol when driving. Heroin addicts often turn to crime to support their habit, while most users of recreational drugs hold down responsible jobs and use drugs only occasionally. I provide those examples to show that we are talking about a very wide spread of drugs with very different bodily responses.

Despite the fact that there are very different effects, some worse than others, this bill singles out some of these drugs and ignores others that are less dangerous. I note that tobacco, for instance, which shows up as the ninth most dangerous drug in the study published in *The Lancet* last year, is not on the list envisaged by the Hon. Ann Bressington. Why not?

The Hon. A.M. Bressington interjecting:

The PRESIDENT: Order!

The Hon. SANDRA KANCK: This bill would set up an elaborate and expensive testing regime, and it is not even clear why. Is it to identify who needs treatment? This does not seem relevant for users of non-addictive drugs, legal or illegal. But, if this is the reason, it makes an assumption that use of the drug means the person has a drug problem, yet we all know that if a person downs a schooner it does not make that person an alcoholic. Is this bill another way of clamping down on drug use? If so, we need to hear more about how this legislation will relate to other legislation. For example, will people who test positive to drugs automatically be charged under other drug laws?

The drug testing on arrest bill says that we should test for the presence of any prescribed drug on anyone who is arrested. What are the implications if a person is arrested,

then tested and is later found to have been wrongfully arrested? Will the test results be destroyed? The legislation is silent on this. From time to time people are arrested, held temporarily in paddy wagons or even police cells, then set free without charges. I think, for instance, of those people who were involved in the protest during the Vietnam moratorium marches and anti-uranium protests on the site of what is now the Roxby Downs mine. Why would people arrested for civil offences have to be drug tested? There is no valid argument for this.

Drug abuse is a big problem. It can harm or even kill the abuser and it can lead to their inflicting violence on others. One of the best things we can do to protect our community from drugs is to make sure we come up with workable laws, and this bill is not workable. It leaves too many unanswered questions and, as a consequence, the Democrats will not be supporting it.

The Hon. NICK XENOPHON: I rise to support this bill. I want to pick up on some of the points made by my colleague the Hon. Sandra Kanck in terms of civil offences. The intent of this bill can be explored in the committee stage, if this bill gets to the committee stage, as I hope it will. If someone is arrested for an act of civil disobedience, I can see the Hon. Sandra Kanck's point about the Roxby Downs protesters or the Baxter demonstrators, and I think that there is a real difference. However, in the discussions I have had with psychiatrists who have dealt with people with substance abuse problems and with counsellors who deal with domestic violence, they tell me that, unfortunately, there is a very clear link between substance abuse, particularly with methamphetamines, and violent behaviour in the form of ice rage and that it is a very real issue in terms of those psychotic episodes that lead to aggressive behaviour. If a person is drug tested as a result of being involved in a violent incident where a serious assault has occurred, I think that is a good thing to do in terms of public policy, if it leads to that person being counselled about their substance use.

I know there is a huge debate about illicit substances and whether or not they should be illicit, and I think the Hon. Sandra Kanck and I will agree to disagree, but I would like to think there is some common ground in respect of this. Where there is substance abuse—and this also includes abuse of alcohol—and where the abuse of a substance leads to violent behaviour that causes injury to another person, I think that is a problem that goes beyond that person's own personal choices, and it is something that affects the broader community. I think that there is—

The Hon. Sandra Kanck: Is that a 'drugs defence'?

The Hon. NICK XENOPHON: No; the Hon. Sandra Kanck says it is a drugs defence; it is certainly not. I think this is about identifying people who have a problem and getting them help. Also, as a community we ought to know the full extent of the link between substance abuse, and this includes alcohol, and violent behaviour. Also, for instance, in the case of offences of break and enter, because anyone who has been the subject of a break and enter would say that it is quite a terrifying offence. That is why I believe this legislation has some real merit.

I believe that a person being arrested is a reasonable threshold, but I take the Hon. Sandra Kanck's point with respect to arrests arising out of civil disobedience. However, given what appears to be a very frightening link between substance abuse, particularly methamphetamines, and criminal activity, I believe this bill could be part of a tipping point for society to confront the issue of substance abuse leading to this behaviour and for those individuals who have that problem to get help and for us as a community to confront that as an issue. That is why I support this bill.

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

MOTOR VEHICLES (DRUG TESTING OF LEARNER DRIVERS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 30 May. Page 202.)

The Hon. NICK XENOPHON: I rise very briefly to indicate my support for this bill. I think it is an innovative bill that looks at basically being part of a culture shift to reduce what I and obviously my colleague, the Hon. Ann Bressington, and many others consider to be alarmingly high levels of substance abuse in our society. The UN drug report figures make it very clear that we are at the top of the tree with respect to illicit drug use in many respects, particularly methamphetamine, which I find quite frightening, and the impact it has in terms of its link with psychosis and aggressive behaviour.

What the Hon. Ann Bressington is proposing here is, I think, part of an attempt to have a culture shift in the way we regard drugs. If learner drivers are aware that they will be subjected to this sort of testing before they get their learner's permit or during the time they are on a learner's permit, I think that will be part of a culture shift. I know from a conference I attended earlier this year, where the Hon. Ann Bressington was an organiser, that when you look at the testing of individuals with respect to drug use, it actually influences people with respect to peer pressure. If they know they will be subjected to testing when they apply for a licence, that acts as a break on reckless behaviour, and I think that is a good thing in terms of what we know about the negative impacts of drug use on mental health. For those reasons, I think this is innovative legislation, and I certainly support it.

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

MOTOR VEHICLES (MISCELLANEOUS) AMENDMENT BILL

The Hon. CARMEL ZOLLO (Minister for Road Safety) obtained leave and introduced a bill for an act to amend the Motor Vehicles Act 1959. Read a first time.

The Hon. CARMEL ZOLLO: I move:

That this bill be now read a second time.

The government is committed to improving road safety and ensuring that recidivist drivers are held accountable for their actions. As part of this commitment the government has introduced this bill to improve the operation and administration of the Motor Vehicles Act 1959 and, most importantly, to close a number of loopholes that allow drivers to avoid a licence sanction or condition placed on their licence.

In July 2005 the Minister for Transport established a driver penalty enforcement task force, a cross-government committee comprising representatives from South Australia Police, the Courts Administration Authority, the Attorney-General's Department, the Department for Transport, Energy

and Infrastructure, and the Motor Accident Commission to review and identify loopholes in the current driver licensing system. In many cases, these loopholes only exist due to a technicality in the legislation which makes it possible for drivers to avoid certain consequences or circumvent a rule without actually breaking the law, or it may be due to an omission or ambiguity in the law itself.

Whether closing a loophole to prevent drivers from manipulating the law or correcting an administrative anomaly, in all circumstances the amendments are limited to ensuring that the legislation operates as it was originally intended. The most significant loophole identified by the task force was one which allowed disqualified drivers to claim that they had never received a licence disqualification notice, thereby avoiding a charge of driving while disqualified. Each year approximately 20 000 of the state's 1 050 000 driver's licence holders face disqualification for the accumulation of 12 or more demerit points within a three-year period or for breaching their good behaviour condition or other licence or permit conditions.

The Registrar of Motor Vehicles has previously advised that there are probably 1 500 to 2 000 repeat offenders who continue to drive although they have been disqualified. In order to be liable for a licence disqualification a person must have committed a number of traffic offences or breached a condition of their licence or permit. From a road safety perspective, these are individuals who often place the well-being of other motorists at risk. To ensure that disqualified drivers are held accountable for their actions, the bill proposes a variation to the current procedure, placing more stringent requirements on recipients of a notice of disqualification.

Under the proposed provisions, a recipient of a notice of disqualification issued by the Registrar of Motor Vehicles will be required to attend a customer service centre or nominated agent, for example, Australia Post, to acknowledge receipt of the notice. If the licence holder does not respond, a process server will be engaged to serve the notice personally on the licence holder. The cost of introducing these new requirements will be borne by the licence holder and prescribed by the regulations. In particular, a $24 administration fee will be introduced, payable at the time of acknowledgment, to cover the cost of administrative requirements such as verifying the identity of a licence holder, witnessing their signature, and processing and storing source documents for evidentiary purposes. This documentation is essential to enable SAPOL to prosecute any licence holder subsequently detected of driving whilst disqualified.

Where a process server is engaged, the licence holder will be required to pay a $60 process server fee in lieu of the $24 administration fee. In cases where the process server cannot find the licence holder, the bill provides the Registrar with the power to refuse to transact any business under the Motor Vehicles Act with him or her until receipt of the notice of disqualification is acknowledged.

The use of registered mail, which is a cheaper and more convenient means of service, cannot guarantee personal receipt of the notice or provide the proof required by a court. Experience has shown that too many disqualified drivers simply will not accept or collect a registered letter if they suspect it contains a notice of disqualification. This loophole was considered to offer the single greatest opportunity for recidivist traffic offenders to avoid a licensing penalty. The introduction of personal service for notices of disqualification issued by the Registrar of Motor Vehicles is expected to increase compliance with permit and licence disqualifications and improve enforcement of the demerit points and graduated licensing schemes.

Following successful prosecutions, recidivist traffic offenders may be less likely to drive until they are legally able to do so or, even better, may modify their driving behaviour to avoid demerit points that accumulate and result in licence disqualification, leading to an improved road safety outcome. While these new procedures cannot guarantee that all drivers, whether disqualified or not, will abide by the road rules, it will ensure that those caught flouting the law by driving under disqualification cannot avoid the penalty for driving disqualified.

The remaining driver licensing amendments within the bill address situations that occur less frequently, do not involve as many drivers and are generally the result of drafting inconsistencies due to successive amendments over the life of the legislation. In particular, the bill ensures that, irrespective of when demerit points for an offence are incurred, the penalty for driving offences applies to the time when the offence was committed and not when it was expiated or settled in court. This principle is similar to that which applies across other provisions of the act in relation to demerit points and ensures that the legislation operates as was always intended.

This amendment will prevent drivers, who have delayed payment of an expiation notice or court proceedings for an offence, from avoiding a licence disqualification (where a driver has breached a good behaviour condition) or from avoiding an extension of provisional licence conditions (where a provisional licence holder has incurred one, two or three demerit points in respect of offences committed prior to their 19th birthday) even if the offender has already progressed to an unconditional full licence.

The bill also ensures that, in all circumstances, a licence disqualification will commence only upon the conclusion of any other disqualification period already in force. This will prevent learner's permit, provisional and probationary licence holders from serving a disqualification for a breach of licence conditions at the same time as another disqualification, which effectively means that they avoid the second penalty by serving it concurrently with other penalties. This provision already exists under the demerit points scheme but has never applied to a disqualification for breaching a condition of a learner's permit or professional or probationary licence.

The bill also provides the Registrar of Motor Vehicles with the necessary discretion to suspend or cancel a South Australian driver's licence when the licence holder has had their driver's licence disqualified by an interstate authority as the result of an administrative order. At present, the legislation only allows the Registrar to cancel a South Australian licence. This amendment will ensure that the Registrar can give effect to the equivalent of the interstate penalty without the South Australian licence holder being unfairly disadvantage and that the impact of an administrative order is the same for a South Australian licence holder as it would be for a licence holder from another jurisdiction.

The bill also allows foreign licence holders, who have received their permanent residence visa prior to arriving in Australia, to drive on their valid foreign licence for up to three months after their arrival before having to apply for a South Australian driver's licence. While this amendment reflects what was always intended under the national driver licensing scheme, the current provision allows foreign licence holders to drive on their valid foreign licence for up to three

months from the time of issue of the permanent residence visa.

Following advice that the issue of a permanent residence visa may occur well in advance of a person's arrival in this country, this amendment will relieve the burden upon foreign licence holders, who were previously required to apply for a South Australia driver's licence upon their immediate arrival in this state, and will only have a positive impact upon business and the broader economy. A transitional provision has also been incorporated into the bill to ensure that these amendments are not retrospective and will only apply to licence-holders who commit an offence on or after the commencement of the legislation.

At present, the deterrent effect of licence disqualifications under the demerit points and graduated licensing schemes is reduced, as persistent traffic offenders are able to manipulate the law so as not to be held accountable for their actions. These anomalies have already been highlighted in the media and are now well-known in the community. Failure to take corrective action is likely to increase the numbers of offending drivers and potentially places the safety of other road users at risk through their driving behaviour. Closing these loopholes and correcting various administrative anomalies within the legislation will improve the effective operation and administration of the legislation, improve compliance with, and enforcement under, the demerit points and graduated licensing schemes, and will ultimately improve road safety for all road users. I commend the bill to the council and 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 *Motor Vehicles Act 1959*

4—Amendment of section 5—Interpretation

This clause amends section 5 by replacing the definitions of ***foreign licence*** and ***licence***, and inserting a definition of ***learner's permit***. These changes are consequential on other amendments made by the Bill.

5—Amendment of section 81A—Provisional licences

This clause makes a number of minor semantic changes to section 81A to achieve consistency of expression with other provisions of the Act. It also amends the section to ensure that if a person who holds a P2 licence incurs any demerit points in respect of offences committed or allegedly committed while under the age of 19 years and the person would be under the age of 20 years when the prescribed period ends, the P2 licence conditions will be effective until the person turns 20.

6—Amendment of section 81B—Consequences of holder of learner's permit, provisional licence or probationary licence contravening conditions etc

This clause makes a number of minor amendments to section 81B that are consequential on proposed section 139BD.

7—Insertion of section 81BA

This clause inserts a new section to enable P2 licence conditions to be re-imposed if a person, while holding an unconditional licence, incurs 1 or more demerit points in respect of offences committed or allegedly committed while the person was under the age of 19 years and held a provisional licence.

81BA—Consequences of holder of unconditional licence incurring demerit points in respect of offences committed while holder of provisional licence

Subsection (1) provides that if a P2 licence is renewed as an unconditional licence and the holder subsequently incurs 1 or more demerit points in respect of offences committed or allegedly committed while under the age of 19 years and held a provisional licence, the Registrar must give the person notice requiring the person to surrender the licence and informing the person that if they comply with the notice, they will be entitled to a refund of a proportion of the licence fee and to be issued a P2 licence (provided they are not disqualified or otherwise legally prevented from holding or obtaining a licence). The notice must also inform the person that if they do not comply with the notice, the Registrar may suspend their licence until it is surrendered.

Subsection (2) provides that the notice may be given by post.

Subsection (3) provides that, subject to the Act, if a person to whom notice is given surrenders the person's licence, the Registrar must, on application by the person and payment of the prescribed fee, issue a P2 licence to the person.

Subsection (4) provides that the conditions applying to a P2 licence issued to a person under this section following the surrender of an unconditional licence are effective for a period equal to the period for which such conditions would have continued to be effective under section 81A if any demerit points incurred in respect of offences committed or allegedly committed while the person was under the age of 19 years had been incurred by the person while the person held a provisional licence.

Subsection (5) provides that if a person fails to comply with a notice given to the person, the Registrar may suspend the person's licence until the licence is surrendered.

8—Amendment of section 81C—Disqualification for certain drink driving offences

9—Amendment of section 81D—Disqualification for certain drug driving offences

The amendments made by clauses 8 and 9 are consequential on proposed section 139BD.

10—Substitution of section 83

This clause repeals section 83 and substitutes a new section.

83—Consequences of certain orders or administrative actions outside State

This section requires the Registrar to take action in relation to a licence or learner's permit to give effect to an order or administrative action that affects a person's licence or other authority to drive a motor vehicle in another State or Territory as if the order or administrative action had been made or taken in this State in relation to the licence or permit. In the case of a foreign order or administrative action, the Registrar has a discretion whether to take action in relation to a licence or learner's permit.

The section also provides that if a person is disqualified from holding or obtaining a licence or other authority to drive a motor vehicle in another State or Territory, the Registrar is required to refuse to issue a licence or learner's permit during the period of disqualification. If a person is disqualified in another country, the Registrar has a discretion to refuse to issue a licence or learner's permit to the person.

11—Amendment of section 97A—Visiting motorists

This clause amends section 97A to allow an Australian permanent resident or citizen to drive in this State pursuant to a foreign licence if the person has not resided in this State for a continuous period of more than 3 months.

12—Amendment of section 98BD—Notices to be sent by Registrar

The amendments made by this clause are consequential on proposed section 139BD.

13—Amendment of section 98BE—Disqualification and discounting of demerit points

This clause amends section 98BE so that if a person incurs 2 or more demerit points in relation to offences committed or allegedly committed while the holder of a licence subject to a condition to be of good behaviour for 12 months, the person is disqualified from holding or obtaining a licence for a period twice that which would have applied if the person's licence had not been subject to such a condition. At present this disqualification is imposed if the demerit points are incurred while the licence is subject to the condition, regardless of when the offences were committed or allegedly committed. The clause also amends the section so that the Registrar can allow an election to accept a licence condition

to be of good behaviour to be made up to 28 days after the day specified in the notice of disqualification.

14—Amendment of section 136—Duty to notify change of name, address etc

This clause amends section 136 to require a person to notify a change of postal address within 14 days of the change. A maximum penalty of $1 250 is fixed for non-compliance.

15—Insertion of section 139BD

This clause inserts a new section dealing with the service of notices of licence disqualification and their commencement.

139BD—Service and commencement of notices of disqualification

Subsection (1) requires notices of disqualifications to be served in accordance with this section.

Subsection (2) requires a notice of disqualification to be sent by post in the first instance.

Subsection (3) provides that the Registrar must, in the notice sent by post, require the person to attend at a specified location within a specified period to personally acknowledge receipt of the notice and to pay the prescribed administration fee. The notice must inform the person that if he or she fails to do these things, another notice will be served personally, the person will be required to pay the prescribed service fee and, in the event of personal service not being effected, the Registrar may refuse to transact any business with the person until they pay the service fee and personally acknowledge receipt of the notice.

Subsection (4) provides that if a person fails to comply with a notice of disqualification, the Registrar must issue another notice and cause it to be served on the person personally.

Subsection (5) provides that if an attempt to serve a notice of disqualification personally is unsuccessful, the Registrar may refuse to enter into any transaction with the person until they pay the prescribed service fee and personally acknowledge receipt of the notice.

Subsection (6) provides that for the purposes of the Act a notice of disqualification is taken to have been given to a person when the person personally acknowledges receipt of the notice or the notice is personally served.

Subsection (7) provides that a notice of disqualification must specify when it will take effect in accordance with this section.

Subsection (8) provides that a notice of disqualification receipt of which is personally acknowledged takes effect 28 days after the day specified in the notice. If a notice is served on a person personally it takes effect 28 days after the day of service.

Subsection (9) provides that if, at the time that a notice of disqualification is due to take effect, a person is already disqualified from holding or obtaining a licence or permit, the notice of disqualification will instead take effect on the termination of that prior disqualification.

Subsection (10) empowers the Registrar to reissue a notice of disqualification.

Subsection (11) defines ***notice of disqualification*** to mean a notice under section 81B(2), 81B(11a), 81C(2), 81D(2), 98BD(2) or 98BE(2a).

16—Amendment of section 139C—Service of other notices and documents

Clause 16 amends section 139C which enable notices and other documents to be sent to a person at his or her last known "place of residence, employment or business". The term "postal address" is substituted so that documents can also be sent to a post office box address.

17—Amendment of section 141—Evidence by certificate etc

Clause 17 amends section 141 which enables proof of compliance or non-compliance with section 136 to be tendered in legal proceedings or arbitrations by means of a certificate signed by the Registrar. This amendment is consequential on the changes to section 136 made by this Bill.

Part 3—Transitional provision

18—Transitional provision

This clause ensures that an amendment to the Motor Vehicles Act made by a provision of Part 2 of this Bill does not apply in relation to offences committed or allegedly committed before the commencement of that provision.

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

ENVIRONMENT PROTECTION (SITE CONTAMINATION) AMENDMENT BILL

In committee.

Clause 1.

The Hon. J.M.A. LENSINK: I have three questions, and I think it is probably appropriate to list them at clause 1 to enable the answers to be obtained if they are not immediately available. The first question relates to the regulations. A number of stakeholders have stated (quite correctly, I think) that a number of issues contained within this legislation will be in the regulations, so my first question is: are any draft regulations available? If not, how soon might they be available to clarify these issues for stakeholders?

The Hon. G.E. GAGO: The regulations will be available once the legislation has been completed; so, once this is through the regulations will be available.

The Hon. J.M.A. LENSINK: Do you have a rough timetable regarding how soon that might be?

The Hon. G.E. GAGO: Basically, it will depend on a cabinet process. However, I can assure the honourable member that we will attempt to expedite it.

The Hon. J.M.A. LENSINK: My second question relates to the transfer of potentially contaminated land from the commonwealth to other jurisdictions. I think this is of particular concern to the LGA with respect to former rail yards, given that the commonwealth is not always bound by state laws.

The Hon. G.E. GAGO: This is quite a complex issue. It is not a simple question to answer. It depends on whether the commonwealth law overrides state law. If not then, yes, the bill would certainly apply to commonwealth land and all transfers. However, for past transfers an agreement would have to be in place transferring the liability. It is not as simple as commonwealth to state, as the railways were originally state run, then transferred to the commonwealth and then, just to make it even more complicated, some came back. Under the bill, section 103E allows looking at past contracts, certainly future contracts, and makes transfers more transparent.

The Hon. J.M.A. LENSINK: I am quite sure that these remedies are available within the bill, but the MTA informs me that it has been advising a number of its members for some time to be cautious because, as more risky potential polluters, they should demonstrate that they have attempted to prevent site contamination or at least be aware of it, for example, the keeping of log books. The MTA has asked me to raise specifically whether attempting to evade would serve as some sort of defence against being served with a notice.

The Hon. G.E. GAGO: The bill does not contemplate the example the Hon. Michelle Lensink has given; that is, a log book is no defence, as the bill is about applying strict liability. If they were an occupier of land when an activity caused the site contamination they are liable, full stop. Means such as a log book probably would not help if the argument is that you had a system in place but that it was a poor one. More importantly, it shows that you were aware of the possible impact of your activities but it still occurred. Whether it can be used as evidence in an appeal is up to the court.

Clause passed.

Clauses 2 and 3 passed.

Clause 4.

The Hon. J.M.A. LENSINK: I move:

Page 4, line 10—Delete subparagraph (i)

One of the definitions within this bill relates to site contamination. As I understand it, the purpose of this bill is to protect, first, the health and safety of human beings and, secondly, the environment. Paragraph (b)(i) includes a definition of actual or potential harm to water that is not trivial. A number of stakeholders have said to me that they believe that that is somewhat ambiguous and that water would be considered under the issue of environmental harm and therefore, in the interest of removing ambiguity, it should be deleted from the definition.

The Hon. G.E. GAGO: The government rejects this amendment. This deletion is really a consequential amendment to new section 5B(1)(b) as it removes the same reference to harm the water. The remediation of water usually requires a specific type of response to ensure contamination does not spread and will not usually be connected to the overlaying land use. That is, regardless of whether groundwater contamination occurs under an industrial land use or a residential land use, it will have to be managed or responded to in both cases usually to manage the migration of contaminants.

The Hon. J.M.A. LENSINK: One of the concerns which was raised and which led to my drafting the amendment was that, with the inclusion of paragraph (b)(i)—that is, actual or potential harm to water that is not trivial—the EPA would be able to require the clean-up of groundwater in circumstances where there is no risk to human health or the environment. Can the minister clarify whether or not that is the case?

The Hon. G.E. GAGO: If the Hon. Michelle Lensink's question goes to the issue of, for instance, whether an aquifer is naturally contaminated, such as naturally occurring high levels of arsenic, the answer is that we will not require someone to clean that up. However, where the environmental values are already compromised but additional chemical substances have been added, it will depend on the level of harm to human health and/or safety. For example, if volatiles from the human introduced chemical substances are causing, or may cause, harm to humans, action would need to be taken, as with any requirement for remediation of groundwater. It would be assessed on a case by case basis and matched to an appropriate response.

Indeed, the definition of 'remediate' has been intentionally drafted to allow for this type of circumstance. 'Remediate' allows for a range of options, not just clean-up or complete removal of the chemical substance. Even with this type of situation in mind, other tools have been introduced in the bill that allow for alternatives to remediation, such as restricting or prohibiting the further taking of any water. When assessing the appropriate response, the authority is obliged to take into account the objects of the act, such as economic and social considerations.

The Hon. M. PARNELL: I appreciate the Hon. Michelle Lensink's intention to try to avoid unintended and unfair consequences in legislation: I think it is part of our job here to make sure that we are not opening up a pathway to bad outcomes. On balance, I am not inclined to support the amendment. I accept what the minister has just said about the definition of 'remediate', and it means more than just clean-up: it can mean, for example, manage (that word is in there). The other checks and balances, I think, are there. Subparagraph (i) is prefaced by 'eliminate or prevent, as far as reasonably practicable'—so, that is the first protection—and then we are talking about actual or potential harm to water that is not trivial. When one overlays those protections on the objects of the act in section 10 and the general environmental duty in section 25, I think there are enough protections in here to prevent the capricious use of a clause such as this. Whilst I appreciate the honourable member's intent, I am not convinced that it is necessary in this case.

Amendment negatived.

The Hon. M. PARNELL: I move:

Page 5, lines 19 to 20—Delete subclause (9).

This is a test amendment for my amendments Nos 4 and 5 as well. My amendment removes a reference to a definition of 'source site'. The reason for this is that that definition, which is referred to in a couple of places in the bill, will become redundant on the passage of other amendments that remove those references.

I want to explain the package that comprises my amendments Nos 1, 4 and 5. In a nutshell, these amendments seek to protect an innocent owner of land from liability in relation to remediation orders and clean-up orders. The regime in this bill is sound in that it starts with the polluter-pays principle. When the EPA is seeking to serve orders for remediation or clean-up it must first look to the polluter; and I think that makes sense. The bill provides for circumstances in which the EPA can move beyond the polluter to the owner, and those circumstances include situations, for example, where the original polluter cannot be found or has died. It also includes a provision where the original polluter cannot reasonably afford the cost of remediation or clean-up, and that triggers the EPA to chase the owner.

The bill as drafted does not have similar protections for the owner. If the owner wanted to claim that they are too poor to be able to afford the clean-up, they are not offered that level of protection. Rather than go down the path of investigating the assets of different people one might want to chase, and difficult issues about whether someone is rich enough, whether they have cash in the bank, whether it would send them bankrupt or whether they should borrow money to pay for the clean-up, I have focused on the level of culpability that might be said to lie with the owner.

If a person purchased land and did not know it was contaminated—it was not their fault it was contaminated—and there was no reasonable way for them to know whether it was contaminated, that gives them some escape from liability. If members want to think of a most severe example, it might be the case of someone who inherits land on the death of a relative, only to find that it is contaminated and that they are served with an order. There is no question that they are culpable and it would, in fact, infringe a legal principle that we should not be passing the debt and responsibility of the debt onto the living.

I think this series of amendments is sensible. However, it does leave a potential vacuum. In some ways that is unfortunate, but I think it is inevitable. The vacuum is that, if we cannot get the original polluter (for whatever reason) and the current owner is completely innocent, it does beg the question of who is left to pick up the tab. First, we have to decide whether the clean-up is really necessary; is the remediation really necessary? It might be that a decision on taking any action could be deferred until a valuable use for the land is found and the planning system kicks in and, as part of that

process, the clean-up takes place. In the absence of a pending development application it might be that there is a vacuum.

I had originally thought about trying to insert a contaminated land fund into the legislation, but I know there is a great deal of nervousness in government, and I know that super funds (as they are known in the United States) have been problematic. I also thought to include specific reference to the current fund—the environment protection fund—established by section 24 of the act. However, on legal advice I understand that it might be beyond the scope of this chamber to suggest how funds are to be spent, even if we are not proposing a money bill per se.

My feeling is that the existing functions of the environment protection fund do include emergency clean-ups. In some circumstances that will cover these orphan sites, as they are known. I think this amendment is sensible and that it plugs a gap in the legislation. I understand that the government is supportive. I will not say more about it now but, rather, commend my amendment to the committee.

The Hon. G.E. GAGO: The government supports this amendment. It is a consequential amendment arising from the Hon. Mark Parnell's amendment to 103C(1)(b).

The Hon. J.M.A. LENSINK: This amendment, as I understand it, gets to the issue of the definition of source site, which I think a number of us across all parts of the chamber, and the department as well, have been trying to clarify. Therefore, from what I understand, if the Hon. Mark Parnell's amendments are to win the day, a number of other amendments that have been filed under my name and the minister's name will become redundant.

The concerns that I have with this amendment are where it shifts the liability. Can the Hon. Mark Parnell indicate to the committee whether it is more likely that the cost of cleanup will revert to the government as a result, and under what circumstances?

The Hon. M. PARNELL: I think that, if we look at it in a purely logical sense, if the end result of my amendment is that there is a class of people that is excluded from liability, the consequence might be that there is slack to be picked up by the government. But, of course, that pre-supposes a number of these sites where we have not picked up the responsibility to remediate through some other measure. For example, I talked about the Development Act, and I think it is generally understood that that will pick up probably 80 per cent of applications to develop. In other words, the driving force will be the fact that development authorities—local councils or the DAC—will be saying to people, 'You cannot do that unless you have fixed up that land beforehand.' So, that will be the driver. Regardless of whether it was the original polluter or someone else, that is what will happen.

In the remaining 20 per cent of cases, where there is no pending development application but we have discovered a situation that is potentially harmful, I would imagine that the original polluter will be able to be found in many cases, but I do not know. It depends how old the pollution is. For example, Port Stanvac has been mentioned many times, and we know those people are still around: they have not gone. But you may have a tannery from two centuries ago, in the 1800s, where finding the polluter might be difficult.

In relation to my innocent purchasers, I would not want people to think that my amendment protects all owners. It only protects the genuinely innocent owners, and that includes not only people who were not aware but also people who could not reasonably have been expected to be aware through inquiries they might have made as a result of the purchase.

So, in theory, there is a potential vacuum and the state might have to pick it up, but we have to bear in mind that the state is already picking up the tab for these orphan sites because, until this legislation is passed, we do not have another regime. It is certainly not my intention to impose additional onerous obligations on the state, but I think it would be unfair for genuinely innocent parties to be forced to pay those costs. If the consequence is that the state picks it up, so be it.

The Hon. J.M.A. LENSINK: I have a further question arising from that explanation where the honourable member referred to people who could not genuinely be expected to be aware. For instance, if they purchased their house, unknowing that, say, 50 years ago there was contamination on that site, would they be excluded under this provision from being liable?

The Hon. M. PARNELL: I am happy to deal with the question now, but it relates to amendment No. 4. After having first exhausted our opportunities to chase the polluter we move on to the owner, but provided that:

> before the person acquired the site—

that is, the owner—

> the person knew, or ought reasonably to have been aware, that the activity that caused the site contamination at the site had been carried on at the site, or while the person was the owner, the person knew, or ought reasonably to have been aware, that the activity that caused the site contamination at the site was being carried on at the site;

The degree of knowledge comes back to a certain extent to a knowledge of site history.

We find in relation to contaminated land that as a community we have kept good records over the years of who owns the land, because we want to get rates from them. Councils have levied rates forever, but we have not necessarily always kept good records on land use. Certainly in years gone by the Waste Management Commission and its successor, the EPA, have kept informal non-statutory registers of contaminated sites and we have some records of site history. We also have under the sale of land and business regulations an obligation on Form 1, a section 7 statement. There are questions the vendor must answer, and one question is whether the vendor is aware of any potentially polluting activities having occurred on the site. As time goes on and our history of land use becomes more complete, and as these vendor statements are accurately completed on each sale, it will be harder for people to be completely ignorant of the site history. I think the honourable member's question related to 50-year-old pollution. If you had no idea that a tannery had been on the site—there were no records anywhere and no reasonable way of knowing—the purchaser would under my amendment be protected, which is the right outcome.

The Hon. R.D. LAWSON: In the case of a purchaser of a house property in Port Pirie knowing that polluting activities have been conducted in Port Pirie for 100 years (although not on the site of this house), and having a general awareness of the fact that lead pollution may occur in one place but settle on all surrounding land, is an owner or purchaser in those circumstances affected by this measure and in what way?

The Hon. M. PARNELL: I doubt it very much, given the regime of this bill, which looks in particular at not just the contamination that affects the site itself but also contamination that migrates off-site, for example, contamination of groundwater. To rephrase the question: would every house

sale in Port Pirie require some response under this legislation? I do not believe it would affect those people. My amendment talks about potentially polluting activities carried out on the site. The fact that there might be some fallout of pollution from elsewhere would not be picked up. You have a spray drift situation in farming areas. Would every farmer have to declare that chemicals had landed on their property? I do not see that as the situation, and I do not see that I am capturing those people in a more onerous regime. I do not think my amendment protects people who ought not be protected, so I do not see it as an issue.

The Hon. G.E. GAGO: I have been advised that the bill provides another mechanism to deal with the specific example the Hon. Rob Lawson has raised. There is a special provision in clause 11, which amends section 103O, under 'special management area'. This provision enables the authority—if it believes that widespread site contamination exists, or that site contamination exists in numerous areas as a result of the same activity—to declare areas to be special management areas. Once an area—or areas—are so declared, the authority conducts a program consisting of publicising the issue, setting up consultative processes between itself and relevant interest groups, and endeavouring to bring about environmental performance agreements under the principal act, or other voluntary agreements to deal with the site contamination.

The Hon. R.D. LAWSON: I thank the minister for her answer. Can the minister indicate whether any decisions have been made about which areas will be declared or designated special areas?

The Hon. G.E. GAGO: I have been advised that no decisions have been made yet, but it is fairly obvious that the example given in relation to Port Pirie will be included in this.

The Hon. J.M.A. LENSINK: I will go back to the hypothetical issue that I raised with the Hon. Mark Parnell. I will give a more specific hypothetical just to flesh this out a bit further. I take the Hon. Mr Parnell's point that, with the passage of time and with a greater awareness in our community of these issues, more recent events and transfers will have a greater likelihood of having some form of record available. If Mr and Mrs Jones purchased a piece of land 60 years ago—and they have no reason to be aware of site contamination on that property—and 60 years later the contamination is discovered, and they continue to be the owners, and are of considerable means, would this clause be a way to find their way out of liability?

The Hon. M. PARNELL: I think the answer is yes, they would, because what I have chosen through this amendment is to chase the degree of knowledge which I equate to culpability rather than the means of being able to clean it up. I considered an amendment along those lines, but you get to that difficult situation of responsibility attaching to means rather than culpability; so rich people have to clean up and poor people do not. I have to say that I do have trouble with the provision that talks about the original polluter, because it does have the defence of poverty, if you like, that lets the guilty but poor party off the hook. However, rather than compound that unsatisfactory situation in my amendment, I have gone for straight knowledge or someone who ought to have been aware. If they have knowledge, or they ought to be aware, they do not get the benefit of the protection of this clause.

The Hon. NICK XENOPHON: This is a question to the Hon. Mr Parnell, the mover of this amendment. As it is a test clause, if I can make reference to the way it will operate, I can indicate my support for it, because I think that, in terms of basic principles of equity and fairness, this is the right way to go about it. I note the government's support for it. Where reference is made to the person knowing or 'ought reasonably to have been aware', is it anticipated that—and this is a question more to the minister—regulations will be promulgated to say in what circumstances the purchaser of land, for instance, ought to be aware? Are statements required under real estate legislation for some basic ticking off as to whether this particular site ought to be the subject of inquiries or—as the minister recently referred to—for those areas that have been set out as being potentially contaminated areas—the special management areas? So, I support this amendment, but is it anticipated to try to give some clarity as to what 'ought to reasonably have been aware' means, or is that something that will have to be sorted out by the courts in due course?

The Hon. G.E. GAGO: It is not our amendment but, obviously, given that we are supporting it, it is not proposed at this stage that there be any regulations that go to providing framework as to what ought to be available. That is likely to be dealt with through internal operating procedures put forward by the EPA and compiled and used by it. So, that is what would provide the internal direction to make those sorts of assessments to which the Hon. Nick Xenophon refers.

The Hon. M. PARNELL: Just to add to that: what I was keen to avoid was the situation where people deliberately choose not to know. That is something that is more appropriate in politics, I think, rather than in the area of contaminated land. If I could give an example: a person came to me once, seeking to further develop some warehouse living. It involved an old industrial estate with a warehouse, and they were complaining that the previous owner had not told them it was an industrial estate, to which the response was, 'Open your eyes; anyone could tell it was an industrial estate. It's a warehouse conversion, for goodness sake.' So, I think we do need to have this protection in there. I would not have thought that any regulations would be necessary to define whether one ought reasonably to have been aware—

The Hon. Nick Xenophon: Or reasonable steps.

The Hon. M. PARNELL: Or reasonable steps. If a person was dissatisfied with an EPA interpretation, then certainly the courts would be the place where it would end up, and I think that they would look at whether a person has taken reasonable steps—whether they ought reasonably to have been aware.

The Hon. J.M.A. LENSINK: The Liberal Party will not be supporting this amendment, which we believe provides a different regime, in effect, for the owner than for the original polluter and, therefore, makes the bill now quite inconsistent. We have recognised, throughout consultations and debate on this bill, that there will be winners and losers from the bill. I think in some ways any attempts to micro-manage the exact circumstances of each site will cause some chaos. It is indicative, from the Hon. Nick Xenophon's question, that clarification might be required through the regulations and that some of the aspects of the simplicity and directness of this legislation are at stake. So, we will not be supporting this clause and I indicate that we will be calling for a division after the voices are determined.

The Hon. G.E. GAGO: As I have said, the government will be supporting this amendment. We believe that this is a very good amendment and it adds greater equity for the

innocent purchaser who has found their property polluted in some way and in the situation where they are not reasonably expected to know that but, at the same time, it also holds the culpable accountable. So, we think it is a fair and equitable way to approach this and it is an amendment that adds to the integrity of this bill.

The committee divided on the amendment:

AYES (11)

Bressington, A.	Evans, A. L.
Gago, G. E.	Gazzola, J. M.
Holloway, P.	Hood, D.
Kanck, S. M.	Parnell, M. (teller)
Wortley, R.	Xenophon, N.
Zollo, C.	

NOES (6)

Lawson, R. D.	Lensink, J. M. A. (teller)
Lucas, R. I.	Ridgway, D. W.
Stephens, T. J.	Wade, S. G.
Finnigan, B. V.	Dawkins, J. S. L.
Hunter, I.	Schaefer, C. V.

Majority of 5 for the ayes.

Amendment thus carried; clause as amended passed.

Clauses 5 and 6 passed.

Clause 7.

The Hon. M. PARNELL: After consultation with the government, I have decided not to proceed with amendments Nos 2 and 3 standing in my name.

Clause passed.

Clauses 8 to 10 passed.

Clause 11.

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

Page 8, line 26—Delete 'notice' and substitute 'order'

I have been advised that this amendment is consequential to the Hon. Mark Parnell's changes.

Amendment carried.

The Hon. M. PARNELL: I move:

Page 8, lines 26 to 28—Delete paragraph (b) and substitute:

(b) if it is not practicable to issue the order to that person, the owner of the site provided that—

(i) before the person acquired the site, the person knew, or ought reasonably to have been aware, that chemical substances were present, or likely to be present, on or below the surface of the site such as to require, or be likely to require, remediation; or

(ii) —

(A) before the person acquired the site, the person knew, or ought reasonably to have been aware, that the activity that caused the site contamination at the site had been carried on at the site, or while the person was the owner, the person knew, or ought reasonably to have been aware, that the activity that caused the site contamination at the site was being carried on at the site; and

(B) the activity is an activity of a kind prescribed by the regulations as a potentially contaminating activity.

Page 9, lines 11 to 26—Delete subsection (1) and substitute:

(1) For the purposes of this act, a person is to be taken to have caused site contamination if the person was the occupier of land when there was an activity at the land that caused or contributed to the site contamination.

Amendment No. 4 is consequential to my amendment No. 1. In fact, amendment No. 1 was consequential to this amendment, but I do not propose to speak further to the amendment.

The Hon. J.M.A. LENSINK: I know what the numbers are, and I will not divide.

Amendments carried.

The Hon. G.E. GAGO: I will not proceed with my amendment No 2, which is no longer required because of the Hon. Mr Parnell's amendment to section 103C(1)(b), which overrides it.

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

Page 9, line 27—Delete 'the site' and substitute:

a site.

This is a minor amendment to correct a drafting error. This amendment clarifies that it applies to any site, not a particular site.

Amendment carried.

The Hon. J.M.A. LENSINK: I move:

Page 10, lines 1 and 2—

Delete 'is sold or transferred after the commencement of this part' and substitute:

has been sold or transferred (whether before or after the commencement of this part or this act)

I indicate that my amendments 5 to 9 are consequential. These amendments have been sought because a longstanding practice—which my learned legal colleagues would understand much better than I, having done only one subject of law and being quite happy to leave it at that—that the courts should be the best determinants of contract law and that agencies of government should not determine whether a transaction was at arm's length, and so forth. We think that these issues should be determined by the courts and, therefore, have sought to remove those roles from the EPA.

The Hon. G.E. GAGO: The government supports this amendment. This amendment simplifies the process for recognising the transfer of liability for past contracts, as the authority no longer has to consider other matters, and its function as a determining body relating to contractual matters has been removed. Whilst we do not object to this amendment, I point out to the honourable member that the determination was always optional anyway. It would occur only when the original polluter sought such a determination. In this way, it could be said that removing this option actually creates a higher workload for the ERD Court, but perhaps, more significantly, it may lead to unnecessarily delays and be more costly to business and individuals, as every determination must now be made by the court. Furthermore, the EPA, as part of its administrative functions, will still need to look at a contract prior to determining the appropriate person to be issued with an order. So, a determination of some sort will still be required in the first instance.

Amendment carried.

The Hon. J.M.A. LENSINK: I move:

Page 10, line 13—Delete section 103F

This amendment is consequential.

Amendment carried.

The Hon. J.M.A. LENSINK: I move:

Page 10, line 24 to page 11, line 9—Delete section 103F

The Hon. G.E. GAGO: The government supports this amendment. It is important for members to consider the implication. For example, removing 103F and amalgamating it with 103E reduces the options available to business and individuals to choose to let the EPA determine liability. It is likely to increase costs and time, and this may be desirable and wholly appropriate where the transfer of liability is clear and/or both parties are agreeable to the EPA being the determining body.

Amendment carried.

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

Page 26, lines 7 to 25—Delete subsection (2) and substitute:

(2) A person to whom this section applies must not, unless authorised by the Authority in writing, carry out a site contamination audit of a site—

(a) if the person is an associate of another person by whom any part of the site is owned or occupied; or

(b) if the person has a direct or indirect pecuniary or personal interest in any part of the site or any activity that has taken place or is to take place at the site or part of the site; or

(c) if the person has been involved in, or is an associate of another person who has been involved in, assessment or remediation of site contamination at the site; or

(d) on the instructions of, or under a contract with, a site contamination consultant who has been involved in the assessment of site contamination at the site.

Penalty: Division 6 fine or Division 6 imprisonment.

(3) A person to whom this section applies must not, in or in relation to a site contamination audit, site contamination audit report or site contamination audit statement, make a statement that the person knows to be false or misleading in a material particular (whether by reason of the inclusion or omission of any particular).

Penalty:

If the offender is a body corporate—Division 1 fine.

If the offender is a natural person—Division 3 fine or Division 6 imprisonment.

This amendment relates to the structure of this clause relating to the offence and the associated penalties. The restructured clause is now in line with similar provisions under the EPA Act. Following discussions with parliamentary counsel, it was recommended that the clause be amended in three ways: first, that 104Y(2) be split into two parts, with the previous 103Y(2)(b) being renumbered as 103Y(3). This is to separate clearly the conflict of interest parts of the clause from the honesty parts; second, the introduction of a provision to ensure that a consultant, who has undertaken an assessment of a site on behalf of a client, cannot commission an auditor to undertake an audit of that site. This would need to be done by the client engaging the auditor directly or through another agent. This is to ensure the integrity of the audit system, which relies on the auditor being independent from the person undertaking the assessment and remediation process. The new provision has been included as clause 103Y(2)(d); thirdly, the penalty provisions of the clause are also amended. Currently, the penalty under clause 103Y is a division 4 fine or a division 4 penalty, which is a fine of $15 000 or up to four years' imprisonment. Although this was the penalty proposed under the draft bill during consultation, no concerns were raised on this matter.

Subsequent consideration of the penalty and discussions with parliamentary counsel have led to the recommendation that the penalty be amended. The existing penalty is problematic in that the fine of $15 0000 is inadequate, while the four years' imprisonment is manifestly excessive and in all probability would never be imposed under the Criminal Law (Sentencing) Act. As to subclause 103Y(3), the making of false statements by an auditor, it is proposed that a division 1 fine apply to a corporation, with a division 3 fine or a division 6 imprisonment for a natural person ($60 000, $30 000 and one year respectively).

An imprisonment component is considered necessary to act as a significant deterrent to less scrupulous auditors. Similar custodial penalties apply in other jurisdictions, such as Victoria (two years) and New South Wales (two years). I note that the penalty in WA is $250 000, but there is no custodial penalty. Subclause 103Y(2), the conflict of interest provisions under the clause, has a division 1 fine or a division 6 imprisonment penalty. These mirror the conflict of interest penalties applied to members of the board of the EPA under section 18 of the act.

Amendment carried.

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

Page 28, after line 15—insert:

103ZC—Provision of false or misleading information

A person must not make a statement that the person knows to be false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information furnished to a site contamination auditor or site contamination consultant that might be relied on by the auditor or consultant in preparing a report relating to site contamination (whether or not required under this or any other act).

Penalty:

If the offender is a body corporate—Division 1 fine.

If the offender is a natural person—Division 3 fine.

This amendment inserts a new clause relating to providing false or misleading information to consultants or auditors under division 5. A concern has been raised within the EPA that in carrying out an audit or assessment, whether or not as part of the audit process, a person may knowingly provide false information to, or conceal information from, the auditor or consultant. This seriously undermines the integrity of the audit system—and, indeed, future owners might rely on auditor and consultant reports.

The provisions under section 119 of the act, 'False and Misleading Information', do not cover this situation as this section applies only to information presented to the authority. The proposed penalty mirrors those under section 119 of the act.

Amendment carried; clause as amended passed.

Clause 12 passed.

Clause 13.

The Hon. J.M.A. LENSINK: I move:

Page 28, lines 30 to 37—Delete subsection (2).

As previously indicated, this amendment is consequential.

Amendment carried.

The Hon. J.M.A. LENSINK: I move:

Page 29, after line 6—insert:

(4) Section 106—after subsection (4) insert:

(4a) If an appeal is made against a site contamination assessment order or site remediation order by a person who, under section 103E, is taken to have assumed liability as a purchaser or transferee of land for site contamination to which the order relates, the vendor or transferor of the land is entitled to be joined as a party to the proceedings in respect of the appeal.

Again, this amendment is consequential.

The Hon. G.E. GAGO: We do not believe this is consequential, and the government rejects this amendment. While the amendment makes it clear that the vendor or transferor has appeal rights as a joined party and will ensure all information can be presented, the government does not support the amendment for the following reasons. It is unnecessary to specify this, as the ERD Court, under the Environment, Resources and Development Court Act, has a discretion to join parties in proceedings. By making it a requirement we are taking away an ERD Court discretion—that is, in its opinion it may not warrant that another party should be joined to the proceedings. In addition, no other provision in the Environment Protection Act allows for this and it is, therefore, an anomaly and poor drafting to have it apply in only one area. For those reasons we oppose this amendment.

The Hon. M. PARNELL: I was interested to hear what the minister just said. On my annotated version of the Hon. Michelle Lensink's amendment I had written down, 'May not be necessary'. However, I have had a closer look at it and, having heard what the minister has had to say, it seems that the government's position is to give the ERD Court discretion as to who should or should not be allowed to join in an appeal. I find that somewhat unusual, given that we have, in this place, passed some amendments to the Development Act that precisely try to fetter the ERD Court in the exercise of its jurisdiction.

I have opposed those sections in the Development Act, because I have sought to have clients joined to court cases. It is not an easy matter to convince the judge, and it is even harder now when we have legislation that actually tells the court not to join people. The issues that the vendor or transferor wants to raise could well be raised as a witness who is called, but it seems to me that is not the same as being a party. When you are a party you get to cross-examine all the other witnesses; you get to participate fully in all the proceedings.

Whilst it might be seen to prolong or to extend proceedings, what it does do is guarantee that the court has the fullest range of information available to it on which to do justice to the case. Whilst I can accept that it is not the end of the world if this amendment does not get up, I am intending to support it.

The Hon. D.G.E. HOOD: The Hon. Ms Lensink said that the amendment is consequential, but I did not understand that it was. Can the honourable member just clarify that?

The Hon. J.M.A. LENSINK: It is my understanding that it is consequential in that the original amendment I moved related to the issue of the principle of contract law that it should be for the courts to determine.

Amendment negatived; clause as amended passed.

Clause 14.

The Hon. J.M.A. LENSINK: I move:

Page 29, lines 21 and 22—Delete paragraph (ic)

This amendment certainly is consequential beyond a shadow of a doubt.

Amendment carried; clause as amended passed.

Title passed.

Bill reported with amendments; committee's report adopted.

Bill read a third time and passed.

PENOLA PULP MILL AUTHORISATION BILL

Adjourned debate on second reading.

(Continued from 25 September. Page 736.)

The Hon. SANDRA KANCK: There are three major sticking points for the Democrats in considering this bill. One is the actual process of getting the bill to this point. The second is the issue of the chemicals involved and the third is water. Process is important because how we get there actually matters, and the process in this case sees the public and the environment being treated with a degree of disdain. When this pulp mill was proposed, it seemed that any impediments that might have been in its way began to melt. A ministerial plan amendment report was prepared and put into operation in order to ensure that the land where the pulp mill was proposed to be located could be used for that purpose. Where was the public discussion about its merits? It seems that the government's blessing was given from the very first. The rezoning of the land gave a very clear message that this pulp mill was destined for approval. Various government agencies then fell into line, with the Native Vegetation Council giving approval for significant red gums to be removed and the Development Assessment Commission gave conditional approval. This was followed by the federal government giving it the nod under the EPBC Act.

In March this year, concerned local landowners took legal action regarding the proposal. They were challenging the process that had led to the conditional DAC approval. This action led to concerns by the government (which I think again demonstrates the mindset that I mentioned) about the certainty of the project going ahead. Around the same time, it became not a 350 000 but a 700 000 tonnes per annum project, and it seems that it suddenly became all too seductive for the government to resist. The state government then intervened with the introduction of this bill so that the conditional approval given under planning law was no longer required. The words chosen by the minister in introducing the bill on 30 May reflect that bias in favour of the proposal, a bias that was shown from the very outset. The minister said:

> The government believes this project to be of such significance that it warrants use of the legislative process to approve—

and I stress the word 'approve'—

> key elements of the proposal.

When you take away the genteel language, the message is that, if it is big, this government must have it, regardless of the cost. How simple; how crude; and how stupid.

I also found myself despairing as I read some of the contributions in the House of Assembly when the select committee's report was tabled. The member for Mitchell said:

> On balance, I think it is fair enough that, with a $1.5 billion proposal, the proponents have a degree of certainty at least in terms of the standards that they must meet to get approval.

It is about the money. It is about how much money gets thrown about, and that determines whether people will put up any resistance or whether they will buckle. I think it is a very dangerous way of thinking. Opponents of the pulp mill have expressed concern that this project should have been required to have an environmental impact statement prepared. The lower house select committee which looked at the bill has said that this bill covers that; that is, there is no longer any need for an environmental impact statement because of the apparent research it has done. I have a regard for some people on that select committee, but I have to say that they are kidding themselves.

The committee's investigations cannot make up for an EIS process, which involves a proper study in which botanists, ecologists, hydrologists, chemists, economists, transport specialists and so on would be involved. Nor can it make up for the lack of public input that occurs after an EIS has been made public when all those arguments are able to be properly read, researched, analysed and responded to in a safe period of time instead of, I think, the obscene haste with which the select committee has done this. When speaking in the House of Assembly in defence of not having an EIS, the member for MacKillop said:

> 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 EPA, DWLBC and other government agencies put to them about how they will meet standards.

Well, what on earth is wrong with that? What a shocking thing that a proponent should have to answer questions of the EPA! He went on to justify what they have done:

This process allows the proponent to come through the other way where they ask, 'What are the limits by which we have to abide? What are the standards we have to meet?' They can then say, 'We will meet those standards,' and then develop the project with the knowledge that they have to meet those standards.

I wish there were some standards. I do not think that what we have really puts standards in place. The member for MacKillop continued:

It is a legitimate process and I think it is a process whereby, as a state, we could attract more very high cost projects. It is one that, as a parliament, we should be prepared to embrace from time to time as necessary.

So, there it is again: the fascination with money. If a big company comes along and says, 'We are going to invest X millions or billions of dollars', then we are going to lie down and let them bring the bulldozers over us. The member for MacKillop also said:

The committee came to the conclusion that it is a legitimate process and that it answers the same questions that would be answered even if the minister had declared this a major project.

Well, honestly! The member for MacKillop obviously has never been through the process of following a project all the way through in the preparation of an environmental impact statement and then the opportunity to input for a supplementary EIS. If he had ever been through that process, there is no way he would have made that claim.

Nevertheless, what he said proves for me that this bill is designed to get around normal and proper processes. It is a repeat of what this government did in riding roughshod over the people of East Whyalla in regard to red dust, using legislation to override the powers of the Environmental Protection Authority. It is as if somehow this government does not want at any stage to be impeded by proper processes. So, addressing my first major concern, the processes to get us to this point have been less than satisfactory. Unfortunately, however, this is now standard operating procedure for this government.

There are some mighty dangerous chemicals to be used in this process, and these give cause to my second major concern. The members of the select committee claim that the process they went through was a good one and that it obviates the need for an EIS. To the contrary, the select committee report shows that it failed to thoroughly interrogate the documents provided to it, further proving the need for proper processes. The select committee report refers to a document entitled Report for Penola Pulp Mill Authorisation Bill, dated May 2007, prepared by a company named GHD. It advises us that, at peak production, the plant will be using 143 tonnes per day of hydrogen peroxide. I am curious to know at what strength. At a strength of 20 vols and 30 vols, used by a hairdresser, serious burns can be sustained. The pulp mill will clearly use a greater concentration, but the information in that GHD report fails to tell us that, and the select committee (I do not know whether or not the members read it) just does not seem to have addressed it.

The GHD report states that 'any surplus production will be. . . diluted to 59 per cent and held in a storage tank for later transportation off site in ISO tanks'. We are looking at a concentration of more than 59 per cent, so I seek further clarification from the minister about the strengths involved.

One of the peculiarities of this bill is that hydrogen peroxide is not mentioned in clause 6 of the schedule. I do not understand, given that this is a product which can cause serious burns at 20 vols and 30 vols strength, why this does not appear in the schedule. I would like the minister to explain why it is not mentioned in the schedule.

The next question that arises—and it is a crucial question that the select committee failed to ask—is how the hydrogen peroxide will arrive at the site. Will it be transported there—all 143 tonnes per day—or will it be manufactured there? Page 48 of the GHD report states that raw chemicals are delivered by road transportation and then assigned some of these chemicals on a chart to three specific locations. One of these is the hydrogen peroxide plant. The question appears to be answered—the hydrogen peroxide will be manufactured on the site. Indeed, on page 49 it specifically states that is the case. Yet, in the past 24 hours, I have heard rumours that hydrogen peroxide will not be produced on the site, so I ask the minister to advise the council what the situation actually is.

On that chart, nine chemicals are listed for the hydrogen peroxide plant. One of those chemicals is anthraquinone, which is a combustible product producing toxic fumes of nitrogen oxide should it burn. It is a substance that is known to be harmful to aquatic organisms, and safety instructions warn that under no circumstances should it be allowed to enter the environment. Yet it is not listed in the schedule of the bill. Again, I ask why not? There are too many unanswered questions about the chemicals involved that the proponents should and would have been forced to answer, if there had been an EIS. Perhaps the select committee members did not have the knowledge to ask the right questions. Again, if that is the case it shows the shortcomings of this particular process.

Related to this matter is the issue of waste. Thousands of tonnes of waste will be produced and the mill operators are responsible for its disposal. Obviously, this is not something that will be easily accomplished because, according to *The Advertiser* of 6 September, the Mount Gambier council has decided that it will not accept the 100 tonnes per day the proponents thought they would dump at ratepayers' expense. I would appreciate some advice from the minister about current plans to deal with the waste. Again, this lack of information demonstrates why we have always needed a proper EIS on this project.

The third major concern (which I mentioned earlier) is water. What the select committee has failed to recognise is that by approving this project we are also implicitly approving the extra forest plantations that will go hand-in-hand with the pulp mill; and the committee has failed to address it. There is no mention of it. Clause 8 of the bill addresses the issue of the water that will be used by the mill itself. It gives the mill a alone—an allocation of water which is more than seven megalitres per day. I am pleased that the select committee made recommendations to ensure that the water allocation can be decreased but not increased and that this has been incorporated in the bill.

The select committee report advises of concerns raised with it that the water allocations are based on March 2006 data rather than June 2007 data, which gives a far less optimistic outlook in terms of water availability. The committee's report states:

Notwithstanding concerns arising from the more recent data, the committee considers that the allocation for the pulp mill should remain.

No explanation is offered as to why solid data is dismissed. Despite the select committee's optimism—and I have no understanding as to why it is optimistic—Dr Glenn Harrington, who at that stage was a senior hydrogeologist

with DWLBC, told a public meeting at Penola in regard to the mill's water allocation from South-East groundwater:

> If we assessed the five year trends for up until March 2006, we see that the water levels were pretty stable through that area and therefore we. . . could justify. . . granting the allocation on that basis. But if. . . someone came in tomorrow. . . and said, 'Look, we want to revise our application'. . . we would have to do it from there and the trend would be different and it wouldn't go ahead.

Why did he say this? He said this because the water modelling for this project is based on the water allocation plans of 2001. Why on earth did the select committee not pursue this matter? When Dr Harrington was questioned about his statement he said:

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

The 21st annual report of the South Australian-Victorian Border Groundwaters Agreement Review Committee, published in June last year, makes for some interesting supplementary reading, and one would hope the select committee looked at this. Page 15 of that report states:

> . . . the development of extensive plantation forests reduces the recharge compared to open pasture. The location where forest plantations will have a significant impact on groundwater supplies is in province 1.

It goes on to observe the declining groundwater levels across the region of 3.5 metres over the past 30 years. This is astounding information, and we cannot look at the pulp mill and the forests it will bring into being without recognising that they will be drawing on the same water system that is already dropping at a rate of 10 centimetres a year across the basin. Then we have the review committee's five-year management review report 1996 to 2000 which states:

> Expansion of forests in the designated area needs to be monitored to consider the impact on the current allowable annual volumes. . . It has the potential to significantly reduce the vertical recharge to the. . . aquifer. . . which may necessitate the need to reduce existing allowable annual volumes and therefore licensed allocations.
>
> Low recharge rates under pinus radiata and under blue gums have been assigned in the determination of vertical recharge. . . Further research is required to evaluate the impact on recharge. Blue gums and. . . pinus radiata may extract groundwater as well as intercept rainfall where the depth to groundwater is within their rooting depth.
>
> . . . A management approach is required to handle further forestry expansion, otherwise allowable annual volumes may have to be reduced progressively in response to assessed vertical recharge.

I commend the Minister for the Environment for the regulations she brought in earlier this year which clearly acknowledge some of the impacts that the forest plantations are having on aquifers in the South-East, and it is a pity that she has not been listened to when it comes to this bill. Recommendation 10 of the select committee's report states:

> The committee recommends that research and testing continue into the confined aquifer and the interconnectivity between the confined and unconfined aquifers.

This is all very well, but this is a select committee. There is no obligation for a government response as is the case of our standing committees which require ministers to report back to the committee within three months of the tabling of the report. The committee makes this recommendation. It does not say who should be doing this and, if it happens to be done, how anyone in this parliament will find out what the results of that research are. So I ask the minister: has the government given any undertaking to conduct this research? If not, will it give an undertaking now in the context of debate on this bill?

If research is conducted and it gives cause for concern, what guarantees do we have that the government will then address the issue, somewhat belatedly of course because by then the pulp mill will be up and running? The certainty this bill gives to the pulp mill proponents also gives certainty to those speculative investment companies that will be growing the trees to fuel the mill. The passage of this bill will give them the go ahead to begin massive plantings of trees, if they have not already begun so, and it means that more groundwater will be extracted by the increased number of trees. This go ahead for increased forestry is being given by this parliament, despite the fact that much of the groundwater in the South-East is close to full allocation and in some places it is already over allocated. The member for MacKillop, in speaking to the select committee's report on 11 September, said:

> The reality is that the majority of the forests that currently exist in the South-East did not replace pasture; in fact, they replaced native forests. So, the reality is that the net effect and the net impact of existing forests—particularly the pinus forests across the South-East—on recharge to the aquifer has been absolutely zero.

Well, he is wrong: the science shows he is wrong. Where did he get that information from? The Natural Resources Committee recently completed a report about the drying of Deep Creek, which directly related the drying of that creek to the planting of forests in that area. We had evidence from Dr Emmett O'Loughlin, the founding director of the Co-operative Research Centre for Catchment Hydrology. I will read from a couple of the slides he presented to the Deep Creek inquiry because it is so relevant to this. He stated:

> Forests have higher and more persistent leaf area. Forests intercept more rainfall. Forests are deeper rooted. Forests have lower albedo and thus absorb more energy. ET [evapotranspiration] from pasture is usually less than 700 millimetres. ET from forests can reach 1 400 millimetres, so runoff from forests is less. After afforestation ET will increase. Groundwater recharge will reduce. Water yields will reduce. Low flows will reduce. Peak flows will reduce.

When he was being queried by the committee about this, this is what Dr O'Loughlin had to say:

> The basic difference between forests and pastures from a hydrology viewpoint, first, is that forests have a higher and more persistent leaf area. Because that is the case, the forests intercept more rainfall, that is, forests' leaf areas prevent rain from getting into the soil in the first place. In the case of natural eucalypt forests—

which is what the planted forest replaced in the South-East (and this is where the member for MacKillop has not done his homework)—

> the interception is about 17 per cent of rainfall compared with pasture. In the case of pine forests it is about 25 per cent, so 25 per cent of rain that occurs in a pine plantation never reaches the ground. With very light drizzly rain a forest can intercept 95 to 100 per cent, but on a year round basis it is something like 25 per cent.

Another of his slides shows that the yield of water decreases progressively. If you start from pasture and then go to a natural eucalypt woodland, there will be a reduction in run-off. If you go to a planted eucalypt forest, there will be a further reduction in run-off and, if you go to a pine forest, it drops even further. Looking at the graph of the overhead, in an area that has 1 200 millimetres of annual rainfall, pasture will yield 550 millimetres of run-off per annum; native woodland will yield 370 millimetres per annum; a planted eucalypt forest will yield 200 millimetres per annum; and a planted pine forest will yield just 60 millimetres per annum. I think it is rather unfortunate that the member for MacKillop made that very brash claim, because the science—and I am

talking about the Cooperative Research Centre for Catchment Hydrology—does not back him up.

Given that we know about the drying impacts of climate change in South Australia, we should be seriously looking at the best crops and products to produce with the dwindling amount of water available in this state. Members know that I have criticised the growing of cotton and rice crops in the Murray-Darling Basin, and I have said that we should find substitute crops that do not use as much water. I say the same for the South-East of this state. I cannot see that exporting these forest byproducts will result in the best use of that water. Effectively, we will be exporting water.

CSIRO predictions for climate change in the South-East are for a one to 10 per cent decrease in rainfall by 2030 and, by 2070, a decrease of between two and 30 per cent. I would suggest that, on the basis of other research, this is probably optimistic. Professor James Lovelock, who was here for the Festival of Ideas a couple of months ago, told Australian audiences in a number of interviews on *Lateline*, and so on, that all of the scenarios thus far painted for climate change are too kind. He suggests temperature increases of up to eight degrees by the end of the century. There is a certain validity to what he says because, when you look at what the IPCC comes up with, this is a consensus viewpoint where the people—those scientists representing their countries—have to go back to their government and get agreement on what they sign off on. When you look at that, the IPCC is coming up with the lowest common denominator approach.

So, if Professor James Lovelock is right, we will need the South-East to produce our food, not to manufacture pieces of paper. So, are there any advantages in this proposal? I see just a few. Originally, the woodchips would have been exported in their raw form. The project now sees them value-adding at the local level. Whether that value-adding is more cost than benefit will be proven over time. The water impacts alone suggest to me, however, that it will be a cost.

Then we have the railway line, which has been hanging around like a bad smell as an embarrassment to this government for a number of years. This will be upgraded and put to use in transporting the finished product. I hope also that some of these dangerous and toxic chemicals that will be brought onto the site as part of the processing will be moved via that railway line. I think the fewer amounts of these substances that are on our roads, the better. I do not know whether that will be the case because, as I have already quoted from the GHD document, the raw chemicals would be delivered by road. So, again, I seek some explanation from the minister in this regard. While there might be a couple of benefits, to me they do not outweigh the total cost.

I make a few other telling observations about this project. The No Pulp Mill Alliance has pointed out in correspondence to us that, around the world, the normal time period for pulp mills to gain approval is five years. It was in May last year that Penola Pulp Pty Ltd lodged an application with the Wattle Range Council. So, when this bill is passed and proclaimed the process will have taken all of 16½ months. Why so fast? Without doing a bit of homework—which one might have expected the select committee to have done, particularly when its members say what they have done is as good as an EIS—one might conclude that there is something spectacularly good about this chemi-thermomechanical process that would justify such fast-tracking. Pulp mills have large environmental impacts wherever they are located, which is why the process approval usually takes five years.

With this chemi-thermomechanical process there is only one other mill of a similar type, and that is the Meadow Lake mill in the Saskatchewan province of Canada. Mr Tim Evans of Protavia told a public meeting in Penola a few months ago that he was on the start-up team for the Meadow Lake mill, and he went on to say, '. . . that was a very successful project in Northern Saskatchewan in Northern Canada and we are expecting this to be every bit as successful, if not more.' He told only half the story: that mill has been a spectacular failure, with more than $900 million lost.

I did a bit of web searching to find out more about that failure, and the reasons are not really clear. The *Leader Post* in Saskatchewan observed that the forestry company Millar Western, which was a joint venturer with the government, defaulted on its bank loans and bonds in 2001. So, perhaps it was just economic mismanagement. *Hansard* from the Saskatchewan Legislative Assembly estimates committees on 19 April last year has the relevant minister claiming that factors in 2004, including a high Canadian dollar, low pulp prices and increasing energy costs, were some of the causes for the mill's lack of success.

I note the article in yesterday's *The Advertiser* and the FOI material that the Hon. Mark Parnell had received, showing that energy was going to be a significant factor with this pulp mill. It is interesting to hear a minister in the Saskatchewan government saying that energy was a factor in the failure of that particular mill. A warning bell rang for me when the minister said:

> . . . we will continue to believe. . . that there is value in the forest. There may not be value in pulp.

So, what is the cause of the optimism of the select committee? It seems to be more a matter of faith in big companies claiming to provide economic benefits rather than proven fact. If there is not value in pulp in Canada, I wonder what value in pulp there is in South-East Australia.

The website of one of the Saskatchewan political parties, the Saskatchewan Liberal Association, says, '. . . the Meadow Lake deal also shaved off the environmental liability and left it in the hands of the Saskatchewan people', a quote that should, I think, lead to further questioning. The question that arises for me, of course, is: is this what is going to happen in South Australia? I would have thought—given that it thinks that its so-called investigation makes up for an EIS—that the select committee would have taken a little bit of time to investigate this properly and compare the Canadian situation with the South Australian situation. I express my disappointment at a very poorly researched report and conclusions from the select committee. This project raises too many unanswered questions and, without those proper scientifically based answers, I indicate that the Democrats are unable to support this bill.

The Hon. CARMEL ZOLLO (Minister for Emergency Services): I thank all honourable members for their contribution. The bill before us reflects the government's commitment to a policy of promoting economic, social and environmental outcomes for South Australia. The bill also reflects the need for government to provide a high degree of certainty to investors where the proposal will yield substantial benefit to the state and require significant capital investment. This bill was further refined as a result of a select committee inquiry held in the other place where all recommendations for amendment of the bill put forward by the select committee

were unanimously adopted. These recommendations are incorporated in the bill before us today.

It is worth noting that the select committee inquiry involved some five public hearings—two at Penola and three in Adelaide. Members of the committee also attended a public information meeting at Penola organised by the South Australian government and the Limestone Coast Regional Development Board and attended by approximately 300 people. The committee considered written and verbal submissions from a wide range of interested parties, even including a member of the Legislative Council. This inquiry was an exhaustive exercise of public consultation and research considering all relevant information and opinion. As such, it is worth briefly summarising the major findings of the select committee, all of which support the intent of this bill.

The select committee determined that the use of special legislation by means of this bill to approve key elements of this project was acceptable. The committee accepted that planning, resource sustainability, and environmental, social and economic factors that otherwise would be integral to a major development process have been addressed in the bill and by the committee's consultation and review processes. The committee noted that the safeguards and consultation inherent in the usual development process have been reflected in the bill. The bill, combined with a consultation and review process conducted by the committee, addresses the significant issues that an environmental impact statement would normally address.

The committee was satisfied that sufficient measures are in place to minimise the impact of the proposed pulp mill on native flora and fauna. The committee considered that the visual impact of the pulp mill is not a significant issue and it accepted that, if the project proceeds, the development will bring significant economic benefits to the region and more broadly to the state.

The Hons Mr Parnell, Ms Lensink and Mr Xenophon have raised a number of questions and issues that require answering and/or clarification. I will address these issues in the order that they have been raised. Several of the issues raised by the members are similar and I have combined these where appropriate. I also acknowledge that the Hon. Sandra Kanck this evening has also raised some questions and they will need to be responded to in the committee stage.

A question has been asked in relation to the forest expansion policy. The policy is held with the Minister for Environment and Conservation and it was developed in consultation with the Minister for Forests and it is supported by that minister. The Department of Water, Land and Biodiversity Conservation has published a South-East forestry policy on its website within its policy booth. This policy has been on the site since 2005 and DWLBC has advised that this information was recently provided to the select committee and it is on the record as being provided. This policy refers to the 59 000 hectare forest expansion policy.

An assurance has been requested regarding the quantum of water available for forestry expansion under the forest expansion policy. I understand that the Minister for Environment and Conservation confirms that, for water resource accounting purposes, the 59 000 hectares may be converted to volume of water. This area of expansion is assured provided that the volume of water is used in accordance with the following principles.

Ministerial statements of 17 February 2004 and 30 June 2004 confirmed that 59 000 hectare policy and that allowance for recharge impacts was taken into full account. The statements also confirmed that there was no allowance for direct extraction by plantation forests established over shallow watertables. The management approach is based on a dedicated minimum area of commercial forest expansion within water resources management areas calculated to ensure that the impact of the development reducing groundwater recharge to the groundwater systems does not affect existing water users. Provision has been made within this dedicated minimum area of commercial forest for 59 416 hectares of plantation expansion in specified management areas without the need to secure water allocations to offset the reduced recharge impacts of the commercial forest expansion.

With respect to EPBC and the commonwealth position in regard to this project, I can assure members that the commonwealth is not seeking further referral for the increased capacity of the mill, but it will require referral of the power plant and hydrogen peroxide plant should they go ahead. With regard to the issues raised concerning the Natural Resources Management (NRM) Board and Water Allocation Plan for the South-East, I can assure members that this is well advanced, and a draft is expected to go out for public consultation in the near future.

Issues were raised regarding the impact of the mill on roads and the resultant large number of heavy trucks. One of the many positives about this value-adding opportunity is the fact that it will remove some 100 000 heavy truck movements off the road that would otherwise have travelled from Penola to Portland with woodchips for export to Japan. There is now the opportunity for these woodchips to travel a much shorter distance to the mill at Penola, saving our roads and reducing greenhouse gas emissions. The roads that feed the pulp mill will, of course, be upgraded to cater for heavy vehicles, and the bill requires the proponent to reach an agreement with Wattle Range Council.

A question has been asked regarding the process by which the water allocation to the mill could be reduced. Under this bill, the minister must consult with the NRM Board, the proponents and anyone else with a substantial interest in this matter. Members have asked questions regarding the adequacy of assessments on the impact of the mill on flora and fauna. Both state and commonwealth authorities responsible for conservation have assessed these matters and are satisfied that there will not be a significant impact on rare and endangered species. I also draw to members' attention that the proponent will set aside some 200 hectares of land and vegetation, which will be managed under a conservation covenant. This is far in excess of what would be required under the offset provisions of both state and commonwealth authorities.

The Hon. Mr Parnell raised a number of issues regarding the EPA and the undermining of its authority to take action under this bill. In this instance, I refer the honourable member to the publicly available transcript of the select committee's proceedings and, in particular, the detailed examination of the Chief Executive and Chair of the EPA and the Director of the Scientific and Sustainability Division. The honourable member would note, if he took the time to do this, that under repeated questioning from the committee the Chief Executive answered that he was quite comfortable with the wording in clause 9, which refers directly to the powers of the EPA under this bill.

The EPA has assessed—and will continue to assess—the project through the ongoing licensing provisions and operating conditions. The EPA, in its evidence to the select

committee, commented that it is the end impact on the ambient environment that it is concerned about. It does not matter where the impact originates—a hydrogen peroxide plant, a pulp mill or a factory: it is the impact of the emissions, or whatever is of concern, on human health or the environment that is of concern.

The EPA has looked at relevant standards for pulp mills internationally in ensuring that the standards and conditions it has imposed are consistent. In addition, it should be noted that the EPA has had first-hand experience at Kimberley-Clark Australia's plant at Millicent. The approach taken has been to set a wide range of statutory standards with accepted environmental and human health impacts as opposed to an EIS approach whereby these are negotiated between the EPA and the proponent. The EPA advised the select committee that it is quite comfortable with this approach. Furthermore, the EPA advised the select committee that the standards that have been set are appropriate and that the proponent will have to comply with these standards. Given that the mill will implement world's best practice and the nature of the chemi thermo mechanical pulping process, the EPA indicated to the select committee that it would be highly unlikely that the mill would not satisfy the licensing requirements of the EPA by complying with the standards and the criteria set out in the bill.

During the six-month commissioning phase, the mill proponents will have to undertake modelling and measurements to demonstrate their compliance to air quality, odour, noise, stormwater management and waste management standards in order to obtain operating licences. Stringent conditions have been applied as a 'catch all' to cover all activities before licences to operate them are issued and to ensure that the proponent has to attain the set performance standards.

The full suite of potential environmental impacts have been accounted for through the criteria and conditions imposed on the operation of the mill. Benchmarks that the proponent has to comply with have been set, and operating standards have not been lessened in any way. The EPA, in the evidence of the select committee, has stated that it remains comfortable and confident that the stringent criteria applied to the proposal adequately address environmental concerns relating to air and water quality, solid and liquid waste, odour and greenhouse, and that there will be no significant adverse impacts from unanticipated environmental risks.

The proponents are committed to using world's best technology and world's best practice in the design, construction, operation and commissioning of the plant. It is here that I would like to make a very important point that has been overlooked by the Hon. Mr Parnell. This mill will have a capital value of at least $1.5 billion. It will be equipped with sophisticated equipment, all of which will be designed specifically to meet the extracting conditions set out in the bill. As part of the engineering, procurement and construction contract for the sophisticated and highly expensive equipment, the suppliers will have to sign performance guarantees that their equipment will meet the standards set out in the bill. These performance guarantees will be in the order of millions of dollars in penalty costs should the providers of this equipment not succeed in meeting the standards set out in the bill.

The Hon. Mr Parnell has raised the issue that the proponent is not subject to the normal fees and charges for assessments. Under this bill, the proponent is required to pay fees for amendments and variations to the project and normal EPA and water licensing fees. The only fee excluded is the normal lodgment and assessment fee; however, in this case, the planning assessment is a select committee process and no industry has ever been asked to pay for a select committee process. The Hon. Mr Parnell also raised a number of issues dealing with the operations of the bill, in particular, protection from judicial review, community access to assessment documents and other information, and the provision of a civil enforcement in situations where the developer fails to comply with conditions of approval.

The requirement for protection from judicial review was a major issue of certainty for this project. This protection was seen as necessary to prevent frivolous and/or mischievous challenges that have the potential to prevent this significant project from delivering much needed investment and value adding into the South-East region. This bill mirrors the working of the Development Act with respect to protection from judicial review, and the select committee was comfortable with this clause and recommended no amendments. The community will have access to all information regarding performance of the mill, including monitoring data. FOI requirements apply to this bill as normal; that is, the public will have access to all assessment and monitoring documents and data as they would for any other project assessed and monitored by the EPA. The bill does not interfere with the normal statutory FOI powers.

With respect to civil enforcement due to non-compliance with approval conditions or EPA licence conditions, I can assure the Hon. Mr Parnell that we agree with his sentiments. The bill as it stands contains this provision, and this has been confirmed with advice from the Crown Solicitor's office. Section 6 of the bill provides:

> The authorisations granted in relation to works under sections 4 and 5 of this act have effect as if they were development authorisations under part 4, division 2, of the Development Act 1993.

That is, the authorisations act as if they were a major development under section 48 of the Development Act. Furthermore, section 85 of the Development Act will be taken as applying under which any person can apply to the Environment Resources Development Court for an order to remedy any perceived breach of project design or conditions.

I come to the specific seven questions asked by the Hon. Mr Parnell at the conclusion of his speech. In regard to question 1, the water licences have been issued, and I understand that they have very comprehensive monitoring requirements to ensure no interference on other water users. There will be no retrospective evaluation of this or any other water licence issued in the South-East. Question 2 raises issues regarding the need for urgency in commencing this project. I am surprised that the Hon. Mr Parnell is unaware that the owners of the blue gum plantation forests bought these trees as time investments. They must be harvested within a given time frame to satisfy legal obligations under these commercial arrangements. It is not a question of leaving trees in the ground until the mill is ready to take them.

There is also the issue of long-term investment in Portland should the pulp mill not go ahead and the woodchips must be exported to Japan. These decisions must be made in a planned way and revolve around the timing of harvest for the plantation forests. In accordance with the investment agreements for the plantation forests, major harvesting must commence in 2009-10. I also wish to point out to the Hon. Mr Parnell that starting construction in mid-2007 does not mean digging holes in the ground. Construction of this magnitude requires hundreds of thousands of hours of engineering

design to get ready to dig those holes. The proponent has well and truly begun the engineering design phase for this project, with some of the world's leading contractors involved and committed to this process.

In his third question, the Hon. Mr Parnell refers to quotes from unhappy Victorians who lost a significant project to this state. This government offered no financial incentive. The Hon. Mr Parnell asks what the Premier offered in return for this project. The Premier offered that he would make the proponents' interaction with government as efficient and effective as possible.

With regard to the issue of electricity, I make the following points of clarification for the Hon. Mr Mark Parnell and other members of the council. The government is not providing a subsidy or any financial assistance for electricity infrastructure. In cases where a major electricity consumer has a choice between taking electricity from the transmission network or from on-site electricity generation, the Australian Energy Regulator, under the Australian Competition and Consumer Commission (ACCC), has developed guidelines to determine whether a TUOS negotiated discount is applicable to the transmission network supply alternative.

In the case of the Penola pulp mill, on-site combined cycle gas turbine generation is considered as an alternative to grid supply. It is therefore possible to make a submission to the transmission network service provider seeking a discounted TUOS. The TUOS discount guidelines are that the transmission service provider must demonstrate that the discount is no larger than necessary, and the transmission service provider must demonstrate that no other user is worse off compared with the situation if the discount is not offered. It is my understanding that the proponent intends to source any electricity from either on-site or remote high efficiency gas-fired generation.

With regard to the issue of rail, let me reassure the Hon. Mark Parnell and other members that access to the Wolseley line will follow the same guidelines and assistance package set out in the previous 2001 expression of interest to reopen this railway line. I also bring to members' attention just how significant this project will be for the further development of the Port of Adelaide. This project will mean that a minimum of some 1 million tonnes of freight will be handled through the Port of Adelaide. This represents an increase in container freight movement of at least 20 per cent and will underpin 100 new jobs and see the Port of Adelaide a frequent destination for Asian shipping lines from which other industries will undoubtedly benefit.

The Hon. Mr Parnell has been extremely vocal regarding the subject of hydrogen peroxide and has made several attempts to link this with the threat of terrorism. For his information, thousands of tonnes of hydrogen peroxide and other potentially dangerous substances move around the roads of Australia every day. However, let me assure members that, whether the chemical is manufactured on site or brought to the site, all chemical movements and storage must be in line with the commonwealth's Dangerous and Hazardous Substances Code of Practice. The state government has recently developed complementary standards with the Dangerous Substances and Major Hazard Facilities Bill.

Regarding the issue of solid waste disposal, the EPA has strict guidelines which everyone, including the proponent, must comply with irrespective of the quantity or quality of the waste. In question 6 the Hon. Mark Parnell seeks clarification on a number of issues that are, in fact, not related; however, I will answer each of these in the order raised. The government will shortly receive a comprehensive water allocation plan from the South-East NRM Board for the next five years that will address the issue of sustainable water use in the South-East. In addition, there is significant further investment in research and investigation into refining our understanding of the hydrogeology of the South-East region. The EPA will be the sole regulator with regard to the operation of this plant.

With regard to zero liquid discharge, I would like to make the following comment. In this state, which is facing major water conservation challenges, this is a technology that should be embraced and supported wherever possible. I understand that the capital cost involved in zero liquid discharge for this project is in excess of $200 million. I have been assured that it is a complex but proven technology, the details of which are, I understand, on the proponent's website.

The Hon. Mark Parnell refers to the Meadow Lake mill in Canada and implies that a zero liquid discharge made that mill uneconomic. Meadow Lake was a 50:50 partnership between Millar Western and the provincial Saskatchewan government. When this mill started up, the price of mechanical pulp bottomed out and the mill struggled to make money in the first years of operation. The mill design, production efficiency, labour costs, etc., or the zero liquid discharge water treatment facility were not the cause: it was purely a market-based situation which affected all pulp producers in northern Canada at that time. I have been advised that, under the current buoyant market prices for this type of pulp, the Meadow Lake mill is one of the world's most viable pulp producers. From memory, I believe the Hon. Sandra Kanck also made reference to this particular mill.

With regard to question 7, I would remind members that the greenhouse gas conditions that exist in this bill would not have been a condition on the proponent had this project proceeded outside of this bill. However, with regard to the practical implementation of the state's policy to minimise greenhouse gas emissions, I make the following points:

- Protavia is sourcing all electricity from gas-fired generation;
- from a global perspective, given the high demand for this type of pulp, it is better that the pulp is produced with gas-fired electricity rather than coal-fired alternatives used in other countries such as China;
- Protavia has signed a memorandum of understanding with small company Osiris to investigate geothermal electricity generation;
- 1.5 million tonnes of chips from a sustainable plantation hardwood forest estate of approximately 75 000 hectares required by the mill will act as a significant carbon sink in offsetting emissions;
- there will be 150 000 fewer truck movements due to the reduction in woodchip exports through Portland and rail carting of pulp to the Port of Adelaide;
- similarly, exporting pulp in ships is more efficient and will produce less emissions than shipping bulky woodchips overseas;
- 220 hectares of red gum woodland will be offset for environmental purposes, acting as a carbon sink; and
- greenhouse gas emissions are less than 5 per cent of the state's total emissions and less than 0.3 per cent of national emissions.

Finally, I would like to correct the statement made by the Hon. Mark Parnell to the media and this council regarding power use by the mill. The Hon. Mark Parnell has stated that the power to be used by this mill is equivalent to nearly

70 per cent of the power consumed by households in the whole of the metropolitan area of Adelaide. According to the Electricity Supply Industry Planning Council, Adelaide's domestic power use (household use) is 1 900 megawatts in terms of electricity demand or, expressed as an amount of electricity, it is equivalent to 6 700 gigawatt hours.

I understand the Penola pulp mill will use up to 189 megawatts, or 1 500 gigawatt hours, which represents 10 per cent and 22 per cent respectively—both figures falling far short of the 70 per cent quoted by the Hon. Mark Parnell in, I understand, *The Advertiser* article of 25 September 2005 and his speech yesterday. In his speech the Hon. Mark Parnell asked the government, 'If things have all been glossed over, what else has been glossed over?' I put to the Hon. Mark Parnell that if he has exaggerated on this issue, what else has he exaggerated on in presenting his case before this council on this bill?

Before I move onto the amendment before the council, I would like to summarise by quoting Mr Oosting from the Wilderness Society who has been leading the opposition for the proposed Gunns' pulp mill in Tasmania. Mr Oosting told *The Age* newspaper that the Wilderness Society supported the pulp mill in Tumut and the proposed mill in Penola. The lack of interest in the Penola pulp mill shown by the mainstream green groups in Australia is testament that this government has got it right.

I do not intend to go through each of the amendments to the bill recommended by the select committee and adopted unanimously in the other place, but I should bring to the attention of the council that I have filed in my name a technical amendment to the list of plan numbers, which were incorrect in the bill under Part 1—Specification of works 1—Specified works (1)(b). This amendment amounts to no more than the correction of a typographical error. The plans themselves have not changed from those submitted to and considered by the select committee and tabled in the House of Assembly.

Finally, I end by quoting the member for Mitchell's comment in his recent *Independent Weekly* article. The member for Mitchell was also a member of the select committee and he said:

> We have achieved the best pulp mill development we are likely to get for the South-East.

Again, I thank all members for their contributions, and I look forward to the committee stage of the bill.

Bill read a second time.

ELECTRICITY (FEED-IN SCHEME—RESIDENTIAL SOLAR SYSTEMS) AMENDMENT BILL

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

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

> That this bill be now read a second time.

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

Leave granted.

> Nationally and internationally, a variety of initiatives are emerging from governments looking to respond to climate change. South Australia remains in the vanguard with its climate change legislation, and its strengths in centralised and decentralised renewable energy generation.

The legislation that is coming before the House today represents another step in the development of a coherent and purposeful strategy to keep South Australia at the forefront of governments facing the momentous challenge of climate change.

Adelaide Thinkers in Residence such as Professors Stephen Schneider and Herbert Girardet supported the introduction of a "feed-in-tariff"—a premium price paid to those who are prepared to invest in solar panels. Also, the Chairman of Green Cross International, Mikhail Gorbachev, wrote to the Government and recommended the introduction of the feed-in scheme.

Feed-in schemes have been implemented in many jurisdictions internationally as a means of promoting renewable power generation. By 2005, at least 32 countries and 5 States or Provinces had adopted such policies, more than half of which have been enacted since 2002. However, this legislation, which stipulates a premium feed-in tariff, is a first for our part of the world in providing a specific bonus for owners of solar panels.

In Europe, at least sixteen EU states have introduced feed-in mechanisms to support renewable energy sources including solar electricity.

The Government has investigated similar schemes around the world but has not found one that could be directly implemented in the context of Australia's National Electricity Market. By consulting the electricity and renewables industries, regulators and energy officials, a scheme has been developed that is suited to the competitive electricity market that exists in South Australia.

Other jurisdictions are following our lead. The Victorian Government has introduced an amendment to its Electricity Act to guarantee small renewable energy generators a "fair price" for any excess electricity they produce. The form it might take is yet to be specified and it is our hope that the lessons learnt from South Australia going first with the specific scheme will be disseminated widely around Australia and South East Asia.

The intent of the Bill is to introduce amendments to the *Electricity Act 1996* to create a "feed-in scheme" for residential electricity customers who operate a small-scale grid-connected photovoltaic electricity system.

The Bill will allow domestic customers to receive 44 cents per kilowatt-hour of electricity generated, and fed back into the grid, by their small solar photovoltaic systems. This is a fixed guaranteed incentive, which reflects double the price of electricity standing contract tariffs projected to apply over the time of the feed-in scheme, including an allowance for normal increases in retail prices.

The premium will be paid on the "net exported" energy from the PV systems—that is, the energy returned to the electricity grid after supplying the household's own consumption needs at any point in time. This will have the effect of valuing every reduction of one kilowatt-hour of energy consumption by a household during the day at a minimum of 44 cents—a strong incentive to manage demand.

For the purposes of this Bill, the qualifying small solar photovoltaic generator is defined as a grid-connected photovoltaic system with capacity up to 10 kilovolt-amperes for a single-phase connection and up to 30 kilovolt-amperes for a three-phase connection.

Therefore, there are three essential requirements to a solar photovoltaic system under this Bill:

- It should be operated by a domestic customer
- Its capacity should be up to 10 kilovolt-amperes for a single-phase connection and up to 30 kilovolt-amperes for a three-phase connection
- It should be grid-connected and should comply with standard requirements.

The Bill puts an obligation on distribution service network providers to credit eligible customers against the distribution charges otherwise payable for the supply of electricity.

The Bill makes it a condition of electricity retail licenses to pass the full amount of the incentive on to customers and reflect these reduced charges in the customer's invoice. It is also hoped that at least some retailers will choose to add to this minimum value of 44 cents.

Should the customer be in credit, this credit will be carried over to the next billing period. The customer will be entitled to be issued a payment if the customer is still in credit by the expiration of 12 months.

The Bill also makes a provision for reporting requirements to the distribution service network providers. It is envisaged that the distributor will provide the Government with information required to evaluate the operation of the scheme.

Currently, ETSA Utilities serves the vast majority of electricity customers and is a monopoly operating under a regulated regime.

The Bill exempts electricity distributors that supply electricity to less than 10 000 domestic customers from participating in the scheme in consideration of the fact that distribution network providers in remote areas often service smaller customer groups where the costs of the feed-in scheme may exceed its value.

In accordance with the national competition principles, we are not forcing retailers to offer contracts to PV owners as part of this scheme. However, we recognise that if an existing customer of a retailer installs and wishes to connect a solar PV system, the retailer will be obliged to pass on the feed-in incentive for as long as the retail contract between the retailer and the customer remains in place. Electricity retailers will have an opportunity to assess the advantages and disadvantages of participating in the scheme relative to their business objectives. Accordingly, only retailers that perceive there to be value in the scheme would be expected to accept or keep customers with photovoltaic systems. In assessing whether there is value in the scheme, retailers would be expected to take implementation costs into account. The implementation "cost per customer" may be higher for smaller retailers.

However, we believe that retailers will take the opportunity to participate in the scheme. Two electricity retailers, AGL and Origin, are already offering their customers a net-metering arrangement.

There has been some criticism that this scheme should have gone further by providing a higher rebate for a longer period, and applied to gross production. As this is a new policy of this kind for Australia, we cannot be certain how customers will respond until it has had a chance to operate. Therefore, the Government has determined that it will review the scheme's operation after the first two and a half years or when the installed capacity of residential small-scale grid connected solar PV systems reaches 10 Mega Watts, whichever comes first.

In order to deal with ever changing technologies and Federal Government policies, it has been decided that the scheme will be of 5 years duration and be reviewed in order to assess how effective the scheme has been and to accommodate this changing environment.

Realising that electricity retailers and the distributor will require some time to establish the processes, it is expected that the scheme would commence no later than 1 July 2008. We are hopeful, however, that retailers and the distributor would be able to put required changes in place earlier that 1 July 2008. Regardless of the commencement date, the scheme will conclude on 30 June 2013, which will allow householders to take advantage of the full five years of rebates under the scheme.

In conclusion, the scheme will enhance the State's international reputation for leading the response to climate change, by playing to our strength in renewable energy generally and, in this case, in deployment of solar energy for homes.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

The measure will be brought into operation by proclamation.

3—Amendment provisions

This clause is formal.

Part 2—Amendment of *Electricity Act 1996*

4—Insertion of Part 3 Division 3AB

This clause inserts a new Division into Part 3 of the Act (Electricity Supply Industry).

The following definitions are relevant to the operation of this Division:

domestic customer means a customer—

(a) who acquires electricity primarily for domestic use; and

(b) who satisfies other criteria (if any) prescribed by the regulations for the purposes of this definition;

excluded network means a distribution network that supplies electricity to less than 10 000 domestic customers;

qualifying generator means a small photovoltaic generator—

(a) that is operated by a domestic customer; and

(b) that complies with *Australian Standard—AS 4777* (as in force from time to time or as substituted from time to time); and

(c) that is connected to a distribution network in a manner that allows electricity generated by the small photovoltaic generator to be fed into the network,

other than where the distribution network is an excluded network;

small photovoltaic generator means a photovoltaic system with capacity up to 10kVA for a single phase connection and up to 30kVA for a three phase connection.

The Division will make it a condition of an existing or future licence authorising the operation of a distribution network, other than an excluded network, that the holder of the licence will allow a domestic customer to feed electricity into the network through the use of a ***qualifying generator***. A domestic customer who qualifies under this scheme will be credited with $0.44 per kWh.

It will then be a condition of the licence of the electricity entity that sells electricity as a retailer to the domestic customer (including a licence on the commencement of this measure) that the credit will be reflected in the charges payable by the domestic customer for the supply of electricity.

The amendments also provide that the scheme will cease to apply to electricity fed into a distribution network after 30 June 2013.

The Hon. D.W. RIDGWAY secured the adjournment of the debate.

RAIL SAFETY BILL

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

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

That this bill be now read a second time.

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

Leave granted.

The Government is committed to the effective management and control of risks to improve safety performance in railway operations. High values are also placed on improving workplace safety, and promoting public confidence in the safety of rail transport. In line with its commitment and values, the Government has introduced this Bill which adopts the model national Rail Safety Bill 2006, developed by the National Transport Commission in consultation with rail organisations including the Australasian Railway Association and the Rail Tram and Bus Industry Union, and rail safety regulators across Australia, and unanimously approved by Transport Ministers through the Australian Transport Council.

In February 2006, the Council of Australian Governments also recognised the importance of a nationally consistent legislative framework for the regulation of rail safety across the national rail network and set timeframes over the next 5 years for the achievement of this and other road and rail regulatory reforms.

Safety regulation of the rail industry by Australian State and Territory governments is based on a co-regulatory model. Rail operators and infrastructure managers are required to gain accreditation from a State's or Territory's rail safety regulator before they may operate in that jurisdiction.

Nationally, rail organisations and rail safety regulators have identified the need for rail safety reform, including legislative reform in order to improve national consistency of rail safety regulation, and to reflect contemporary developments in safety regulation.

The rail industry makes an important contribution to the South Australian economy, with an estimated annual turnover of approximately $500 million for the commercial rail industry (freight and passenger sectors). Overshadowing the economic imperative, high profile fatal rail crashes like those at Glenbrook, Waterfall and more recently Lismore and Kerang interstate, and in South Australia at the Salisbury level crossing, have focussed government, industry and public interest on improving the current rail safety legislative framework in order to improve safety outcomes.

Development of the Bill

Development of the South Australian legislation to repeal the *Rail Safety Act 1996* and implement the model national Bill has involved consultation with relevant South Australian government

departments and rail organisations. Various provisions have been amended in order to take into account feedback received from rail transport operators and the Rail Tram and Bus Industry Union.

In the interest of accountability and effectiveness of the legislation, the Government has committed to further consultation with rail and union organisations and government agencies on the supporting rail safety regulations when they are drafted, following Parliamentary approval of the Bill.

The Government would like to acknowledge the efforts of all who have contributed to this process to date.

Objects of the Bill

The Bill aims to provide for the safe carrying out of railway operations and management of risks associated with those operations, and to promote public confidence in rail transport. It will result in improvements to the existing co-regulatory approach to regulation and accreditation of rail organisations and will ensure that rail organisations, who are best placed to identify, assess and control risks by the most appropriate and cost-effective means, take primary responsibility for these processes.

Implementation and impacts of the national model legislation

The National Transport Commission prepared a detailed Regulatory Impact Statement on the model Bill, with input from jurisdictions and rail organisations. It indicates that the model Bill refines the existing co-regulatory structure and improves its effectiveness and efficiency in some key areas, rather than implementing major new regulatory requirements. The National Transport Commission's analysis of the model Bill indicates that some provisions will contribute to, at most, a minor to modest increase in business compliance costs. In other cases, it is anticipated that compliance costs will be reduced, in particular for rail organisations that are compliant with existing obligations. Improved regulatory harmonisation between jurisdictions will also lead to improved efficiency for South Australian rail industry participants accredited to undertake rail transport operations in other Australian States or Territories.

Importantly, the Bill will contribute to improved rail and workplace safety as well as protection of existing rail infrastructure, through implementation of the following key model provisions.

The Bill clarifies the criteria for and purpose of accreditation, which is to attest that a rail transport operator has demonstrated the competence and capacity to manage risks to safety associated with its railway operation, as opposed to the current requirement to demonstrate competence and capacity to comply with certain standards. This redefines rail safety legislation as a safety regime rather than an accreditation regime.

Rail specific rights and obligations are defined in a manner that is consistent with the *Occupational Health, Safety and Welfare Act 1986* (SA), which requires employers to ensure health and safety in the workplace so far as is reasonably practicable. For example, general duties are introduced for rail transport operators and other parties in the chain of responsibility, including designers, contractors and manufacturers, to ensure the safety of railway operations, so far as is reasonably practicable. The Bill also provides that Occupational Health, Safety and Welfare legislation will prevail to the extent of any inconsistency, and that an offender is not liable to be punished twice under both Acts for the same act or omission constituting an offence.

Contractors will no longer be required to become accredited operators. They will instead be subject to the general safety duty and be required to comply with the safety management system of the accredited rail transport operator to whom they are contracted.

The Bill strengthens requirements for rail transport operators' safety management systems, including consultation requirements in development of such systems. Referencing of standards will be rationalised, for example by removing the requirement to comply with the Australian Rail Safety Standards. Rather the key elements of the standard will be set out in the legislation. This change is in keeping with regulatory best practice and is anticipated by the National Transport Commission to result in general reductions in associated business compliance costs for organisations that are compliant with existing regulatory requirements, by improving the clarity and transparency of the regulatory system.

In addition, the Bill allows for approval of compliance codes. Compliance with an approved code will provide certainty for rail operators, and in particular smaller organisations, that they are deemed to have complied with certain regulatory obligations, while allowing them flexibility to determine the most cost-effective means of doing so.

Enhanced audit and enforcement powers and options will make a range of responses available to enforcement officers and courts, to suit the variety of situations they face in the regulatory environment and better tailor their responses to the circumstances of an alleged breach. These changes will be matched by enabling review of a slightly broader range of Regulator decisions, and improving existing review mechanisms. Provision is also made to enable better sharing and reporting of data and information that is already recorded regarding rail incidents and accidents.

Issues left to jurisdictions to regulate

In addition to the key model provisions, the model Bill is silent on some issues that are reserved to jurisdictions to regulate pending development of nationally agreed policy positions. This Bill therefore retains South Australia's existing legislative position in relation to independent inquiries into rail accidents or incidents and provisions relating to drug and alcohol offences and testing, with some revision and correction of anomalies. For example, a new provision regarding independent investigation reports into serious rail safety incidents or accidents will require the Regulator to make a copy of such a report available for public inspection.

The Bill also maintains flexibility for operators to determine the most cost-effective means of undertaking workplace testing in order to implement their alcohol and drug management program and fulfil their obligations to manage risks to safety associated with drug and alcohol use in the context of rail transport operations. It introduces a new offence of having a prescribed drug (consistent with the Road Traffic Act) in one's oral fluid or blood while carrying out rail safety work, provides for a rail safety worker to be required to submit to a drug or alcohol test following an accident or incident, and aligns better with the Road Traffic Act procedures and evidentiary presumptions where appropriate. These changes better reflect the seriousness with which the industry, the Government and the community view the management of such risks to safety in the rail environment.

Local variations

In many instances, the model Bill specifically provides that local variations are allowed. This flexibility has been used in drafting provisions including:

- Provision that the Crown is to be bound, but not subject to criminal liability, in accordance with local policy;
- Provisions for Ministerial exemptions, and delegation of the Regulator's powers;
- Retention of existing Ministerial power to set fees by publication in the Government Gazette;
- Retention of existing enforcement powers under the current Act in addition to those contained in the model Bill, including the power to enter a place in an emergency, give certain directions, and require a person to answer questions;
- Protection from incrimination, and provision of indemnities, in accordance with local policy; and
- Provision for disallowance of compliance codes by Parliament.

In addition, the Bill varies from some national model provisions in order to comply with this state's legislative drafting practice, legal requirements or policy, or in order to reduce the compliance burden on industry. Examples include:

- Requiring the Regulator to consult the Minister prior to waiving or refunding accreditation fees, in recognition of the Minister's responsibility for the rail safety budget;
- Enabling the Regulator to consider accreditation issued in another jurisdiction in determining whether a rail transport operator fulfils the criteria for accreditation in this state;
- Clarifying that regulatory obligations under the Bill may be fulfilled by materials or documents produced pursuant to other legislative requirements in order to avoid duplication of regulatory requirements;
- Enabling the Regulator to release part or all of a report prepared by an operator into a notifiable incident only if the release is justified in the public interest, including on account of issues of public safety, or justifiable on some other reasonable ground;
- Providing for interaction between public infrastructure managers and rail transport operators regarding works near railways, and empowering the Regulator to stop works likely to threaten the safety or operational integrity of a railway, based upon the existing Rail Safety Act provision;
- Adapting the non-core model clause that imputes offences committed by bodies corporate or employees to

directors, managers and employers within those organisations to better reflect the existing Rail Safety Act provision and defences, including a requirement that the body corporate be found guilty of an offence before a director can be liable;

· Granting immunity for nurses who in good faith report an unfit rail safety worker, in addition to the model Bill provision of indemnity for medical practitioners, optometrists and physiotherapists; and

· Enabling *pro rata* refund of accreditation fees paid under the current Rail Safety Act by parties who will no longer require accreditation once the new Act comes into force.

Consequential amendments

The Bill makes consequential amendments to the *Railways (Operations and Access) Act 1997* in order to revise and relocate existing provisions relating to installation and operation of traffic control devices and giving of directions by authorised persons for the control of traffic to the Rail Safety Bill as they concern the safe operation of a railway.

Conclusion

This Bill is a product of significant cooperation, consultation and effort within South Australia and at the national level. It builds upon and enhances the existing South Australian co-regulatory scheme for regulation of rail safety, providing for improved safety of rail operations and workplaces, and increased confidence in rail transport safety. These outcomes will benefit rail organisations and the community alike. I look forward to receiving bipartisan support during the debate and passage of this Bill.

I commend the Bill to Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

The title of the Bill is the Rail Safety Bill.

2—Commencement

The date for commencement is to be set by proclamation.

3—Objects

The objects of the measure include to provide for improved rail safety and to manage and control risks associated with rail operations and to promote public confidence in rail safety.

4—Interpretation

This clause sets out the meaning of particular terms used in the measure. Some important terms include: ***corresponding law*** which means a law of another jurisdiction that corresponds to this measure or otherwise declared by the regulations to be a corresponding law; ***interface agreement*** refers to an agreement about managing risks to safety identified and assessed under Part 4 Division 4 of this measure that include provisions for implementing and maintaining measures to manage those risks and the evaluation, testing and revision of those measures, and set out the respective roles and responsibilities of the parties to the agreement and the procedures by which the parties will monitor compliance and review the agreement; ***notifiable occurrence*** which refers to an accident that has caused property damage, serious injury or death or something prescribed by the regulations to be a notifiable occurrence; ***rail infrastructure*** includes facilities like railway tracks, signalling systems, service roads, electrical power supply, buildings, workshops, depots and yards, but does not include rolling stock; ***rail infrastructure manager*** means the person who has effective control of the rail infrastructure (whether or not they are the owner); ***railway*** includes a heavy or light railway, monorail, tramway, or a private siding; ***railway operations*** includes the construction of a railway, tracks or rolling stock, and the maintenance, management, installation, movement or operation of rail infrastructure and rolling stock; ***railway tracks and associated track structures*** refers to things like tracks, sidings, bridges, tunnels, stations, tram stops and drainage works; ***rolling stock*** means vehicles that use rails and includes trains and trams, maintenance trolleys, monorail vehicles, carriages and rail cars, but does not include a vehicle designed to be used on and off a railway; ***rolling stock operator*** means a person who has effective management and control of the operation or movement of rolling stock on rail infrastructure (but not someone who merely drives the rolling stock or operates signals).

5—Declaration of substance to be a drug

The Minister has the power to declare a substance to be a drug for the purposes of this measure by notice in the Gazette.

6—Railways to which this Act does not apply

This measure does not apply to an underground railway used for mining operations, a slipway, a rail used to guide a crane, an aerial cable operated system, railways in amusement parks or other prescribed railways.

7—Ministerial exemptions

The Minister has the power to exempt persons from this measure or particular provisions of the measure, subject to conditions.

8—Concept of ensuring safety

A duty to ensure safety imposed by the bill requires a person to eliminate or reduce risks to safety to the extent reasonably practicable. Determining what is reasonably practicable will involve considering the likelihood of the risk eventuating, the degree of harm that may result, what the person knows about the risk, the ways available to eliminate or reduce the risk and the cost of doing so.

9—Rail safety work

Rail safety work includes driving, controlling or moving rolling stock; signalling and signalling operations; coupling or uncoupling rolling stock; maintaining, repairing, modifying, inspecting or testing rolling stock or rail infrastructure; installation of components in relation to rolling stock; design, construction, repair, modification, maintenance, upgrading, testing and inspection of rail infrastructure; installation or maintenance of telecommunications systems relating to rail infrastructure or the supply of electricity to rail infrastructure, rolling stock or telecommunications system; certification as to the safety of rail infrastructure or rolling stock; the development, management or monitoring of safe rail systems for railways and monitoring of passenger safety on a railway or any other work prescribed by the regulations. The regulations may also prescribe work that is not to be rail safety work.

10—Crown to be bound

This measure binds the Crown in right of the State and in all its other capacities so far as the legislative power of the State extends. No criminal liability attaches to the Crown itself (as distinct from its agents, instrumentalities, officers and employees) under this measure.

Part 2—Occupational health and safety legislation

11—Act adds to protection provided by OHS legislation

Occupational health and safety legislation will continue to apply and must be observed in addition to the provisions of the Bill.

12—OHS legislation prevails

If there is any inconsistency between the occupational health and safety legislation and the provisions of the Bill, the occupational health and safety legislation will prevail.

13—Compliance with this Act is no defence to prosecution under OHS legislation.

Complying with this measure will not of itself be a defence in any proceedings for an offence against the occupational health and safety legislation.

14—Relationship between duties under this Act and OHS legislation

Evidence of a contravention of this measure may be admissible in any proceedings for an offence against the occupational health and safety legislation.

15—No double jeopardy

A person cannot be punished twice in respect of conduct that is an offence under both this measure and the occupational health and safety legislation.

Part 3—Administration

Division 1—Rail Safety Regulator

16—Rail Safety Regulator

This clause makes provision for the appointment of a Rail Safety Regulator (the Regulator) by the Minister, either as a specified person or someone who holds a particular office and may be a public servant.

17—Functions

The Regulator's functions include the administration, audit and review of the accreditation regime set up by this measure. The Regulator will also work with rail transport operators, rail safety workers and other persons involved in railway operations including interstate Rail Safety Regulators, to improve rail safety in South Australia and nationally. The

Regulator's role also involves the collection and publishing of information and the provision of advice, education and training in relation to rail safety, as well as monitoring, investigating and enforcing compliance with this measure.

18—Annual report

The Regulator is required to provide the Minister with an annual report about his or her activities under the measure, to be laid before both Houses of Parliament. The report will include information on the development of rail safety, information on any improvements or changes and anything required by the regulations.

19—Delegation

This clause permits the Regulator to delegate his or her functions or powers in writing, with or with out conditions. This does not prevent the Regulator from acting in any matter and is revocable at will.

20—Ministerial control

The Regulator is subject to the general control and direction of the Minister in connection with administrative matters associated with the activities of the Regulator under this measure. However, the Minister may not give a direction in relation to the requirements for accreditation, or a particular rail transport operator or rail safety worker, or in relation to dealing with a particular circumstance, incident or event, or so as to suppress information or recommendations associated with reporting under this measure.

21—Regulator may exercise functions of authorised officers

This clause gives the Regulator the power to exercise any function conferred on an authorised officer under this measure or the regulations.

Division 2—Authorised officers

22—Appointment

This clause provides for the appointment of authorised officers by the Regulator. This may be done by specifying a class of persons by notice in the Gazette as authorised officers. For example, South Australian police officers or rail safety officers of another jurisdiction. An authorised person need not be a government employee. The appointment of an authorised officer may be subject to conditions which, for example, limit the functions that may be exercised or the circumstances or manner in which functions may be performed.

23—Reciprocal powers

This clause operates in relation to other sates or territories that may have in force, rail safety legislation that corresponds to this measure. The Minister may enter into an agreement with the Minister of that other jurisdiction such that South Australian authorised officers may exercise functions conferred on rail safety officers of the other jurisdiction and vice versa.

24—Identification cards

Authorised officers are to be issued with identification cards by the Regulator.

25—Possession of identification card

Authorised officers must not exercise a function until they have been issued with an identification card.

26—Display and production of identification card

When exercising a function, an authorised officer must display the identification card if he or she is not wearing an approved uniform or badge, in which case he or she must produce it on request.

27—Return of identification cards

A person who has ceased to be an authorised officer must return the identification card to the Regulator. Failing to do so may result in a maximum fine of $750.

Part 4—Rail safety

Division 1—General safety duties

28—Safety duties of rail transport operators

A rail transport operator (which includes a rail infrastructure manager and a rolling stock operator) has a duty to ensure the safety of the operator's railway operations as far as reasonably practicable. Failing to do so may result in a maximum penalty of $300 000 for a body corporate or $100 000 for a natural person.

Subclause (2) sets out the sorts of things that may constitute an offence by an operator. For example, failing to develop or implement safe systems for carrying out the operator's railway operations; failing to ensure that the rail safety worker doing the work is competent or of sufficient good health and fitness or unimpaired by alcohol or drugs; failing to ensure that a rail safety worker complies with the operator's fatigue management program; failing to provide adequate facilities for persons at the operator's railway premises; or failing to provide safety workers with the necessary information, instruction, training and supervision.

Subclause (3) sets out the sorts of things that may be a contravention of the duty by a rail infrastructure manager. For example, failing to ensure that the design, construction, commissioning, use, modification, maintenance, repair, cleaning or decommissioning of the manager's rail infrastructure is done in such a way as to ensure the safety of the railway operations; or failing to establish systems and procedures for the scheduling, control and monitoring of the railway operations so as to ensure safety of the operations.

Subclause (4) sets out the sorts of things that may constitute an offence on the part of a rolling stock operator. For example, failing to provide or maintain safe rolling stock; or failing to ensure that the design, construction, commissioning, use, modification, maintenance, repair, cleaning or decommissioning of rolling stock is done safely; failing to comply with rules and procedures for the scheduling, control and monitoring of rolling stock established by the manager; failing to establish and maintain equipment, procedures and systems to minimise safety risks to the operator's railway operations, or failing to make arrangements to ensure safety in connection with the use, operation and maintenance of the operator's rolling stock.

29—Duties of rail transport operators extend to contractors

This clause provides that the duty of the rail transport operator to ensure safety extends to a contractor of the operator who undertakes railway operations in relation to the rolling stock or rail infrastructure of the operator.

30—Duties of designers, manufacturers, suppliers etc

This clause places a duty on a person who designs, manufactures, supplies, erects or installs something that he or she is aware will be used as or in connection with rail infrastructure or rolling stock, to ensure that it is safe to use for that purpose. The person must carry out any necessary tests or examinations to ensure that this is the case and to take such action to ensure that information is available about the use of the thing, the results of any testing or examinations and any conditions that are necessary to ensure that the thing is safe. Failing to satisfy this duty may result in a maximum penalty of $300 000 for a body corporate or $100 000 for a natural person.

Subclause (3) provides that a person who is merely financing the acquisition of a thing on behalf of another person is not bound by this provision as a supplier, but the duty applies instead to that other person. A person who decommissions any rail infrastructure or rolling stock must ensure that it is carried out safely and must carry out any testing or examinations to ensure compliance with this duty. Failing to comply may result in a maximum penalty of $60 000 for a body corporate and $20 000 for a natural person.

Division 2—Accreditation

31—Purpose of accreditation

This clause sets out the purpose of accreditation of a rail transport operator in relation to railway operations under the measure as being to attest that the operator has demonstrated the competence and capacity to manage risks to safety associated with those railway operations.

32—Accreditation required for railway operations

A person must not carry out railway operations unless he or she is a rail transport operator who is accredited under this measure or is otherwise exempt from compliance under this measure, or is a person who is carrying out those operations on behalf of an operator who is accredited or exempted. There is a maximum penalty of $300 000 for a body corporate and $100 000 for a natural person for breach of this provision. The requirements of this clause do not apply to a rail safety worker who is not a rail transport operator, but is carrying out rail safety work on behalf of an accredited or exempted rail transport operator.

33—Purpose for which accreditation may be granted

Accreditation may be granted to a rail transport operator for carrying out railway operations for a specified part or parts

of a particular railway; for any service or aspect of railway operations specified; or for specified railway operations to allow site preparation, construction of rail infrastructure, restoration or repair work, testing of railway tracks or other infrastructure, or other activities that the Regulator considers appropriate. Accreditation may be granted for a specified period of time.

34—Application for accreditation

This clause provides for a rail transport operator to apply to the Regulator for accreditation in relation to specified railway operations. The application must specify the scope and nature of the railway operations and must include a safety management plan, and must state whether or not the applicant is accredited under a corresponding law. The application must also include any information required under the regulations and must be accompanied by the prescribed application fee. The Regulator may require further information or verification of any information supplied by statutory declaration.

35—What applicant for accreditation must demonstrate

Before granting accreditation, the Regulator must be satisfied (having regard to relevant guidelines) that the applicant is, or will be, the rail infrastructure manager or rolling stock operator in relation to the relevant railway operations and that the operator has the capacity and competence to manage safety risks and to implement the proposed safety management system. The applicant must also demonstrate he or she has the financial capacity or adequate insurance arrangements to meet potential accident liabilities and that he or she has also met the consultation requirements under this measure and any requirements under the regulations. In determining whether an applicant satisfies some of these requirements, the Regulator may take into account the fact that an applicant holds accreditation under a corresponding law.

36—Regulator may direct applicants to coordinate and cooperate in applications

Where in the interests of safety it is necessary for rail transport operators to coordinate their applications for accreditation, the Regulator may direct the applicants in writing to do so. A direction may include a requirement that the operators provide each other with information about their railway operations relevant to risks to safety. Reference to such information must then be included in the application. There is a maximum penalty of $15 000 for failing to comply with a direction of the Regulator or for failing to refer to the information.

37—Coordination between Regulators

If the Regulator receives an application for accreditation or variation of accreditation and the applicant is accredited or is seeking accreditation under a corresponding law of another State or Territory, the Regulator must consult with the relevant corresponding Regulator about the application to ensure consistency with the way in which the application is dealt, taking into account any applicable guidelines.

38—Determination of application

The Regulator must give written notice granting or refusing the application generally within 6 months of receiving the application. A notice granting the application must specify the prescribed details of the applicant and the scope and nature of the railway operations for which the accreditation is given and the manner in which they are to be carried out in addition to any conditions or restrictions. A notice refusing the application or imposing a condition or restriction must include the reasons for the decision and information about the right of review under this measure.

39—Conditions and restrictions

This clause provides that an accreditation is subject to any conditions or restrictions imposed by the regulations.

40—Penalty for breach of condition or restriction

Contravening or failing to comply with a condition or restriction may result in a maximum penalty of $300 000 for a body corporate and $100 000 for a natural person.

41—Annual fees

This clause provides that an annual fee fixed by the Minister and published in the Gazette must be paid by the accredited person. The accredited person may make an agreement with the Regulator in relation to the manner of payment of the fee. The Minister may fix different fees for different types of accreditations, or fix different ways of calculating fees or impose additional fees for late payment.

42—Late payment

If an accredited person fails to pay the annual fee, then his or her accreditation is suspended until the fee is paid, unless the person enters into an agreement with the Regulator or the Regulator otherwise exempts them from the operation of this clause.

43—Waiver of fees

The Regulator has the power to waive or refund the whole or part of any fee after consultation with the Minister.

44—Surrender of accreditation

An accredited person may surrender his or her accreditation in accordance with the regulations.

45—Revocation or suspension of accreditation

This clause gives the Regulator certain powers that are exercisable if he or she is no longer satisfied the accredited person is able to demonstrate the matters in clause 35 (competence and capacity to manage risks of safety etc.); or is unable to satisfy the conditions or restrictions of the accreditation; or is not managing rail infrastructure or operating rolling stock to which the accreditation relates and has not done so for at least 12 months; or has contravened this measure or the regulations. In these situations the Regulator may suspend the accreditation (in whole or in part) with immediate effect, or from a future specified time for a specified period, or revoke the accreditation or impose or vary conditions of restrictions to which the accreditation is subject. The Regulator may disqualify a person who has had his or her accreditation revoked from applying for accreditation for a specified period. Before making a decision under this clause, the Regulator must notify the person in writing of the proposed decision and the reasons for it, and that the person has 28 days to make representations to the Regulator showing why the decision should not be made. If, after considering any representations, the Regulator suspends or revokes an accreditation, the notice must set out the reasons for the decision and information about the right of review under this measure. If the person is also accredited in another jurisdiction, the Regulator must notify the corresponding Regulator of the suspension or revocation. The Regulator may withdraw a suspension of an accredited person by written notice.

46—Immediate suspension of accreditation

The Regulator may immediately suspend an accreditation for up to 6 weeks by notice in writing if he or she considers there is an immediate and serious risk to safety not to do so. The Regulator may reduce the period of suspension or increase it for not more than a further 6 weeks by notice in writing. Before increasing the period of suspension, the Regulator must notify the person of his or her intention and give reasons why. The person may within 7 days, or such longer period specified by the Regulator, make representations in writing as to why the suspension should not be extended. After considering the representations, the Regulator must give reasons for his or her decision to go ahead and extend the suspension and give information about the right of review under this measure. A suspension under this clause may be withdrawn by the Regulator by notice in writing.

47—Keeping and making available documents for public inspection

A rail transport operator is required to ensure that the current notice of accreditation or exemption or a notice of registration of a private siding or other prescribed document is available for inspection at the operator's registered office or principal place of business during ordinary business hours. Failing to do so may result in a maximum penalty of $2 500.

48—Application for variation of accreditation

An accredited person may apply to the Regulator for a variation of the accreditation, which must specify the details of the variation being sought, the prescribed details and application fee.

49—Where application relates to cooperative railway operations or operations in another jurisdiction

The requirements of clauses 36 and 37 (directions by the Regulator for applicants to coordinate an application for accreditation and the requirement for corresponding Regulators to consult on applications across jurisdictions) also apply to applications for variations of accreditation.

50—Determination of application for variation

The Regulator must give the applicant notice in writing of his or her decision generally within 6 months of receiving the application. A notice varying an accreditation must specify the prescribed details of the applicant and specify the variation to the accreditation so far as it applies to the nature and scope of railway operations or the manner in which they are to be carried out, and specify any conditions and restrictions imposed or varied by the Regulator and any other prescribed information. A notice refusing an application or imposing a condition or restriction must set out the reasons and the information about the right of review under this measure.

51—Prescribed conditions and restrictions

The regulations may prescribe conditions and restrictions to which an accreditation varied under Part 4 of the measure may be subject.

52—Regulator may direct amendment of a safety management system

The Regulator may direct a rail transport operator to amend the operator's safety management plan and in doing so must give reasons for the direction and the right of the operator to a review of the direction. Failing to comply to a direction may result in a maximum penalty of $120 000 for a body corporate and $40 000 for a natural person.

53—Variation of conditions and restrictions

An accredited person may apply to the Regulator for a variation of a condition or restriction imposed by the Regulator on the accreditation and is to be made as if it were an application to a variation to the accreditation and the requirements of clause 48 apply (requirements regarding an application for variation of accreditation). After considering the application the Regulator may grant or refuse the application and in the case of a refusal, must include reasons for the decision and information about the right of review of the decision under this measure.

54—Regulator may make changes to conditions or restrictions

The Regulator may at any time vary or revoke a condition or restriction imposed by the Regulator or impose a new condition or restriction. Unless immediate action is required in the interests of safety, before taking action under this clause, the Regulator must give written notice of the proposed action and allow the accredited person to make written representations within 14 days (or other period as agreed) about the proposed action. After considering the representations, the Minister must give details of the decision and the reasons for it in writing and notification of the rights of review under this measure.

55—Accreditation cannot be transferred or assigned

Regardless of the terms of any act or rule of law to the contrary, an accreditation cannot be transferred or assigned to another person and cannot vest by operation of law in any other person. Any purported transfer or assignment will have no effect.

56—Sale or transfer of railway operations by accredited person

If an accredited person proposes to sell or transfer any railway operations for which the person is accredited, the Regulator may waive compliance with certain provisions of Division 2 in relation to the proposed transferee, but only if the Regulator is satisfied that the transferee has the capacity and competency to comply with the relevant requirements of Division 2. A waiver of compliance with requirements may be given subject to such conditions or restrictions as the Regulator thinks necessary.

Division 3—Private sidings

57—Exemption from accreditation

A rail infrastructure manager of a private siding is not required to be accredited in relation to railway operations carried out in the private siding or to comply with Division 4, 5 or 6 of Part 4 in relation to the private siding. (That is, requirements about safety management systems, information about rail safety and investigation and reporting by rail transport operators). However, if the private siding is to be connected with or have access to a railway or siding of an accredited person, the rail infrastructure manager must register the private siding with the Regulator and pay the annual fee fixed by the Minister and comply with the conditions imposed by the Regulator or prescribed by regulations in relation to the safe construction, maintenance and operation of the private siding (and such conditions may be the same or similar to the requirements under Division 4, 5 or 6 of Part 4. The rail infrastructure manager must also comply with the provisions of clause 62 in relation to the management of the interface with the railway of an accredited person and notify them in writing of any railway operations affecting the safety of the railway or siding of the accredited person. Failing to comply with this clause may result in a maximum penalty of $60 000 for a body corporate and $20 000 for a natural person. The Regulator must issue a notice of registration in relation to a registered siding and if prescribed by the regulations, must make the register available for public inspection during ordinary business hours.

Division 4—Safety management

58—Safety management system

A rail transport operator must have a safety management system for railway operations carried out on or in relation to the operator's rail infrastructure or rolling stock. The safety management system must be in a form approved by the Regulator and must comply with the prescribed requirements, risk management principles, methods and procedures. It must identify and assess any safety risks in relation to the railway operations on the operator's rail infrastructure or rolling stock and must specify the controls that are to be used by the operator to manage the risks that have been identified and to monitor safety in relation to the railway operations in addition to procedures for monitoring, reviewing and revising the adequacy of these controls. It must also include measures to manage risks to safety identified under clause 62; a security management plan (see clause 63); an emergency management plan (see clause 64); a health and fitness management plan (see clause 65); an alcohol and drug management plan (see clause 66); and a fatigue management plan (see clause 68). Failing to comply with this clause may result in a maximum penalty of $300 000 for a body corporate and $100 000 for a natural person. Before establishing or reviewing a rail safety management system, the operator must consult with persons likely to be affected by the system such as persons who carry out those railway operations or work at the operator's railway premises or with the operator's rolling stock, health and safety representatives, a registered association of an affected person (at the person's invitation) and any other rail operator with whom the operator has an interface agreement under clause 62 and members of the public, as appropriate. A safety management plan must be evidenced in writing and identify each person responsible for preparing any part of the system and the person or class of persons responsible for implementing the system. A rail transport operator may, in satisfying a requirement under this clause, incorporate a document or other material prepared for the purposes of another Act, if it satisfies the relevant requirements under this measure.

59—Compliance with safety management system

A rail transport operator must implement the safety management system. Failing to do so may result in a maximum penalty of $300 000 for a body corporate or $100 000 for a natural person. Similar penalties apply to a rail transport operator who fails to comply with their safety management system unless they have a reasonable excuse, (for example, demonstrating that compliance with the system in particular circumstances would have increased the likelihood of a notifiable occurrence happening).

60—Review of safety management system

A rail transport operator must review the safety management system in accordance with the periods prescribed by the regulations, or if no time is prescribed, at least once a year or as agreed by the operator and the Regulator. Failing to comply with this clause may result in a maximum penalty of $75 000 for a body corporate or $25 000 for a natural person.

61—Safety performance reports

This clause requires the rail transport operator to provide the Regulator with a safety performance report that contains a description and assessment of the safety performance of the operator's railway operations and comments on any deficiencies in the operations that are relevant to the safety of the railway, a description of any safety initiatives undertaken or proposed in relation to the railway operations and any other prescribed performance indicators. A report is required in

relation to each calendar year or such other period agreed by the Regulator and the rail transport operator. There is a maximum penalty of $75 000 for a body corporate and $25 000 for a natural person failing to submit a report as required.

62—Interface coordination

This clause requires a rail transport operator to identify and assess safety risks that may arise from railway operations carried on by, or on behalf of, the operator that may arise because of railway operations carried out by, or on behalf of, another operator. The operator must determine measures to manage those risks as far as is reasonably practicable, and in doing so must seek to enter an interface agreement with the other rail transport operator. Not doing so may result in a maximum penalty of $300 000 for a body corporate and $100 000 for a natural person. The requirements under this clause relating to the preparation of an interface agreement do not apply if neither of the operators are a rail infrastructure manager. A rail transport operator or rail infrastructure manager that is required to identify and assess risks to safety that may arise from operations carried out by another person may do so alone, jointly with the other person, or by adopting the identification and assessment of those risks carried out by the other person. An interface agreement may be entered into by 2 or more operators and may include measures to manage any number of risks to safety that may arise from railway operations because of the existence or use of any roads or related infrastructure. The rail transport operator must keep a register of all interface agreements to which the operator is a party that are applicable to the operator's railway operations.

63—Security management plan

This clause requires a rail transport operator to have a security management plan for railway operations carried out by the operator or in relation to the operator's rail infrastructure or rolling stock. The plan must incorporate measures to protect people against theft, assault, sabotage, terrorism and other criminal acts and other harm and must comply with this measure and any prescribed requirements. The operator must ensure that the plan is implemented and must ensure that the appropriate response measures of the plan are implemented if an incident contemplated by this clause occurs. Breaching this clause may result in a maximum penalty of $300 000 for a body corporate and $100 000 for a natural person.

64—Emergency management plan

A rail transport operator is also required to have an emergency management plan that must be prepared in conjunction with relevant emergency services and in accordance with the requirements of the regulations. Not doing so may result in a maximum penalty of $300 000 for a body corporate and $100 000 for a natural person. A similar penalty will apply if the rail transport operator fails to ensure that the appropriate response measures of the emergency plan are implemented in the case of an emergency.

65—Health and fitness management program

A rail transport operator is also required to have and implement a health and fitness program for rail safety workers who carry out rail safety work in relation to the operator's rail infrastructure or rolling stock that complies with this measure and the regulations. A maximum penalty of $30 000 applies for not doing so.

66—Alcohol and drug management program

A rail transport operator is required by this clause to prepare and implement an alcohol and drug management plan for rail safety workers that complies with this measure and the regulations. A maximum penalty of $30 000 applies for not doing so.

67—Testing for presence of alcohol or drugs

The Regulator may require a rail transport operator or a person undertaking railway operations on or in relation to the operator's rail infrastructure or rolling stock, to test (including on a random basis) for the presence of alcohol or a drug in any person on duty for the purpose of carrying out rail safety work. The testing must be conducted in accordance with the procedures set out in Schedule 2 of this measure or the regulations.

68—Fatigue management program

A rail transport operator is required by this clause to prepare and implement a program for the management of fatigue of rail safety workers who carry out rail safety work in relation to the operator's rail infrastructure or rolling stock. The program must be in accordance with prescribed requirements. A maximum penalty of $30 000 applies for contravening this clause.

69—Assessment of competence

A rail transport operator must ensure that each rail safety worker who is to carry out rail safety work in relation to the operator's rail infrastructure or rolling stock has the competence to do that work. (Maximum penalty $30 000). The clause sets out the manner in which the assessment of the worker's competence must be made.

70—Identification for rail safety workers

A rail transport operator must ensure that a rail safety worker has identification that allows verification of the competence and training of the worker by an authorised officer. This identification must be produced by the worker on request by an authorised officer.

71—Duties of rail safety workers

This clause sets out the duty of a rail safety worker to take reasonable care for his or her safety and the safety of others and to cooperate with the rail transport operator in any action taken by the operator in relation to a requirement under this measure. A rail safety worker must not recklessly or intentionally interfere with, or misuse, anything provided by the operator when carrying out rail safety work. A rail safety worker must not wilfully or recklessly place the safety of others on or near rail infrastructure at risk while carrying out rail safety work. There is a maximum penalty of $10 000 for breaching this duty. It is also an offence for a rail safety worker to have the prescribed concentration of alcohol or a prescribed drug present in their oral fluid or blood, or to be under the influence of alcohol or drugs so as to be incapable of effectively discharging a function or duty of a rail safety worker. (Maximum penalty $5 000). A person will be taken to be incapable of effectively discharging a function or duty if, owing to the influence of alcohol or a drug, the use of any mental or physical faculty of the person is lost or appreciably impaired.

72—Contractors to comply with safety management system

A person who is not an employee who undertakes railway operations in relation to rail infrastructure or rolling stock of a rail transport operator must comply with the operator's safety management system. The maximum penalty for an offence against this clause is $100 000 for a natural person and $300 000 for a body corporate.

Division 5—Information about rail safety etc

73—Rail transport operators to provide information

The Regulator may, by notice in writing, require a rail transport operator to provide the Regulator with information about measures taken to promote rail safety, the operator's financial capacity or insurance arrangements or other prescribed information relating to rail safety. A rail transport operator must also provide the Regulator, in a manner and form approved by the Regulator, and at the prescribed times and in respect of the prescribed periods, information prescribed by the regulations in relation to rail safety or accreditation. There is a maximum penalty of $40 000 for failing to comply with either of these requests.

Division 6—Investigating and reporting by rail transport operators

74—Notification of certain occurrences

This clause requires a rail transport operator to report to the Regulator all notifiable occurrences or other occurrence which may endanger the safe operation of the operator's railway premises or railway operations.

75—Investigation of notifiable occurrences

The Regulator may require a rail transport operator to investigate and report on notifiable occurrences or other occurrences that have endangered the safe operation of the operator's railway operations in order to determine the cause or contributing factors of the occurrence. The Regulator may provide a copy of the report to other persons or publish the report if it is in the interests of public safety to do so or justifiable on some other reasonable ground.

Division 7—Audit of railway operations by Regulator

76—Audit of railway operations by Regulator

This clause gives the Regulator the power to audit the railway operations of a rail transport operator and to prepare and implement an annual audit program. The regulations may establish procedures in relation to carrying out audits.

Part 5—Enforcement

Division 1—Entry to places by authorised officers

77—Power to enter places

This clause sets out when an authorised officer may enter a place in relation to the administration, operation or enforcement of this measure.

78—Limitation on entry powers—places used for residential purposes

The right of an authorised officer to enter a place used only as a residential premises must only be with the consent of the occupier or with the authority of a warrant.

79—Notice of entry

Entry by an authorised officer of railway premises other than a public place must be with reasonable notice, unless the occupier consents, or notice would defeat the purpose of entry, or a warrant has been issued or there is an emergency.

Division 2—General enforcement powers

80—General powers

This clause sets out the powers of an authorised officer that may be exercised in connection with the administration, operation or enforcement of this measure including searching and inspecting any part of a place and any rail infrastructure, rolling stock or road vehicle or other thing and using reasonable force to do so; give directions in respect of the stopping or movement of rolling stock or road vehicles; inspecting testing, filming or recording an image of rail infrastructure or rolling stock or a road vehicle or other thing; seizing anything an authorised officer reasonably suspects is connected with an offence against this measure or the regulations or to secure any such thing from interference, and requiring a person to answer questions.

81—Use of assistants and equipment

The authorised officer may be assisted by such assistants and equipment as the officer considers necessary.

82—Use of electronic equipment

An authorised officer may operate equipment to access information stored on tape or disk or other device in the exercise of his or her powers under clause 80.

83—Use of equipment to examine or process things

An authorised officer may bring equipment onto rolling stock, a vehicle or place needed for the examination or processing of things found in order to determine if they are things that may be seized.

84—Securing a site

In order to protect evidence relevant for compliance or investigative purposes, an authorised officer may secure the perimeter of a site. No-one may enter or remain in a secure site without the permission of an authorised person (which includes a police officer) or entry is to ensure safety, remove deceased persons or animals, or remove a road vehicle or protect the environment from significant damage.

Division 3—Offence provision and search warrants

85—Offence provision

Hindering or obstructing, using abusive language or assaulting, threatening or intimidating an authorised officer is an offence. Failing to comply with a requirement or direction of an authorised officer or refusing to answer a question without reasonable excuse is also an offence. (Maximum penalty: $10 000).

86—Search warrant

This clause sets out the procedures for obtaining a search warrant from a magistrate to enter railway premises or residential premises and to search and seize anything in accordance with the warrant.

Division 4—Powers to support seizure

87—Directions relating to seizure

This clause gives powers to an authorised officer to enable a thing to be seized including the power to direct a person to take a thing to a specified place within a specified time. Failing to comply with a direction under this clause may result in a maximum penalty of $10 000.

88—Authorised officer may direct a thing's return

An authorised officer may direct a thing to be returned to the place from where it was taken.

89—Receipt for seized things

An authorised officer must give a receipt for a thing seized.

90—Access to seized thing

Until a seized thing is forfeited, an authorised officer must allow its owner to inspect it or provide a copy of it in the case of a document, unless it is not reasonable or practical to do so.

91—Embargo notices

An authorised officer may issue an embargo notice in relation to things that cannot be physically seized or removed, which forbids the use, movement, sale, lease or transfer of the thing without the written consent of an authorised officer or the Regulator. There is a maximum penalty of $10 000 for contravening an embargo notice.

Division 5—Forfeiture

92—Return of seized things

A thing seized by an authorised officer must be returned as soon as possible unless it is evidence in proceedings for an offence against this measure or the thing is forfeited to the Crown or the officer is otherwise authorised by law or court order to retain, destroy or dispose of it.

93—Forfeiture

This clause provides for circumstances in which something seized by an authorised officer is forfeited to the Crown.

94—Forfeiture on conviction

On finding a defendant guilty of an offence against this measure, a court may order a thing seized to be forfeited to the Crown or otherwise disposed of.

95—Dealing with forfeited sample or thing

On forfeiture of a thing to the Crown, it becomes the property of the Crown and may be dealt with by the Minister as he or she thinks fit. Notice must be given to the owner of the forfeiture and informing the owner of how they may seek a review of the decision.

Division 6—Directions

96—Authorised officers may direct certain persons to give assistance

An authorised officer may direct a rail transport operator or rail safety worker to give them reasonable assistance to enable the officer to exercise a power under this Part of the measure. Such things may include unloading rolling stock, driving a train or accessing electronically stored information.

97—Power to direct name and address be given

An authorised officer may direct a person to give their name and address if they are found committing an offence against a rail safety law or leads the officer to reasonably suspect the person has committed an offence.

98—Failure to give name or address

Failing to comply with a direction to give their name and address without a reasonable excuse is an offence with a maximum penalty of $10 000.

99—Power to direct production of documents

An authorised officer may direct a person to allow the officer to inspect and copy documents required to be kept under a rail safety law or prepared by the person under a rail safety law for the management of rail infrastructure or the operation of rolling stock that the officer believes is necessary to understand a document required under a rail safety law.

100—Failure to produce document

Failing to comply with a direction to make available or produce a document for inspection without reasonable excuse is an offence with a maximum penalty of $10 000.

Division 7—Improvement notices

101—Improvement notices

An authorised officer may serve an improvement notice on a person if the officer reasonably believes the person is contravening a rail safety law or is likely to continue to do so, or is carrying out railway operations that threaten safety. An improvement notice may require a person to undertake remedial rail safety work or do any other thing to remedy the contravention or to carry out railway operations so that safety is not threatened. The clause further sets out the requirements as to the contents of an improvement notice.

102—Contravention of improvement notice

Contravening an improvement notice is an offence with a maximum penalty of $120 000 for a body corporate or $40 000 for a natural person.

103—Withdrawal or amendment of improvement notices

An improvement notice served by an authorised officer may be withdrawn or amended.

104—Proceedings for offences not affected by improvement notices
The service, amendment or withdrawal of an improvement notice does not affect any proceedings for an offence against a rail safety law.
105—Regulator to arrange for rail safety work required by improvement notice to be carried out
If a person fails to comply with an improvement notice that requires the person to carry out rail safety work to remedy an alleged contravention, the Regulator may arrange for the rail safety work to be carried out and the costs recovered from the person served with the improvement notice.
Division 8—Prohibition notices
106—Prohibition notice
An authorised officer may issue a prohibition notice in relation to an activity if the officer believes on reasonable grounds that the activity involves an immediate risk to safety in relation to railway operations or railway premises or at, on or in the vicinity of rail infrastructure or rolling stock. The notice may prohibit the carrying on of the particular activity or the carrying on of the activity in a particular way until the authorised officer certifies that the matters that give or will give rise to the risk have been remedied. The clause sets out the requirements of a prohibition notice and the types of directions it may include as to the measures that may be taken to minimise or eliminate the risk.
107—Contravention of prohibition notice
A person on whom a prohibition notice is served must comply with the notice unless the person has a reasonable excuse. The maximum penalty for a body corporate is $300 000 and $100 000 for a natural person.
108—Oral direction before prohibition notice served
If it is not possible or reasonable to serve a prohibition notice immediately, the authorised officer may direct the person who has control over the activity involved to do or not to do a stated act. There is a maximum penalty of $20 000 for not complying with the oral direction, but the direction ceases to have effect if the authorised officer does not serve a prohibition notice in relation to the activity within 5 days.
109—Withdrawal or amendment of prohibition notice
A prohibition notice may be withdrawn or amended by an authorised officer by notice served on the person.
110—Proceedings for offences not affected by prohibition notices
The service, amendment or withdrawal of a prohibition notice does not affect any proceedings for an offence against a rail safety law in connection with any matter in respect of which the prohibition notice was served.
Division 9—Miscellaneous
111—Directions may be given under more than one provision
An authorised officer may give directions under 1 or more provisions of Part 5 of this measure at the same time.
112—Temporary closing of railway crossings, bridges etc
This clause provides that an authorised person who holds a specific authority of the Regulator or an accredited person (acting in accordance with the guidelines of the Regulator) may close temporarily or regulate a railway crossing, bridge or other structure for crossing or passing over or under a railway if satisfied it is necessary because of an immediate threat to safety. The authorised person must notify the person responsible for the railway crossing, bridge or other structure of its closure or regulation.
113—Restoring rail infrastructure and rolling stock etc. to original condition after action taken
This clause provides that if an authorised officer, or a person assisting an authorised officer, exercises a power under this Part of the measure in relation to rail infrastructure or rolling stock, railway premises or a road vehicle and damage was caused by the unreasonable exercise of the power or it was otherwise unauthorised, the officer must take reasonable steps to return it to the condition is was in immediately before the action was taken.
114—Use of force
A power to enter a railway premises must only be exercised with no more force than is reasonably necessary to effect the entry.
115—Power to use force against persons to be exercised only by police officers
A provision in this Part of the measure that authorises a person to use reasonable force does not authorise a person who is not a police officer to use force against another person.
116—Protection from incrimination
A person is not excused from complying with a direction under Division 2 (General enforcement powers) or Division 6 (Directions) to answer a question, produce a document or provide information on the grounds that it may tend to incriminate the person or make them liable to a penalty. However, any information provided by a natural person, or in the case of a person who is directed to produce a document, the fact of the production, is not admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty (other than proceedings for making a false or misleading statement).
Part 6—Review of decisions
117—Interpretation
The review of decisions under this Part of the measure is by the Administrative and Disciplinary Division of the District Court.
118—Reviewable decisions
This clause sets out a table that contains the decisions under this measure that are reviewable and who is eligible to apply for the review of a reviewable decision.
119—Review by Regulator
A person who is eligible to apply for a review of a reviewable decision may apply to the Regulator for a review within 28 days of the decision. The Regulator may affirm or vary the decision or set it aside and substitute another decision in writing and set out reasons for the decision. The Regulator has the power to stay certain decisions under review and must decide an application for a stay by the end of the next business day following the day the application was made, or the stay will be taken to have been granted.
120—Application to District Court
An eligible person may appeal to the District Court, a reviewable decision made by the Regulator or a decision made by the Regulator on review (including a decision to stay the operation of a decision). The appeal must be lodged within 28 days of the decision being made.
Part 7—Inquiries
121—Appointment of investigator
The Regulator may appoint an independent investigator to investigate an accident or incident on, involving or associated with a railway that causes death or serious injury to a person or major property damage. The Regulator may act on his or her own initiative or at the request of a rail transport operator or the Minister. Before making an appointment the Regulator must consult with the Minister about the person to be appointed, the matters to be inquired into and the reporting arrangements for the investigation.
122—Procedures and powers of an investigator
This clause sets out the powers of an investigator in conducting an investigation including the power to issue a summons to require the attendance of a person or production of a document and the power to require a person to answer questions under oath or affirmation. It is an offence for a person to refuse to do so and there is a maximum penalty of $20 000 for doing so. It is not an excuse for refusing to answer questions or provide information that doing so may incriminate the person. However the fact of production of a document or information or the answer given in response to a requirement is not admissible in evidence against the person in proceedings for an offence.
123—Report
This clause provides that an investigator must prepare a written report for the Regulator at the conclusion of an inquiry which may contain recommendations and refer to safety actions and any other matters the investigator considers relevant. The Regulator must give a copy of the report (and any comments) to the Minister. Copies of the report may also be given to any other persons the Minister or the Regulator think fit and either the Minister or the Regulator may publish the report or any part of it. The Regulator must also ensure that a copy of the report is made available for public inspection and placed on a website within 28 days of receiving it. Before publishing or providing the report, the Regulator and Minister may take steps to prevent disclosure of certain information in the report that is necessary in the public

interest, or to avoid prejudicing any proceedings before a court or tribunal or on some other reasonable ground.

124—Related matters

An investigation and report under this Part of the measure may occur despite any legal proceedings unless a court or tribunal orders otherwise. No action lies against an investigator, the Minister, the Regulator, authorised officer or a person who has provided evidence or information to the investigator in relation to the provision or publication of a report.

Part 8—General liability and evidentiary provisions

Division 1—General

125—Period within which proceedings for offences may be commenced

This clause applies to an offence against a rail safety law other than an offence prescribed by the regulations or other than an offence for which proceedings may only be commenced within 2 years after its alleged commission. Despite any other law, proceedings for an offence against a rail safety law to which this clause applies may be commenced within 2 years or further period of 1 year from when the Regulator, police officer or authorised officer first obtained evidence of the alleged offence considered sufficient to warrant the commencement of proceedings.

126—Authority to take proceedings

Legal proceedings to recover any charge, fee or money due under this measure may only be instituted by the Minister or the Regulator or a person authorised by either of them. Legal proceedings for an offence against this measure or the regulations may also only be taken by the Minister or the Regulator, or a person authorised by the Minister or the Regulator.

127—Vicarious responsibility

This clause provides that if in any proceedings for an offence against a rail safety law, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show that the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority and that the director, employee or agent had the relevant state of mind. Conduct engaged in by a director, employee or agent on behalf of a body corporate will be taken to have been engaged in by the body corporate unless it can show it took reasonable precautions and exercised due diligence to avoid the conduct.

128—Records and evidence from records

The Regulator must keep records of the grant, refusal, variation, suspension, surrender and revocation of accreditations, and of any conditions or restrictions of accreditations, and of improvement notices and prohibition notices, under this measure. A certificate signed by the Regulator that at the time specified in the certificate that the particulars as to any matter required to be recorded under this clause did or did not appear on or from the records is evidence of what it certifies in any legal proceedings.

129—Certificate evidence

A statement in a certificate issued by the Regulator, a corresponding Rail Safety Regulator, an authorised officer or a police officer as to any matter that appears in records kept or accessed by the Regulator is admissible in any proceedings and is evidence of the matter.

130—Proof of appointments and signatures unnecessary

This clause provides that for the purposes of this measure and the regulations, it is not necessary to prove the appointment of an office holder such as the Regulator, Police Commissioner, police officer or and authorised officer. A signature purporting to be the signature of an office holder is evidence of the signature it purports to be.

131—Multiple offences

This clause provides that despite anything to the contrary in this or any other law, a person may be punished for more than one breach of a requirement of this measure or the regulations if the breaches relate to different parts of the same rail infrastructure, railway premises or rolling stock.

132—Offences by bodies corporate and employees

This clause provides for the liability of directors and employers where a body corporate or employee (respectively) have committed an offence. It also provides for the defences that may be raised by those persons.

Division 2—Discrimination against employees

133—Dismissal or other victimisation of employee

This clause provides that it is an offence for an employer to threaten, dismiss or treat unfavourably, an employee or prospective employee who has given assistance to a public agency about a breach of an Australian rail safety law, or made a complaint about a breach of an Australian rail safety law to the employer, fellow employee, registered association or public authority or official. There is a maximum penalty of $20 000 and a court may also make an order for damages or to reinstate an employee (if relevant) on conviction of the employer of an offence under this clause.

Division 3—False or misleading information

134—False or misleading information provided to Regulator or officials

This clause provides that it is an offence for a person to make a statement or provide a document that is false and misleading in a material particular to the Regulator or an official exercising a power under a rail safety law, and also if the person is reckless as to whether it is false or misleading. There is a maximum penalty of $10 000 or such other penalty as a provision of this measure may otherwise specifically provide.

Division 4—Other offences

135—Offence to impersonate authorised officer

It is an offence for a person who is not an authorised officer to hold himself or herself out to be, with a maximum penalty of $5 000.

136—Not to interfere with train, tram etc

A person must not without the permission of an authorised officer (in this clause a rail transport operator, authorised officer or police officer) or without reasonable excuse, move, interfere with, disable, or operate any equipment, rail infrastructure or rolling stock owned or operated by a rail transport operator or attempt to do any of these things. Maximum penalty is $20 000.

137—Applying brake or emergency device

A person must not without reasonable excuse apply a brake or use an emergency device fitted to a train or tram or make use of an emergency device on railway premises. Maximum penalty of $5 000.

138—Stopping a train or tram

A person must not without reasonable excuse cause or attempt to cause a train or tram in motion to be stopped. Maximum penalty $5 000.

Division 5—Court-based sanctions

139—Daily penalty for continuing offences

This clause provides for an additional penalty of not more than one fifth of the maximum penalty prescribed for an offence for each day during which an offence continues after a person has been convicted of that offence.

140—Commercial benefits order

If a person has been convicted of an offence against a rail safety law the court may make a commercial benefits order that requires the person to pay a fine of up to three times the amount a court estimates to be the gross commercial benefit the person (or associate of the person)received or would have received as a result of the offence. The clause sets out what a court may or may not take into account in estimating the gross commercial benefit that was or would have been received. The clause also sets out who is an associate of a person for the purposes of the clause including spouses, domestic partners, household members, partners and fellow trustees and directors.

141—Supervisory intervention order

This clause provides that a court may make a supervisory intervention order on the request of a prosecutor if the court considers a person found guilty of an offence against a rail safety law to be a systematic or persistent offender. An order under this clause must not exceed 1 year and may require a person to do specified things including staff training, installing monitoring equipment, or to implement particular practices, systems or procedures, or to undertake specified monitoring, compliance or operational practices subject to the direction of the Regulator, or to provide compliance reports to the Regulator. An order under this clause must only be made by the court if the court considers the order is capable of improving a person's ability or willingness to comply with the rail safety laws. Contravening a requirement of an order under this clause is an offence with a maximum penalty of $40 000.

142—Exclusion orders
A court may, on the application of the prosecutor, make an exclusion order against a person found guilty of an offence against a rail safety law if the court considers the person to be a systematic or persistent offender. The purpose of an order under this clause is to restrict the opportunities for the person to commit or be involved in the commission of further offences by prohibiting (for example) the person from managing rail infrastructure or operating rolling stock, or being a director or officer concerned in the management of a body corporate involved in managing rail infrastructure for a specified period. The court should only make such an order if satisfied that the person should not continue the things that are the subject of the proposed order and that a supervisory intervention order is not appropriate. Contravening an order may result in a maximum penalty of $40 000.

Part 9—Miscellaneous

Division 1—Management of rail corridors, crossings and public works

143—Installation of control devices
This clause provides that a rail transport operator may with the Minister's consent, or must, at the direction of the Minister, install and operate traffic control devices at a level crossing in connection with the operation of a railway. A rail transport operator must, at the direction of the Minister, also install and operate other devices or systems that control or prevent members of the public from accessing or crossing railway premises while rolling stock is approaching or passing. The Minister may also direct that a device or system be altered or removed by the rail transport operator. Failing to comply with a direction is an offence with a maximum penalty of $75 000 for a body corporate and $25 000 for a natural person. This clause does not limit any requirement imposed under Part 4 Division 2 (Accreditation) or Part 4 Division 4 (Safety management) of this measure or under Part 2 Division 2 of the *Road Traffic Act 1961* (Traffic control devices).

144—Power to require works to stop
A person other than a rail transport operator must not carry out works near a railway without the approval of the Regulator or the relevant rail infrastructure manager, if the works threaten or are likely to threaten the safety or the operational integrity of the railway. (Maximum penalty $50 000.) The Regulator may give a person carrying out works near a railway that the Regulator reasonably believes threaten, or are likely to threaten, the safety or the operational integrity of the railway, written directions to stop, alter or not commence such work. The regulator may, by notice in writing require a person who has the care, control, or management of the land where the works are situated, to alter, demolish or take away the works. There is a maximum penalty of $50 000 for failing to comply with such directions and in such cases the Regulator may arrange for any act required by a notice to be carried out and then recover the expenses incurred in doing so.

Division 2—Confidentiality

145—Confidentiality
This clause provides that a person engaged in the administration of this measure must not disclose or communicate information obtained in the administration except as authorised by this measure or another Act; with the consent of the person from whom the information was obtained or relates; for law enforcement purposes; rail safety inquiries or public safety, or to a court in connection with legal proceedings. There is a maximum penalty of $10 000. This clause does not prevent a Rail Safety Regulator from accumulating and aggregating data and authorising its use for the purposes of research or education.

Division 3—Civil liability

146—Civil liability not affected by Part 4 Division 1 or 4
Nothing in Division 1 or Division 4 of Part 4 (General safety duties or Safety management) is to be construed as conferring a right of action in any civil proceedings in relation to any contravention of these provisions or as conferring a defence to an action in civil proceedings.

147—Exclusion from liability
No liability attaches to the Minister, the Regulator, an investigator, an authorised officer or any other person acting in the administration of this measure for an honest act or omission in the exercise of a function or power under this measure. This includes, for example, exclusion of liability in negligence or for breach of a statutory duty or defamation. No such liability gives rise to a civil liability against the State or an authority of the State.

148—Immunity for reporting unfit rail safety worker
This clause provides that no action lies against a person (including a medical practitioner, a nurse, optometrist or physiotherapist) who in good faith reports to the Regulator, rail transport operator or other person employed by either of these persons, any information, test results or examination that discloses that a person is unfit to carry out rail safety work or that it might be dangerous to allow that person to carry out such work.

Division 4—Compliance codes and guidelines

149—Compliance codes and guidelines
This clause provides that the Minister may make an order, notice of which is to be published in the Gazette, approving a compliance code or guidelines for the purpose of providing practical guidance to persons with duties or obligations under this measure. A failure to comply with a compliance code or guidelines does not give rise to any civil or criminal liability. However, a person who complies with a compliance code may be taken to have complied with this measure. A compliance code (and any variations) must be laid before both Houses of Parliament within 14 days of notice of its approval being published in the Gazette, and the Houses may pass a resolution disallowing the approved compliance code.

Division 5—Other matters

150—Recovery of certain costs
This clause provides that the Regulator may recover, as a debt from a rail transport operator, the reasonable costs of the entry and inspection of railway infrastructure, rolling stock or railway premises in respect of which the person is accredited, other than the costs of an inspection of an accredited person under Part 4 Division 7 (Audit of railway operations by Regulator).

151—Recovery of amounts due
Every fee, charge or other amount of money payable under this measure or the regulations may be recovered by the Minister as a debt due to the Crown in a court of competent jurisdiction.

152—Compliance with conditions of accreditation
This clause provides that an accredited person will be taken to have complied with this measure or the regulations in relation to an obligation or duty if a condition of accreditation makes provision for or in respect of the duty or obligation and the person complies with that condition.

153—Prescribed persons
A person prescribed by the regulations for the purposes of this clause must give notice in the prescribed form and within a prescribed period to a rail transport operator of the commencement, or discontinuation, or completion of prescribed operations or activities that may adversely affect the safety of any rail infrastructure or rolling stock of a rail transport operator.

154—Powers of authorised persons
An authorised person may give directions to the drivers of motor vehicles and other persons that are necessary for the safe operation of any rail infrastructure or rolling stock or to deal with an emergency. Failure to comply with such a direction may result in a maximum penalty of $5 000. An authorised person must comply with any guidelines issued by the Regulator for the purposes of this clause.

155—Contracting out prohibited
A term of any contract or agreement that purports to exclude, limit or modify the operation of this measure is void to the extent that it would otherwise have effect.

156—Enforceable voluntary undertaking
This clause provides that a person may give the Regulator a written undertaking in connection with a matter relating to a contravention or alleged contravention of this measure by the person. The Regulator may apply to the Magistrates Court for an enforcement of an undertaking by order of the court. There is a maximum penalty of $20 000 for failing to comply with an order.

157—Classification of offences
Offences constituted by this measure are summary offences.

158—Regulations

This clause provides that the Governor may make regulations contemplated by, or necessary or expedient for, the purposes of this measure including regulations that make provision for or in relation to the factors set out in Schedule 1 of this measure. The regulations may refer or incorporate a code, standard or other document; be of general or limited application; provide that specified provisions of this measure do not apply, or apply in prescribed circumstances; provide that any matter or thing is to be determined, dispensed with or regulated or prohibited according to the discretion of the Minister, the Regulator or other prescribed authority, and prescribe fees that are differential or to be determined according to prescribed factors.

Schedule 1—Regulations

1 The regulations may make provision for requirements, standards, qualifications or conditions that must be satisfied in relation to accreditation and requirements as to the terms, conditions, restrictions or particulars applying under or with respect to them and other matters relating to their award, refusal, variation, suspension, cancellation or surrender.

2 A scheme for certificates of competency (or provisional certificates of competency) for persons employed or engaged in railway safety work, and for the duration, variation, suspension or cancellation of those certificates.

3 The prohibition of the carrying on of railway safety work or other prescribed activities except by or under the supervision of a person who holds an appropriate certificate of competency or who has prescribed qualifications, training or experience.

4 Safety standards or other requirements that must be complied with in connection with the construction, maintenance or operation of a railway, or in connection with the performance of any work or activity, or in relation to any rail infrastructure, rolling stock, trains, system, devices, appliance or equipment in relation to sidings.

5 The safeguarding, siting, installing, testing, altering, maintaining or removal of any rail infrastructure, rolling stock, system, device, appliance or equipment.

6 The records and documents to be kept by any person and the manner of keeping and inspecting those records and documents.

7 The furnishing of returns and other information that is verified as prescribed.

8 The registration of plans and other documents required under this measure.

9 The recording, investigation and reporting of accidents and incidents.

10 The health, fitness and functions of railway employees.

11 The regulation of the conduct of passengers and other persons on railways or on land or premises associated with a railway.

12 The trespass on, or entry to railways, or on land, premises, infrastructure or rolling stock associated with a railway.

13 The regulation or prohibition of the carriage of goods, freight or animals on railways.

14 The unauthorised use of railways or rolling stock.

15 The display of signs and notices.

16 The opening and closing of railway gates.

17 The regulation of vehicles, animals and pedestrians crossing railways.

18 The regulation of crossings.

19 The loading, unloading or transportation of freight.

20 The identification of rolling stock, rail infrastructure, devices, appliances, equipment or freight.

21 The causing of damage to, or interfering with or removing, rolling stock, rail infrastructure, devices, appliances, equipment or freight.

22 Procedures associated with inspections, examinations or tests under this measure.

23 The form and service of notices and other documents under this measure.

24 Empowering the Regulator to prohibit a person from acting (or from continuing to act) as a rail safety worker for a specified period, or until further order of the Regulator.

25 Fixing fees and charges for the purposes of this measure or in respect of any matter arising under this measure, including a fee that the Regulator may recover from an accredited person as a debt if the accredited person fails to comply with a requirement of this measure within a specified time.

26 Generally, evidence in proceedings for an offence against the regulations.

27 Fixing expiation fees, not exceeding $750, for alleged offences against this measure or the regulations.

28 The imposition of penalties, not exceeding $10 000 for a contravention of, or failure to comply with, a regulation.

Schedule 2—Provisions relating to alcohol and other drug testing

Part 1—Preliminary

1—Preliminary

This clause sets out the meaning of certain terms that are used in Schedule 2 including ***alcotest*** which means a test by means of apparatus approved under the *Road Traffic Act 1961* or this Schedule for the purpose of conducting alcotests; ***authorised person*** means a person appointed as an authorised person under clause 2 of this Schedule or a police officer; ***breath analysing instrument*** which means an apparatus of a kind approved under the *Road Traffic Act 1961* or this Schedule as a breath analysing instrument; ***drug screening test*** which means a test by means of an apparatus of a kind approved under the *Road Traffic Act 1961* or this Schedule for the purpose of conducting drug screening tests, and ***oral fluid analysis*** which means an analysis of oral fluid by means of an apparatus of a kind approved under the *Road Traffic Act 1961* or this Schedule for the purpose of conducting oral fluid analyses.

2—Authorised persons

This clause provides that the Regulator may appoint an authorised officer, an officer of the Department or other person holding office in the Public Service, a person with qualifications or experience considered by the Regulator to be appropriate, or a person nominated by an accredited person to be an authorised person for the purposes of this Schedule. An authorised person also includes a member of the police force.

3—Urine testing

This clause provides that the results of a urine test carried out on a rail safety worker under this measure are only to be used for the purpose of disciplinary proceedings and are not admissible in proceedings for an offence. A urine test carried out under this Act must be conducted in accordance with the requirements set out in the regulations.

Part 2—Testing

4—Authorised person may require alcotest or breath analysis

This clause provides that an authorised person may at any time require a rail safety worker who is about to carry out, is carrying out, attempting to carry out or has carried out rail safety work or is involved in a prescribed occurrence, to undergo testing by alcotest or breath analysis (or both). A rail safety worker must comply with the reasonable directions of the authorised person in relation to the conduct of the testing. The testing must not be commenced more than 8 hours after the worker has ceased to carry out the rail safety work or 8 hours following a prescribed occurrence. A person required under this clause to submit to an alcotest or breath analysis must not refuse or fail to comply with all reasonable directions of an authorised person in relation to the requirement, and in particular, must not refuse or fail to exhale into the apparatus by which the alcotest or breath analysis is conducted in accordance with the directions of the authorised person. There is a maximum penalty of $5 000. This clause also provides that it a defence to a prosecution for failing to comply with a direction that the direction was unlawful or that the person was not allowed the opportunity to comply after being given the prescribed oral advice in relation to the consequences of refusing and the person's right to request the taking of a blood sample, or the person otherwise had good reason for refusing to comply with the direction. If a person refuses or fails to comply with the requirement or direction under this clause by reason of some physical or medical condition of the person and immediately makes a request of the authorised person that a sample of his or her blood be taken by a medical practitioner, an authorised person must do all things reasonably necessary to facilitate the taking of a sample of the person's blood. A person is not entitled to refuse to comply with a requirement or direction on the

grounds of self incrimination or because the person consumed alcohol after the person last performed rail safety work or was involved in a prescribed occurrence, but before the requirement or direction was made.

5—Authorised person may require drug screening test, oral fluid analysis, blood test and urine test

This clause provides that an authorised person may at any time require a rail safety worker who is about to carry out, is carrying out, attempting to carry out or has carried out rail safety work or is involved in a prescribed occurrence, to undergo a drug screening test, oral fluid analysis, blood test or urine test (or any combination of these). A rail safety worker must comply with the reasonable directions of the authorised person in relation to the conduct of the testing. The testing must not be commenced more than 8 hours after the worker has ceased to carry out the rail safety work or 8 hours following a prescribed occurrence. A drug screening test or an oral fluid analysis may only be conducted by a person authorised to do so by the Regulator or in the case of an authorised person who is a police officer, an officer so authorised by the Commissioner of Police under the *Road Traffic Act 1961*. A person required under this clause to submit to testing must not refuse or fail to comply with all reasonable directions of an authorised person in relation to the requirement, and in particular, must not refuse or fail to allow a sample of oral fluid, blood or urine to be taken in accordance with the directions of the authorised person. There is a maximum penalty of $5 000. This clause also provides that it a defence to a prosecution for failing to comply with a direction or requirement that the direction or requirement was unlawful or that the person was not allowed the opportunity to comply after being given the prescribed oral advice. This advice is in relation to the consequences of refusing to cooperate and the person's right to request the taking of a blood sample instead of a drug screening test or oral fluid analysis, or the right to request an oral fluid analysis or breath analysis instead of a blood test in connection with drug testing or alcohol testing (respectively), or the person otherwise had good reason for refusing to comply with the direction. If a person refuses or fails to comply with the requirement or direction under this clause by reason of some physical or medical condition of the person and immediately makes a request of the authorised person that a sample of his or her blood be taken by a medical practitioner, an authorised person must do all things reasonably necessary to facilitate the taking of a sample of the person's blood. Likewise, if a person refuses or fails to comply with a requirement to give a blood sample by reason of some physical or medical condition of the person and immediately requests an oral fluid analysis in relation to drug testing or a breath analysis in relation to alcohol testing, an authorised person must do all things reasonable to facilitate the conduct of the oral fluid analysis or breath analysis (respectively). A person is not entitled to refuse to comply with a requirement or direction on the grounds of self incrimination or because the person consumed alcohol or a drug after the person last performed rail safety work or was involved in a prescribed occurrence, but before the requirement or direction was made.

6—Concentration of alcohol in breath taken to indicate concentration of alcohol in blood

This clause provides that if a person submits to an alcotest or a breath analysis and the alcotest apparatus or the breath analysing instrument produces a reading in terms of a number of grams of alcohol in 210 litres of the person's breath, the reading will, for the purposes of this measure and any other Act, be taken to be that number of grams of alcohol in 100 millilitres of the person's blood.

7—Breath analysis where drinking occurs after rail safety work is carried out

This clause allows for the fact that a person required to submit to a breath analysis may have consumed alcohol in the period between the completion of rail safety work or the prescribed occurrence giving rise to the request to undergo testing, and the actual performance of the test (the "relevant period"). In proceedings for an offence where the results of a breath analysis are relevant, a court may take into account the quantity of alcohol consumed by the person during the relevant period and its likely effect on the concentration of alcohol indicated as being present in the person's blood by the breath analysis, and may find the person not guilty of the offence charged.

8—Oral fluid analysis or blood test where consumption of alcohol or drug occurs after rail safety work is carried out

This clause allows for the fact that a person required to submit to an oral fluid analysis or blood test may have consumed alcohol or used a drug in the period between the completion of rail safety work or the prescribed occurrence giving rise to the request to undergo testing, and the actual performance of the test (the "relevant period"). In proceedings for an offence where the results of an oral fluid analysis or blood test are relevant, a court may take into account the fact that the person consumed alcohol or used the drug during the relevant period and may find the person not guilty of the offence charged.

9—Compulsory blood testing following a notifiable occurrence

This clause sets out the duty of a medical practitioner to take a blood sample from a rail safety worker who has suffered an injury as a result of a notifiable occurrence and the worker attends or is admitted into a hospital.

10—Processes relating to blood samples

This clause sets out the procedures to be followed in taking a sample of blood for the purposes of this Schedule.

11—Processes relating to oral fluid samples

This clause sets out the procedures to be followed in taking a sample of oral fluid for the purposes of this Schedule.

12—Processes relating to urine samples

This clause provides that the provisions prescribed by regulations will apply where a sample of urine is taken under this measure.

13—Authorised person to be present when sample taken

This clause provides that a blood sample taken under particular clauses in this Schedule must be done in the presence of an authorised person.

14—Cost of blood tests and urine tests under certain clauses

The regulations may prescribe a scheme for the payment of the costs of taking a blood or urine sample and the subsequent analysis of the sample.

Part 3—Evidence

15—Evidence

This clause sets out the presumptions that may be made about the proof of certain factors in relation to the conducting of alcohol and drug testing, the conclusions that may be drawn from certain test results and the contents of certain certificates.

Part 4—Miscellaneous

16—Blood samples may be taken by nurses outside Metropolitan Adelaide

Except in the case of a compulsory blood sample taken following a notifiable occurrence under clause 9, a person required to provide a sample of blood outside Metropolitan Adelaide may have the sample taken by a registered nurse instead of a medical practitioner.

17—Protection of medical practitioners etc from liability

No proceedings lie against a medical practitioner or a registered nurse or a person acting on the direction of either of these persons in relation to anything done in good faith and in compliance with the provisions of this Schedule. A medical practitioner does not have to take a blood sample if he or she thinks it would be injurious to the medical condition of the person. Nor is a medical practitioner obliged to take a blood sample of a person who objects and persists in that objection after the practitioner has told the person that to do so, without genuine medical grounds, may constitute and offence against this measure.

18—Approval of apparatus for the purposes of breath analysis etc

This clause provides that the equipment used to conduct breath analyses, alcotests, oral fluid analyses and drug screening tests and kits that constitute a blood test kit may be approved by the Governor by notice in the Gazette. If equipment has been approved under the *Road Traffic Act 1961* it does not require further approval for the purposes of this measure.

19—Oral fluid, blood sample or urine sample or results of analysis etc not to be used for other purposes

This clause provides that oral fluid, urine and blood samples taken under this Schedule and any forensic material taken incidentally must only be used for the purposes contemplated by this measure, in connection with the management and control of any work or activity associated with railway operations or for the purpose of disciplinary proceedings against a rail safety worker.

20—Regulations

Without limiting any other provision, this clause provides that the regulations may make provision in relation to the testing of persons and the analysis of test results under this measure. The regulations may also set out requirements in relation to the destruction of oral fluid, blood or urine samples taken under this measure including any other forensic material taken incidentally during a drug screening test, oral fluid analysis, blood test or urine test.

21—Regulations

This clause provides that the regulations may make provision for any other matter associated with the testing of persons under this measure for the presence of alcohol or a drug and the analysis and use of test results and the steps that may be taken into account of any testing or evidence or information produced as a result of the testing.

Schedule 3—Related amendments, repeal and transitional provisions

Part 1—Preliminary

1—Amendment provisions

This clause is formal and provides that the provisions of the Acts referred to in the headings are amended by this measure.

Part 2—Amendment of *Railways (Operations and Access) Act 1997*

2—Amendment of section 4—Interpretation

This clause deletes the definition of ***traffic control device*** from the *Railways (Operations and Access) Act 1997*.

3—Repeal of Part 2 Division 3

This clause deletes Part 2 Division 3 of the *Railways (Operations and Access) Act 1997* (Control of traffic).

Part 3—Repeal of *Rail Safety Act 1996*

4—Repeal of *Rail Safety Act 1996*

This clause repeals the *Rail Safety Act 1996*.

Part 4—Transitional provisions

5—Interpretation

This provides that the ***1996 Act*** means the *Rail Safety Act 1996*.

6—Existing accreditations

This clause ensures that accreditation held under the 1996 Act is recognised under the new measure and that the Regulator may, by notice in writing to the rail transport operator, make variations or impose new restrictions or conditions. The Minister may also in his or her absolute discretion refund the whole or any part of a fee paid by a person in relation to accreditation under the 1996 Act if accreditation is not required to be held by that person under this measure.

7—Private sidings

This clause ensures that private sidings registered under the 1996 Act are recognised under the new measure, subject to any variations or new conditions or restrictions the Regulator imposes by notice in writing to the relevant rail infrastructure manager.

8—Other provisions

The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of this measure.

The Hon. D.W. RIDGWAY secured the adjournment of the debate.

PRINCE ALFRED COLLEGE INCORPORATION (CONSTITUTION OF COUNCIL) AMENDMENT BILL

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

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

That this bill be now read a second time.

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

Leave granted.

The *Prince Alfred College Incorporation (Constitution of Council) Amendment Bill 2007* will make minor, but necessary amendments to the legislation under which Prince Alfred College is incorporated. The changes proposed in the legislation will support recent reforms implemented by the College that modernise the school's corporate governance arrangements.

The *Prince Alfred College Incorporation Act 1878* has been amended by Parliament only once previously, by the *Uniting Church in Australia Act 1977*. This legislation facilitated the formation of the Uniting Church by creating a union of individual Christian churches, including the Wesleyan Methodist Church under which the school was established and also updated provisions relating to the constitution of the Prince Alfred College School Council.

The key purpose of the Bill before you is simple—it removes some prescriptive detail relating to the composition of the school Council from the legislation. The revocation of this provision will modernise the school's incorporating legislation and enable the school community to make changes to the composition of its School Council without reference to Parliament in the future. The composition of the School Council will be set out in the School Council's Constitution, which can be amended with approval of the South Australian Synod of the Uniting Church of Australia.

This approach of prescribing membership requirements of an incorporated governing body within its Constitution is consistent with that of other similar bodies through legislation, such as the *Associations Incorporation Act 1985* and particularly for school governing councils under the *Education Act 1972*.

The South Australia Synod of the Uniting Church in Australia has approved the proposed changes, as required by section 19(3) of the Act.

The Bill also provides for other minor and consequential amendments that have been included on the advice of Parliamentary Counsel, including updating the definition of *Synod*. It is also appropriate to remove the out-dated Constitution from the legislation.

As members would be aware *Prince Alfred College Incorporation Act 1878* is a private Act not committed to any Minister. However on the invitation of the College I am very happy to take carriage of this Bill on the school's behalf in my capacity as Minister for all schools. I propose you support these minor but necessary changes.

I commend the Bill to Honourable Members.

EXPLANATION OF CLAUSES

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

The measure is to come into operation on assent. However, it is advisable to provide that certain amendments are backdated to the day on which the School Council varied its Constitution under section 19(1) of the Act as those variations were, strictly speaking, inconsistent with section 17(2) of the Act.

3—Amendment provisions

This clause is formal.

Part 2—Amendment of *Prince Alfred College Incorporation Act 1878*

4—Amendment of section 3—Interpretation

This amendment up-dates the definition of ***Synod***.

5—Amendment of section 17—Constitution

The composition of the Council is to be altered in a manner that will cause an inconsistency with the requirement of section 17(2) of the Act, which currently provides that not less than one-third but not more than one-half of the ordinary members of the Council must be ministers of The Uniting Church in Australia. All requirements as to the composition of the Council are now to be determined under the Constitution, which cannot be varied without the approval of the Synod under section 19 of the Act.

6—Schedule

The Constitution set out in Part 2 of the Schedule of the Act is being altered, and may be altered from time to time into the future. Part 2 will therefore become out-of-date and in any event there is no need to continue to set out the Constitution in an Act of Parliament.

Schedule 1—Amendment of Constitution

1—Amendment of Constitution

This provision will provide complete certainty as to the commencement and operation of the Constitution of the School, as varied by the School Council on 24 September 2006.

The Hon. D.W. RIDGWAY secured the adjournment of the debate.

ADJOURNMENT

At 10.37 p.m. the council adjourned until Thursday 27 September at 11 a.m.