LEGISLATIVE COUNCIL

Thursday 25 October 2007

The PRESIDENT (Hon. R.K. Sneath) took the chair at 11:01 and read prayers.

STANDING ORDERS SUSPENSION

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (11:01): I move:

That standing orders be so far suspended as to enable petitions, the tabling of papers and question time to be taken into consideration at 2:15pm.

Motion carried.

RAIL SAFETY BILL

Adjourned debate on second reading.

(Continued from 18 October 2007. Page 1015.)

The Hon. M. PARNELL (11:01): The Greens support this legislation, which we believe will put in place a framework that will help improve the safety of our rail network. The importance of a safe rail network cannot be lost on anyone. It is critical that the public have confidence that, when they travel on rail or they live near railway lines, the network will be safe—that they will be personally safe and that their properties and their vehicles will be safe when they come in contact with the rail network.

The importance of rail in the urban passenger transport context is even more important now than it was in the past, and the reason for that is quite clear. In an era of global warming leading to climate change, it is important that we put in place policies that make sure that as many people as possible are attracted to public transport and, in particular, attracted to rail transport. Whilst the passenger rail network in South Australia is a diesel electric system, there is scope, and I think it should be on the government's agenda to electrify the network. The importance of electrification for climate change is that renewable energy is most likely to be delivered in the form of electricity rather than in the form of other fuel, such as liquid fuels. So, the rail network will play an important part in a sustainable transport future for cities like Adelaide and, indeed, for our entire state.

The media, over the past little while, has been full of bad news stories about rail safety. We have had situations with doors not closing properly, and we had a minor derailment in the yards just out of Adelaide and, sadly, a few people were injured, although, fortunately, only in a minor way. These stories do discourage people from using public transport. Whilst a proper analysis of the statistics would show that you are much safer on a train than you are in a private car, perceptions are important, and people need to feel safe and secure when they travel by train.

The other aspect of rail safety that is important is to make sure that our trains are properly staffed with appropriately qualified security guards. It used to be the norm that staff travelled on every train; in fact, they used to sell tickets to passengers. Previous governments did away with that regime and found that the public's confidence in the rail system suffered. So, we now have guards back on trains after seven o'clock at night, and that is a good thing. However, we need to make sure that our trains are safe at all hours of the day and night, so I would encourage the government to reinstate staff on trains during the day as well as those trains in the evening.

Another aspect of rail safety that is often overlooked is in relation to the rollingstock itself and, in particular, the carriages and their windows. People might think, 'Well, what have windows got to do with rail safety?', but the problem is that, when you have windows that are scratched and covered in graffiti, people cannot see out of them. There are two things that flow from that, and the first is that people feel unsafe and uncomfortable if they are sitting in an environment where they can see that uncontrolled behaviour, such as graffiti, has happened. It does not instil you with confidence when you know there are people out there running amok in the system, and it does not help you to feel safe. When it comes to looking out of those windows, trying to find out what station you are at, trying to work out whether or not this is your stop, there is a real issue there as well.

Safety issues, I guess, come from young people in particular who might miss their stop because the windows are all scratched and identifying signs on the stations have been vandalised, so they do not know whether it is the right stop for them to get off. Whilst these might seem like

fairly minor and insignificant issues, they actually combine to form a situation of less than optimum safety on our rail network.

The bill before us, whilst it does not deal with the minutia of rail safety, does help reform the process that can lead to better safety outcomes. With those brief words, I advise that the Greens are happy to support the second reading of this bill.

The Hon. D.G.E. HOOD (11:07): I rise to support the second reading of this bill, as well. The bill introduces measures agreed at a national level between state transport ministers and authorities to improve rail safety in our country, as well as retaining unique aspects of South Australian law concerning rail safety. I record my gratitude to the minister for providing a briefing on this bill to my office.

We have discovered that Victoria has moved ahead of us and introduced its own bill, and that state will perhaps need to backtrack to fix up things that have arisen as a consequence of these national reforms. I can understand why Victoria might have moved ahead of the pack on rail safety when one considers that recent research indicates that nearly twice as many people are injured at level crossings in Victoria than in any other state. Indeed, the Kerang rail disaster in June was no doubt looming large in Victoria's mind, with 11 families grieving the loss of their loved ones, not to mention the many others injured in that rail accident.

Arising from that briefing, I thought it useful to note that, on the subject of perhaps greatest concern when most people think of rail safety—namely, safety measures at level crossings—we are not seeing laws dealing with that issue at this point. The national coalition of state transport bodies has yet to vote upon these measures (and perhaps that is being held up by the federal election). I do note that rumble strips are likely to be implemented in Victoria to warn road users that they are approaching a rail crossing, and this perhaps demonstrates the need for cooperation between local councils, private property owners and state governments in improving rail safety.

It also became apparent to me, when looking at this bill, that many aspects concerning rail safety were not dealt with in this bill; for example, the way in which local government and private landholders are regulated to ensure pedestrians do not inadvertently access a rail corridor, and ensuring that trespassers do not access them, either. In other words, this bill deals more with railway operators and railway safety workers who, roughly speaking, are drivers, signal operators and maintenance workers. The question of management of access to the rail corridor—and, therefore, fencing, etc., to prevent undesirable access—is dealt with in other legislation. In the briefing, we were told that regulations could be used to bolster the aspect of this bill, and that would be good to see. Rail safety, no doubt, includes ensuring that access to the rail corridor is as well regulated as it can be.

I am grateful to the minister's office, which swiftly provided answers to my questions about the interface of occupational health, safety and welfare law, as it was recently amended by a bill before this chamber, and the laws penalising rail companies for failing to observe OHS&W principles. Clearly, clause 12 of this bill ensures that the OHS&W act prevails, which is a good thing. We would not want this parliament to toughen OHS&W laws across the board, only to be thwarted by weaker laws existing in rail safety legislation. We commend the government for having a provision that ensures that there are no inconsistencies between these two bills which could, potentially, create a lawyers' paradise.

My final topic of specific interest in this bill is the issue of workplace drug testing. I am told that in the railway sector the private operators always have workplace drug testing—and I believe that is a good thing. It appears that the private sector is leaving the public sector for dead on workplace drug testing, and to see railways improving public sector compliance in this regard is a welcome move. The rolling stock, including passenger stock and other machinery used in railways, is so large and significant as to cause considerable injury if a crash occurs. No doubt we must ensure that drivers and other rail safety workers (to use the generic term defined in this bill) are not affected inappropriately by illicit or, indeed, legal drugs to an unsatisfactory extent.

Schedule 2 of this bill sets out the testing regime, and I think it is useful to record my understanding of what is to occur. First of all, I commend the transport minister, as I believe this area (the rail safety area) is a leader in this state, from what I observe in other departments. Certainly, it is taking a while to get SA Police workplace drug testing under way, although significant steps have been made in that regard in recent times. From the briefing, I also understand that it will, in fact, be SA Police who run the testing in the rail safety arena, although provision exists for other rail safety workers to be accredited and trained in this area. Testing all the way through to urine and blood testing is available, should it be required.

Further, I am told that the tolerance level for alcohol will be .02 blood-alcohol concentration, which is certainly tougher than the amount allowed for people who drive motor vehicles. That level applies not only to people who are driving passengers, but can be the BAC limit detected within a prescribed time after the rail safety worker has, for instance, driven the train. The .02 BAC level does appear in the bill and I am informed that that level will be set in the regulations. I suppose that is appropriate because the government can in that way implement its own policies of toughening or weakening that level, and the parliament can disallow regulations when such a thing is done. Family First has questioned the minister's office on this and, again, received a swift reply, for which we are grateful.

I will close by indicating that Family First certainly supports the strengthening of rail safety, not only in South Australia but nationwide. We congratulate the minister for carrying over the drug-testing regime into this part of his portfolio. We support the second reading of this bill.

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (11:14): I thank honourable members for their indications of support for this bill. The Hon. John Dawkins asked a question about the tram, and I hope to have a response for him later on this afternoon. At this stage I will seek leave to conclude my remarks and we can resume on motion and, hopefully, complete the bill this afternoon.

Leave granted; debate adjourned.

AUSTRALIAN ENERGY MARKET COMMISSION ESTABLISHMENT (CONSUMER ADVOCACY PANEL) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 16 October. Page 907.)

The Hon. M. PARNELL (11:14): I commence by acknowledging that South Australia is the lead state for these electricity bills, including this bill, which establishes the consumer advocacy panel. I will have more to say about our role as the lead state later when debating the other bill.

The important thing now is to note that we have a tension at work here between our role as legislators, doing the best we can for South Australia, and the desire of all the states and territories to try to have uniform legislation. I do not think that the second consideration—namely, uniform consideration—should have the primacy that perhaps other members argue it has. I think we need to be able to make changes that may be specific in the South Australian context.

Another point to note about national legislation, and our being the lead agency, is that, in relation to these electricity bills, I am receiving correspondence from national organisations we would not normally expect to deal with because they can see that South Australia is where the debate will be. They look to us to show some leadership. One organisation that has written to me in relation to this bill is the Consumer Action Law Centre in Melbourne. I will read a few sentences from its submission, as follows:

Dear Mr Parnell,

You might be aware that amendments to national energy legislation were introduced into the South Australian House of Assembly on 27 September. South Australia is the lead parliament for national energy legislation. Once the legislation is passed, it will be applied by the other national energy market jurisdictions (that is, New South Wales, Victoria, Queensland, Tasmania and the ACT).

As a consumer advocate, I would like to raise one particular issue in relation to the Australian Energy Market Commission Establishment (Consumer Advocacy Panel) Amendment Bill. In Minister Conlon's second reading speech, he referred to the extensive consultation undertaken in relation to the draft legislation. The Consumer Action Law Centre, being a founding member and convener of the National Consumers Roundtable on E Energy a grouping of community sector advocates who advocate the interests of domestic energy consumers), has participated significantly in this consultation.

The Bill aims to strengthen consumer advocacy arrangements in both gas and electricity through the establishment of consumer advocacy funding to facilitate consumer engagement with industry, government and regulators. The body will replace the current Advocacy Panel, which operates under the National Electricity Rules. The Bill, at section 30, provides that funding should be available to all consumers with particular regard for small to medium consumers. However, we are concerned about the proposed definition of 'small to medium consumers' which would be placed in the Regulations.

When the Advocacy Panel was first set up, its intention was to assist small to medium consumers. Quoting from the original report that proposed the advocacy panel: 'Small and medium end users, in particular, currently generally do not have access to sufficient human and financial resources to ensure adequate representation whatever those arrangements. They should not be left out of the decision-making process solely because of lack of

resources. The diverse and diffuse nature of the customer base, however, and the individually small scale of the direct benefits to those end-use customers as a result of national market reforms means that it is unrealistic to expect self-funding coalitions of small and medium end users to emerge.' Large end-users by comparison, by virtue of the large financial stake in the outcomes of energy market regulations and reforms, have a direct incentive to engage in advocacy and the resources to do so.

The Regulations will define small to medium consumers as those that consume less than 4,000 megawatt hours of electricity and 100 terajoules of natural gas per annum. These limits equate to annual bills of around $350,000 for electricity and close to $1 million for natural gas. Thus they would effectively allow large businesses prioritised access to funding by defining them as 'small to medium consumers', and appear to be the result of effective lobbying by representatives of large end-users. We believe this definition will diminish the original purpose of the funding model that funds be redistributed to advocates who would not otherwise have a voice.

That is the correspondence to me from Gerard Brody, who is the Director of Policy and Campaigns with the Consumer Action Law Centre in Victoria. Really, for me, the question that arises from that communication is: where is the voice for those who are genuine small consumers? Perhaps more importantly: where is the voice for those whose desire is to consume less rather than more energy?

I think that there are omissions in the composition of the panel, not just in relation to the definition of small to medium consumers but also in the representation or the expertise on the panel in the areas of demand management, energy efficiency and renewable energy. I think that it is no longer possible to maintain the simple approach that electricity is one thing and greenhouse avoidance products are another, because they are intertwined, and consumers need much greater levels of guidance and protection because of the current complexity in dealing with different frameworks.

The world of energy products is changing continuously, and consumers deserve protection of their interests when they are purchasing renewable and low emissions energy, whether on a voluntary or mandatory basis, particularly now, as there are many different products in the market and as standard electricity becomes carbon constrained towards the implementation of the Australian emissions trading system or some form of carbon tax.

I had a private conversation with a government minister just last night about which products on the market are the best if you want to buy green energy in your domestic environment. I was pleased to refer the minister to a website operated by a number of conservation groups, where they rate the different energy products. Some of them I think you could describe as quite shonky in the performance that they deliver, while others are genuine, accredited green energy products. However, consumers struggle in the marketplace understanding these different systems.

The Australian Greenhouse Office and the Office of the Renewable Energy Regulator, as well as the state-based green power scheme regulators, have, I believe, to date failed to provide a robust framework to protect consumers' interests on the quality of renewable and low emissions energy products. Double counting of renewable energy benefits is flourishing, with just one example being the widespread rebadging of old hydroelectricity that dilutes the voluntary renewable energy market, despite the fact that the greenhouse benefits of old hydro and new renewables are still benefits that are being counted towards standard grid electricity emission factors. The consumer advocacy committee can play a vital role in reforming the industry to stop double counting and to represent consumer interests in renewable and low emissions energy matters, and also to support research into the best physical and market frameworks that will provide consumers with value for their mandatory and their voluntary renewable electricity and low emissions electricity purchases.

As well, the consumer advocacy committee could play an important role in driving better guidelines and transaction disclosure standards dealing with renewable energy certificates from user generators from households to large businesses. I have mentioned in this place before the problems with the ownership of those certificates not necessarily being in the hands of the person who would like to think that they are responsible for renewable energy, such as the owner of a domestic solar hot water service, such as the one that is on my roof. The absence of robust guidelines and acceptable disclosure standards has caused widespread confusion in the community, with many people and organisations believing that they are still using renewable energy that they have, in fact, sold or signed across to other parties as renewable energy certificates.

From households to large organisations, even to state governments, we find that embarrassing and damaging mistakes are being made. We find dubious claims of high renewable energy use when, for example, in South Australia most of the state's renewable electricity is sold as renewable energy certificates to the national market, and mostly sold interstate. That is partly a

function, I believe, of the lack of a decent consumer advocacy panel that would serve to lobby for a clear set of rules and expectations to protect the changing interests of electricity or other low emissions energy customers.

In summary, whilst this legislation is welcome and supported, I think that it is capable of reform. I ask all honourable members to try to strike a balance between our role as state legislators, our special role as the lead legislating agency, but not lose sight of the fact that, at the end of the day, we would like to have some uniform standards. I will be looking at amendments to this legislation, but for now I am happy to support its second reading.

The Hon. R.I. LUCAS (11:26): I rise on behalf of Liberal members to repeat the position that was put down by the shadow minister, the member for MacKillop, in another place in relation to this legislation; that is, that the Liberal Party is supporting the second reading and the passage of the legislation for the reasons that he briefly outlined. My comments will therefore be relatively brief. As I indicated in the debate on the companion legislation (perhaps loosely termed; I refer to the national electricity law changes), most of my questions and comments in relation to the Australian national electricity market will be left to that particular bill rather than repeating them during the debate on this bill.

This bill is relatively specific. It is the result of a national agreement and is establishing a consumer advocacy panel. As I have said, the member for MacKillop has indicated that we are supporting that. One of the concerns that I have with the laudable goals that underpin the establishment of bodies like this consumer advocacy panel is the potential dilemma in terms of ultimately making a judgment as to how effective they are, and also where the money is ultimately spent. Whilst the budget has to be approved by the council of ministers, there must be some indicative idea as to what the budget is likely to be—not exactly, but some indicative idea of whether we are talking $1 million, $5 million, or something like that, and also whether or not the government contemplated or argued that there ought to be some limit on the amount of money spent on administration as opposed to expenditure on research projects and other such laudable projects.

I note in the drafting that there is a specific limit in terms of ensuring that money that is proposed to be made available for research projects initiated by the panel does not exceed 25 per cent of the panel's total budget funding projects. As I understand it, I think that is directed at trying to ensure that panel-initiated projects do not dominate the funding as opposed to projects that are being recommended by people other than those on the panel. In the real world, I am sure that panel members and/or others, if they needed to, would be able to get somebody other than a panel member to suggest a research project anyway, but let us put aside that nicety for the moment. I am highlighting there that at least some endeavour should be made to limit the expenditure of part of the budget.

I want to know whether the government actually discussed the prospect of trying to limit the amount of money spent on administration. One of the problems, as I said, with some of these bodies that we have seen in the past at the national and state level is that the administration grows like topsy, and a significant lump of the X dollars in the total budget for the consumer advocacy panel gets spent on staff salaries, entitlements, benefits and servicing the staffing needs of that particular body, as opposed to being farmed out to consultants and others for particular research projects.

If there is to be benefit from this particular panel, ultimately that is likely to be best served by as much money as possible being used on the delivery of services—in this case, the delivery of research information which might better inform debate on the national electricity market—and less money being spent on the administrative structures.

That is essentially the only question I leave with the minister: what is the indicative size of the budget and did the government take up the prospect of trying to limit the amount of money spent on administration? Given that there is no legislative limit, does the minister and the government have a view as to what level the administrative expenses ought to be kept to as part of the total budget? I accept that part of the minister's reply will be that the ministerial council ultimately approves the budget, and hopefully that will mean that it has responsibility to limit the amount of money spent on administration, but I am seeking the minister's view on whether, when he looks at the budget, he is prepared to canvass that aspect of it, and is he prepared to give an indication of what he might think is a fair expenditure on administration as part of the total budget? I indicate the opposition's continued support of the legislation.

Debate adjourned on motion of the Hon J.M. Gazzola.

MOTOR VEHICLES (MISCELLANEOUS) AMENDMENT BILL

In committee.

Clauses 1 to 9 passed.

Clause 10.

The Hon. S.G. WADE: Will the minister clarify the effects of clause 10? In her second reading explanation the point is made that currently, if the holder of a South Australian driver's licence commits an offence outside South Australia, and enforcement in that jurisdiction results in suspension or cancellation, the South Australian Registrar of Motor Vehicles must cancel the licence, even if the penalty in the other jurisdiction is less than cancellation. The government claims the bill gives the registrar the discretion to suspend rather than cancel. I refer to current section 83, because on my reading it gives the registrar the power to suspend or modify in section 83(2). On my reading the new provision is broader in that it refers to any administrative action and not just disqualification, suspension or modification. I want to understand the impact of the legislation, if the minister might clarify.

The Hon. CARMEL ZOLLO: I will explain the intention of this clause: it is to ensure that the Registrar of Motor Vehicles is able to suspend as an alternative to the current requirement to cancel a South Australian driver's licence when the licence holder is disqualified from driving by an administrative order made by an interstate authority. It has been necessary to delete section 83 of the Motor Vehicles Act in its entirety and replace it with provisions that have similar effect but provide the registrar with greater discretion.

The provisions allow the registrar to take action as necessary in relation to a South Australian licence or permit so as to give effect to a court order or administrative action made in another jurisdiction as if it had been made in this state. Essentially, this ensures that the registrar can give effect to the equivalent of the interstate penalty without South Australian licence holders being unfairly disadvantaged. New subsection (2) applies only to a court order; not an administrative action; that is in response to the question asked by the honourable member.

Clause passed.

Clauses 11 to 13 passed.

Clause 14.

The Hon. S.G. WADE: I move:

Page 8, line 18—after 'a person' insert:

who is—

(a) a registered owner or the registered operator of a motor vehicle; or

(b) the holder of a licence or learner's permit; or

(c) the holder of trade plates,

This clause relates to the introduction of a new requirement on people with licences and similar permits to notify a change of postal address. The opposition supports the introduction of that obligation, and believes it is reasonable in terms of the administration of the Motor Vehicles Act. However, we submit to the committee that there is benefit in clarifying the provision in two respects.

The first is reflected in my amendment No. 1. Clause 14 purports to insert new subsection (2d) in section 136, the first words of that new subsection being `If a person changes his or her postal address'. In that respect it is out of character with the rest of the provisions in that section because it does not specify the class of persons to which it relates, and the opposition believes there is value in clarifying that it is not an unlimited obligation on all members of the South Australian community to notify, but that it is specifically an obligation held by registered owners or operators of motor vehicles, holders of licences or licence permits, or holders of trade plates.

It is our view that that amendment covers all the classes of persons dealt with under the current section 136, and we believe that, as a Legislative Council seeking to improve legislation, that proposed amendment would assist the government in its objective.

The Hon. CARMEL ZOLLO: The government will support this amendment. Essentially it is a drafting oversight and we agree that it would ensure consistency with other provisions in section 136 of the act and would clarify the application of the legislation. I agree that it is important

that we define the three categories of persons, so that it is consistent with the other provisions in the section.

Amendment carried.

The Hon. S.G. WADE: Mr Chairman, if it is appropriate I would like to ask questions of the government about the operation of the bill before I move my second amendment. I seek to explore with the government what level of non-compliance there has been in relation to section 136 provisions. As I understand it, section 136 puts a duty of notification on a range of users of motor vehicles to notify the department, and I was hoping the government could advise on the level of non-compliance it is finding with the current section 136 provisions, as well as the administrative and other costs such non-compliance might be placing on the government.

The Hon. CARMEL ZOLLO: I undertake to bring that information back, because we do not have it with us here today.

The Hon. S.G. WADE: Thank you, minister. In relation to clause 14 the maximum penalty specified is $1,250 but that is also out of sync with the rest of section 136, where the most common penalty is $250. Whilst the government is not in a position to advise us regarding the costs that non-compliance is currently creating, I am wondering why the government feels that $1,250 is a more appropriate penalty in this section than the $250 in other sections.

The Hon. CARMEL ZOLLO: If the honourable member would move his amendment, which seeks to keep it at $250, I would probably be in a position to explain it to him—unless he wants me to do so without his moving the amendment, and I am happy to do that.

The Hon. S.G. WADE: I am happy to do it that way. Still in the nature of questions—

The CHAIRMAN: Do you want to move your amendment?

The Hon. S.G. WADE: Not until after I have finished my questions. In relation to the other elements of section 136, is the government planning to increase the penalty for the other offences in that section?

The Hon. CARMEL ZOLLO: Yes.

The Hon. S.G. WADE: So, is the government intending to move an amendment to the other clauses here today? I ask that because, if the government has opened the act and has decided that it wants to increase the fees for failure to notify, why is the government choosing not to do it today?

The Hon. CARMEL ZOLLO: Again, this is a bit of a strange way to do things, because it involves asking questions about an amendment the honourable member wishes to move; he wants me to answer questions about it beforehand. I think we have already flagged in this chamber that we are intending to bring back proposed legislation. We flagged that intention when the Hon. Dennis Hood introduced a bill in this parliament—which is now in the other place—in relation to unregistered and uninsured matters. We flagged at that time what our proposal was, and I can go through it now, but I was going to speak to it when the honourable member moved his amendment if he chose to do that.

The Hon. S.G. WADE: I move:

Page 8, line 21—Delete $1,250 and substitute:

$250

This amendment has the effect of bringing this clause into line with other provisions of current section 136. I will be very interested to hear the minister justifying a 500 per cent increase in a government fee.

The Hon. CARMEL ZOLLO: We oppose this amendment on the basis of a future proposal. It is not normal for government ministers to be flagging proposals, but we have already done that in this place when we were responding to the Hon. Dennis Hood's legislation in relation to uninsured and unregistered vehicles. We explained at the time that, whilst we supported his bill in principle, we wanted to strengthen further legislation and we hoped to be in a position to bring that in early next year.

The amendment is opposed on the basis of a future proposal to better manage unregistered and uninsured vehicles, and that proposal is likely to be considered early next year now. Under this proposal, the increase in the maximum penalty from $250 to $1,250 is proposed to

apply to all existing provisions under section 136 of the act to ensure alignment with this new subsection (2d), as per the Motor Vehicles (Miscellaneous) Amendment Bill before us.

Again, the details of the unregistered and uninsured proposal have previously been referred to in this chamber on 29 March 2007 and include making unregistered and uninsured offences expiable, with an expiation fee that is sufficiently high to act as a deterrent as well as increasing the levels of detection by making these offences detectable by road traffic cameras.

Again, I acknowledge that the Hon. Dennis Hood has legislation before the parliament. As we said at the time, we supported him in the principle of making the offences expiable, but there are a number of other issues we want to consider to strengthen the bill. Clearly, it is our preference not to have to come back to this place with another amendment next year to revisit this section. I point out to honourable members that the small number of recidivist offenders who use loopholes should not be treated leniently. That is our view.

The Hon. S.G. WADE: Certainly, on behalf of the opposition I would share the government's concern that the Hon. Mr Hood has brought to this chamber in terms of dealing with unregistered and uninsured drivers. That is indeed an area of great concern, but I do not think we should confuse the bulk of this bill, which deals with the process of disqualification, with this element. As I understand it, clause 14 deals more with the general administration of licences.

Let us remind ourselves what we are talking about. This is every licence and permit holder having a duty to notify a change of postal address within 14 days. We support that—we think it is good to make sure people focus on their public duties—but to my mind $250 is already a severe penalty for that indiscretion, and $1,250 for an ordinary South Australian failing to notify of a postal address change within 14 days I think is unreasonable.

I accept that the minister says she has a proposal that she will bring back in fuller terms, but I would certainly encourage the government to withdraw clause 14 of the bill at this stage so that it can be considered in the context of the whole proposal. I would ask the government to have a good, hard look at whether we really need to put such an onerous burden on ordinary South Australians to deal with that minority of people who choose to drive uninsured and unregistered.

If the government is serious about focusing on the uninsured and unregistered, the postal address will not really help. You cannot turn up at a post box and nab the person. What are more important are other subsections of section 136 that deal with change of abode and residence. I ask the minister to withdraw clause 14 so the government has the opportunity to consider it more fully in the context of the legislative changes she has already foreshadowed.

The Hon. C.V. SCHAEFER: I rise to support my colleague. I really have not followed this bill in great detail until now, but the minister herself said that this clause is to stop recidivists, and my understanding of that is people who are repeat offenders; people who deliberately and habitually fail to register their vehicles. We know that those people do exist, but my colleague asked the question: how many of these recidivists are out there? Obviously, if they deliberately do not register their vehicle it is very difficult for us to know how many of them are out there, but I am sure there must be an informed estimate or guess of how many of these people there are.

Two very quick instances have occurred to me while listening to this debate. What about someone who is away on an extended holiday? They come back and they are a fortnight over registering their vehicle and they are copped with a $1,250 fine for a mistake; for an omission. What about people who live some distance from a town? I know this government has no idea of anyone who lives very far away or does not have their mail delivered. There are a lot of people who only receive their mail once a week. I admit there are fewer and fewer of those people, because they are so seldom considered in this place. There are people who get their mail once a week.

So, essentially, the minister is saying that they have to send that back; if they are not computer literate—and quite a lot of them are not—they have to send it back by return mail. The minister has already given us warning that there will be further changes early next year. I would just like to support my colleague and ask the minister: does this pass the commonsense test? It clearly does not pass the commonsense test, so why don't we leave it as it is until we can have a look at these more detailed changes early next year?

The Hon. SANDRA KANCK: I think this provision in the bill is absolutely over the top, and we have not had an adequate explanation for it. In addition to the examples the Hon. Caroline Schaefer has given, I can think of a number of instances where mere oversight can be a problem. Think of a situation where there has been a death in the family. Their minds are—

The Hon. C.V. Schaefer interjecting:

The Hon. SANDRA KANCK: Yes; a car crash, where they have had to identify a member of the family. They have to organise a funeral, and their mind is on a whole range of other things. What about someone who is unexpectedly hospitalised and held in hospital for four weeks? Again, it is so easy for someone like that to be trapped in this, and it is hardly a heinous offence. I agree with the Hon. Caroline Schaefer when she says that this does not pass the commonsense test.

The Hon. M. PARNELL: As a general rule, I think the penalties for motoring and motor vehicle-related offences in South Australia are, in many respects, too low. When you have visitors from interstate and they are thinking about parking for a bit longer in a carparking spot or contemplating some other offence, they are amazed at how low our penalties are. However, the punishment does need to fit the crime, and I am very persuaded by what the opposition speakers and the Hon. Ms Kanck have said. If the only offence is failure to notify change in postal address within two weeks, that is hardly a heinous crime.

People might be aware that, with the complexity of life now, when people move house many of them go to the post office and buy a pack, because you actually do need a list of all the people you need to contact. Even those of us who like to think their life is under some sort of control leave things out. I lost track of a small superannuation fund once because it did not have much in it, and I forgot to notify them; it was not a group I corresponded with more than about once a year, and it is easy to forget things. If it is the government's intention to come back with some other changes and expiation measures in the future, we could revisit it then. We could have a large fine for the recidivists and we could have a more reasonable expiation for the genuine accidental 'I forgot to notify' type of cases. I am quite happy at this stage to have the amount of maximum penalty at the lower amount, as proposed by the opposition, and I support the amendment.

The Hon. CARMEL ZOLLO: I think honourable members may have lost sight of what this is about. This is about the duty to notify a change of address, and it is about people who are repeat offenders. We are not talking about a penalty here; we are not talking about an expiation fine. We are talking about a maximum court-imposed penalty; we are not talking about people receiving expiation fines. I think honourable members may have misunderstood. The intention of this legislation and all future legislation will be to ensure that the Registrar of Motor Vehicles, in terms of his administration of the act, relies on having accurate and up-to-date information. The increase in penalties aims to reduce any manipulation of the system by repeat offenders when they go before the court. We are not talking here about people receiving an expiation fine.

The Hon. S.G. WADE: I invite the minister to highlight to the committee where clause 14 (in other words, proposed section 136(2d)) limits its effect to people who are recidivists, even on their second offence. My understanding is that new subsection (2d) applies to any South Australian. If that is not the case, can the minister please explain how it interacts with other provisions to make it apply to recidivists?

The Hon. CARMEL ZOLLO: It does apply to all South Australians, but what we are talking about is a court imposing a higher fee up to that maximum if someone appears before the court on more than one occasion.

The Hon. S.G. WADE: So, this penalty would not be imposed by administrators; it can be imposed only by a court?

The Hon. CARMEL ZOLLO: Yes.

The Hon. C.V. SCHAEFER: If the person concerned shifts or, as we have said, is sick and has two or three vehicles, does that then involve a cumulative fine? This clause makes very little sense. You are using a sledgehammer to crack a very small walnut.

The Hon. CARMEL ZOLLO: My advice is that, potentially, yes, it does, but they would be combined as one matter in the court. I understand there is a $99 expiation fee, or people can be taken to court, but I am advised that it is not readily enforced and, I guess, therein lies the problem. We want a database that has some integrity.

The Hon. C.V. Schaefer interjecting:

The Hon. S.G. WADE: As the Hon. Mrs Schaefer mentioned, it is baffling to see why the government is increasing a penalty for an offence that it is not currently enforcing. One of this bill's main attractions for the opposition is that it reduces the administrative burden on police and on transport department officials. It seems incongruous that we are moving away from an expiation notice approach to what is a very draconian court-based approach. My question again relates to

the related clauses in section 136, considering that this is a provision in the context of a wider clause. Considering that the change of postal address is proposed to be lifted to $1,250, in the government's planning for further amendments to this clause are the other penalties to be lifted to $1,250, or some other rate?

The Hon. CARMEL ZOLLO: Two matters: we are not changing the expiation fee; and, in response to the second question, the answer is yes.

The Hon. D.G.E. HOOD: Just to clarify: in future, does that mean that the expiation fee for the same offence would still be $99 but, for repeat offenders only, there would be a maximum penalty (if they go to court) of up to $1,250—for repeat offenders only? I want to be very clear about that.

The Hon. CARMEL ZOLLO: The only way I can respond to that is to say that the expiation fee will remain the same at $99. This debate is occurring because we have flagged future legislative amendments (which have arisen out of the Hon. Dennis Hood's initiative) to see unregistered and uninsured people being expiated. That is well in train and the government has said, 'Yes, we will pick up that aspect of this legislation but go further for repeat offenders.' The bill we are dealing with today does not address repeat offenders. This debate has come about because we are talking about proposed legislation, which we all know about, because it has been before this council and, when the government responded to the Hon. Dennis Hood's bill, we put that on the record. I do not want to avoid it; we put it on the record before.

The Hon. S.G. WADE: Again, I stress that the opposition supports efforts to deal with uninsured and unregistered drivers and vehicles, but we also want to protect ordinary South Australians. I think the minister failed to answer the Hon. Dennis Hood's question, which was: does this proposed clause to amend section 136(2d) deal with people who are not recidivists? The answer (which I think might be clearer from my lips) is that it does apply to first offenders. There is nothing in this clause which says that the penalty of $1,250 does not apply to a person on their first appearance. That being the case, we believe it is a draconian imposition on ordinary South Australians. Again, considering that the government intends to re-open this act in the near future to change other elements of section 136, rather than impose this draconian penalty on first offences or make this penalty available for first offenders, we urge the government to withdraw this clause and allow the committee to consider a future clause in toto.

The Hon. D.G.E. HOOD: I think the Hon. Stephen Wade and the opposition make a good point. If there is no certainty that this penalty will not apply to first offenders, the $1,250 penalty (or potential penalty) certainly does seem very severe. Is it the case that this penalty may, in fact, apply or (as it is currently written in the act) would apply potentially to first offenders?

The Hon. CARMEL ZOLLO: The response to that is yes, but I remind honourable members that we have not changed the expiation fee; it is still $99. We are talking about a court-imposed possibility of a maximum penalty. We are not talking about acting under any level of administration.

The CHAIRMAN: You might get a couple of hundred dollars.

The Hon. D.G.E. HOOD: Thank you, Mr Chairman. That being the case, Family First will support the amendment. We think $1,250 for a first offence is potentially too high and we look forward to the legislation from the government, when it comes through, and supporting it and re-aligning all the penalties at that time.

The Hon. CARMEL ZOLLO: Before we put this clause, I should point out to honourable members that, when I talked about recidivists or repeat offenders, I may well have put other information on the record. We have a system now, when we detect road traffic offences through cameras, where the expiation notice is sent to the owner of the vehicle as recorded on the register of motor vehicles. I think everyone follows that. If people are not giving their correct address then they are getting away with it, if you like (for lack of a better expression). Anyone could inadvertently forget a notice, or be away or something, so there is a simple expiation fee. However, if other people are using that as a loophole, they can go to court and face a maximum penalty of $1,250. Really, what this is all about is a safer community on our roads; it is not about anything else.

The Hon. S.G. WADE: The minister's point, that this is about road safety, is not disputed by the opposition. As I said before, we argue, however, that other elements of section 136 are even more relevant to dealing with road safety. Surely, it is more relevant to know the place of residence of a person so that the police and other officers can serve notices, make an arrest or do whatever else they need to do. We believe that $1,250 for a mere postal address infringement is draconian,

and we intend to persist with our amendment, because the government is not willing to withdraw clause 14. We look forward to considering a refreshed section 136 when the government brings forward a more considered proposal.

The Hon. M. PARNELL: In a way, the minister's information was new information. I understand why you would want to close the loophole. If the camera takes a photograph of an alleged wrongdoer, is the only information you have their postal address, or do you also have their residential address? As the Hon. Stephen Wade says, if you also have their residential address, you have the ability to find them anyway. Do you have only a postal address? If a postal address is all you have, it gives more credence to what the minister is saying. However, if you also have the alternative of going to their house, it seems that this is too severe a fine for just failing to notify a change of postal address.

The Hon. CARMEL ZOLLO: My advice is that there may be some cases where they have only a postal address and that is the only way of their being able to reach people. I understand that people have up to 28 days to pay the expiation fee they receive up front.

The Hon. S.G. WADE: My reading of the act does not accord with the minister's last answer. Section 136(1) provides:

> (1) If a person (other than a body corporate) who is—
>
> (a) a registered owner or the registered operator of a motor vehicle; or
>
> (b) the holder of a licence or a learner's permit,
>
> changes his or her name or the place at which he or she is ordinarily resident, the person must within 14 days of doing so give notice to the Registrar in a prescribed manner of the new name or new place at which he or she is ordinarily resident, as the case may be.
>
> Maximum penalty: $250

My understanding is that we know where they are ordinarily resident. We can meet them there or we can post there in lieu of a postal address. I am sure that policemen have not been inhibited in sending out notifications because they are yet to receive a section 136(2d).

The Hon. CARMEL ZOLLO: My advice is that, in cases where people want to keep that residential address quiet (I understand that happens sometimes because of the nature of their employment, such as people in the medical profession or a particular branch of the medical profession), they sometimes provide the Registrar with only their postal address.

The Hon. S.G. WADE: I take the minister's answer just as the Hon. Caroline Schaefer has highlighted it—that the government apparently is not currently enforcing the postal address expiation requirements. Do I take it from the minister's answer that the government is currently not enforcing the duty on people reflected in section 136(1) to notify a change in their residence?

The Hon. CARMEL ZOLLO: We are going back over the same ground now. I said before that certainly people are required to, but we know that it is not always readily enforced. That is what this legislation is trying to do: we are trying to ensure that the integrity of the database of the Registrar of Motor Vehicles is always the latest and most up-to-date so that those who are trying to beat the system, if you like, not people who just ordinarily forget or who have difficult circumstances, are detected.

The Hon. S.G. WADE: I will not prolong the discussion, other than to reiterate that the opposition's amendment will support the introduction into the legislation of a requirement for notification of a postal address. It will ensure that the penalty is as great as any other notification requirement under section 136. We believe that is reasonable. We believe that it will support the government's road safety efforts. If there is reason for that penalty and for other related penalties to be increased, we look forward to considering that at the appropriate time. However, we urge honourable members to be circumspect in putting penalties on ordinary South Australians who have perhaps never committed an offence in relation to these mere administrative-type matters and to accept the opposition's amendment.

The Hon. CARMEL ZOLLO: It appears that we do not have the numbers, so I will not divide. However, as I said, I am disappointed. This is not about people just forgetting or whatever. There is an expiation fee of $99, which we are not increasing in any shape or form. This is about ensuring that we have a database that has integrity and stops those who want to divert the course of justice from being able to do so. It says to them that they are responsible to ensure that the database is up to date and, if they do not do so, they can face the court and a maximum penalty of $1,250, but that is really up to the court; it is not an administrative charge.

Amendment carried; clause as amended passed.

Clause 15.

The Hon. S.G. WADE: I move:

Page 8, line 35—

After 'attend at a' insert:

police station, post office or

I reiterate almost to the point of tedium that the opposition supports the fundamental direction of this bill—we supported the second reading. Our amendments are in the nature of legislative review to improve the legislation to make sure that they apply as effectively and as fairly as possible. Amendment 3 standing in my name in that context relates to the proposed process to require licence holders to take notice of disqualification. For the benefit of honourable members I will briefly reiterate that process.

The bill—and the opposition supports the bill—requires a three stage process for notification: a letter is to be sent requiring the licence holder to surrender their licence to a specified location, they must provide proof of identification, and they must pay a fee, which the opposition understands will be in the order of $24. If the licence holder does not respond to this letter, the notice of disqualification will be served on them personally—for example, by a process server—and they will be liable to a fee, which, we are advised, is expected to be around $60. If personally serving this disqualification is unsuccessful, the licence holder's licence will still be disqualified, and the registrar of motor vehicles has the power to refuse to enter into transactions with the licence holder.

If the person comes into contact with the police, they (the police) will also be able to serve the notice on them immediately. The government has assured the opposition that the fees to be set by regulation will be maintained on a cost recovery basis. In the context of our support of this bill we have proposed two amendments. The first relates to the location at which a person needs to attend to present their licence; that is proposed section 39B(D)(3). The bill merely refers to 'a specified location'. We are of the view that that is too general. It was suggested in a briefing that a likely specified location might be a customer service centre for the Department of Transport. There are 20 such centres around South Australia—10 in the metropolitan area and 10 in country areas.

I do not envisage any problems with metropolitan South Australians accessing a customer service centre, because within a reasonable period—seven days or 14 days—one would expect that people would be able to readily access such a centre. My particular concern and that of the Liberal Party is the impact on South Australians living in regional and rural areas. In particular, I am concerned for people in the west and north of our state. The South-East is relatively well serviced. There are customer service centres at Mount Gambier, Murray Bridge and Naracoorte, but in the western area there is no centre west of Port Lincoln and no centre north of Port Augusta. The impost on people living west of those three centres, such as people living at Ceduna, could be quite severe. If you live at Ceduna, it is a five-hour drive to Port Lincoln (where there is a customer service centre), a five-hour drive to Port Augusta, and a five-hour drive to Whyalla.

The Hon. J.S.L. Dawkins: They are all in the one seat.

The Hon. S.G. WADE: Yes. As the Hon. John Dawkins has highlighted, even within the areas that are, shall we say, further south there are black spots.

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

The Hon. S.G. WADE: He has highlighted the concerns of the residents of Clare, who have to go to either Berri or Gawler. We urge the committee to be mindful of the impact on South Australians beyond the metropolitan area. I appreciate that the Labor Party does not need to worry about that because of its historic failure to win the confidence of the people of South Australia beyond the regional areas. But we in the Liberal Party have always stood up for rural and regional South Australians, and I recognise the respect that the crossbench MLCs show for regional and rural South Australia because there are so many preferences out there.

I notice that in a lot of our debates it is the crossbench MPs and the Liberal Party MPs who discuss the impacts while the Labor members sit on baffled. And this is another example of that, where the impact on South Australians beyond the metropolitan area has not been properly considered. We appreciate that the government might be interested in providing for people to be able to access police stations and postal services, but, to be frank, we are not satisfied with the

government's interest. This is a government which only this week has made it very clear that it is withdrawing 250 public servants from rural and regional South Australia—

The ACTING CHAIRMAN (Hon. I.K. Hunter): The member might keep himself to the business of his amendment.

The Hon. S.G. WADE: Sorry, Mr Acting Chair, this is directly relevant to the amendment. What confidence can South Australians have that the government will pursue a proper network of services when it is in the process of withdrawing shared services from regional South Australia the very week that we are considering this amendment? I think it is directly relevant to how much trust South Australians, particularly members of this council, should put in a government's statement of intent. We believe that it is completely reasonable for a post office and a police station to be specified locations, and for other locations to be able to be specified by the government.

It is common practice for those facilities to be accessible for South Australians in terms of discharging their duties; for example, the post office is becoming, as I understand it, the preferred venue for South Australians to deal with passport matters, and you can go there to pay fines. Why should you not be able to go there to hand in your licence? We support this provision, but we believe that parliament needs to have some assurance that service levels will be kept such that South Australians can readily fulfil the duties specified in this new arrangement.

The Hon. M. PARNELL: I will preface my question of the mover by saying that I am very sympathetic to what he is trying to achieve in having a broad range of locations that you can attend. I note that the government could do that by specifying a broad range of locations, and I will ask the minister—I will not need to, she will tell us—what ranges they have in mind. I can understand that a police station which is in the control of the state is an appropriate place, although I would have some concerns about part-time police stations. Not all police stations are open during office hours.

My specific question in relation to post offices is: would there not be an additional administrative expense, because post offices are not owned or controlled by the state? We would have to enter into, I imagine, a commercial arrangement with them so that these surrendered licences would then presumably have to be forwarded somewhere else by registered mail to ensure their safety. I am just wondering what the mover's idea is in relation to handing something in to facilities which we do not control; and, secondly, whether there is any difficulty with the definition of 'post office', because there are some postal agencies as well as full-time staffed post offices.

The Hon. S.G. WADE: I thank the honourable member for his question. My understanding is that a post office, rather than a postal agency, is linked up through an Australia Post electronic system, such that a person, at the time of handing in their licence, would be able to receive a receipt for their licence and at the same time the Registrar of the Department of Transport would be instantly advised of the processing of that transaction. In that context, as I would remind honourable members, that is already a service which is taken advantage of by the commonwealth in relation to passports.

I think it is important to understand the impact on ordinary South Australians. I appreciate that these are people who have transgressed, otherwise they would not be facing a licence disqualification, but I think it is really important that we maintain accessibility, for two particular reasons. First, we want to encourage compliance. If you are at Roxby Downs, Ceduna or Clare and you are faced with a trip down to Gawler or across to Port Augusta from Ceduna, that is not a short trip, that is a matter of travelling up to five hours. So, if we are going to try to increase compliance, to encourage people who have already shown themselves to be disrespectful of the law, we need to maximise the service.

In that regard, I think that police stations and post offices are generally accessible around South Australia and should be used, and that we should not just rely on a government statement of intent but that we should actually put it in the legislation. I would warn the government that if it does not ensure accessibility it will find that people will fall back to the second step. After all, if I was at Ceduna and I was faced with the prospect of having to go to Whyalla, Port Lincoln or Port Augusta, involving a five-hour trip, to hand over my licence and pay a $24 fine and, let us remember, find my way back to Ceduna —

The Hon. J.M. Gazzola interjecting:

The Hon. S.G. WADE: I am sorry; this is what I am wanting the government to do, to assure us, through legislation, that it will be accessible, because it is also a matter of getting home

again. You have handed in your licence, so presumably you are not going to drive unlicensed. It is a fair walk, so you have the cost of driving back. Faced with that scenario, if I was a rational person of Ceduna, and there are lots of other South Australians, I would wait for them to serve it personally and pay $60. Why would you bother using the first step?

So, I would urge the government not just to give undertakings but to show its bona fides by accepting this amendment and to use the Hon. Caroline Schaefer's commonsense test. The Hon. Robert Lawson might prefer a reasonableness test, but I think both tests would say that it is reasonable that common places of service of public documents, such as police stations and post offices, should be specified. If the government wants to specify more, then we are more than happy, for regional and rural South Australians in particular, to receive other alternatives. But we think that those two service levels are fundamental.

The Hon. CARMEL ZOLLO: The government will be opposing this amendment.

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

The Hon. CARMEL ZOLLO: Well, I was listening to a lot of nonsense, frankly. The government will be opposing this amendment on the basis that it is not appropriate, from a drafting point of view, to include the specific locations at which a licence holder is required to attend to acknowledge receipt of a disqualification notice and pay the required fee in the bill. I draw attention to the fact that this is not anything different. Obviously, this will be part of the regulations. These locations will, more appropriately—as in other pieces of legislation—be prescribed in the Motor Vehicle Regulations 1996, which will allow for changes to be made without requiring an amendment to the act. This will ensure greater flexibility in the administration of the legislation.

I remind the Hon. Stephen Wade that regulations come before both houses of parliament and the fact that he is relying on the government to do the right thing really is very offensive, because he does have the opportunity to disallow any regulation. To accuse the government of actually not putting something in a regulation really is just nonsense. The debate on which organisations should be included as a location at which a licence holder is required to attend to acknowledge receipt of a disqualification notice is a different matter.

It is the government's intention that another nominated agent, such as Australia Post, will be engaged to ensure timely access to a specified location for all licence holders across the state, including those in regional and remote areas. Again, I took offence to the nonsense that this side does not care about regional or remote South Australians. It really was very offensive. While there are 21 departmental customer service centres located in the main populated towns, there are approximately 402 Australia Post outlets located across the state.

Upon the successful passage of the bill through parliament, the government will negotiate an agreement with Australia Post or an alternative provider if agreement cannot be reached with Australia Post. This is a cost recovery proposal, I remind members. In relation to SAPOL (because essentially that is one of the words this amendment includes), in the early stages of this proposal it was approached with the possibility of serving notice of disqualification roadside or through country police stations. At the time this approach was not considered appropriate for a number of reasons: there would be resource implications and technical issues, and issues of how this initiative fits within core police business. SAPOL's view has remained unchanged.

I can assure the committee, as do all other ministers when we have regulations that can be tested on the floor of the chamber, that it is our intention that another nominated agent such as Australia Post will be engaged to provide timely access to a specified location for all licence holders across the state. I stress that that includes those in regional and remote areas. I place on record that we have 21 departmental customer service centres located in the main populated towns. There are approximately 402 Australia Post outlets located across the state. I urge members, particularly those on the cross benches, not to support this amendment because the locations will be specified in the motor vehicle regulations 1996. If members think we have done the wrong thing, they can move disallowance on the floor of the chamber.

The Hon. M. PARNELL: It surprises me that negotiations with the post office, an outside body, are more likely to be fruitful than are the negotiations the government has had with the police stations. Listening carefully to the answer, I can understand that someone who has been in trouble with the law—and we want them to do the right thing by handing back their licence—would find it easier to go to the more anonymous post office rather than front up to a police station.

Having listened to arguments from both sides, I am happy to give the government the opportunity to try to negotiate this cost recovery mechanism with Australia Post. We will see the

regulations in due course. If the regulations come back to us showing that there are only 21 places where you can take your licence, and that is the government's best deal, I would be very minded to support any Liberal amendments to this section. For now I am happy to let the government negotiate further, so I will not support the amendment.

The Hon. C.V. SCHAEFER: I am somewhat relieved to hear the minister give an assurance that the government will negotiate with post offices. I assume that the minister is also including postal agencies. After all, this government can and does authorise agents for almost anything. We have authorised agents who can fine us and raid our houses for fishing matters, for native vegetation clearance—you name it. We have authorised officers for everything, yet we cannot have an authorised officer to cancel a licence.

The minister also raises another question. She had us note that this was a cost recovery exercise. From that am I to read into it that it will actually cost someone in Ceduna more than it will cost someone in Prospect to relinquish their licence? I also defend my colleague because, when briefed and when he asked for an example of where these places would be, he was given the example of the 21 customer service centres, most of which looked like being closed under the government's latest rationalisation of 250 public servants out of the country. So, we may have even fewer customer service centres.

The Hon. Mark Parnell raised the issue of the additional cost incurred by the government of handing over a licence at a post office, but I put to him there is the issue of the additional cost for someone who has to drive to Port Lincoln, as well as the fact that they have to take someone with them because they are not allowed to drive back. The minister is worried that my colleague's amendment is not appropriate from a drafting point of view; frankly, I am more concerned about the appropriateness of the laws we make in this place to those who will be advantaged and disadvantaged by them, and I am not convinced that the general populace will be anything but very expensively disadvantaged by this clause. We all know that you have to give up your licence, but what would be wrong with being able to post it via registered mail, for goodness sake? If I were faced with a round trip cost of about $300, and making someone come from Port Lincoln to me, that is what I would choose to do.

The Hon. CARMEL ZOLLO: I point out to the honourable member (and I am sure that we all agree) that it is obviously in the government's best interests to have as many registered servers as possible, because we do want to make this act work. It does not cost any more; the administrative cost is $24 to start with and then $60 if a process server has to be engaged.

The honourable member also asked why we did not use registered mail. While alternatives to personal attendance were considered, none of the options could really confirm that the licence holder had actually received the notice—and remember, this is about closing loopholes. While registered mail may appear to be a cheaper and more convenient means of service, it cannot guarantee personal receipt of the notice nor provide the proof required by court. Experience has shown that too many disqualified drivers will simply not accept or collect a registered letter if they suspect it contains a notice of disqualification. Again, we need to understand that this is about closing loopholes, about that small percentage of people who do not always want to do the right thing.

Similarly, there are obviously inherent flaws surrounding verification of a person's identity should a licence holder be able to acknowledge receipt of a notice over the phone. Advice from the Crown Solicitor's Office indicates that the only way to overcome the current difficulties in improving service by post is a requirement for personal attendance, which will close the current loophole and prevent further abuse of the system by persistent traffic offenders. Honourable members need to bear in mind that this is about persistent traffic offenders, and trying to stop those people.

The Hon. S.G. WADE: I think the minister has the wrong end of the stick in relation to the suggestion made by the Hon. Caroline Schaefer. As I understood it, the honourable member was not suggesting that registered mail be the preferred means for giving notice to disqualified drivers but rather that it be at least an option for surrendering a licence. So, on behalf of the Hon. Caroline Schaefer, I reiterate the question: why would registered post not be an acceptable way of surrendering a licence?

The Hon. CARMEL ZOLLO: I think that perhaps the member opposite has not understood the intent of this legislation. This is not about returning licences but about acknowledging receipt of the notice of disqualification. This is actually about acknowledging disqualification, and you have to acknowledge receipt of the notice of it. What was previously

happening was people saying, 'I didn't receive it.' This is actually evidentiary evidence that you have received something. This is what it is about.

The Hon. S.G. WADE: So, to use the words of section 139BD(3)(a)(i), why does the government consider it is necessary for a person to attend at a specified location to personally acknowledge receipt rather than—

The Hon. CARMEL ZOLLO: To stop people claiming they haven't.

The Hon. S.G. WADE: What about the telephone; what about a letter; what about registered mail; what about a statutory declaration?

The Hon. CARMEL ZOLLO: I have just explained why we cannot use registered mail.

The Hon. S.G. WADE: No; with all due respect, the minister has not. If the issue is personal acknowledgment of receipt, why does the person actually to be there? After all, if you accept a statutory declaration from a person from Ceduna, why would you not do so in this context?

The Hon. CARMEL ZOLLO: It is about verifying the identity of the licence holder and the fact that the court at the moment is accepting non-receipt of a notice as a defence. We have learnt that this is what has been happening and we are trying to close this loophole. Our advice is that this is the best way that we can do it legally.

The Hon. S.G. WADE: Moving to another aspect of the minister's comments, I was surprised that the government is advising us that the government's own agency, the SA Police, does not think it is appropriate for it to receive notices and believes it is not its core business. This act has been brought in by the Minister for Road Safety, not the Minister for Transport; and road safety, as I understand it, is a key strategic goal of the South Australian Police Force, so I express disquiet that the government and the South Australian Police Force are not seeing police as part of this equation.

Apparently there are resource implications for police. I would put the other side of the coin: I would have thought this act would lead to a significant reduction in costs for the police in relation to aborted prosecution proceedings where police take a matter to court and then are stymied by an accused person who asserts that they did not receive a notice of disqualification. In terms of the cost benefit analysis, the cost to the police in accepting this responsibility under this clause would be significantly less than what they are currently bearing.

The Hon. CARMEL ZOLLO: I have just received some advice in relation to the locations. Apparently, the location is specified in the notice that the person receives and will not be in the regulations. I will move to report progress and bring in an amendment so that it will be brought in by regulation as well as specified in the notice itself; we will do both.

Progress reported; committee to sit again.

RAIL SAFETY BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 1141.)

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (12:45): When we were discussing this measure some time back, I indicated that there were a couple of issues I wanted to put on the record. First of all, the Hon. John Dawkins asked a question about the construction of the tramline extension. The tram extension was constructed by Coleman Rail, which has a contract to design and construct the tramline, as well as having the rail safety accreditation in South Australia to undertake that task. Also, my advice is that TransAdelaide, which is operating the trams, does have rail safety accreditation to operate trams and maintain the infrastructure. I trust that information adequately covers the issues raised by the Hon. John Dawkins.

The Hon. Dennis Hood raised some issues with the minister, and I think he indicated in his second reading speech that he had received a response from the minister. I agreed that I would at least put those issues on the record and acknowledge the Family First interest in these matters and the fact that the government had responded to them. The first issue related to the prescribed concentration of alcohol: that is to be prescribed in regulations, as provided for in clause 4—Interpretation—as follows:

prescribed concentration of alcohol means the concentration of alcohol present in the blood of a person that is prescribed by the regulations (being a specified amount, or any greater amount, of alcohol in 100 millilitres of blood);

It is intended to be prescribed consistently with regulation 9 of the existing Rail Safety Regulations 1998, which prescribes a concentration of 0.02 grams or more of alcohol in a 100 millilitres of blood for the purpose of section 30 of the existing act.

The Hon. Dennis Hood also referred to the interaction between the Occupational Health, Safety and Welfare (Penalties) Amendment Bill, which this chamber completed considering this week. He asked whether that bill harmonises completely with this bill. My advice is that clause 12 of the Rail Safety Bill provides that, if there were any inconsistency between that act or regulations and a provision in the occupational, health and safety legislation, the latter prevails to the extent of any such inconsistency. It is not considered that there is any inconsistency, but this model provision has been included in order to promote legal certainty should any question arise.

This provision does not concern the specific offences and associated maximum penalties referred to under each of the two pieces of legislation as, despite being analogous or comparable in terms of duties and penalty levels imposed, they are indeed different offences. Clause 59 of the Rail Safety Bill imposes duties and obligations upon a rail transport operator to implement and comply with their safety management system developed under this act, whereas section 19 of the OHS act operates more broadly for the provision of a safe work environment and safe system of work, etc.

Clause 15—No double jeopardy regarding offences and penalties—provides that, where a particular act or omission constitutes an offence under the Rail Safety Act and regulations, as well as under the OHS legislation, the offender is not liable to be punished twice in respect of the same act or omission. In practical terms, a prosecutor would determine which offence to proceed with, depending upon the circumstances, including which count is able to be made out on the evidence, maximum penalties available under legislation, etc. Such principles are, I understand, fairly routinely addressed by prosecutorial practices.

In the case of a breach of clause 59, the Rail Safety Bill proposes a maximum monetary penalty of $100,000 for a natural person and $300,000 for a body corporate. These penalties are identical to the division 2 penalties that apply for a first offence breach of section 19 of the OHS&W act, once amended by the Occupational Health, Safety and Welfare (Penalties) Amendment Bill, which was considered by this council earlier this week.

In summary, any given incident in any field may give rise to potential breaches under the same or more than one law, as well as common law claims. This is the case, for example, for a road crash that could give rise to multiple offences under both the Road Traffic Act 1961 and possibly the Criminal Law Consolidation Act 1935, and a claim for damages in negligence. Clause 12 of the rail safety bill aims to clarify the relationship between the rail safety and occupational health and safety legislation, should any apparent inconsistency arise. Clause 15 aims to ensure that a defendant is not liable to be punished twice for the same act and omission under those two laws. I trust that adequately addresses the issues raised by honourable members. I commend the Rail Safety Bill 2007 to the council.

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

HEALTH CARE BILL

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

[Sitting suspended from 12:55 to 14:15]

LAKE BONNEY

The Hon. SANDRA KANCK: Presented a petition signed by 124 residents of South Australia, concerning plans to drain Lake Bonney and build a weir at Wellington and requesting that the council will do all in its power to obtain water for urban and agricultural purposes that do not destruct the natural operations of the River Murray system.

WATER ALLOCATIONS

The Hon. SANDRA KANCK: Presented a petition signed by 135 residents of South Australia, concerning water allocations and River Murray environmental flows and praying that the council will do all in its power to promote the buy-back of water allocations by state and federal governments in order to improve environmental flows and support sustainable agriculture.

PAPERS

The following papers were laid on the table:

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

Reports, 2006-07—
Administration of the State Records Act 1997
Department for Transport, Energy and Infrastructure

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

Bio Innovation SA—Charter.
Review of the Operations of the Road Traffic Act (Drug Driving)—Report, September 2007.

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

Reports, 2006-07—
Dental Board of South Australia
Dog and Cat management Board
Food Act
Health and Community Services Complaints Commissioner
Medical Board of South Australia.
Nurses Board of South Australia
Pharmacy Board of South Australia
SA Ambulance Service
Upper South East Dryland Salinity and Flood Management Act 2002

WORKCHOICES

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:17): I lay on the table a copy of a ministerial statement relating to a WorkChoices report made earlier today in another place by my colleague the Minister for Industrial Relations.

DRUGS, ROADSIDE TESTING

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (14:17): I seek leave to make a ministerial statement.

Leave granted.

The Hon. CARMEL ZOLLO: I refer to the report on the first year of operation of the Road Traffic (Drug Driving) Amendment Bill 2005, which I recently laid on the table. The Rann government is committed to getting the message through to irresponsible drivers that they do not belong on our roads. When legislative measures to tackle drug driving in the Road Traffic (Drug Driving) Amendment Bill 2005 came into force on 1 July 2006, South Australia was only the third jurisdiction in this country to introduce random roadside drug testing.

The drug-driving testing regime means that any driver in South Australia can be stopped and asked to take a random roadside saliva drug test. The prescribed drugs police can test for are the active ingredients in cannabis (THC), methyl amphetamine, speed, and MDMA (Ecstasy). When the bill was approved by the parliament, the government included a review clause, which meant that a review of the operation of the random drug testing program would be undertaken.

Mr Bill Cossey AM was engaged to undertake the review, and a steering committee was also established, comprising senior officers from the Department of Transport, Energy and Infrastructure (DTEI), SA Police, Forensic Science SA and Drug and Alcohol Services SA. The independent review found that the legislation has been introduced efficiently and with a minimum of legislative, administrative or operational difficulties. There were 10,097 roadside tests conducted in the first year, and 294 drivers (one in 34) were found to have one or other of the three drugs prescribed by the legislation in their system. All 10,097 drivers were also tested for the presence of alcohol, and 147 were found to have blood alcohol levels in excess of the legal limit.

From a road safety perspective, the use of drugs when driving is of concern, and it is alarming that one in 34 drivers has tested positive to the prescribed drugs. The government has an

ongoing commitment to this road safety measure, and an extra $11.1 million over four years was allocated in the 2007-08 state budget for an expansion of roadside drug testing, reflecting the government's commitment to continue with a drug testing regime.

This is on top of $4.3 million previously allocated by the state government in the 2005-06 budget. The increased funding will mean that police can undertake around 39,000 tests per year. As the report outlines, SAPOL has reported a positive response from drivers who have been stopped to undertake a saliva test. A voluntary attitudinal survey of 400 drivers was undertaken by SAPOL while waiting for the results of the initial drug-screening test at the roadside.

Of the respondents, 98 per cent indicated support for driver drug testing; 97 per cent indicated that they were comfortable with the equipment used for the initial drug-screening test. This shows that road users are supportive of the introduction of random drug testing and that the time taken to perform the test is not considered to be an inconvenience. It is also worth members noting that, when parliament passed the legislation, it also provided police with the powers to request a drug screen or blood test when in the normal course of their duties they observe a driver committing a driving offence or driving in a manner that indicates impaired driving ability. Samples taken in these circumstances are analysed for a very broad range of drugs—including prescription—and not just the three drugs tested in the roadside drug-screening process.

Drivers can be charged under the provision of driving under the influence (DUI) as a result of this testing. The 18 recommendations listed in the report cover a range of issues including legislative and operational matters. As Mr Cossey states in the report, the recommendations aim to strengthen the already robust foundation established in the first 12 months as the implementation of more widespread driver testing proceeds in 2007-08. The government is considering all the report's recommendations, and I am taking advice about further strengthening some of those recommendations. For example, the report recommends giving people charged with a drug-driving offence information about accessing professional help. It may be more in line with public expectations that repeat drug drivers be treated in the same manner as repeat drunk drivers.

Similarly, in terms of consistency between the way in which drunk and drug-driving offences are treated, another of the report's recommendations is to increase the expiation fee for certain drunk-driving offences to better match the expiation fees for drug-driving offences. I have had some initial discussions with the Police Commissioner about the report's recommendations. As mentioned, I also intend to seek further advice from other interested partners involved in road safety in South Australia prior to bringing back any required legislative changes. Naturally, I intend to further discuss the implementation or otherwise of the bulk of the report's recommendations with my cabinet colleagues, bearing in mind that the community tolerance of people who use drugs and drive or who drink alcohol and drive, or both, is rightfully at an all-time low.

QUESTION TIME

MOTORCYCLE GANGS

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:23): I seek leave to make a brief explanation before asking the Minister for Police a question about outlaw motorcycle gangs.

Leave granted.

The Hon. D.W. RIDGWAY: Whilst the government's tough on law and order approach, in particular to outlaw motorcycle gangs, has been mostly talk and little action, we have seen some effect. I refer to an article in the *Sunday Mail* entitled 'Locals fear new bikie stronghold', which discusses concern of the community in the Para Hills West area about outlaw motorcycle gang activity in that area. According to the article, police minister Paul Holloway asked the police to examine the Para Hills West Working Club's application after being alerted about the concerns of nearby residents. Whilst the police are taking some action in the city, I have been alarmed to receive a number of phone calls from people in rural and regional South Australia about outlaw motorcycle gangs spending more and more time in their particular areas, in particular on weekends and, indeed, coming back and occupying the same premises each weekend. My questions to the minister are:

1. What strategy does the government and the South Australian police have to ensure that bikie gangs are not creating clubhouses and locations in our regional cities?

2. What additional resources are available to local police to handle an increased presence of bikie gangs, particularly on weekends, in our regional cities and towns?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:25): Obviously, this government's efforts in relation to outlaw motorcycle gangs has been effective, and a key part of that is the disruption of these gangs. The more successful the government is in disrupting these gangs, the more their activities will seek to diversify, the further they will spread and, hopefully, ultimately they will spread interstate and, indeed, overseas. They will be right out of our community. In relation to regional areas, SAPOL does have Operation Avatar, and the Police Commissioner announced a little while back how the operational organisation within the police force in relation to keeping tabs on motorcycle gangs would be significantly strengthened.

SAPOL has the capacity to, and does, monitor the activities of these outlaw motorcycle gangs, so I am sure that police intelligence is well aware of any changed behaviour in relation to these gangs and, of course, in relation to dealing with them. Not only was there a significant increase in officers assigned to the section that deals with outlaw motorcycle gangs but it was announced a month or two ago by the Commissioner that this government will be strengthening legislation and, of course, police have the capacity to use the Star Group and other well trained sections of the police force that can deal with any concentration of thuggery, if that is necessary. I assure the honourable member that there has been a significantly increased effort. The number of police officers devoted to dealing with outlaw motorcycle gangs has increased markedly.

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: If, in fact, those gangs are seeking to congregate outside the city then I think that is probably an indication that police efforts at disruption are being successful. I can assure people in the regional areas as well that the activities of the police will not stop and the harassment of those outlaw motorcycle gangs will continue right to the borders of the state. Indeed, one of the initiatives that the police have been taking is to ensure that we do get a coordinated response around the country. To that end, the Police Commissioner from this state, Mal Hyde, has been the head of a working group that has been looking, in a national sense, at outlaw motorcycle gangs. At the next police ministers conference coming up shortly, the Commissioner will be reporting on those activities.

So, not only are we doing everything we can to harass those gangs within the state but we are also trying to coordinate efforts across boundaries because ultimately, since these gangs are highly mobile, if we are to be effective in reducing their influence we do need to do it on a national scale. I am pleased to say that this state, through the Commissioner, is leading the efforts in adopting a national approach towards dealing with those gangs.

SPEED LIMITS

The Hon. S.G. WADE (14:29): I seek leave to make a brief explanation before asking the Minister for Road Safety a question about speed limits.

Leave granted.

The Hon. S.G. WADE: In *The Advertiser* dated 12 July 2007, under the heading 'Emergency crews need protection', the CFS chief officer Euan Ferguson called for the speed limit for passing stationary emergency vehicles to be lowered from 40 km/h to 25 km/h. I understand that this position is supported by the Country Fire Service Volunteers Association, the United Firefighters Union, the SES Volunteers Association, the Police Association and the Fire and Emergency Services Advisory Board. In contrast, *The Advertiser* reports that the Minister for Road Safety has indicated that she does not support the proposal, preferring to wait for a national approach on the issue.

Reducing the speed limit for passing stationary emergency vehicles to 25 km/h would make this offence consistent with similar offences in South Australia. For example, one already needs to reduce speed to 25 km/h in school zones, at roadworks and when passing a bus with children getting on or off. In these speed limits South Australia is already inconsistent with other states that specify 40 km/h in such zones. My questions to the minister are:

1. Why is national consistency so important in relation to provisions for the safety of emergency service workers but not for a range of other static road safety situations?

2. Considering that minister Laidlaw indicated, in moving the original amendment in 2000, that she looked forward to other jurisdictions introducing the speed limit, but seven years later none have, on what grounds does the minister consider that national consistency is possible?

3. Will the government support the chief officer of the CFS and seek national consistency at a 25 km/h limit rather than a 40 km/h limit?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (14:31): I thank the honourable member for his questions. Section 83 of the Road Traffic Act 1961 mandates a 40 km/h speed limit while passing emergency service vehicles displaying their red and blue flashing lights. Last year the SAFECOM Advisory Board, as we have just heard, sought advice on a further reduction of the speed limit to 25 km/h. Discussions were held between SAPOL and the Department of Transport, Energy and Infrastructure on the proposed reduction and other ways in which the safety of emergency services personnel working on or adjacent to roads could be enhanced. As a result, SAFECOM is to promote the use of the SAPOL Traffic Watch line within our emergency services agencies—a means of reporting drivers passing emergency vehicles at excessive speed, for subsequent SAPOL action.

I facilitated a multi-agency group to include SAPOL, SAAS and my agencies to develop a community education and awareness campaign about the current 40 km/h limit. This group will also work with SAPOL to improve enforcement and, once this campaign has been conducted and evaluated, if there has been no improvement the group will then consider other options. In the interim, emergency service personnel are being encouraged to improve 'near miss' reporting and to develop other strategies to improve incident scene safety.

DTEI and the emergency service organisations at this stage will continue to support the introduction of the 40 km/h limit with their national colleagues, because the national introduction of this limit will increase community awareness. In discussion with my Commissioner of Fire and Emergencies, I understand that one of the suggested ways forward was to issue warrants and putting up a sign in the same way that people undertaking road traffic works put up signs. I am not certain of the reason why this was discounted at the time, but it is something on which I have asked the Commissioner to continue further discussions in relation to our emergency services.

An option to grant approval for a temporary measure of a 25 km/h speed limit sign in certain circumstances would, on the surface, certainly alleviate that problem, but at the time it was not supported, and I have asked the Commissioner to go back and ascertain why. The honourable member asked whether I am supportive of the safety of my emergency service personnel, in particular the volunteers. Of course I am supportive of them, but national approaches are usually what most ministers seek for consistency throughout the nation and because that works well when people are driving interstate. It is not something I have ignored. I have facilitated meetings. I have also now asked my Commissioner to go back and re-engage emergency service workers in relation to seeing temporary signs being put up at the site of an incident. When those discussions are complete, I will probably be in a position to write back to the association, if indeed it raised this matter with the honourable member.

XENOPHON, HON. N.

The Hon. R.D. LAWSON (14:35): I seek leave to make a brief explanation before asking the Leader of the Government a question about Mr Xenophon's replacement.

Leave granted.

The Hon. R.D. LAWSON: In 1977, when the issue presently before the parliament in relation to Mr Xenophon came before the South Australian parliament, the Hon. Don Dunstan made a number of statements about the appropriate (to use his words) 'principle to be followed'. I remind members that in 1977 the South Australian Constitution contained provisions exactly the same as the federal Constitution relating to the filling of casual vacancies within the Senate. Those words provided that 'the new member must have been publicly recognised by a particular political party as being an endorsed candidate of that party.' The issue then was whether or not there was a party (formerly the Liberal Movement).

The government's legal advice—and the Hon. Don Dunstan agreed with it—was that there was no political party; so the words of the section did not apply and the parliament should follow principal and precedent. In relation to that the Hon. Don Dunstan said (and I quote from the *Hansard* of 7 December 1977):

> ...how are we to give effect to the voice of the electors expressed at the election when Senator Hall [who was the retiring senator] was elected to the Senate?

He said it had been proposed by the member for Mitcham (Hon. Robin Millhouse) that 'the nomination should come from a member of the grouping in the Senate team in which Senator Hall ran'—the grouping; not the political party but the grouping.

The Hon. Don Dunstan went on to say that the government of that day, endeavouring to do what was right, had 'come to the conclusion that it has no alternative but to support the nomination of the third member of that team.' He said nothing about the political parties; he talked about groups and teams.

Yesterday, in a very lengthy ministerial statement wildly critical of the Hon. Mr Xenophon, the Premier said that the Hon. Mr Xenophon was not a member of a political party, and he went on to say:

> As I have indicated, an eligible nomination can only be accepted by the joint sitting...if Mr Xenophon has publicly represented himself as the endorsed candidate of the No Pokies Campaign operating as a political party.

The government has been arguing strongly that Mr Xenophon is not a member of a political party and therefore the principle enunciated by Don Dunstan ought be followed here. I should also mention the statement made this day in another place by the Premier when he said that it was finally the intention of the Labor Party to nominate Mr Darley. My questions to the minister are:

1. These points were all obvious from the beginning. Why is it only today that the government has finally agreed to nominate Mr Darley?

2. Why did the government not announce before today its intentions in relation to Mr Darley, having regard to the fact that the Premier says it was and is the Labor Party's intention?

3. Why will not the government immediately convene an assembly of members to allow principle and precedent to be followed, to (once again, as the Hon. Don Dunstan said) give voice to the views expressed by the electors at the election of the retiring member?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:39): Yesterday I made a detailed statement to this council identical to that of the Premier which set out the many constitutional issues that are involved with the Hon. Nick Xenophon's move to the Senate. Don Dunstan's comments, if I heard the honourable member correctly, were about the Senate. Senate vacancies are filled under the Australian Constitution, and the amendments that have been passed in the Australian Senate. This state has its own Constitution, and any vacancy to be filled in this council needs to be done under the Constitution of South Australia, not the Australian Constitution.

In any case, whatever the issues were in relation to the Liberal Movement back in the 1970s, we all know that the honourable member who asked the question, along with his leader in the lower house, is probably one of the inheritors of the Liberal Movement tradition, unlike the conservatives within in the party such as the Leader of the Opposition and the former leader of the opposition, who come from the other faction in the Liberal Party.

Whether you compare the Liberal Movement as a political party with the No Pokies Campaign is a moot point. Whether or not that is the case, I would have thought that, particularly since the Hon. Sandra Kanck has raised with the Premier the issue of eligibility and given that it is justiciable, it is prudent and appropriate that the government should get legal advice in relation to it.

Whether or not the Liberal Movement is equivalent to the No Pokies Campaign in the context of whether or not it is a party under the terms of this state's Constitution I think is a matter on which any government would be wise to get advice from the Solicitor-General, and we will do that.

The PRESIDENT: Order! I think I can remember the last Senate position taking some time to fill.

CHELTENHAM PARK RACECOURSE

The Hon. R. WORTLEY (14:41): Will the Minister for Urban Development and Planning. provide the chamber with an update on the proposed rezoning of the former Cheltenham Park Racecourse?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:42): In 2006 the South Australian Jockey Club informed the state government that it planned to sell the Cheltenham Park Racecourse following a decision to discontinue horse racing meetings at the suburban racecourse.

As part of that sale process the jockey club required the land to be rezoned to allow the former racecourse land to be possibly used for purposes other than horse racing, such as residential and/or retail purposes.

In keeping with that request, the government has today released a formal rezoning proposal for the 49-hectare Cheltenham Park Racecourse site. The rezoning proposal is contained in a developmental plan amendment document that will form the basis of consultation with both the community and the Charles Sturt Council. That consultative process will continue until January 2008, when public submissions close.

As part of that foreshadowed amendment to the developmental plan, 13 hectares of the open space is proposed to be set aside in a single parcel. The proposed amendment also includes provision for a range of recreation and sporting activities as well as stormwater management areas in the form of wetlands, creek lines and permanent water bodies. A further 4 hectares of open space will be used to create smaller pocket parks and landscape buffer areas throughout the new development.

The rezoning proposal provides for a high quality master plan residential precinct with large open spaces totalling more than 17 hectares or 35 per cent of the site, including a substantial wetlands area and a wide range of housing types. The plan will encourage the use of taller buildings and higher densities around the open space as part of a transit oriented development, which will integrate passenger rail and mixed use activities, including retail; linked walking and cycling trails throughout the development; integrated environmental sustainability principles such as on-site retention of stormwater and other water sensitive urban design features and passive solar designed housing; and a minimum of 15 per cent of the housing to meet the government's affordable housing requirements.

This proposed amendment to the development plan deliberately encourages the possibility of higher densities of living integrated with large areas of public open space as well as a public transport focus. The proposed new rules also encourage the development of a new railway station at Cheltenham in order to achieve greater integration between transport, living and community. The proposed Cheltenham Park Racecourse development will look to other successful models of transit-oriented development, such as those in Perth, which have already attracted great attention. However, it is proposed to have additional open space in this development, combined with integrated stormwater management and reuse measures.

In terms of the feel of the development, we want a vibrant inner-metropolitan suburb, and we are encouraging design features such as high-pitched rooves and front verandahs to provide a distinct community feel and orientation. I think it is an exciting plan that takes advantage of a prime location between the city and the sea. The DPA document proposes the creation of a new policy area called `Cheltenham Park policy area 69 within the City of Charles Sturt Development Plan.' The document includes a detailed design character description for the area and specific objectives and principles of development control.

The consultation process will be run by the Development Policy Advisory Committee, which is an independent statutory body that provides advice to the minister. Written submissions will be received until Friday 11 January 2008, and a formal public meeting will be held on 24 January 2008. Following the consultation period, DPAC will report to me, and I will decide whether to make any of those changes to the DPA and then whether to adopt the document. If the DPA is adopted, the zoning and policy changes will then be made to the City of Charles Sturt Development Plan.

CHELTENHAM PARK RACECOURSE

The Hon. T.J. STEPHENS (14:46): I have a supplementary question. Minister, will you provide us with the location of the transit-oriented developments in Perth upon which this development is modelled?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:46): There are a number of good examples of such redevelopments. There are some around Subiaco. I think an authority has been established in Perth (the West Perth Redevelopment Authority, or something like that). Certainly, there is a body that has a special capacity for redeveloping those inner areas of Perth, particularly West Perth, around Subiaco, there are of a number of lines that radiate out from Perth, the Joondelup line being one of them. However, there is also the other line that goes up through the north of Perth through the centre. In Perth, I understand they are spending $2 billion on a new light railway down to Mandurah. However, here in this state, when we have a $30 million extension

to the tramline, members opposite oppose it every inch of the way. I think that says a lot about members opposite: they think small and they act small.

CHELTENHAM PARK RACECOURSE

The Hon. M. PARNELL (14:48): I have a supplementary question. Will the government, either through the development plan amendment or through some other mechanism, ensure that development on this site meets the same type of environmental standards as those proposed for the Lochiel Park site?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:48): I invite the honourable member to have a look at the proposed DPA and, if he believes it can be improved, I invite him to make a submission in relation to that. As I have said, the consultation period does not end until January and there will be a public meeting later in January (24 January, I think). If the honourable member wants to make a contribution to that, he is welcome to do so. However, I point out that, with these high density proposals, the focus is on transit-oriented development, as well as the recreational walkways, water reuse and so on. I believe that, by any standards, it will be a leading development within our community.

SEXUAL ABUSE OFFENCES

The Hon. D.G.E. HOOD (14:49): I seek leave to make a brief explanation before asking the Minister for Police a question about another appalling decision by our courts in a recent case of horrendous sexual abuse.

Leave granted.

The Hon. D.G.E. HOOD: I have just returned from a protest outside the Supreme Court building approximately 30 minutes ago. It was organised by victims of child sex abuse. The protest concerned the appalling decision by the Court of Criminal Appeal on 12 October this year in the matter of the crown against a defendant identified as Mr P.

From about 1969 until 1989, three children were subjected to what the court acknowledged was a 'dreadful course of sexual abuse' at the hands of their own father, who was identified by the court as Mr X. Mr P then became involved in the course of abuse with the permission of Mr X, the victims' father. It was alleged that on three occasions from approximately 1974 to 1976 Mr P participated in sexual intercourse with the children—against their will obviously. When Mr P was finally brought to justice, thanks largely to the bill removing the statute of limitations for sexual offences (introduced by my colleague the Hon. Andrew Evans) he was sentenced to imprisonment for a period of five years and three months, with a non-parole period of three years.

That was not good enough for the sexual offender, who had his lawyers appeal the sentence, saying that it was 'manifestly excessive'. In the judgment, with Chief Justice Doyle dissenting, the court held that the whole of the sentence should be suspended because, among other reasons, if the defendant was sentenced to prison he would 'be at significant risk of further emotional harm whilst in custody'—this is the offender. My questions are:

1. Is the minister appalled that this sexual offender, who abused defenceless young girls on a number of occasions, has been allowed to walk free with no penalty whatsoever?

2. Is the minister, as the Minister for Police, concerned that the courts appear to be putting the needs of the offender above the need for justice and the protection of the victims?

3. How does this sentence accord with section 10(4) of the Criminal Law (Sentencing) Act? This section provides:

> A primary policy of the criminal law is to protect children from sexual predators by ensuring that, in any sentence for an offence involving sexual exploitation of a child, paramount consideration is given for the need for deterrence.

The PRESIDENT: Order! Just before the honourable minister answers, I remind the honourable member, when he asks those types of question, to be careful not to reflect upon the courts. The word 'appalled' reflects opinion and the honourable member should just be careful of that.

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:50): I was listening to the radio this morning and I did hear one of the victims of that assault speaking—if it is the case that I

believe the honourable member is referring to—and not only was the father of those girls guilty but I understand there were some other individuals who had also been let off by the courts.

As you rightly pointed out, Mr President, it is against the standing orders of this place to attack the judiciary and judicial decisions. As a matter of course I think it is important, if we are to make comments, that we should read all the facts and be aware of what the judiciary is taking into consideration. Many decisions made by the courts certainly frustrate me, and I am sure they frustrate the police and others when we read about them. However, it is important that we do have, under our Westminster system, a separation of powers, and the courts are there to interpret the law.

Nevertheless, I think the courts are responsive to public opinion. If there is public outrage in relation to particular decisions because the public believe that community standards are not being adequately reflected, then I think the judiciary do respond. We have some evidence of that in relation to some of the recent motor vehicle chases. I believe the courts have responded to the belief of the community that some of those sentences being handed down were not adequate. It has always been an issue, in relation to child abuse, that the penalties imposed are often out of kilter with community standards.

Apart from making those comments, all I can do is ask the Attorney to have a look at this particular case. If it has gone to the Court of Criminal Appeal there is only the High Court left in relation to such matters. I will ask the Attorney to examine the issues raised by the honourable member. All this parliament can do is continue to reiterate—through the increasing amount of legislation and the increase in penalties that have been provided, as well as the increased attention that has been given to all cases involving sexual abuse (including events in the Northern Territory), together with discussions taking place not just in this parliament but also in other parliaments—that the community believes that the courts need to deal with sexual abuse cases with more rigour than has been the case in the past. One can only hope that in future the courts will reflect the views the community hold—that penalties should be greater for these sorts of offences.

HORSERACING

The Hon. T.J. STEPHENS (14:55): I seek leave to make a brief explanation before asking the Leader of the Government, representing the Minister for Racing, a question about racing in South Australia.

Leave granted.

The Hon. T.J. STEPHENS: Mr President, you would be aware that recently in *The Advertiser* a leading trainer, David Hayes, commented that South Australia is the most unhealthy racing state in Australia. To further compound this, the opposition recently learned that industry revenue generated by wagering racing in the eastern states has dropped by somewhere in the vicinity of $1 million due to the effects of equine influenza. Whilst this is occurring, the cost to racing clubs in South Australia to combat the virus is rising. Vaccinations are underway, and we are advised that it costs approximately $20 to administer a vaccination to racing and breeding stock, of which there are around 6,500. This must be done twice and, following that, vaccination has to be ongoing. On top of this, there are veterinary costs of somewhere between $50 and $120 to administer each vaccination, so you are looking at an incredible amount of money. We are also advised that the industry could not cope with cuts to prize money, and this takes us back to the comments made by Mr Hayes.

Following the Bentley report into racing, the minister talked about wagering tax reforms that would greatly benefit racing. It was said that a figure in the vicinity of $7 million would be returned annually to the racing industry once the reforms were adopted. Nothing has happened, and the industry sorely needs assistance. The opposition understands that a once-off grant of around $3 million is required to alleviate the current crisis. My question is: will the minister commit either to doing this or to fast-tracking the tax reforms which he previously promised but which he has to date failed to deliver?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:57): I will refer that question to my colleague the Minister for Racing and bring back a reply.

OFFENDER DEVELOPMENT BUILDING

The Hon. I.K. HUNTER (14:57): I seek leave to make a brief explanation before asking the Minister for Correctional Services a question about the official opening of the Offender Development Building and the 20-year anniversary celebration of Mobilong Prison.

Leave granted.

The Hon. I.K. HUNTER: I understand that the Minister for Correctional Services recently opened the Offender Development Building at Mobilong Prison. Will she provide the chamber with some details about this new building?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (14:57): I thank the honourable member—

Members interjecting:

The Hon. CARMEL ZOLLO: Again, it is such a shame that members opposite are not interested in acknowledging the contribution of correctional services officers in this state. They just do not care. Last Friday, I had pleasure in attending a dual celebration: the official opening of the Offender Development Building and the 20-year anniversary of Mobilong Prison. The new $1.7 million Offender Development Building is now well placed to deliver important rehabilitation programs for prisoners at Mobilong both now and into the future.

The new building will accommodate the Mobilong intervention team, which comprises two full-time and one part-time psychologists, two social workers and one Aboriginal liaison officer. The Offender Development Building features an open space design for staff and two group rooms for program delivery. In addition, there are two interview rooms for one-on-one programs and a video-conference room for court video-conferencing.

The Intervention and Rehabilitation Programs Branch will deliver approximately 1,800 hours of programs to prisoners each year, which equates to 11,600 prisoner hours and 631 prisoners participating in programs. These programs include: alcohol and other drugs, anger management (for Aboriginal and non-Aboriginal offenders), the Break Even gambling program, parenting, violence prevention, victim awareness, and financial planning. These programs will provide training and education for prisoners that will ensure that their re-entry into the community has a higher likelihood of success.

I also had the pleasure of taking part in commemorating Mobilong's 20-year anniversary. The construction of Mobilong was commissioned and opened in 1987 by the then correctional services minister, Hon. Frank Blevins. Mobilong is still regarded as a modern design, as well as being a truly safe and secure correctional facility.

It was an appropriate occasion to acknowledge the commitment of Mobilong's long-serving staff. The opportunity was also used as a reunion of past and present staff, with photographs taken to mark the day. Today, Mobilong can accommodate 290 male medium security prisoners. Of course, the government looks forward to a significant milestone, with the land adjacent to Mobilong to be the location for the new men's and women's prison due in 2011, costing over $400 million.

The new prison infrastructure investment is a vital step towards providing a safe community for all South Australians. The long service awards were presented to the following Mobilong staff: Bernard Gelston for 25 years' service; Robert Creaser, John Gaston, Dennis Payne, Roger Benton, James Cannard, Patrick Welby, Geoff Dobbins, Steven Russell, Robert Schmidt, Robert Coupland, Mark Taylor, Robert Hancock, John Whimpress and Neil Wilkes for 20 years' service; Bruce Pfieffer, Carol Zulian, Peter Binney, Tony Abbondandolo and Karen Walding for 15 years' service; and Ricki Ayres, Diana Banks, Graham Pool and Kevin Vandenbrink for 10 years' service.

JUDICIARY, EDUCATION

The Hon. SANDRA KANCK (15:01): I seek leave to make a brief explanation before asking the Minister for Police, representing the Attorney-General, a question about the education of judges and magistrates in South Australia.

Leave granted.

The Hon. SANDRA KANCK: This morning, as has already been noted, a woman named Maryanne was interviewed on Radio 891. She and her sisters were sexually abused. One of the men who abused them when they were still children has been found guilty of their abuse and was

sentenced to five years and three months imprisonment. However, the Court of Criminal Appeal has overturned the imprisonment, and that man has walked free. In 1993, before I became a member of this place, following the infamous 'rape in marriage' comments made by former justice Derek Bollen, I collected more than 11,000 signatures on a petition which, amongst other things, called for the mandatory education of judges.

The lifelong impact of sexual assault on victims is clear; as Maryanne pointed out this morning, it does not heal as a broken leg does. Consequently, the importance of the judiciary recognising this cannot be overstated. My questions to the minister are:

1. What training specifically around issues of the impact of sexual assault is currently on offer to the judiciary?

2. Is there any obligation on our judges and magistrates to undertake such training? If so, what has been the rate of uptake of training, and are there any plans to improve on this?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:03): I thank the honourable member for her questions. I think I can only add to the comments I made earlier in response to the Hon. Dennis Hood. Certainly, on the face of it, it appears to be an amazing decision that the judge has made, and it certainly appears to be totally out of kilter with community values and standards.

The Hon. R.I. Lucas interjecting:

The PRESIDENT: The member should be careful.

The Hon. P. HOLLOWAY: I think the point about training raised by the Hon. Sandra Kanck is reasonable. Our judicial system can correctly and effectively operate only if the public has confidence in its decisions. I think it is important that the judiciary also explains its decisions, in case there are mitigating circumstances that we are unaware of, or there are factors that have not come out. It is important that the judiciary, to keep faith in our system, explains decisions. I know that the Chief Justice has certainly in the past had a radio spot and has been very innovative in terms of making the judiciary more accessible to the public in terms of explaining decisions.

If there are special factors that we are not aware of, it is certainly very much in the public interest that the public know about those so that it can understand decisions which appear on the face of it to be contrary to commonsense and community sentiments. Again, I think that the point raised by the Hon. Sandra Kanck is reasonable.

I know that the judiciary do have some forms of training, but I will refer her question to the Attorney-General and bring back a reply. Given the increased interest we have had and the changes to legislation in relation to these child sexual abuse cases, particularly cases going back many years, it is perhaps a pertinent question that we do consider what training or information is available to the judiciary in relation to those matters

BEULAH PARK FIRE STATION

The Hon. J.S.L. DAWKINS (15:05): I seek leave to make a brief explanation before asking the Minister for Emergency Services questions about the Beulah Park Fire Station.

Leave granted.

The Hon. J.S.L. DAWKINS: On Tuesday of last week the minister responded to a question from the Hon. Russell Wortley regarding efficient energy technology in new fire stations. In her answer, the minister referred to the Beulah Park fire station, which is currently under construction. I understand that it is expected to be operating in the very near future. My questions are:

1. Will the minister confirm that SA MFS management has not budgeted for the staffing of this new station?

2. Will the minister confirm that to cover this budget shortfall the backup appliance, otherwise known, I think, as pump 2, from the city fire station will be assigned to Beulah Park for an undetermined period of time.

3. What effect will such a move have on the overall capability of the city station?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (15:06): I thank the honourable member for his question in relation to the

Beulah Park fire station construction. As the honourable member would be aware, as I am sure we are all aware, South Australia is experiencing a residential and commercial construction high. So, I guess any suggestion of any perceived delay is not a result of any process or program within the MFS.

I say for the record, as I responded to the question from the Hon. Russell Wortley the other day, that we have taken the opportunity to use this time to adjust the program to dramatically deliver increased green initiatives in the building design for the $3.95 million Beulah Park station. This includes increasing the capacity of the grid connected photovoltaic solar panels from an originally planned 2 kilowatt capacity to 12 kilowatt capacity— a 6 fold increase.

Members interjecting:

The Hon. CARMEL ZOLLO: Obviously members opposite are not interested to hear that. I think it is a good thing. Without any increase to the project budget—

Members interjecting:

The Hon. CARMEL ZOLLO: Members opposite asked about the budget, so I am telling them about the budget. The other thing I place on the record is that the operational response is never compromised because the Glynde station remains until the Paradise and Beulah Park stations are online. All new MFS stations are built with two bay facilities for operational flexibility. The majority of MFS stations are, however, single appliance stations, unless there is an identified need, and we see that sometimes in commercially high risk areas. As I said, the Beulah Park station has been delayed somewhat because of the tremendous construction that we see in our state, which is, of course, welcome, I am sure.

The construction of the new Beulah Park fire station will replace the Glynde station at a total cost of nearly $4 million over the two budget years of 2006-07 and 2007-08. We will see the commencement of construction of the new Paradise station at a cost of $4 million over two years between 2007-08 and 2008-09 and, of course, we will also see the commencement in Port Lincoln, as well over two years. I think I have already placed on the record on a number of occasions the capital projects delivered during 2006-07, so I will not repeat those for the chamber.

Members interjecting:

The Hon. CARMEL ZOLLO: Members opposite are never interested to hear all the good things that this government does. Service to the community in South Australia will never be compromised.

BEULAH PARK FIRE STATION

The Hon. J.S.L. DAWKINS (15:10): Will the minister confirm that the management of SAMFS has not budgeted to staff this new station at Beulah Park?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (15:10): I have full confidence in my fire chief, Mr Grant Lupton, to staff all stations appropriately.

METROPOLITAN FIRE SERVICE

The Hon. J.S.L. DAWKINS (15:10): Will the minister indicate whether the use of the back-up appliance from the city station will impact on the ability of other appliances and crews to access vital training courses?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (15:11): As I have just said, I have full confidence in my chief officer to ensure that the community of South Australia is always appropriately protected.

TOBACCO ADVERTISING

The Hon. J.M. GAZZOLA (15:11): I seek leave to make a brief explanation before asking the Minister for Mental Health and Substance Abuse a question about tobacco advertising displays.

Leave granted.

The Hon. J.M. GAZZOLA: Recently the minister informed the council about anti-smoking measures that will come into effect indoors at pubs, clubs, bingo venues and the Adelaide casino.

However, tobacco displays can also be a form of promotion of cigarettes, particularly to our young people. Will the minister inform the council of moves to reduce this type of advertising?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (15:12): I thank the honourable member for his courage in getting to his feet and asking that question in this forum.

Members interjecting:

The Hon. G.E. GAGO: We work on him! I am pleased to remind the council of these important measures that will come into effect on 1 November. Research has demonstrated that retail tobacco displays have become a potent advertising method, particularly for young and experimental smokers—and the honourable member would not qualify in that respect! Restrictions to the size of tobacco displays and accompanying grotesque graphic warnings will apply. Cigarette retailers are being reminded about next Thursday's introduction of point of sale restrictions on the display of tobacco products. These changes coincide with a complete ban on smoking inside hotels.

Retailers have one week left to ensure their point of sale displays comply with these new regulations. Cigarette retailers have been given ample notice of the new laws, and outlets are expected to comply as from 1 November. These laws are not only about preventing smoking but about creating an environment that helps current smokers to quit and those who have quit to remain smoke free. In fact, 23 South Australians die each week from smoking-related illness (or about 1,240 deaths a year in South Australia), the single biggest cause of premature death in our state. We know that those deaths are easily preventable by giving up.

Giving up smoking is no easy feat as those addictions are hard to beat, but nevertheless a lot of help is available. Having been a former smoker myself, I appreciate how difficult these addictions are. Like a lot of former nurses, I know that there is a high incidence of smoking among that occupational group. Giving up smoking was one of the hardest things I have done in my life, so I am very sympathetic towards smokers who face the challenge of giving up.

We will require retailers to display graphic health warning posters wherever cigarettes are displayed; these posters will depict images similar to those displayed on cigarette packages and will be changed annually. The poster for the first year shows the grotesque mouth cancer picture that I am sure many of us have seen already. We will restrict retailers to a maximum of three square metres of tobacco display, which must carry an A3-size graphic health warning poster, or alternatively to a display of one square metre, which must carry an A4-size poster.

Tobacco retailers will be permitted to display only one packet of each product, and no cartons of cigarettes are to be displayed. Specialist tobacconists will be allowed a small amount of additional display area to accommodate cigar ranges, and I am advised that some retailers are, in fact, choosing to put their tobacco displays completely out of sight rather than have to display the very graphic pictures of mouth cancer and so on. Exposure to tobacco product displays can wrongly increase a young person's perception that cigarettes are an acceptable part of every day life, and we know that they definitely are not. Having a graphic health warning next to any display will ensure that young people understand that smoking has serious and often grotesque consequences.

Tobacco retailers were directly notified about the point of sale restrictions in January when they were mailed an information booklet and when an advertisement was placed in *The Advertiser*. Further correspondence was provided to retailers last month, including the graphic health warning posters. Departmental staff have also met with tobacco wholesale representatives and many large retail outlets to further inform them of the restricted display requirements and to provide further clarification.

The 1 November bans are the next step in the government's tough approach to smoking, including the enforcing of on-the-spot fines for people who smoke in cars with children under the age of 16, enforcing on-the-spot fines to retailers who sell to those under the age of 18, increasing the annual tobacco merchants' licence fee to over $200 per year, and increasing the number of offences that can have an expiation fee applied from 10 to 28.

TOBACCO ADVERTISING

The Hon. C.V. SCHAEFER (15:16): I have a supplementary question. Is the government considering extending its ban on tobacco smoking to beer gardens and outside entertainment areas?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (15:16): I have spoken about this previously in this place, and have requested my department to look at the most recent data available to give me advice regarding the evidence base of the impact of passive smoking outdoors. I am yet to receive that report, but when I do I will use that information to consider any further moves in terms of smoking.

TOBACCO ADVERTISING

The Hon. I.K. HUNTER (15:17): I have a supplementary question. Will the minister consider extending such smoking bans to the outside areas and environs of Parliament House?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (15:18): Clearly, I would need to consult with my colleagues.

Members interjecting:

The PRESIDENT: Order! It all sounds like a weight loss program to me; stand outside the hotel smoking.

NATURAL RESOURCES COMMITTEE: DEEP CREEK

The Hon. C.V. SCHAEFER (15:18): I seek leave to make an explanation before asking the Minister for Environment and Conservation a question about the Natural Resources Committee report on Deep Creek.

Leave granted.

The Hon. C.V. SCHAEFER: The committee today tabled the minister's response to our report on Deep Creek, and to say that her response was disappointing and inadequate would be an understatement. In particular, I refer to parts of her reply to our recommendation 8 that 'ForestrySA removes portions of its Foggy Farm plantations to maintain permanent buffers in the hydrologically effective areas of between 20 and 100 metres either side of Foggy Farm tributaries as detailed in the evidence provided by Dr O'Loughlin.'

In part, the minister's response says things like, 'The government believes the committee is unjustified in weighing the anecdotal evidence to the level reported, as no scientific evidence has been presented to indicate that the Upper Deep Creek catchment could ever be determined as a perennial stream.'

She further says, 'This does not take into account that Foggy Farm was a heavily grazed property and considered to be degraded prior to purchase by Forestry SA' and other lengthy statements such as that. My questions are:

1. Does the minister consider the extensive report provided by Professor Emmett O'Loughlin, who is the founding director of the CRC for Groundwater Catchment Hydrology and an internationally recognised and respected hydrologist, which report was provided to her by the committee—does the minister consider that report to lack science and be purely anecdotal? If so, why and on what does she base that assumption?

2. What evidence does she have that the property was degraded prior to purchase by Forestry SA? If she has that evidence, was it ever provided to our committee?

3. Did the minister read the report or merely take the word of her agency, which was heavily criticised within the report by our committee?

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (15:21): I thank the honourable member for her important questions. By way of background, Forestry SA owns and operates pine plantations totalling a couple of hundred hectares at least in the upper catchment area of Deep Creek. These plantations have been established progressively over the years and occupy quite a bit—just under 10 per cent—of the Deep Creek catchment area.

Plantation forestry is one of a number of factors that impact on catchment hydrology. Others include the location and number of dams and also the changes in the climatic and rainfall patterns. Farm dam numbers have increased in the catchment, and the aggregate volume—

The Hon. C.V. Schaefer: They have not.

The Hon. G.E. GAGO: The advice I have been given is that farm dam numbers have increased in the catchment, and the aggregate volume has approximately doubled since the forest was first established. That is the advice that I have been given, at least.

In addition, rainfall observed at a nearby weather recording station indicates a declining trend. I have been advised that, since 1980, only seven years had rainfall that either reached or exceeded the long term mean, and this is in contrast to the decade of the 1970s, when seven of the 10 years had rainfall in excess of the long term mean.

Concerns have been raised by several neighbouring land-holders that the forest has impacted negatively on local hydrology, with a decline in stream flows and native vegetation along water courses at Foggy Farm. The Natural Resources Committee of parliament has conducted an inquiry into Deep Creek and its tributaries, with particular reference to the impact of forestry activities and dams, water use and changing rainfall levels.

A joint submission by the Department of Primary Industries and Resources, Forestry SA, the Department for Environment and Heritage and the Department of Water, Land and Biodiversity Conservation (DWLBC) was made to the NRC. The NRC's Deep Creek report has made a number of findings regarding plantation forest development in Deep Creek, and a government response was recently tabled.

I am advised that the Department of Water, Land and Biodiversity Conservation with the Mount Lofty water allocation planning process has already put in practice a number of actions proposed by the committee report, and a number of those are in place already. If I recall, the government has given support for eight out of the 10 recommendations, so it has been quite responsive.

I have also asked the Department of Water, Land and Biodiversity Conservation to consider those recommendations and to provide me with further advice about the recommendations of the committee and their ongoing application. I understand that a range of different expert advice was provided to the committee. I have briefly looked at the report, and I have received a briefing on it as well. The expert departmental advice has been written up as a report, and we have supported eight of the 10 recommendations.

HEALTH CARE BILL

Second reading.

The Hon. G.E. GAGO (Minister for Environment and Conservation, Minister for Mental Health and Substance Abuse, Minister Assisting the Minister for Health) (15:26): 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.

South Australia has a very good public health system staffed by very committed health professionals and administrative staff. It is also well supported by volunteers and communities. It consistently provides safe and effective health services for South Australia's population. However, it is governed by legislation developed over 30 years ago which is now in need of major reform if it is to respond positively to the contemporary and future healthcare demands.

In South Australia's Health Care Plan recently announced by the Government, there is recognition of the fact that consistent with national and international experiences, South Australia faces a number of increasing challenges to and demands on its health services. These include an ageing population, the increasing incidence of chronic diseases, changes in medical technology, ageing infrastructure, challenges in recruiting and retaining health professionals and higher expectations about the range, safety and quality of services.

These challenges to the health system will make it increasingly difficult for the public health system to meet the demands in a cost effective and equitable way unless reforms to the health system are instituted.

These are also some of the pressures and trends identified in the Generational Health Review (GHR) report which provided the impetus to begin the reform process needed for our public health system.

The GHR report guided the initial directions for structural reform of the public health system in South Australia. It clearly identified fragmentation and duplication of planning, funding and governance arrangements as major inhibitors to the development of a coordinated health system and a systemic approach to improvements in health outcomes for South Australians.

It recognised a need to shift the health system to a greater population focus, a primary health care approach and an accident and illness prevention focus.

Released in 2003, the Government's response to the GHR, First Steps Forward, established the initial reform process including the establishment of three metropolitan health boards:

- Central Northern Adelaide Health Service (CNAHS)
- Southern Adelaide Health Service (SAHS)
- Children Youth and Women's Health Service (CYWHS).

These Boards became responsible for the governance and delivery of health services in their regions and some statewide services, such as dental and drug and alcohol services.

Following on from these initial reforms, in July 2006, the seven country health regions were consolidated into one regional country body, Country Health SA. However, responsibility for the delivery of health services in their local communities remained with the then 44 local country hospital boards.

These governance changes were instrumental in setting the direction of the reforms. The Health Care Bill 2007 before the House represents a critical opportunity to make more fundamental reforms to the governance arrangements for the public health system. Without these reforms South Australia risks having a public health system that is incapable of meeting the challenges identified in the GHR report and by other national and international bodies to provide a more sustainable public health system with better and more equitable health outcomes for its population.

This Bill provides a sound legislative framework to address the challenges ahead. It repeals the South Australian Health Commission Act 1976, the Hospital Act 1934 and the Ambulance Services Act 1992 and relevant functions have been incorporated into this Bill.

Greater coordination and less fragmentation of services and reduction of unnecessary duplication in the planning and delivery of service have been clearly identified by the GHR report as vital to providing better services and health outcomes. The key governance changes under the Health Care Bill will enable the Chief Executive of the Department of Health to have the overall responsibility for and greater control over services provided by the public health system. This will enable the public health system to have a much greater capacity to act as a coordinated, strategic and integrated system.

The Bill ensures that the Chief Executive (CE) of the Department of Health will be responsible to the Minister for Health for the management, administration and delivery of public sector health services in the State. The CE will have the powers to direct public health services and staff, and will be subject to direction from the Minister. However, consistent with what exists in the South Australian Health Commission Act, neither the Minister nor the CE will be able to give a direction concerning the clinical treatment of a particular person.

Two other well identified areas requiring reform are to orientate health services towards a greater population focus and primary health care approach in the planning and delivery of services and to ensure that communities are engaged in planning health services.

These are reflected in the Bill's objectives and principles. They state that health services need to be part of an integrated system supporting health promotion, disease, accident and illness prevention and the safe and effective management and treatment of disease, illness and injury.

They also state that service providers should engage with the community and volunteers in the planning and provision of health services and to encourage responsibility at individual and community levels for the promotion and development of healthy communities and individuals.

Importantly the Bill's principles recognise the health needs of Aboriginal people and the need for the health system to support values that respect their contemporary and historical cultures. This, I believe, is a very important principle and has been well supported by Aboriginal organisations. It orientates the health system far more strongly towards providing services that can work well with Aboriginal communities.

Another principle requires the planning and provision of health services to take into account the needs of people living and working in country and regional areas of the state. Again, this will support the delivery of services for people living and working in our country regions.

To simplify the current governance arrangements and consistent with providing greater accountability, the metropolitan boards will be dissolved. However the metropolitan regions as incorporated hospitals will remain but be managed by a chief executive officer accountable to the Chief Executive of the Department.

The capacity for providing independent advice is addressed in the Bill by the establishment of the Health Performance Council. The Council will ensure that the Minister can have access to high level advice independent from the Department and provides greater public accountability for health outcomes. Having a single body will also support a more consistent and strategic approach in providing advice.

The Health Performance Council will evaluate and report on the overall performance of the public health system in relation to agreed outcomes. It will produce an annual report to be tabled in the Parliament as well as a substantial four yearly report. This latter report will identify significant trends, health outcomes and future priorities of the health system. It will review the health system as a whole, including the public, private and non government systems involved in the provision of health services. The four yearly report will also be tabled in the Parliament and the Government will provide a response to the Parliament within 6 months of it being tabled.

The Health Performance Council will be made up of persons appointed by the Governor and these members will be persons who collectively have the knowledge, skills and experience necessary to enable the Health Performance Council to carry out its functions effectively. They will not be on the Council to necessarily represent the interests of particular groups but to be able when required, to provide sound advice about the needs of particular groups or on specific issues. To this effect the Government will ensure that we consult a wide range of bodies in order to determine the best possible membership, and the regulations will prescribe the key bodies that at a minimum must be consulted before making recommendations to the Governor.

As soon as the Bill is passed we will be seeking the views of a range of bodies regarding the membership of the Council.

To further support the capacity of the Department and the Minister to have access to independent advice, and in particular that of local communities, the Bill provides for the establishment of Health Advisory Councils (HACs) as either incorporated or unincorporated bodies. Where a HAC holds assets it will be an incorporated HAC governed by a constitution. Where it is an unincorporated body, it will be governed by a set of rules. The primary purpose of these Councils is to provide advice on health and service issues, planning and resource allocation, and advocate on behalf of the local community, population group, service or issue the Councils are established in relation to.

In the country, following extensive consultation with hospital Boards, we propose to establish the Country Health SA Board as an incorporated HAC, responsible for providing the Minister and the Department of Health with advice on health and service issues and planning and resource allocation for the whole of country South Australia.

The Government also intends to establish incorporated HACs to replace country hospital and health service Boards. These HACs will be incorporated unless they choose not to be. This will generally be the case when they do not manage assets. The establishment of HACs to replace country Boards will ensure the strong link between country communities and local health services is maintained. These HACs will undertake a range of advisory and advocacy functions, including the ability to raise funds if they choose and playing a significant role in processes for the selection of senior management of the local hospital or health centre.

The membership of the Country Health SA HAC and these local country HACs will, as a transition arrangement, be drawn from the existing Boards. HAC membership will be determined by the individual HACs constitution, and will generally consist of appointed and elected positions. Again, to support community involvement, the majority of members will be local community

members elected at an annual general meeting. The Minister will have the capacity to appoint up to 3 members.

To suit the purposes of specific Councils to meet local needs or for example, the needs of bodies such the Country Ambulance Volunteers Health Advisory Council to be established under the proposed Act. The Minister will, subject to consultation, have power to vary the membership functions and powers of a HAC.

The CHSA Board will be established as an incorporated HAC acting as an 'umbrella' body for all country HACs. This Board will have similar functions to a local HAC but also have additional functions and powers that will enable it to hold and manage assets. The CHSA Board will continue with its advisory role in planning the location and types of services and the allocation of resources provided by Country Health SA. Members of current CHSA Board will be transitioned into the new body until such time as new membership is required.

In relation to HACs, the Bill gives powers to the Minister to amalgamate HACs, transfer the assets of a HAC or dissolve a HAC. This is consistent with the need to ensure services are allocated on the basis of need and to maximise the efficiency with which they can be provided.

In addition, the Bill has provisions describing the process that must be followed should there be a need to transfer any assets or abolish a HAC. The Bill ensures that the Minister must consult with the relevant HAC and that the Minister is satisfied that there has been a reasonable level of consultation with the community before any actions are taken. Where agreement is not reached, mediation is required. The Bill also provides for the regulations to prescribe the criteria which must be met before actions such as transferring assets or dissolving a HAC can occur. These criteria would include for example, the lack of demand or need for a service, the ability to ensure availability of qualified staff, and reasonable access to alternative services.

These provisions in the Bill and the regulations ensure that the principles of consultation with community and relevant bodies are maintained. They also support a balance between the powers to transfer or amalgamate assets that are necessary to ensure the health system can operate safely, effectively and efficiently and the right of local communities to have a strong voice about the use of their assets.

Unincorporated HACS will not hold assets but will have important advisory functions. They may be established for parts of the metropolitan area or for particular population or service groups. For example, the Country Ambulance Advisory Committee will become a Country Ambulance HAC that advises on issues for the volunteer ambulance service providers. The Country Ambulance Advisory Committee is well established and the principles of electing members will be reflected in their rules.

Under the proposed Act the Government will establish a HAC for veterans and as part of this will consult with organisations such as the RSL and other relevant bodies to determine the membership, functions and other matters that should be part of the Rules. Should the Repatriation General Hospital become part of Southern Adelaide Health Service, the Minister can establish, in consultation with its Board, a HAC for that hospital site.

The Bill provides for the establishment of incorporated hospitals. The existing three metropolitan regions, Central Northern Adelaide Health Service, Southern Adelaide Health Service and the Children Youth and Women's Health Service will be maintained as incorporated hospitals. Country Health SA will be established as the incorporated hospital for the country region. These incorporated hospitals will be administered by Chief Executive Officers. As suggested earlier, the Repatriation General Hospital will remain as a separately incorporated hospital with its own board unless it chooses to become part of Southern Adelaide Health Service.

Staff of the incorporated hospitals will maintain their Fringe Benefits Tax entitlements under the Fringe Benefits Tax Assessment Act 1986. The Department has been formally advised of this by the Australian Taxation Office which has ruled that the three metropolitan incorporated hospitals and the Repatriation General Hospital are hospitals for the purposes of Fringe Benefits Tax exemptions. The Australian Taxation Office is examining information from Country Health SA to determine its status as an incorporated hospital for Fringe Benefits Tax purposes. The Department expects that the Australian Taxation Office will make a similar ruling as for the other incorporated hospitals.

The Bill provides that health service staff will be employed under the proposed Health Care Act 2007.

Consistent with the Statutes Amendment (Public Sector Employment) Act 2006, the Chief Executive of the Department of Health will be the employing authority for all staff across the portfolio and will assign staff to the incorporated hospitals and the South Australian Ambulance Service as appropriate.

Transitional arrangements in the Bill provide for employees under the South Australian Health Commission Act 1976 and ambulance officers under the Ambulance Services Act 1992 to be assigned to work where they are currently employed without alteration to their conditions of employment and with recognition of current entitlements and awards.

Clerical and administrative staff under the Ambulance Services Act 1992 will also translate to employment under the proposed Health Care Act without loss of conditions.

Under the Health Care Bill the Ambulance Services Act 1992 will be repealed and the functions of SAAS will be managed under a new arrangement within the Department. The Bill ensures that SAAS will remain as an identifiable incorporated entity. Consistent with the incorporated hospitals, it will be managed by a chief executive officer. Services and staffing levels will remain unchanged under the proposed new governance arrangements.

It is important to note that SAAS does not operate as a commercial provider and, consistent with National Competition Policy principles, it is to the benefit of the community that it remains as the sole provider of emergency ambulance services in South Australia.

The Bill in its principles, makes it clear that it is in the public interest to have a single provider of emergency ambulance services to ensure that the maximum efficiency in terms of prioritising of calls, allocations based on need and nearest access to the service can be achieved in an emergency situation. Having a single provider will minimise the risk to the public that might arise from delays resulting from needing to coordinate a number of emergency ambulance services providers when a local, regional or statewide medical emergency arises. It will ensure the most efficient delivery of emergency ambulance services, consistent and appropriate standards of training and service delivery where lives are at risk, and a single system where a coordinated and unified response is required.

The licensing and exemption provisions of the Ambulance Services Act 1992 will be part of the Health Care Bill.

While SAAS will not be required to have a licence, the Bill requires non-emergency ambulance providers to have a restricted ambulance licence. Private operators will continue to be able to transport patients in non emergency situations where a clinical decision has been made that a patient requires a level of assistance for transfer between locations.

Transitional provisions will ensure that businesses currently holding a licence to provide non emergency ambulance services can continue to do so under the conditions of their licence for a period of 12 months. After that time they will need to apply for a restricted ambulance service licence under the new Act.

While the provision of emergency ambulance services will be restricted so that these can only be provided by SAAS, the Bill allows other emergency ambulance services to be exempted from the licensing requirements and enables them to provide emergency ambulance services as they do currently. It is our intention to exempt certain services including the State Rescue Helicopter Service, patient retrieval services arranged by hospitals and medical practitioners and the Royal Flying Doctor Service.

In the interests of public health and safety the Bill will enable SAAS to authorise a person holding a restricted ambulance service licence to provide an emergency ambulance service in the case of a State emergency.

These licence holders will also be able to provide emergency ambulance services if the condition of a patient being transported by the operator suddenly deteriorates and they have taken reasonable action to contact SAAS seeking authorisation to provide such a service. To ensure that private operators act within the intent of this section of the legislation, SAAS can require them to provide a written report on the circumstances of the particular case that required them to operate as an emergency ambulance service. The fitting and use of appropriate lights and sirens will be subject to further consultations when drafting the regulations for this Bill along with consequential amendments to other regulations.

The Bill will also have provisions to allow the remaining country ambulance service operators to be exempted from certain provisions so they can continue to provide emergency ambulance services and there will be no change to the ambulance services currently provided.

The Bill has a specific provision to enable SAAS staff or volunteers to use force to enter premises. On occasion they have needed to use force to enter premises where it was believed that a person was in need of medical assistance and the police were unavailable to access the premises for SAAS in a timely manner. In such circumstances, SAAS acts in what it believes to be the best interest of the person, although no such express powers exist in the Ambulance Services Act 1992. This has created some uncertainty for SAAS staff and volunteers.

The Bill addresses this issue and gives powers to SAAS staff, including volunteer staff, to use force to enter premises where they reasonably believe that a person is in need of medical assistance. SAAS will develop a set of protocols or procedures that staff must follow for the purposes of this section. Included in these will be the need to contact the police in the first instance. These protocols will largely reflect current practices, but remove the uncertainty for SAAS where staff have had to forcibly enter premises in the past.

The quality and safety of health services is a prime concern of the public and health professionals. It is also an important consideration of the Bill. The Bill has much clearer provisions than those in the South Australian Health Commission Act 1976 to ensure quality and safety activities can be carried out in a way that ensures information that can enhance or protect public health and safety is publicly available, but at the same time, protect the confidentiality of persons providing information or having access to information that supports such an activity.

The quality improvement or research activities are protected in the same way as that currently provided for under section 64D of the South Australian Health Commission Act 1976. However the provisions in this Bill have taken into account recent Crown Law advice and court judgements to ensure persons or groups of persons conducting research into the causes of mortality or morbidity, or involved in the assessment and improvement of the quality of specified health services are properly protected from being legally required to make certain information public.

The provisions in the Bill support clinicians, managers and others to communicate openly and honestly in assessing the processes and outcomes of the provision of health services where there has been a significant adverse event and to make recommendations for system improvements. This is most likely to happen where those involved are secure in the knowledge that what they divulge cannot be made public or used in any proceedings. The Bill, in promoting full and frank discussion in a 'protected' environment for the purposes of facilitating quality improvement in health services, maintains the right to have access to or disclose information in the public interest. This is consistent with what is the current intent of section 64D of the South Australian Health Commission Act 1976. To further support participation in an analysis of an adverse event undertaken under Part 8 of the Bill, a provision is drafted enabling a person who believes they have been victimised as a result of this participation to take action that can be dealt with as a tort or under the Equal Opportunity Act 1984.

The Bill provides for a specific investigative procedure, a Root Cause Analysis, to be undertaken where there has been an adverse incident. Root Cause Analysis is a specific type of quality improvement activity which uses an investigative method to determine the underlying contributing factors leading to an adverse event. The purpose is to identify the system issues that result in adverse events occurring and to arrive at a series of recommendations to reduce the likelihood of the adverse event from occurring again. RCA has a systems focus. It does not review individual responsibility nor does it investigate performance, intentionally unsafe acts, criminal acts or acts relating to clinician impairment. These are left to the appropriate bodies such as registration boards or courts.

In drafting these provisions, account has been taken of interstate and overseas legislation and a 'best practice' document issued by the Australian Council for Safety and Quality in Health Care.

Importantly with these governance changes, the Bill has provisions for testamentary dispositions or trusts made or created before or after the commencement of the Act. These provisions ensure that they can be applied according to the testator's wishes or, in circumstances where this may no longer be possible, establishes a process to ensure that they are properly dealt with to minimise the risk of a testamentary disposition or trust failing.

The provisions do not derogate from the Trustee Act 1936 and ensure that the Attorney-General is consulted as part of the process where the Minister is to make a designation regarding the disposition of a trust to another entity where the entity to which the trust had originally applied, may no longer exist.

The Bill has provisions to allow trusts previously held by an existing local country hospital board to continue to be held for the same purpose by an incorporated HAC. This is intended to ensure that any gifts or bequests to those bodies will not fail.

These provisions are based on extensive consultations between the Attorney General's Department and the Department of Health.

The Government is also mindful of the need to be able to regulate the management, operation or winding up of any gift fund, or other funds or accounts. The Government is committed to the prudential management of such funds and accounts and aware of the potential taxation implications if appropriate regulatory provisions are not in place. Accordingly, a specific regulation making power is included to address these issues. However, it will also be necessary and appropriate that any relevant regulations operate subject to any requirements imposed by a trust, under another Act or by the general law with respect to the management or disposal of property, including so as to ensure consistency with the terms or conditions of any trust or gift.

Private hospitals will continue to be regulated under the Health Care Bill in the same way as they are under the South Australian Health Commission Act 1976. However this section will need to be reviewed and the Act will potentially need to be amended at some later stage to address any changes.

This is not directly relevant to the reforms of the public health system and therefore I do not intend to confuse matters that may arise from a review of these provisions with the governance reforms for the public health system.

The Bill provides for greater sharing of information with carers, health professionals and others involved in providing care, and balances this with the right of the patient to privacy. This is in response to the concerns of carers and families and clarifies the circumstances where information can be disclosed for on-going treatment and care of patients.

This Bill makes possible very important changes to the governance and orientation of our public health system. It also improves existing provisions or provides new provisions such as those for the better protection of public health and safety; for persons having made or who may consider making a testamentary disposition to a health service and for greater protection of staff and patients by giving powers to authorised officers to remove or restrain persons who are behaving offensively.

Transitional provisions will ensure that necessary by-laws, including those of health centres designated by the Governor, can continue until such time as they are re-issued or replaced under alternate arrangements.

The Bill as tabled is the outcome of a thorough consultation process and has incorporated many of the suggestions and recommendations arising out of this process. The responses from the regions and metropolitan area have been supportive of the reforms embodied in the Bill. For example, Southern Adelaide Health Service stated that 'it believed that the draft legislation appropriately translates the Government's announced directions for health system governance. It is recognised that the intention of the Bill is to create a unified, single public health system with improved statewide coordination and integration of public health services. The establishment of both the proposed Health Performance Council and the Health Advisory Councils are welcome initiatives and are important to further enhance the community and consumer interface that has been an important focus of health reform to date.'

The RSL also acknowledged the 'need for improvements to the public health system' and offers 'our support to these changes, designed to provide a unified and coordinated health system for the future'.

The country region, where there will be a significant impact, has been particularly supportive and it is appropriate to read some of their comments.

The Country Health SA Board—'would like to express appreciation of the open manner in which the whole process has been conducted and in particular to the Minister for Health for his responsiveness to the comments offered from time to time by Country Health SA and to the views expressed by country people in general. The Minister has remained faithful to a vision of stronger

and more sustainable health services for country residents delivered closer to home and to maintaining the strong connections between local communities and the health services which have developed over many years. The Country Health SA Board thanks the Minister for the consistency of his approach and for his support for country health services in the context of this major change to governance arrangements. The Board supports the general thrust of the draft Bill and wishes to express its support for the following aspects of the Bill.' The comments from the Board went on to list support for a range of provisions in the Bill, including: the object of having an integrated system that provides optimal health outcomes for South Australians; the principles of the Bill; inclusion of representatives with knowledge of Aboriginal issues in the model constitution and rules for HACs; and the establishment of the Health Performance Council.

Aboriginal Health Council SA—stated it supports the overall objective of the Bill, to ensure a health system that is accessible, safe, and reliable for all residents of SA.

Mid North Health—while Mid North Health commented it would prefer to remain as a Board, it also stated 'we have welcomed the opportunity to be involved in the consultation about the draft, enabling us to have input to produce an outcome that is as 'user friendly' as possible'.

Ceduna District Health Service—'Board are in support of the intent of the proposed legislation, in particular the board feel that the proposed role of the HACs is much more in line with what community members believe the role of existing boards should be. That is, advocacy and provision of advice, rather than administration of clinical and corporate governance.'

Aboriginal Health Council—commented that it generally supports the processes that are in place at present and proposed for moving forward.

Yorke Peninsula Health—'the Board gives in principle support to the introduction of the Bill to underpin the transition to a systematic approach to future health care delivery'.

In closing I would say that all South Australians are entitled to enjoy a good long healthy life. To better support people to have this opportunity, the public health system needs to change to address the challenges before it and provide safe and effective health care and support to individuals and communities as well as supporting the full range of health professionals. The complexities of the contemporary health system require more direct responsibility and accountability for the services it provides.

As stated in South Australia's Health Care Plan, 'Improving the health and well-being of the South Australian community will require us all to take responsibility to develop a combined approach from individuals, community groups, government and non government sectors…'

The Bill will enable the development of a better more coordinated and integrated health service and support a stronger focus on the quality and safety of the services.

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—Interpretation

This clause sets out the terms that are defined for the purposes of the measure.

The following key definitions are specifically noted:

ambulance means a vehicle that is equipped to provide medical treatment or to monitor a person's health and that is staffed by persons who are trained to provide medical attention during transportation;

ambulance service means the service of transporting by the use of an ambulance a person to a hospital or other place to receive medical treatment or from a hospital or other place at which the person has received medical treatment;

emergency ambulance service means an ambulance service that—

(a) responds to requests for medical assistance (whether made by 000 emergency telephone calls or other means) for persons who may have injuries or illnesses requiring immediate medical attention in order to maintain life or to alleviate suffering; and

(b) is set up to provide medical attention to save or maintain a person's life or alleviate suffering while transporting the person to a hospital;

health service means—

(a) a service associated with:

(i) the promotion of health and well being; or

(ii) the prevention of disease, illness or injury; or

(iii) intervention to address or manage disease, illness or injury; or

(iv) the management or treatment of disease, illness or injury; or

(v) rehabilitation or on going care for persons who have suffered a disease, illness or injury; or

(b) a paramedical or ambulance service; or

(c) a residential aged care service; or

(d) a service brought within the ambit of this definition by the regulations,

but does not include a service excluded from the ambit of this definition by the regulations;

medical treatment includes all medical or surgical advice, attendances, services, procedures and operations.

4—Objects of Act

The objects of the measure are—

(a) to enable the provision of an integrated health system that provides optimal health outcomes for South Australians; and

(b) to facilitate the provision of safe, high-quality health services that are focussed on the prevention and proper management of disease, illness and injury; and

(c) to facilitate a scheme for health services to meet recognised standards.

5—Principles

A number of principles are to be applied in connection with the operation and administration of the legislation.

Part 2—Minister and Chief Executive

6—Minister

The Minister is to have a variety of functions in connection with the operation of the measure (to be performed to such extent as the Minister considers appropriate).

7—Chief Executive

The Chief Executive of the Department is to have a variety of functions in connection with the operation of the measure. The Chief Executive will be responsible to the Minister for the overall management, administration and provision of health services within the Minister's portfolio, to assume direct responsibility for the administration of incorporated hospitals and to ensure that the Department undertakes a leadership role in the administration of health services. The Chief Executive will also be required to ensure that the Department establishes and maintains consultation processes with members of the community, volunteers, carers and health service providers.

8—Delegations

The Minister and the Chief Executive will have the ability to delegate functions and powers.

Part 3—Health Performance Council

9—Establishment of Health Performance Council

The Health Performance Council (HPC) is to be established. The members of HPC will be constituted by persons who together, in the opinion of the Minister, have a variety of talents and a range of experience, skills and qualifications to enable HPC to carry out its functions effectively.

10—Provisions relating to members, procedures and committees and subcommittees

Schedule 1 sets out associated provisions with respect to HPC.

11—Functions of HPC

The functions of HPC will include to provide advice to the Minister about—

(a) the operation of the health system; and

(b) health outcomes for South Australians and, as appropriate, for particular population groups; and

(c) the effectiveness of methods used within the health system to engage communities and individuals in improving their health outcomes.

12—Annual report

HPC will be required to prepare an annual report, which will be laid before both Houses of Parliament.

13—4-yearly report

HPC will prepare a 4-yearly report that assesses the health of South Australians and changes in health outcomes over the reporting period. In particular, the report will be required (amongst other things) to—

(a) identify significant trends in the health status of South Australians and consider future priorities for the health system having regard to trends in health outcomes, including trends that relate to particular illnesses or population groups; and

(b) review the performance of the various health systems established within the State in achieving the objects of this Act.

The report will be laid before both Houses of Parliament. The Minister will be required to prepare a formal response to the report within 6 months after the receipt of the report.

14—Use of facilities

HPC may, with the approval of the responsible Minister or, if relevant, a responsible public sector instrumentality, make use of the staff, services or facilities of an administrative unit or another public sector instrumentality.

Part 4—Health Advisory Councils

Division 1—Establishment of Councils

15—Establishment of Councils

The Minister will be able to establish Health Advisory Councils (HACs) to undertake an advocacy role on behalf of the community, to provide advice, and to undertake other functions, in relation to health service entities, the Minister or the Chief Executive. The Minister may establish a HAC as an incorporated body or an unincorporated body.

16—Status

This clause makes provision with respect to the corporate nature of an incorporated HAC, and the powers and functions of HACs.

17—Constitution and rules

An incorporated HAC will have a constitution and an unincorporated HAC will have a set of rules.

Division 2—Functions and powers

18—Functions

This clause provides an indication of the functions that a HAC may adopt (as set out in the constitution or rules of the HAC). Subject to the Act, a HAC will be required to take into account the

strategic objectives that have been set or adopted within the Government's health portfolios. An incorporated HAC will be expected, with respect to the entity in relation to which it is established—

(a) to support and foster the activities and objects of the entity; and

(b) subject to this Act, to hold its assets for the benefit, purposes and use of the entity on terms or conditions determined or approved by the Minister.

19—Specific provisions in relation to powers

A HAC will require the approval of the Minister before exercising a number of specified powers.

Division 3—Related matters

20—Specific provisions in relation to property

This clause sets out a scheme for the transfer of assets, rights or liabilities of a HAC by a notice published by the Minister in the Gazette.

21—Accounts and audit

A HAC will be required to keep proper accounts and financial statements.

22—Annual report

This clause provides for the preparation of an annual report in connection with the operations of a HAC.

23—Use of facilities

A HAC may, with the approval of the responsible Minister or, if relevant, a responsible public sector instrumentality, make use of the staff, services or facilities of an administrative unit or another public sector instrumentality.

24—Delegations

A HAC will have the ability to delegate functions and powers, subject to any limitation or exclusion determined by the Minister.

25—Access to information

This clause sets out a specific power vested in a HAC to request the provision of information.

26—Common seal

This clause facilitates proof of the use of the common seal of an incorporated HAC.

27—Schedule 2 has effect

Schedule 2 sets out associated provisions with respect to HACs.

28—Administration

The Minister will be able to remove the members of a HAC from office on a ground specified by the regulations. The Minister will be able to appoint an administrator pending the appointment of new members. An administrator may act for a period of up to 12 months.

Part 5—Hospitals

Division 1—Incorporation

29—Incorporation

The Governor will be able to establish an incorporated hospital to provide services and facilities under the Act.

30—Hospital to serve the community

An incorporated hospital must be administered and managed on the basis that its services will address the health needs of the community (which may occur by focussing on 1 or more areas or sections of the community).

31—General powers of incorporated hospital

An incorporated hospital will have various statutory powers.

32—Common seal

This clause facilitates proof of the use of the common seal of an incorporated hospital.

Division 2—Management arrangements

33—Management arrangements

The Chief Executive will be responsible for the administration of an incorporated hospital. The Chief Executive will be able to appoint a person as the CEO of an incorporated hospital. Such an appointment will not prevent the Chief Executive from acting personally in a matter. This scheme operates subject to Schedule 3 with respect to the Repatriation General Hospital.

Division 3—Employed staff

34—Employed staff

This clause provides for an employing authority to employ persons to work in an incorporated hospital.

35—Superannuation and accrued rights, etc

This clause sets out various matters associated with the employment of persons at incorporated hospitals.

Division 4—Accounts, audits and reports

36—Accounts and audit

An incorporated hospital must keep proper accounts and prepare financial statements.

37—Annual report

An incorporated hospital will prepare an annual report.

Division 5—Sites, facilities and property

38—Ability to operate at various sites

This clause makes it clear that an incorporated hospital may be established or undertake its activities at various sites.

39—Ability to provide a range of services and facilities

This clause sets out some specific powers of an incorporated hospital, including to operate—

(a) sites that provide a variety of health services;

(b) health and community care services for all or specific sections of the community, including residential services for the aged and other vulnerable groups, or for persons who must interact with the public health system;

(c) other forms of service or facilities (including services and facilities that benefit (directly or indirectly) staff, patients or visitors, and services and residential facilities for the aged and other forms of accommodation).

40—Acquisition of property

The Minister will be able to acquire land under the Land Acquisition Act 1969 for the purposes of an incorporated hospital.

Division 6—Delegations

41—Delegations

An incorporated hospital will have the ability to delegate functions and powers.

Division 7—By-laws and removal of persons

42—By-laws

An incorporated hospital will continue to have power to make by-laws for specified purposes. A by-law must be approved by the Minister and confirmed by the Governor.

43—Removal of persons

This clause sets out a scheme to enable an authorised officer to take action in relation to a person who—

(a) is considered by an authorised officer to be acting in a manner that constitutes disorderly or offensive behaviour; or

(b) is considered by an authorised officer on reasonable grounds to be a threat to another person at the site; or

(c) is suspected by an authorised officer on reasonable grounds of being unlawfully in possession of an article or substance; or

(d) is otherwise suspected by an authorised officer on reasonable grounds to have committed, or to be likely to commit, an offence against any Act or law.

Division 8—Fees

44—Fees

The Minister will be able to set fees to be charged by an incorporated hospital in respect of services provided by the hospital.

Division 9—Rights of hospitals against insurers

45—Interpretation

46—Report of accidents to which this Division applies

47—Notice by designated entity to insurer

48—First claim of designated entity

These clauses replicate Part 3 Division 8 of the current Act.

Part 6—Ambulance services

Division 1—South Australian Ambulance Service (SAAS)

49—Continuation of SAAS

The SA Ambulance Service is to continue as a body incorporated under this Act. The staff of SAAS will include volunteers who are appointed to assist with the operations or activities of SAAS.

50—Management arrangements

The Chief Executive will be responsible for the administration of SAAS. The Chief Executive will be able to appoint a person as the CEO of SAAS. Such an appointment will not prevent the Chief Executive from acting personally in a matter.

51—Functions and powers of SAAS

The primary function of SAAS will be to provide ambulance services within the State (and beyond).

52—Employed staff

This clause provides for an employing authority to employ persons to assist SAAS in its operations or activities.

53—Accrued rights for employees

This clause sets out various matters associated with the employment of persons at SAAS.

54—Delegation

SAAS will have ability to delegate functions and powers.

55—Accounts and audit

SAAS must keep proper accounts and prepare financial statements.

56—Annual report

SAAS will prepare an annual report.

Division 2—Provision of ambulance services

57—Emergency ambulance services

Emergency ambulance services will be provided by SAAS, as prescribed by the regulations, or under a specific exemption granted by the Minister for the purposes of this Part. In addition, a person holding a restricted ambulance service will be able to provide an emergency ambulance service if—

(a) the person is acting within the scope of an authorisation given by SAAS (either in relation to specified cases, or in relation to a particular case, and subject to such conditions as may be prescribed by the regulations or determined by SAAS); or

(b) the person has reason to believe that failure to provide such a service will put at risk the health or safety of a particular person, or of a section of the public more generally, and the person providing the service has taken such action as is reasonable in the circumstances to contact SAAS to seek an authorisation under this section; or

(c) the person is acting at the direction or request of SAAS.

58—Licence to provide non-emergency ambulance services

A person will not be able to provide a non emergency ambulance service unless—

(a) the services are carried out—

(i) by SAAS; or

(ii) by a person acting under the direction or request of SAAS; or

(b) the person holds a licence under this section (a restricted ambulance service licence); or

(c) the services are provided by a person or a person of a class, or in circumstances, prescribed by regulation; or

(d) the services are provided under an exemption granted by the Minister under this Part.

Division 3—Miscellaneous

59—Fees for ambulance services

The Minister will be able to set fees to be charged for ambulance services.

60—Holding out etc

A person must not hold himself or herself out as carrying on the business of providing ambulance services except as provided or authorised under this Part. A person must not hold himself or herself out as being engaged in the provision of ambulance services unless he or she is a properly authorised member of the staff of an ambulance service.

61—Power to use force to enter premises

A member of the staff of SAAS will be able to break into premises if the person believes that it is necessary to do so to determine whether a person is in need of medical assistance, or to provide medical assistance. A person so acting must comply with any protocol or practice established by SAAS.

62—Exemptions

This clause facilitates the scheme for granting Ministerial exemptions under this Part.

Part 7—Quality improvement and research

63—Preliminary

This clause sets out various definitions associated with a new scheme to provide for the assessment or evaluation of health services under a Ministerial declaration.

64—Declaration of authorised activities and authorised persons

The Minister will be able, by notice in the Gazette, to declare an activity to be an authorised quality improvement activity or an authorised research activity, or to declare a person or group of persons to be an authorised entity for the purposes of carrying out a declared quality improvement

activity or research activity. The Minister will be required to make the health and safety of the public the primary consideration when acting under this provision.

65—Provision of information

Information (including confidential information) may be disclosed for the purposes of an authorised activity without the breach of any law or principle of professional ethics.

66—Protection of information

This clause provides for the protection from disclosure of information gained as a result of an authorised activity, or gained on behalf of an authorised person in connection with an authorised activity.

67—Protection from liability

No act or omission in good faith for the purposes of an approved activity, or that is reasonably believed to be for the purposes of an approved activity, gives rise to a liability.

Part 8—Analysis of adverse incidents

68—Preliminary

This clause sets out various definitions associated with a new scheme to provide for the investigation of adverse incidents in the provision of health services.

69—Appointment of teams

It will be possible to appoint a team under this Part to investigate an adverse incident.

70—Restrictions on teams

An investigation will not extend to inquiring into the competence of a particular person.

71—Provision of information

Information (including confidential information) may be disclosed to a team under this Part without the breach of any law or principle of professional ethics.

72—Reports

A team will prepare 2 reports at the end of an investigation. 1 report will contain—

(a) a description of the adverse incident, based on facts that, in the opinion of the team, are known independently of its investigation; and

(b) the team's recommendations.

The second report will contain (as the team thinks fit)—

(a) a description of the adverse incident;

(b) a flow diagram;

(c) a cause and effect diagram;

(d) a causation statement;

(e) the recommendations of the team;

(f) the working documents associated with the team's investigation and processes (incorporated as attachments);

(g) any other material considered relevant by the team.

The second report will not be released to the general public.

73—Protection of information

This clause provides for the protection of information gained through the activities of a team under this Part.

74—Immunity provision

No act or omission in good faith for the purposes of an investigation, or that is reasonably believed to be for the purposes of an investigation, under this Part gives rise to a liability.

75—Victimisation

This clauses sets out a scheme to protect a person who provides information in connection with an investigation under this Part.

Part 9—Testamentary gifts and trusts

76—Interpretation

A prescribed entity under Part 9 will be a hospital or health centre incorporated under the repealed Act, an entity incorporated under another Act that provides health services (other than a private hospital), or an entity incorporated under this Act. However, the regulations may exclude an entity from the operation of the Part.

77—Application of Part

The Part will be in addition to, and not in derogation of, the Trustee Act 1936.

78—Testamentary gifts and trusts

The scheme will facilitate the effect or operation of testamentary dispositions or trusts made for the benefit of a prescribed entity that has been dissolved and that has had its functions transferred to an incorporated hospital under the Act. A comparable provision will apply if the disposition or trust is for the benefit of patients or residents of a prescribed entity.

Part 10—Private hospitals

79—Prohibition of operating private hospitals unless licensed

80—Application for licence

81—Grant of licence

82—Conditions of licence

83—Offence for licence holder to contravene Act or licence condition

84—Duration of licences

85—Transfer of licence

86—Surrender, suspension and cancellation of licences

87—Appeal against decision or order of Minister

88—Inspectors

These clauses replicate Part 4A of the current Act.

Part 11—Miscellaneous

89—Application of PSM Act

The Governor will be able, by proclamation, to apply (with specified modifications) provisions of the Public Sector Management Act 1995 to persons employed at incorporated hospitals (see section 59 of the current Act).

90—Recognised organisations

This clauses contains a scheme that allows recognised organisations to make submissions about matters arising out of, or in relation to, the performance or exercise of functions or powers of an employing authority or incorporated hospital under the Act (see section 61 of the current Act).

91—Duty of Registrar-General

This clause will facilitate the registration of the vesting of any land in a relevant entity under the Act (see section 62 of the current Act).

92—Conflict of interest

This clause requires a health employee to declare a conflict of interest (see section 63A of the current Act).

93—Confidentiality and disclosure of information

This clause relates to personal information obtained by a 'person engaged in the operation of the Act'. A person engaged in the operation of the Act will be taken to be—

(a) an officer or employee of the Department engaged in the administration of the Act; or

(b) a person employed by an employing authority under the Act; or

(c) a member of the staff of SAAS; or

(d) a person otherwise engaged to work at an incorporated hospital or in connection with the activities of SAAS.

Such a person so engaged (or formerly engaged) will not be able to disclose personal information except to the extent that the person may be authorised or required to do so under this clause. The disclosure will be on the grounds set out in the clause, as authorised by the Chief Executive, an employer, an incorporated hospital or SAAS, or as authorised under the regulations.

94—Offences by bodies corporate

If a body corporate is guilty of an offence against the Act, every person who is a member of the governing body of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless the person proves the general defence under the Act.

95—General defence

It is a defence to a charge of an offence against the Act (the general defence) if the defendant proves that the alleged offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

96—Evidentiary provision

This clause sets out various evidentiary presumptions.

97—Administrative acts

This clause provides for the immunity from liability of the Minister and SAAS with respect to certain administrative acts under the Act.

98—Forms of Ministerial approvals

This clauses facilitates the operation of those provisions of the Act that provide that the Minister may give an approval.

99—Gift funds established by Minister

This clauses makes express provision for the establishment of 1 or more gift funds by the Minister.

100—Regulations

The Governor will make regulations for the purposes of the Act.

Schedule 1—Health Performance Council

This schedule relates to the members and proceedings of the Health Performance Council.

Schedule 2—Health Advisory Councils

This schedule relates to the members and proceedings of Health Advisory Councils.

Schedule 3—Special provisions relating to the Repatriation General Hospital Incorporated

This schedule provides for the administration of the Repatriation General Hospital by a board of directors.

Schedule 4—Related amendments, repeals and transitional provisions

This schedule makes a series of related amendments to other Acts, provides for the repeal of 3 Acts, and sets out transitional provisions associated with the enactment of this new measure.

Debate adjourned on motion of the Hon. J.M.A. Lensink.

ENVIRONMENT PROTECTION (SITE CONTAMINATION) AMENDMENT BILL

Consideration in committee of the House of Assembly's amendment.

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

That the House of Assembly's amendment be agreed to.

This is an administrative amendment, and I understand it is uncontroversial. The amendment is not a departure from the meaning of the concept of site contamination; rather, it is to clarify an aspect that has resulted from an amendment in the Legislative Council that was consequential to the main amendment under new section 103C(1)(b) moved by the Hon. Mark Parnell. A major part of this bill is the concept that site contamination can exist at the site where the original activity took place and also elsewhere as a result of the migration of chemicals by, for example, groundwater.

The government had proposed an amendment to change a note in the previous bill to a subclause to this effect. This amendment was inadvertently dropped following amendments moved by the Hon. Mark Parnell. I think we all got very excited at the time, and it was a small oversight.

Advice received recently from parliamentary counsel was that there may be some legal uncertainty that this aspect of the bill remained under the original definition. Therefore, the amendment was made to avoid any possible legal questions as to the interpretation. The amendment is made to avoid the possible interpretation that for site contamination to exist, chemical substances must have been directly introduced by human activity to the particular site contaminated. By removing the words `introduced to the site' and by adding the subsection (1)(b), it will be clear that site contamination will exist regardless of whether the chemical substances had been directly introduced at the site or introduced at another site and migrated to the site in underground water or otherwise. This amendment is necessary as a result of the amendments to sections 103C and 103D which resulted in the removal of an explanatory note to the same effect.

The Hon. J.M.A. LENSINK: The Liberal opposition supports this amendment. The issue of the definition of 'site contamination' did cause us all not quite sleepless nights but needed close examination to ensure that the act, as it will be, can be correctly interpreted as it was intended to be.

The Hon. M. PARNELL: The Greens support the amendment.

Motion carried.

VICTIMS OF CRIME (COMMISSIONER FOR VICTIMS' RIGHTS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 23 October 2007. Page 1081.)

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:31): I think it just remains for me to thank all honourable members for their contribution to the debate on this bill. I commend the bill to the council and look forward to its speedy passage.

Bill read a second time.

In committee.

Clause 1.

The Hon. S.G. WADE: I want to take this opportunity to say that I am disappointed that the government has not acted on the vacancy of the Hon. Mr Xenophon. He indicated, at an earlier stage, that he would be moving amendments to this act. The fact that the government is leaving that seat vacant means that his successor is not able to provide the council with that member's wisdom, or to take on the amendments that the Hon. Mr Xenophon was intending to move. I think it is regrettable for both this council and the people of South Australia that the government is not fulfilling its responsibilities in keeping this council at full strength.

The Hon. P. HOLLOWAY: In relation to this bill, my advice is that Mr Xenophon did not actually speak on it. He may have spoken on the companion bill but, in any case, when he was elected he had Ms Bressington on the ticket, so he does have another member in this place if, in fact, he was a party. If that member is a member of that party (if it is a party) and, therefore, we need to go down the ticket, then obviously we have somebody there who should be able to fulfil that operation. Again, we make the point that you cannot have it both ways; either you are a member of a party or you are not. As I said, Ms Bressington had either 31 or 32 primary votes. She was elected very much on Mr Xenophon's ticket. If she wishes to represent Mr Xenophon, she can do so. Who is to say that, even if Mr Darley were here, he would move the same amendments.

Clause passed.

Remaining clauses (2 to 8), schedule and title passed.

Bill reported without amendment; committee's report adopted.

Bill read a third time and passed.

STATUTES AMENDMENT (VICTIMS OF CRIME) BILL

Adjourned debate on second reading.

(Continued from 23 October, 2007. Page 1086.)

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:37): I thank honourable members for their contribution to the debate on the bill. First, I touch on the point mentioned by the Hon. Robert Lawson in relation to the matters raised by a member in another place. The member invited the Attorney-General to consider whether the presumption in favour of bail should be reversed only when there has been a persistent or significant breach of the bail agreement. The member gave the example of a bail agreement involving a curfew and the offender's coming home half an hour or so late and, therefore, being technically in breach. The government will not pursue this suggestion. To begin with, the member's example is not really on point. Why would a curfew be imposed for the protection of the victim? A more realistic example is a condition imposed under which the vendor must not contact the victim. In that case, a trivial breach is unlikely.

Secondly, the terminology is imprecise. What is a 'significant' breach? Offenders caught by the proposed provision would not be automatically remanded in custody, and the question of the gravity of the breach is best left to the court to decide whether to grant or revoke bail. Thirdly, the suggestion would overly complicate bail hearings because the threshold question of whether the breach is substantial or persistent must be decided first. That would be only for the purpose of determining whether or not the presumption in favour of bail is reversed. It would be easier to say that there has been a breach, the presumption is automatically reversed and then let the court decide whether or not the gravity of the breach warrants bail being revoked.

I foreshadow that the government will move one technical amendment at the committee stage to close a loophole that has recently come to light. It is designed to stop offenders victimising minors during court proceedings for compensation. I commend the bill to the council.

Bill read a second time.

In committee.

Clauses 1 to 15 passed.

New clause 15A.

The Hon. P. HOLLOWAY: I move:

After clause 15—

Insert:

15A—Amendment of section 18—application for compensation

Section 18—after subsection (4) insert:

(4a) If—

(a) the claimant is a child or other person who is not of full legal capacity; and

(b) the Crown Solicitor and the person acting on behalf of the claimant propose to settle the claim for statutory compensation by agreement; and

(c) an application is made to a court for an order or orders in respect of that agreement,

the offender must not be joined as a party to the proceedings before the court on that application.

This amendment closes a loophole in the act that has only recently come to light. Any application for compensation by a child or a person who is not of full legal capacity has to be ratified by a court. Under the act as it presently stands, the offender must be a party to those proceedings and therefore can question the victim in court. This gives the offender a further chance to harass and demonise the victim, with the possibility that significant trauma can again be inflicted on him or her. Victims who have reached the age of majority and are legally capable can agree with the Crown on

the quantum of compensation without having to go to court, so they can avoid that further victimisation.

This amendment closes the loophole in the case of victims who are minors or legally incompetent by providing that the offender must not be joined as a party to those proceedings before the court in which a compensation payment is ratified. However, the offender is still able to question the quantum of compensation both in the informal proceedings during the initial investigation by the Crown and in the formal proceedings for recovery of that compensation from the offender later on.

New clause inserted.

Remaining clauses (16 and 17) passed.

Bill reported with amendment; committee's report adopted.

Bill read a third time and passed.

NATIONAL ELECTRICITY (SOUTH AUSTRALIA) (NATIONAL ELECTRICITY LAW—MISCELLANEOUS AMENDMENTS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 23 October. Page 1095.)

The Hon. SANDRA KANCK (15:45): The question arises as to why I am even bothering to address this legislation. I attempted to make this speech earlier on—

An honourable member interjecting:

The Hon. SANDRA KANCK: Yes; I suppose it is because it is there; it is like a mountain to climb. It seems to me that since about 1996, when we had the first of the bills to establish the national electricity market, we go through this almost annual occurrence of amending legislation and not amending it because we cannot amend it. For me, it is like an annual ritual head bashing, and it really does make me wonder why we bother. Over the years, as we have dealt with a succession of these bills, each time I have stood up I have made comments, I have asked questions, I have even attempted to move amendments and all to no avail.

Nevertheless, there are two reasons that I am addressing this bill. One is to put on the record my disgust that once again we, as a parliament, are trumped by a decision made by a group of men in grey suits, probably over in Canberra or somewhere in the Eastern states, and we are not allowed to amend it. It puts our democracy up to ridicule. Each time we go through this we are told that we cannot amend it because it has all been agreed beforehand, but it always leaves me wondering: why are we doing this? It is a done deal. The energy ministers get together. They do not tell us what they are talking about. They make the decisions and then they come back to us and tell us what they are going to dump on us. Each time it happens it makes a mockery of the parliament.

I remember 11 years ago (I think it was) when we had the first of these bills, and I remember in my departmental briefing the advisers were so excited about the fact that we were the lead legislators. Every time one of these bills comes up, because we are the lead legislators, South Australia is the first to move the legislation. I could not understand then why they were excited, nor can I understand now why they were excited, because it gains us nothing if our rights to amend legislation are taken from us.

The second reason for speaking today is, once again, to rail against the national electricity market. This is a very grotesque creature that was spawned out of competition policy. I think it is one of the ugliest creations of economic rationalism that we have seen. It is a very amoral creature that concerns itself with profits. All of the decisions that are made about the national electricity market—and the bill that we have before us absolutely underlines this—are based on dollars and never on environmental benefit. The market always dictates the terms.

I received an email from the Total Environment Centre, which I have dealt with in respect of previous legislation where we have been the so-called lead legislator. This is a media release that it put out on 17 October. It is headed 'Baby steps on energy efficiency, but giant leap back for environment'. Jane Castle is the Total Environment Centre's energy campaigner and she says:

> Since 1990, electricity generation emissions have grown by 52 per cent, resulting in an extra 60 million tonnes of greenhouse pollution every year. Since 1999, energy consumption has spiralled upwards by 24 per cent, much faster than the population growth. The national electricity market has done nothing to stop this.

She is absolutely right: it has done nothing to stop it and, in fact, it encourages it, because when the market is amoral, as it is, it is about getting electricity at the cheapest price under this system, and the base load generators always get dispatched. The base load generators are those, particularly, that are producing electricity from the most polluting source; that is, brown coal.

The centre then goes on to talk about the really bad impact of this particular legislation, because it is going to remove anything in the acts of other states and territories that dares to have any environmental objectives. From the attachment to her media release, I will mention a few of those. The ACT has an Independent Competition and Regulatory Commission Act 1997, in which section 7 of the objectives says:

> The commission has the following objectives in relation to regulated industries, access regimes, competitive neutrality complaints and government-regulated activity:
>
> ...
>
> (b) to facilitate an appropriate balance between efficiency and environmental and social considerations.

Section 20(2) provides:

> In making a decision under subsection (1), the commission must have regard to:
>
> ...
>
> (f) the principles of ecologically sustainable development mentioned in subsection (5);
>
> (g) the social impacts of the decision; and
>
> (h) considerations of demand management and least cost planning.

Those two parts of the ACT legislation will disappear from its legislation as a consequence of the bill before us. If we think about it, why should not the social impacts of the electricity market be taken into account and why should not ecologically sustainable development be a crucial part of any legislation to do with electricity? New South Wales has its IPART (Independent Pricing and Regulatory Tribunal) Act. Section 14A—Setting of methodology for fixing prices—states in subsection (2):

> In making a determination the tribunal may have regard to such matters as it considers appropriate, including:
>
> ...
>
> (g) the need to maintain ecologically sustainable development by appropriate pricing policies to protect the environment;
>
> ...
>
> (i) considerations of demand management and least cost planning.

That, too, will go as a consequence of this legislation. Queensland has its Queensland Competition Authority Act 1997 and section 6—Matters to be considered by authority for investigation—provides:

> (1) In conducting an investigation under this division the authority must have regard to the following matters:
>
> ...
>
> (h) considerations of demand management;
>
> (i) social welfare and equity considerations, including community service obligations, the availability of goods and services to consumers and the social impact of pricing practices;
>
> ...
>
> (k) legislation and government policies relating to ecologically sustainable development;
>
> ...
>
> (m) economic and regional development issues, including employment and investment growth.

That will have to go as a consequence of this legislation. Victoria has its Essential Services Commission Act, and section 8(2) says:

> In seeking to achieve its primary objective the commission must have regard to the following facilitating objectives:

...

(e) to ensure that regulatory decision-making has regard to the relevant health, safety, environmental and social legislation applying to the regulated industry.

That will also go. That is only some of the information provided to me from the Total Environment Centre about the impact of this bill before us. I find it amazing that the South Australian government has agreed to this, and I would like the minister, in summing up the second reading debate, to explain the Rann government's position in relation to its climate change objectives. Does the government not consider that considerations about environment and demand management ought to be an essential part of any electricity legislation if we are to contain greenhouse gas emissions?

As it is, there is no point in even reading this bill or the minister's speech because our analysis and any comments arising ultimately will be ignored. The historical record shows that previous contributions, including some detailed questioning that I gave the legislation a couple of years ago, have made not one scrap of difference. Because of the environmental impact this bill will have, and the fact that we cannot in any way alter the bill, I indicate Democrat opposition.

The Hon. M. PARNELL (15:55): The Greens too have serious concerns about this legislation and I acknowledge the role that people like the Hon. Sandra Kanck have played. I acknowledge the role played by those who have been in this place much longer than me in dealing with this legislation over many years.

The Hon. Sandra Kanck interjecting:

The Hon. M. PARNELL: The Hon. Sandra Kanck says, 'Asking questions that don't get answered.' She likened participation in these debates to banging your head against a wall; well, I am new to this game and I am ready to do some head-banging, because I think this legislation is in serious need of reform. Whilst I understand and appreciate the desire to try to get, as far as possible, uniform legislation, I find that the burden on our shoulders now is not just for the people of this state whom we represent; it is also for the people in the other states to whom the Hon. Sandra Kanck referred, those jurisdictions whose environment and consumer protection measures will be axed by the passage of this legislation. So, we do have a responsibility here, as the lead state, to seriously debate this bill and to get it right.

I wish to start my contribution by referring to some statements contained in the government's second reading explanation, as follows:

It is important to note that the National Electricity Objective does not extend to broader social and environmental objectives. The purpose of the National Electricity Law is to establish a framework to ensure the efficient operation of the National Electricity Market, efficient investment, and the effective regulation of electricity networks. As previously noted, the National Electricity Objective also guides the Australian Energy Market Commission and the Australian Energy Regulator in performing their functions. This should be guided by an objective of efficiency that is in the long term interest of consumers. Environmental and social objectives are better dealt with in other legislative instruments and policies which sit outside the National Electricity Law.

What a load of rubbish! How is it, in the 21st century, that the government is pretending that environmental, economic and social objectives can be put in their silos and treated separately? It is not the way we regard other areas of the economy; and it is not the way we regard natural resources, for example. We have been incorporating principles of ecologically sustainable development and social justice in many bills we have debated in this place, so I think the government's starting point is entirely wrong.

The Hon. Sandra Kanck referred to a media release issued by the Total Environment Centre in Sydney. This is a recent release made on 17 October which is headed, 'Baby steps on energy efficiency but...giant leap back for environment.' The Hon. Sandra Kanck quoted at some length from the attachment to that press release, which showed the impact of this legislation we are trialling in South Australia on the laws of other jurisdictions. However, the media release also says:

Electricity networks must be obliged to reduce demand before they even think about building more expensive, polluting infrastructure. On top of that, the Australian Energy Regulator must be required to provide incentives for innovative energy saving programs rather than making them optional and subject to the networks' opinions.

While staring down the barrel of global warming, the states have also dumped their environmental objectives and policies. This is a disaster for greenhouse emissions. Without environmental and social objectives the National Electricity Market will continue to operate on narrow economic lines and favour inefficient, expensive and polluting power. Other countries such as Britain have well developed environmental and social objectives in their electricity market laws—why not Australia?

I think that is the main question before us: why can we not ensure that our electricity laws, our energy laws, also reflect those environmental and social objectives?

It would be wrong for members to think that this debate is purely driven by one environment centre based out of Sydney in New South Wales. In fact, there is an entire coalition of social justice and environment groups that are arguing exactly the same thing. I have another media release, which is from earlier this year, May 2007, but it is not just from the Total Environmental Centre this time: it is also signed by the Consumer Utilities Advocacy Centre, the Australian Conservation Foundation, the St Vincent de Paul Society and the Australian Business Council for Sustainable Energy. That is the organisation whose submissions have urged this parliament to increase the feed-in tariff for solar voltaic panels. It is also signed by the Australian Council of Social Services and the Worldwide Fund for Nature so, effectively it is a who's who of the social justice and environment networks.

Under the heading 'Australia to dump environment and social goals in power shake-up', the media release of those organisations dated 22 May reads:

> 'Federal, State and Territory Governments want to be seen to lead on climate change, yet they're in the process of neutering environmental policies by embracing the National Electricity Market...with its obsession with dirty coal generation,' said Jeff Angel, Total Environment Centre Director. 'The [National Electricity Market] has overseen a massive increase in greenhouse gas pollution and consumption. Hard-won environmental protections must not be dumped in the transfer of power to the national level.'

He poses again the same question:

> Other countries such as Britain have well developed environmental objectives in their electricity market laws—why not Australia?

But the social justice perspective is in this release as well and, coordinating to Gavin Duffy from the St Vincent de Paul National Council:

> It would be a fundamental failure if the policy framework does not guarantee basic social and environmental protection.

We also have the business perspective from the Director of the Business Council on Sustainable Energy, Ric Brazzale, who states:

> Most states have had strong environmental objectives in their energy legislation and all governments now agree we need to dramatically reduce greenhouse emissions. At a time of heightened community concern with climate change it is bizarre to think that future energy market developments occur in a manner that does not also support emission reductions.

These groups have got together and put forward comprehensive recommendations which they have put to all state, territory and federal ministers. Their call can be summarised in three main dot points, and these are included in a document entitled the *Power for the People Declaration*. That declaration calls on members of parliament to ‘amend the Australian Energy Markets Agreement, the National Electricity Law and the National Gas Law’ by:

1. Requiring regulators to consider the environment and sustainable development when making decisions;

2. Requiring regulators to consider social impacts, with particular reference to preventing negative impacts for low income and disadvantaged consumers; and

3. Requiring the industry to implement cost-effective demand management and energy efficiency to help consumers save energy wherever this is cheaper than investing in more infrastructure.

The fact that such diverse groups with such different interests have got together with a common call to us as legislators to fix up these national laws should be very telling indeed. Given the fact that South Australia is the lead jurisdiction, we have the first opportunity in the nation to fix up these laws and show an example to the rest of the country.

I do not intend to read the whole of the *Power for the People Declaration*, but I will refer to the preamble and then briefly to the conclusion. The *Power for the People Declaration* commences under the heading 'Our concern' as follows:

> Signatory groups have strong misgivings about the current structure of the National Electricity Market...and believe that it does not address deep seated environmental and social concerns held by the Australian community. Under the new National Electricity Law, market regulators cannot take social or environmental issues into account. However, it is clear that the market, left to its own devices, will not produce good social and environmental outcomes.

Electricity is an essential service, and necessary for health, well being and participation in employment, community and social activities. The key controls on electricity production and distribution are market rules and regulations. Yet currently this market actively operates in conflict with many social and environmental objectives, undermining policies designed to promote social cohesion and environmental protection. This will have to change if we are to prevent dangerous climate change and protect vulnerable households.

Members of parliament need to reform the National Electricity Market so that it can help facilitate, rather than obstruct, environmental and social policies and be more accountable to the Australian community. By contrast, we look to the UK, where the market is comparable to Australia and where measures to achieve better social and environmental outcomes are in place in legislation.

The declaration then goes on to list some of the amendments that these groups are calling on us to implement. The conclusion of this 'Power for the People' declaration is equally telling. It states:

Despite its poor record on efficiency, environmental and social issues, the National Electricity Market...is viewed by industry and governments as a success as it has delivered cheap electricity to industry, allowed states to trade with each other through interconnectors and facilitated competition. The Council of Australian Government...has foreshadowed another round of reforms to the electricity industry to 'ensure Australia retains secure energy markets and relatively low electricity and gas prices'. However, they have not committed to saving a single gram of carbon emissions through the reform process, nor have they acknowledged that energy reforms may have deleterious effects on some consumers. The reform process must be directed towards positioning the National Electricity Market...so that it delivers energy in ways that are both socially just and environmentally sustainable. Australia's leaders should ensure the National Electricity Market does not obstruct environmental and social goals, but helps to facilitate them.

In conclusion, it is clear that the National Electricity Market has failed. What we find is that electricity use as one measure of energy consumption is rising, prices are rising, and the market completely fails to take into account important issues of demand management and the need for energy efficiency, and it ignores renewable energy.

Our electricity laws are going to be critical to our successful response to climate change. South Australia has negotiated for special exemptions (for example, postage stamp pricing) so that everyone pays the same wherever they are on the grid, and the argument has been that this is critical for our state. My question is: why is our leading climate change legislation not critical for our state? Why is that not an issue on which South Australia seeks a special exemption? So, despite the experience of the Hon. Sandra Kanck and others, who say they have been banging their head against a brick wall for years on this, I propose to introduce amendments. The amendments will be taken from submissions from the leading environment and social justice organisations I have referred to, and I urge all honourable members to take seriously their role not just to the citizens of South Australia but also to other people throughout the country on whose behalf we lead this debate.

Debate adjourned on motion of the Hon. I.K. Hunter.

MOTOR VEHICLES (MISCELLANEOUS) AMENDMENT BILL

In committee.

Clause 15.

The Hon. S.G. WADE: Since the committee last met, the government has tabled amendment No. 1 in the name of the Minister for Road Safety. In consideration of that amendment and in consideration of the undertakings given by the minister earlier in committee, the opposition considers that we can best protect the interests of South Australians living in rural and regional areas by not pursuing this amendment, so I propose to withdraw it and make comments in the context of the government's amendment.

The CHAIRMAN: Does the Hon. Mr Wade seek leave to withdraw his amendment?

The Hon. S.G. WADE: Yes, sorry, I seek leave to withdraw my amendment.

Leave granted; amendment withdrawn.

The Hon. D.G.E. HOOD: Family First think that this is a good compromise and we are happy to support the government's amendment.

The Hon. CARMEL ZOLLO: I move:

Page 8, lines 35 and 36—Delete 'at a specified location within a specified period' and substitute:

, within the period specified in the notice, at a specified place of a kind prescribed by the regulations

This amendment will allay any concerns that the opposition or other members might have had in relation to our actually being able to say in the regulations where people will be serving the notices.

In response to earlier debate, the government is pleased that it can introduce this in-house amendment to make it completely clear that the locations at which a licence holder will be required to attend to acknowledge receipt of a notice of a disqualification will be prescribed in the regulations; specifically, the Motor Vehicles Regulations 1996.

It was always the government's intention to prescribe these locations in the regulations (as I had earlier thought) and to ensure that licence holders are aware of the locations they are required to attend. As this is a cost-recovery initiative, there is no incentive for the government not to ensure an adequate network to service all licence holders, particularly those residing in regional and remote areas of the state.

If these locations were included in the act itself, it would limit the government's ability to negotiate an appropriate fee with appropriate service providers. From a business perspective, and in the interests of the community in keeping cost recovery to a minimum, we do not think it is prudent to force any government to deal only with the service providers listed under the act.

As mentioned previously, by including these locations in the regulations, parliamentary members will have the opportunity to scrutinise the regulations at a later date. If they are not happy with the regulations the government puts forward, they have the opportunity to disallow those regulations, but I am certain that will not happen, because it is our intention to ensure that this legislation works well. I thank honourable members for their support.

The Hon. S.G. WADE: Further to my comments in withdrawing my amendment, I would like to stress that we are accepting this amendment with the background of the minister's comments at the committee stage, in terms of the undertakings. The opposition would not want to put Australia Post or any other provider in an unfair negotiating position with government and so, in that context, it is appropriate that the regulations are for the place where that agency network is recognised rather than in the statute and, therefore, binding the government to a particular user.

We accept the government's invitation to proactively review the regulations and we look forward to doing that. In that context, the opposition would like to reiterate its expectations for the regulations. The government has already indicated that it intends that the Department for Transport, Energy and Infrastructure's community service centres would be specified locations. We welcome that. As I said earlier in committee, the opposition's view is that the network of 136 police stations around South Australia is another appropriate specified location, and we express our disappointment that the police do not see this as part of their core business. We note the government's interest in using Australian Post as an agency network. However, of course we appreciate that it is still subject to negotiations with that agency.

If Australian Post is not a viable agency network, the opposition would expect agency arrangements of similar reach to be made. The minister indicated that she understands that there are about 405 postal outlets; and, whilst it may not be possible to get an agency network of a similar size within one agency network, it may be possible to arrange for a set of other agency arrangements. If those negotiations prove troublesome, we would encourage the government to consider an alternative mechanism—perhaps alternative amendments—to the act. For example, it might be that to meet the needs of the legislation to confirm the identity of a person we could use justices of the peace to confirm a statutory declaration in terms of notice of disqualification. After all, we have similar proof of identity issues in relation to passports, yet the commonwealth, as I understand it, is willing to use non-government mechanisms of proving identity.

With those comments, I indicate that the opposition looks forward to seeing the regulations that will need to be put in place under this bill. We look forward to the government meeting its commitment to ensure that South Australians in rural and regional areas have fair access to agencies to fulfil the obligations under this act.

The Hon. CARMEL ZOLLO: I thank members opposite and members on the cross benches for supporting the government's amendment. I pick up the point the honourable member made in relation to using JPs. Of course we are talking about someone being involved in a transaction of money here. We think this is a little different for evidentiary purposes in case it goes down that path. I just make that comment.

Amendment carried.

The Hon. S.G. WADE: I move:

Page 9, lines 5 and 6—

Delete 'a service fee of the amount prescribed by the regulations' and substitute:

The specified service fee (being an amount prescribed by the regulations)

Again, this amendment is similar to the previous three amendments. It is an attempt by the opposition to support the spirit of the legislation and improve its effectiveness. Our reading of the clause is that the notice given to a person, in terms of notice of disqualification, could advise that a service fee is payable but that it could be expressed in general terms as a service fee payable under the regulations.

We think it would increase compliance if people were actually advised of the fee in the regulations. In other words, being told that rather than being invited to access legislation (however difficult that might be for individual users), so that they get due notice of the fees involved by that fee being indicated in the letter itself.

The Hon. CARMEL ZOLLO: This amendment is opposed as it appears not to change the effect of the clause. Under the bill, the Registrar of Motor Vehicles is required to inform the licence holder of the process they must follow and the appropriate fees that will apply. Whilst the fees themselves will be prescribed in the regulations, it is in the government's best interests to ensure that all licence holders, particularly those who are liable to a licence disqualification, are aware of the $24 administration fee and consequent $60 process server fee should the licence holder fail to comply with the original notice. This will assist in ensuring that all clients respond in a timely way, and it may reduce the need to engage a process server. Essentially, we will be doing what the honourable member suggests, and we will be doing so in a letter informing people what they are liable for, as well as prescribing it in the regulations. As I said, this amendment does not really change anything.

In addition, to ensure that licence holders are aware of the new legislative requirements, a brochure will be forwarded with each registration and licence renewal as well as each letter that notifies a licence holder that they have accumulated at least six demerit points and each notice of disqualification. The brochure will provide the licence holder with legislative and administrative information concerning the licence disqualification process and the new requirements. As I said, we believe that we are already doing what the honourable member is suggesting.

The Hon. S.G. WADE: I think it is a shame that, if the government is of that view, it does not take the opportunity to clarify the legislation. However, we are trying to improve it; if the government does not want to take it up, we note its undertakings and will be alert to ensuring that the documents provided to people affected by these provisions reflect the undertakings of the government. We do not intend to pursue the amendment, other than allowing it to be dealt with by the committee.

Amendment negatived; clause as amended passed.

Remaining clauses (16 to 18) and title passed.

Bill reported with amendments; committee's report adopted.

Bill read a third time and passed.

At 16.25 the council adjourned until Tuesday 13 November 2007 at 14:15.