LEGISLATIVE COUNCIL

Thursday 6 March 2008

The PRESIDENT (Hon. R.K. Sneath) took the chair at 14:17 and read prayers.

WATER ALLOCATIONS

The Hon. SANDRA KANCK: Presented a petition signed by 280 residents of South Australia, concerning the extraction of water from the River Murray. The petitioners pray 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.

NATURAL RESOURCES COMMITTEE

The Hon. R.P. WORTLEY (14:17): I lay on the table the report of the committee on the Eyre Peninsula Natural Resources Management Board.

Report received.

PAPERS

The following papers were laid on the table:

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

Regulation under the following Act—
Construction Industry Long Service Leave Act 1987—Employer Levy

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

Adelaide Hills Council;
Alexandrina Council;
The Barossa Council;
Mount Barker District Council;
Onkaparinga (City);
Victor Harbor District Council; and
Yankalilla District Council Development Plans—Commercial Forestry—Development Plan Amendment by the Minister
Corporation of the City of Whyalla—General and Coastal DPA—Development Plan Amendment by the Council
Mount Gambier (City) and Grant District Council Development Plans—Greater Mount Gambier Deferred Urban—Development Plan Amendment by the Minister

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

2007 World Police and Fire Games—
Report, 2005-06
Report, 2006-07

PROSTATE CANCER

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:18): I lay on the table a copy of a ministerial statement relating to the decline in prostate cancer deaths, made earlier today in another place by my colleague the Minister for Health.

QUESTION TIME

FIRE SERVICES EXPENDITURE

The Hon. S.G. WADE (14:20): I seek leave to make a brief explanation before asking the Minister for Emergency Services a question relating to fire services expenditure.

Leave granted.

The Hon. S.G. WADE: During the last five years of the previous Liberal government, fire services expenditure per 1,000 people increased by 15 per cent. The recent productivity commission report on government services shows that since the Rann government was elected in

2002 expenditure on fire services per 1,000 people has increased by only 1 per cent. At the same time, on average, fire services expenditure in Australia has increased by almost 25 per cent.

Under Labor, South Australia now spends less on fire services per 1,000 people than does any other state or territory in Australia, bar Queensland. Since 2002, response times have increased by more than a quarter in South Australia to the point that we now have the longest response times in the nation. The United Firefighters Union has linked the increased response times to the government's failure to adequately fund fire services, and they particularly highlight the case of the Beulah Park Fire Station, the fire station with no crew.

My question to the minister is: if the government is unwilling to properly fund fire services in South Australia, what other strategies does the government have to redress the blowout in response times?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (14:21): I thank the honourable member for his question. I think I am on record in this place as saying, on a number of occasions now, that as the UFU is about to embark on a new enterprise bargaining agreement clearly we have had a spray all over the place, at one stage ranging from the police greys to how money is spent from the emergency services levy in other areas.

An honourable member interjecting:

The Hon. CARMEL ZOLLO: The productivity report is always carefully analysed for improvement in our services. That is the reality, and that is what it is about. Basically it is, if you like, a self audit that makes us more accountable in the provision of services to the public.

It should be noted that national comparative performance evaluation of emergency management is a recent development, with the first comparative information published in only 1998. The Productivity Commission itself acknowledges that there are issues of data definition and quality to be resolved to improve the reliability of longitudinal analysis, and I am told this includes a lack of standardisation for factors other than population.

I understand that on page 20 of that report there are really only two performance indicators for fire events that are comparable: the fire death rate and the fire injury rate. I should also note that there is always a lag between government policy and management initiatives and their effects, so trends sometimes do not become apparent for a few years. I would also like to say that, of course, a detailed analysis of the productivity report will be provided to the SAFECOM board to, I guess, better consider strategies to target community risk services.

As I have also said before in this place, SAFECOM is always analysing risks by researching factors contributing to fire-related deaths and injuries as well as issues such as false alarms, which we have heard about. This work will develop policies to meet SAFECOM's strategic objective of reducing fire-related deaths and injuries to below the national averages by 2015. Of course, we can have a major tragedy like the Wangary bushfires, where we saw the loss of those lives, and that will spike up the figures.

I should also put on record that SAFECOM is appointing a director of community resilience—which does not mean another full-time staff member—to target high risk areas and coordinate sector resources to better implement appropriate strategies to increase community preparation and prevention. So, to say that this government is not spending extra money on fire services is a furphy. As I have said before on other occasions in this parliament, the previous government actually completely gutted the MFS.

In relation to preparedness, South Australia has been a leader in the introduction of fire safety measures, smoke alarms and detectors, and our legislation should improve these preparedness indicators in the report. Despite this, other states can sometimes have below average fire related deaths. As I have said, one single incident can spike up those figures. I am told that response times in all major mainland states, with the exception of Western Australia, have increased.

As the honourable member knows, the new station at Seaford is being built and will be ready in a few years. Also, the repositioning of crews at Paradise and Beulah Park will assist in reducing these times. I am told that the report states that the containment of fires to the object room of origin has been below the national average for years. But we should bear in mind that

South Australia also has the highest rate of evaporative air-conditioning, which is thought to be a contributing factor—and that is why the statistics show what they do.

The HAZMAT incident attendance appears to be high but, again, both South Australia and the ACT report minor combustible liquid spills and minor gas leaks under 200 litres. This is not the case in New South Wales, and incident reporting in Queensland was incomplete. So, I think there are very sound reasons why some of those figures are not comparable. But, as I have said, this is a very important audit and, obviously, one we will look at very seriously and work towards improving.

FIRE SERVICES EXPENDITURE

The Hon. S.G. WADE (14:28): I have a supplementary question. The minister tried to discount the Productivity Commission Report; except, presumably, fire injury and fire death rates. In that regard, how does the minister explain that, under this government, the fire injury rate has increased in South Australia from 17.3 to 24 per cent when for the rest of Australia it has gone up less than 1 per cent?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (14:27): I actually acknowledged that the fire death rate is above the national average, and I mentioned Wangary for that reason.

METROPOLITAN FIRE SERVICE

The Hon. J.S.L. DAWKINS (14:28): I seek leave to make a brief explanation before asking the Minister for Emergency Services a question about the South Australian Metropolitan Fire Service.

Leave granted.

The Hon. J.S.L. DAWKINS: According to the 2006-07 annual report of the Metropolitan Fire Service, the MFS recruited 72 people in the past financial year. In the same period, 71 people separated from the agency, leaving the MFS with a net gain of one employee for the 2006-07 financial year.

I am informed that the current recruiting process will not be completed until 1 July this year, which means that no new MFS recruits will be fully trained and available for active duty until October this year. My questions are:

1. Given that the MFS only narrowly avoided a net loss in personnel last year, what action has the government taken to increase recruiting to provide a real increase in the MFS numbers?

2. Does the minister concede that, with no recruits able to complete training until October this year, even if the government were to find the money to fund recruiting for the new Beulah Park station, its mismanagement of the recruitment process means that a crew to staff that new station would not be available until several months after it opens?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (14:29): As I have said on several occasions in this chamber, I think the opposition is incredibly embarrassed by its record in relation to gutting the MFS and also the low recruitment rate during the whole eight years it was in government. I have also again placed on the record that we have increased—

The Hon. P. Holloway interjecting:

The Hon. CARMEL ZOLLO: Yes, that's right; they actually closed them. We have put an extra $25 million into the operational budget of the MFS, let alone opened new stations. As I have again placed on the record, we have provided more appliances and things like protective clothing, and also the provision of breathing apparatus comes to mind, all of which has made the MFS the envy of interstate fire services.

In relation to Beulah Park, the MFS clearly believes it has sufficient crew to staff that station. The MFS fire chief has also committed to monitoring the situation. Again, I know that the opposition is embarrassed and that it really wants to congratulate us.

ENVIRONMENT PROTECTION AUTHORITY

The Hon. J.M.A. LENSINK (14:30): I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning a question about EPA separation distance guidelines.

Leave granted.

The Hon. J.M.A. LENSINK: Last year, the EPA released its separation distance guidelines, and its communication of November 2007 states:

> These Guidelines give a recommended separation distance for a range of new or expanding industries to ensure the environmental impact on neighbouring residential sites is minimised. They are used by the EPA, planning authorities, developers, planning consultants and the community in assessing development applications for new or expanding development.

The guidelines state:

> The use of separation distances is not an alternative to compliance by industry with its statutory obligations, but rather is an aid in locating industry and sensitive land uses to minimise the impacts of noise, odour, polluting air emissions or waste water.

My questions are:

1. Is there any statutory obligation for industry and developers to comply with these guidelines?

2. What actions is Planning SA taking to ensure that councils, industries, etc., as outlined in the document, are complying with them?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:31): As the honourable member mentions in her questions, the Environment Protection Authority sets the guidelines for all environmental matters, and approval is given under the Development Act. Without looking at particular cases, it would be difficult for me to say whether it would come under planning consent or the form of an EPA licence. So, I need a bit more information before I can answer those questions, but I am happy to take them on notice and bring back an answer for the honourable member.

AGEING POPULATION

The Hon. I.K. HUNTER (14:32): I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning a question about the ageing population of South Australia.

Leave granted.

The Hon. I.K. HUNTER: Population projections show that the average age of South Australians is getting older—and that will be of no surprise to members of this chamber. These shifting demographics create new policy challenges for governments at all levels. Will the minister advise what the state government is doing to respond to the challenges posed by South Australia's ageing population?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:32): Currently, South Australia has the equal oldest population in Australia, with a median age of 39 years in 2006. The size of our population of 'young elderly', which groups people aged 65 to 84 years, is projected to increase from 206,000 in 2006 to about 374,000 by mid 2031. This increase will be most pronounced after 2011, as the post Second World War baby boomer generation reaches retirement age.

Large increases are also projected to occur in the 'old elderly', which groups people aged 85 and over, where the population is expected to increase from 32,000 in 2006 to about 73,000 in 2031. To help planners and policy makers develop strategies to cope with this ageing demographic, Planning SA has developed the Ageing Atlas.

This statistical atlas responds to the growing demand by government agencies, private industry and the general community for reliable data to assist with planning for the future needs of our ageing population. Increases in the older population will happen, regardless of the size of incoming migration, as the ageing will occur within the existing population. This presents challenges to our service providers, planners and policy makers into the future.

The Ageing Atlas project was conceived in 2006 as part of a Planning SA project entitled Ageing and Its Implications for Social and Planning Policy. The aim of the atlas is spatially and numerically to define and map the composition of the state's ageing population and then to provide this information in an easy-to-access format for as many users as possible.

The atlas is an interactive internet-based guide. It combines population data and projections with other research to provide:

- projected numbers of older residents in all metropolitan Adelaide and country councils by age group through to 2021; and
- the number and type of existing accommodation for aged people by council area.

The Ageing Atlas is designed to provide a range of spatial information about the characteristics of our ageing population to assist with a broad range of planning decisions, including the future location of health services, retirement villages and retail facilities across South Australia. This policy tool is to be developed further in the coming year as further data are integrated into the system. The Ageing Atlas is a companion to the Population Projections Enquiry System, also developed by Planning SA. I commend these projects to members of the council and congratulate Planning SA on its work in developing this atlas.

REAR-VISION CAMERAS

The Hon. D.G.E. HOOD (14:35): I seek leave to make a brief explanation before asking the Minister for Road Safety a question about rear-vision cameras in four-wheel drive vehicles.

Leave granted.

The Hon. D.G.E. HOOD: In recent years we have heard the tragic stories of parents who back out of their driveways and, on some occasions, inadvertently back over their own children, who are playing in the driveway or otherwise just wandering around in the driveway. In fact, there was another incident earlier this week. Overnight, on 3 March, in Geelong, Victoria, a father accidentally backed his BMW four-wheel drive into his daughter, sparking renewed calls for mandatory rear-vision cameras in four-wheel drive vehicles. I further note that, in 2005, the Pedestrian Council claimed that about 330 children nationwide are injured in similar driveway incidents each year.

A survey of some 2,380 licensed drivers, released by AAMI insurance company in the past 24 hours, indicates that a surprising (or, I should say, a not surprising) 75 per cent of Australians support the compulsory installation of cameras in four-wheel drive vehicles. Recently released models of four-wheel drive vehicles have responded to this situation by installing cameras or motion detectors to show or detect what is happening at the rear of the vehicle when it is reversing and, of course, other life-saving inventions are being installed on a mandatory basis in vehicles, such as electronic stability control, side curtain airbags and the like. My questions to the minister are:

1. What is the government's view of requiring the installation of reversing cameras in large four-wheel drive vehicles by law?

2. What, if any, research has the government done or commissioned in this area with a view to improving road safety?

3. Will the government consider introducing a scheme to subsidise the installation of reversing cameras for existing four-wheel drive owners?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (14:37): I think all of us would feel for the parents of young children who have tragically lost their lives in an incident such as the honourable member has just described. I do not have statistics with me as to exactly how many children have lost their lives in South Australia.

In relation to the government's looking at this as a safety feature, the South Australian government assists in funding the Centre for Automotive Safety Research (CASR) in South Australia, which is based at the University of Adelaide. The Motor Accident Commission also assists in funding that centre in relation to looking at new ways of improving road safety and, in particular, vehicle safety. There is also the Australasian New Car Assessment Program (ANCAP), which is a market-driven research centre, which also carries out experimentation in relation to measures that assist in reducing road trauma throughout South Australia. It should provide a rating.

The honourable member may have seen from time to time that a vehicle has a particular star rating, and that will depend on the features it includes to assist in road safety.

I know that there has been some publicity in relation to these cameras and, from memory, I understand that the cost is not necessarily prohibitive for the people who own four-wheel drive vehicles. The suggestion at the time was that parents who have young children invest in them. Again, young children are a vulnerable group in our community.

One state government curriculum package is aimed at children aged between zero and five years. It is provided to preschools and child care centres. In fact, I have attended an interactive session at which—and it is usually during quiet time—the young children were sat down and taken through the package. It is called Safe Start, from memory. It is a large package whereby they interact on a regular basis over time. They are taught about the dangers of cars—whether it is as a pedestrian walking with their parents or even at home in the driveway; all scenarios are put before them. Clearly, we do not try to do it in a heavy-handed way. Young children will respond differently to different scenarios.

It is very much meant to cater for that age group. Of course, if they stay, we always encourage the parents to take part. So, we have that facility. Research is also happening, as I said, in particular with CASR (which we assist with funding), together with the Motor Accident Commission. Of course, it is market driven, and that is the reality. Certainly, if I were a young parent with little children and was driving a four-wheel drive it is something I would be looking for. As I said, I will undertake to have a chat to CASR and bring back a response for the honourable member.

The Hon. R.I. LUCAS (14:41): I seek leave to make an explanation prior to asking the Leader of the Government a question about the growing concern at the minister's controversial decisions in relation to planning in Mount Gambier.

Leave granted.

The Hon. R.I. LUCAS: There is growing concern at the controversial decision the minister recently made in relation to zoning and planning issues in Mount Gambier. The respected local newspaper, the *Border Watch*, today has a front-page story with the prominent headline 'Mayoral blast—External influences blamed for minister's decision to rezone land'. The article quotes the Mayor of Mount Gambier, Mr Steve Perryman, flagging concerns about the decisions. The minister will be aware that part of the Northern Gateway precinct land included a proposal for a Big W, a Woolworths and other retail outlets, although I understand there is not currently a development application in relation to that proposition.

The minister's master plan, which he released on 28 February, envisages retail and commercial development in this Northern Gateway precinct. However, at the same time (and this is one of the controversial aspects of his decisions), the minister released a ministerial development plan which rezoned all that land as 'deferred urban'. As the minister knows, I asked a question on this matter earlier in the week and he did provide some information. However, by way of clarification, is the minister stating that it is the government's policy that, even though he has rezoned that land 'deferred urban', it is possible that the Big W and Woolworths proposal can still be considered by the Mount Gambier City Council and that, if it was to meet all the required approvals, that proposal for a Big W and a Woolworths could proceed in the Northern Gateway precinct?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:44): Incidentally, the *Border Watch* was actually quoting the question asked by the Hon. Rob Lucas last week. What I have indicated to the council—and I indicated this in my answer when I was asked the question the other day—is that the interim ministerial development plan amendment in relation to the Northern Gateway with respect to deferring that land was simply a holding operation. The council is moving to rezone the Northern Gateway in accordance (well, I believe it is in accordance; it remains to be seen whether it is in accordance) with the Mount Gambier Master Plan.

As I said in my answer the other day, I have now determined that there is no reason that that cannot proceed simultaneously with the process that is necessary to rezone the land as deferred urban. Once the council gets its new development plan amendment into operation, that reflects the master plan and then I can remove the ministerial development plan amendment, the interim action which was tabled earlier today, which is acting as a holding operation. Once the

council rezones it, I will support it, providing that it is consistent with the master plan. Then I will be happy to—

The Hon. R.I. Lucas: Is it possible?

The Hon. P. HOLLOWAY: At the moment, as I said, it is a holding operation. The reason I brought in the development plan amendment for the Northern Gateway was so that there would be no further applications under the existing zoning, which is not compatible with the zoning that is proposed under the master plan. I think the proposal the honourable member was talking about, or certainly the one that is being considered, is for bulky goods, which I understand—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: If it is for bulky goods (and I think that is the application), the master plan does not support it. Essentially, the argument, as I understand it, comes down to this: Grant council and Mount Gambier council had different ideas about where bulky goods should go and, as a result of negotiations (over 12 months) on the Mount Gambier Master Plan, it was agreed that there would be a zoning out on the western gateway.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: They came to see me. I had a meeting with both mayors and the CEs back in September or October last year. Certainly, at that stage, when the draft plan was out, there was agreement. However, the debate has been: where should bulky goods go, or where should any major retail area (out of the city) be? Should it be on the western entrance or the northern entrance? Essentially, that is the debate.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: There can be competition but what we want—

Members interjecting:

The Hon. P. HOLLOWAY: There should not be competition between councils. What we want is competition between retailers–that we do want. However, we do not want competition between councils which are competing to remove the values of the community. Rather, we want a joint plan. We want council to work out where, in the best interests of the residents of the town, the bulky goods precinct, or the commercial precinct, should be.

Because a development application had been lodged and because that application was, at least prima facie, complying with the current zoning, but it was incompatible with what was envisaged under the master plan, that is why I introduced the interim zoning of deferred urban. That would give the Mount Gambier council time to get its rezoning in, so that it can rezone that area commercial or whatever, providing it is consistent with the master plan. As I have indicated to the council, I will be happy to do whatever I can to ensure that it happens as speedily as possible.

It is my wish that the intention of the Mount Gambier Master Plan be given effect in the respective development plans as quickly as possible. However, if I had not taken the action of this interim rezoning, this holding operation as deferred urban, there could have been a number of applications that could have involved further bulky goods which the master plan does not support.

It is not my vision for Mount Gambier that I am protecting here; rather, it is the vision in the master plan that was developed that came out of the process involving Planning SA, the District Council of Grant and the Mount Gambier council. It is that which I am seeking to protect. That really is the background to it, and that is why I took the action. As I said the other day, I make no apology for protecting the integrity of the plan.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: If the honourable member wants to do something for the people of Mount Gambier, a number of other observers have suggested that it would be a good idea if the councils merged and had a joint vision for the town. It is not up to me. This government is not going to force councils to amalgamate, but what we can do at the very least, and what I intend to do as planning minister, is to ensure that on planning their city they work together to ensure that it is the best outcome for that city.

GREATER MOUNT GAMBIER MASTER PLAN

The Hon. R.I. LUCAS (14:50): As a supplementary question, did the minister discuss with the member for Mount Gambier his proposed decisions announced on 28 February; that is, the

Greater Mount Gambier Master Plan and his ministerial development plan? If he did discuss it prior to the release on 28 February, did Mr McEwen support that plan?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:51): Mr McEwen is a member of cabinet; this is a cabinet process.

GREATER MOUNT GAMBIER MASTER PLAN

The Hon. R.I. LUCAS (14:51): I have a further supplementary question. Is the minister indicating that this was a decision taken by cabinet in which Mr McEwen participated?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:51): What I am saying is that it is the usual intention that, whenever there is a release of major documents such as planning strategies, cabinet is informed of those documents.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Yes; they are, but the cabinet is informed.

GREATER MOUNT GAMBIER MASTER PLAN

The Hon. R.I. LUCAS (14:51): I have a further supplementary question. Now that the minister has indicated that he took this to cabinet, even though he is the planning minister, did he have any other discussions with the member for Mount Gambier in relation to the controversial decision that he has taken in Mount Gambier, which has pitted developers against developers and now city council against district council, at least in relation to this aspect?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:51): It is a good try from the honourable member to get me to indicate what was discussed in cabinet. He knows that those matters are confidential. I am just indicating by my answer, if the honourable member does not understand, that Mr McEwen was well aware of the decision, because cabinet was informed of that decision, which is the usual practice with such things.

GREATER MOUNT GAMBIER MASTER PLAN

The Hon. R.I. LUCAS (14:52): I have a supplementary question. My question to the minister did not relate to cabinet decisions: it related to any discussion outside cabinet between the member for Mount Gambier and the minister. I again direct the question to him. What other discussions did he have with the member outside of cabinet in relation to these controversial decisions?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:52): In relation—

The Hon. R.I. Lucas: What are you hiding?

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: In relation to my decision—

The Hon. R.I. Lucas interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: I have absolutely nothing to hide at all. As I said, in relation to the decision, I informed cabinet, but I did not discuss—

The Hon. R.I. Lucas interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: —the ultimate decision prior to that. But, as for all processes for rezoning, if the honourable member was a lower house member, he would be aware that, whenever development plan amendments are made, it is actually a requirement under the Development Act that you consult with the local member. We probably have some members here on the Environment, Resources and Development Committee—

Members interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: —who know that, whenever development plan amendments (PARs under the old system) are made, they actually go to the Environment, Resources and Development Committee. One of the items that I send to them is consultation with the local member.

An honourable member interjecting:

The Hon. P. HOLLOWAY: That's right; it has been that way for some years. The views of local members—and Mr McEwen is the local member—are considered as part of the process. What I have to do in my submission to the ERD Committee, when I put it, is to assure the committee that I have consulted with the relevant local members.

GREATER MOUNT GAMBIER MASTER PLAN

The Hon. R.I. LUCAS (14:54): I have a supplementary question. In that consultation with the local member, did he support the decisions that the minister was about to take?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (14:54): As I said, we have a committee of parliament that will examine these matters. The report about the honourable member's views will go before that. I think it would be breaching standing orders if I was to pre-empt that, because—

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: It will go. I am not supposed to discuss matters before standing committees; it is a standing committee.

The Hon. R.I. Lucas: What are you hiding?

The Hon. P. HOLLOWAY: I am hiding nothing at all.

FIRE PREVENTION

The Hon. R.P. WORTLEY (14:55): I seek leave to make a brief explanation before asking the Minister for Emergency Services a question about fire prevention.

Leave granted.

The Hon. R.P. WORTLEY: A number of damaging fires have been reported as a result of the use of mechanical tools, such as angle grinders. Is the minister able to provide any information about the requirements for the use of these tools during the fire danger season?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (14:55): This is a serious matter, with two fires in as many days sparked by angle grinders, which certainly has had our firefighters worried. While there is no suggestion that fires which have started as a result of the use of mechanical tools are deliberate, the inappropriate use of such equipment under current conditions clearly can have devastating results. Everyone in this place is aware that the state is experiencing a period of extraordinary fire risk. We have very dry grasses and vegetation and it takes only one spark, and unless appropriate measures are in place fire can spread quickly.

I appreciate that the restrictions we place on the use of these sorts of tools can cause inconvenience for farmers, workers, supervisors, businesses and so on. However, public safety is the primary concern and I assure members that restrictions are in place to protect life and property. A number of items of equipment fall into this category: angle grinders, chainsaws and brush cutters, together with other appliances or items which, under the Fire and Emergency Services Regulations 2005, have restrictions placed on their use during the fire danger season. These include vehicles, aircraft, welders, slashers, bee smokers, rabbit fumigators, bird scarers and blasting using explosive materials.

As general advice, I urge anyone intending to undertake activities using any of the above to contact the CFS hotline to check any restrictions prior to using these items. These restrictions are not overly onerous, and simple precautions can be taken, such as having a water supply available, hoses already attached, portable water if necessary, rakes, shovels, and so on. These precautions take only a moment. The CFS hotline and website are very helpful and can deal with specific requirements for each item of equipment or appliance.

Angle grinders, however, seem to have been of some concern. I remind people that they can be used during the fire danger season, but people must (and this is common sense) have a shield or guard fitted; the area cleared of flammable material or wetted sufficient to prevent the spread of fire to a distance of at least four metres; adequate water on hand to extinguish any fire should a spark escape; and a person present at all times to control the appliance while it is in use. Similar requirements exist for chainsaws, welders, brush cutters and so on.

On a total fire ban day these appliances cannot be operated without the issuing of a schedule 10 permit from local councils. However, it does not have to be a total fire ban day for the fire risk to be high. We are in very dry conditions and, regardless of what the law requires, I urge everyone to err on the side of caution and exercise some common sense. A number of fires this season have a known cause of a mechanical cutting tool or welder.

With the dry and hot conditions that we are expecting over the coming days and in the lead-up to the long weekend, SAFECOM Public Affairs and the fire services will be reinforcing the safety message through the media, aiming to bring home to people the dangers of operating this type of equipment. I urge everyone to take those messages seriously.

POLITICAL DONATIONS

The Hon. M. PARNELL (14:59): I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning a question about political donations by property developers.

Leave granted.

The Hon. M. PARNELL: Last week, the New South Wales Premier, Morris Iemma, outlined changes to the rules governing political donations by property developers. He did this in response to the rising tide of outrage in that state over the perceived influence that donations to political parties by property developers have on government decision making. One of the reforms outlined by the Premier in New South Wales in parliament last Thursday is a new requirement for all applicants for development approvals to detail at the time they lodge a development application any donations made to political parties by the applicant. Premier Iemma said, 'The government agrees that disclosure should be publicly available as part of the development application.'

In today's *Australian* newspaper there is a report that says:

> Inspection of AEC records show a significant increase in donations from land and property developers to the ALP in South Australia in the election year of 2005-06. Donations from property developers were $330,000 in 2005-06, more than double the donations from the year before of $142,000.'

The article goes on to say:

> ALP state secretary Michael Brown denied that developers paid for access to ministers in South Australia, as has been suggested in New South Wales. However he said businessmen and women regularly paid to meet ministers under the auspices of the ALP's South Australia Progressive Business group.'

My questions to the minister are:

1. Will South Australia follow New South Wales' lead and require all applicants for development approval to detail their donations to political parties at the time they lodge their development applications? If not, why not?

2. Have any property developers paid to meet with you under the auspices of the ALP's South Australia Progressive Business Group? If so, which ones, and how much did they pay?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:01): The Hon. Mark Parnell has been trying to peddle this issue for some time, and he got it horribly wrong earlier this week. It has been quite a disgrace, but rather typical of the Greens which is, of course, a party that really is dedicated to the destruction of the economy of our state and of Australia as a whole. No political force is a greater threat to economic progress than the Greens.

Given that they are so opposed to development in any form within our state it is not surprising that they would try to raise these sorts of issues, because they see it as a way that they can get a level playing field in politics. If they are able to do anything which can damage economic progress within the state then they will do it. We should be mindful of their motivation.

We should also be mindful that the Hon. Mark Parnell got it horribly wrong the other day, and I will say more about that later. Frankly, I am getting sick of his sleazy allegations, his wrongly-based allegations. If he wants to make allegations that this government is acting improperly let him go outside; he is a lawyer and knows what you would get. The fact is that he knows he is wrong. Within the cosy confines of this council he has been making allegations and casting slurs—

The Hon. J.M. Gazzola interjecting:

The Hon. P. HOLLOWAY: Under privilege, and making innuendoes that are totally wrong. Will South Australia follow New South Wales' lead? No. As far as I am concerned we will not be following New South Wales' lead in development matters because, with the Development Act, which this government passed, we introduced independently-run development assessment panels. What measure could give greater protection against influence in development decisions than having independent panels rather than local government? So we have that big difference from New South Wales.

Now, New South Wales might have problems with Wollongong council and elsewhere, but in this state we have an independent majority on development assessment panels to give us a cleaner development—

The Hon. R.D. Lawson interjecting:

The Hon. P. HOLLOWAY: Fancy someone from the Liberal Party interjecting on donations. Which party wrecked the declaration of donations legislation in this country? It was members opposite. It was their party which tore up the declaration; they used their majority in the Senate to remove it. I think any Liberal at all—

Members interjecting:

The PRESIDENT: Order!

The Hon. J.S.L. DAWKINS: I rise on a point of order. The minister well knows that pointing is out of order, and he has been doing it all day.

Members interjecting:

The PRESIDENT: Order! The minister will refrain from pointing at those he is accusing.

The Hon. P. HOLLOWAY: Thank you, Mr President; I will take your advice. Fancy members opposite from the Liberal Party trying to interject and score points in relation to donations, when they were the ones who scuttled the legislation we had in this country to have proper disclosure of donations.

As I said, there are significant differences between New South Wales and here, but I am not the minister responsible for the legislation in relation to electoral matters. But, certainly, to the extent that I am involved in planning decisions, I can assure the honourable member that we will not be following New South Wales' lead in terms of anything that they might do in relation to planning.

Incidentally, I also understand that he has been sniffing around on a whole lot of other issues, trying to discover some dirt. The honourable member referred to this morning's newspaper article, which relates to the sale of land to the Fairmont Homes Group, and this was the issue that was published in *The Australian* this morning, and it came out of a question asked by the Hon. Mark Parnell earlier this week. It suggests that the rezoning of land at Blakeview was in some way related to the purchase of land by Land SA or Fairmont Homes, or the group that is related to Mr Pickard.

I have just received some information from the Land Management Corporation, which states:

The following information is provided in regard to the attached article that appeared in today's *Australian* newspaper.

In November 2006, the LMC Board approved a land release strategy to increase residential land supply in response to significant demand, and to enable the requirements of Defence Housing Australia (DHA) to be met (who require residential allotments to house the new Battalion members and their families being relocated to Edinburgh Parks) and to mitigate against the delay experienced in rezoning land at Evanston South that had been programmed for release in 2006.

The first parcel to be released under this revised strategy was one of 28 hectares fronting Craigmore and Bentley Roads at Blakeview. The land had been included in the Residential Zone in the City of Playford Development Plan for many years.

In other words, it was not in the land for the extended urban growth boundary. The statement goes on:

In order to meet the agreed timeline for the delivery of finished allotments to DHA, LMC lodged a plan of subdivision of the Blakeview site so that the sale could be subject to Provisional Planning Consent by the City of Playford and enabling DHA to commit to purchase the allotments it selected from that plan. The plan created 359 allotments. The terms and conditions of tender placed a number of obligations on the successful tenderer, including an undertaking to meet the commitment to meet the timeframe for the sale of allotments housing to DHA, provision of affordable housing in accordance with the State Housing Plan, a range of sustainable development outcomes including the provision of a system for the reticulation of reclaimed water to each allotment and open reserves within the estate.

LMC engaged Savills to market the property for sale by public tender with advertising commencing 23 June 2007 at both a local and national level. A strong level of interest was displayed from a variety of primarily local developers of varying size.

Tenders closed on 29 August 2007. The evaluation of tenders was completed in accordance with LMC's tender evaluation protocols and under the observation of an independent Probity Auditor. The evaluation was based on the criteria of tender price, experience in similar projects, proven track record and financial capacity. The tender submitted by Fairmont Homes Group Pty Ltd was for the highest price of all tenders received.

The probity auditor provided a report confirming that all processes were conducted in accordance with the probity plan.

The acceptance of the tender was endorsed by the LMC Board and approved by the Minister for Infrastructure on the 8th September 2007. Settlement of the purchase occurred on the 29th November 2007.

This land parcel was already zoned residential, and did not form part of the lands subsequently included in the revised urban growth boundary.

In other words, the basis of the story in *The Australian*, the basis of the question asked by the Hon. Mark Parnell, was totally false.

EMPLOYMENT

The Hon. C.V. SCHAEFER (15:09): I seek leave to make a brief explanation before asking the Leader of the Government a question about employment opportunities.

Leave granted.

The Hon. C.V. SCHAEFER: A recent pamphlet from SACOME states that of the 108,500 permanent visas to be granted this financial year only approximately 4,500 skilled workers will reach South Australia. In the face of this, the government has announced $150,000 for training to encourage South Australians into mining careers. My question is: what provision has been made to encourage people into equally needy industries, such as agriculture and manufacturing?

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (15:10): The question asked by the honourable member is an important one, because this government is addressing the dramatic increase in skills that will be required by the mining industry through bodies such as RESIC, which is the committee involving government and senior mining company executives in relation to infrastructure and skills shortages in the mining industry.

While we are taking that initiative because of the significantly growing demand for skilled labour within the mining industry, one of the risks we face is the pressure in other areas that will occur because of the capacity of the mining industry to take labour from other industries, and I know that it is a matter that my colleague the Minister for Agriculture, Food and Fisheries is certainly aware of. PIRSA looks after the minerals and energy resources division, but it also encompasses agriculture. I know that, through contact with its chief executive, it is looking at what it can do to alleviate the impact on the farm sector and, of course, other sectors of the community.

One of the huge problems we will face in this country relates to the ageing of the population. Earlier, I answered a question about the Ageing Atlas, and the figures I provided indicated just how rapidly the number of people over 75 and 85 will grow: it will almost treble by about 2030. There will be a huge increase in that population, and there will be a big demand for carers and other workers, as well as for a skilled workforce in other sectors of the economy.

To deal with the ageing of the population, we will need to look at a number of other quite radical solutions. I notice that yesterday the House of Assembly accepted the changes to the superannuation scheme, which will encourage people to keep workers in the workforce longer. It is important that we keep our senior public servants (whose average age is increasing) in the

workforce. Obviously, we must look right across the board at what we can do to encourage people, particularly those with skills, to stay in the workforce longer.

We will need to look at immigration to fill the skills needs, and we will also have to develop other strategies, because I believe that it will be one of the most challenging issues facing this state both politically and economically in the future. We face a huge challenge, and I do not pretend that there is any easy solution.

I know that Primary Industries and Resources SA is looking specifically at the agriculture sector, and I think that that is the area the honourable member specifically referred to in her question. Clearly, every sector of the economy will be impacted by the changing nature of the economy and by the ageing of the population. My personal view is that one of the sectors that will be most difficult to deal with will be the care sector because, with the ageing of the population, that is where demand will grow even more rapidly; however, it is probably where, traditionally, wages have been the lowest, so it will be the hardest sector to attract people to, but that is just my personal observation on the problem.

It is an issue the government is aware of, and that is why I announced projects such as the Ageing Atlas so that, in terms of housing and accommodation, we can look at the changing demographics of the population, and that is just one part of it. Clearly, specific issues need to be addressed in agriculture, and I am happy to ask whether the Minister for Agriculture wishes to add anything further to the answer in relation to that sector in particular.

CORRECTIONAL SERVICES VOLUNTEERS

The Hon. B.V. FINNIGAN (15:14): I seek leave to make a brief explanation before asking the Minister for Correctional Services a question about Correctional Services volunteers.

Leave granted.

The Hon. B.V. FINNIGAN: I understand that the Department for Correctional Services has a number of volunteers who donate their time and energy to assist prisoners and offenders in the community. Will the minister provide some details of the department's volunteer support?

The Hon. CARMEL ZOLLO (Minister for Emergency Services, Minister for Correctional Services, Minister for Road Safety, Minister Assisting the Minister for Multicultural Affairs) (15:15): The Department for Correctional Services is, indeed, fortunate enough to have a dedicated unit of about 95 volunteers coordinated out of the Port Adelaide community corrections centre. Our volunteers provide a valuable service to the correctional system. They offer a range of opportunities that add value to prisoner and offender case plans.

An honourable member interjecting:

The Hon. CARMEL ZOLLO: It is a shame that the honourable member opposite is not interested in listening to what our volunteers do. Volunteers are also an important link between the department and the community. Over the past year, volunteers have been actively involved at seven prisons and 13 community correction centres right across our state. This translates to in excess of 8,300 hours volunteered to the department during the year. Volunteers assist prisoners and offenders with the preparation of resumes; transport them to job interviews, work, education and medical commitments; provide library, craft and educational programs; and transport prisoners' families to prisons for visits. The volunteer unit also works closely with community corrections centres to help with programs involving numeracy and literacy tuition; basic budgeting skills; learner's permit tuition; personal support and mentoring; transport to various counselling appointments; and involvement in the department's core programs.

During the time that I have been the minister, I have had the opportunity to meet many of these volunteers. Cases that come to mind are when we read in the paper that a particular person under home detention is required to undertake medical visits: a volunteer is involved in something like that. The crosses that have been put together (which I have previously spoken about) were produced at Elizabeth and transported to Point Pearce. Volunteers were involved in all of that. I was fortunate enough to visit the Edwardstown community corrections centre, which has a program for offenders with special needs, and the volunteers there are really tremendous people.

The volunteer unit continues to increase its participation in both community corrections and prisons in rural areas, with about 20 volunteers based outside the metropolitan area. Country volunteers are now located at Port Augusta, Port Pirie, Cadell, Berri and Murray Bridge, and there is a recently re-established unit of volunteers in the Mount Gambier region. Indeed, the level of volunteer inquiries has risen significantly this year, with the introduction of the Centrelink voluntary

work initiative. It is anticipated that the level of inquiries for volunteer work generated through this initiative will only continue to grow as the program expands.

Last year, I had the great pleasure of attending the volunteers unit Christmas luncheon, where I presented 16 volunteers with long service award medals. The individual service awards ranged from five to 25 years of service to the department. I am pleased to say that this year 50 of the department's volunteers attended the Clipsal 500 at the invitation of the Premier. The day was a great success. I am advised that the volunteers have said that the day was fantastic and was appreciated by all who attended. I was pleased to have the opportunity to be there with them.

I am sure that honourable members will join me in thanking all the department's volunteers for their service to the community. As I said earlier, in the time that I have been the minister I have had the opportunity to meet many of them. I am sure all of us understand that public administration is a challenging area, in terms of the people who work in a paid capacity but, for those who are volunteers, it can sometimes be equally as challenging. Again, I appreciate their commitment to our community.

SENIOR SECONDARY ASSESSMENT BOARD OF SOUTH AUSTRALIA (REVIEW) AMENDMENT BILL

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

The Hon. CARMEL ZOLLO: Before addressing the amendments, I wish to make a statement concerning two questions raised by the Hon. Rob Lucas during a previous debate on this bill in November 2007 to which I undertook to provide a response. The first matter concerned the SACE Review recommendations and the South Australian Tertiary Admissions Centre (SATAC). The SACE organisation and SATAC were working in conjunction to oversee scaling of the tertiary entrance rank (TER). Ultimately, the SACE board will determine (in consultation with SATAC) how TER results are communicated to candidates.

The second matter the Hon. Rob Lucas raised concerned the Future SACE. The Crown Solicitor has verified that, under the current legislation, the minister has the power to review the operation of the SACE and to make recommendations and trial those recommendations.

Legal advice has confirmed that the current development work concerning the proposed Future SACE is not unlawful. The Future SACE Implementation Steering Committee, comprising the education sectors and the board (through the Chief Executive Officer of SSABSA) was established to oversee the development and trialling work related to the Future SACE. The outcome of this collaborative work will be considered by the board cognisant of the input of the educational expertise provided by the steering committee and the extensive consultation across the education sectors. This process reflects the intent of the SACE review and the legislative reforms.

The government's SSABSA bill vests responsibility for senior secondary certification with the board in close collaboration with the school sectors and the responsible minister. The collaborative development work will in no way undermine the role and authority of the new SACE board under the proposed legislation.

Following the SACE review, funding over a five-year period was sought to design, trial and implement a new SACE. Funding was allocated in the 2006-07 education portfolio budget. In accordance with that budget provision, the steering committee is overseeing the SACE development and trial work. What the education community, the board and the minister will achieve through this work is a SACE for the future and enhanced educational outcomes for all young people across South Australia.

I will now address the amendments from the other place. When the council last considered the SSABSA amendment bill I noted that the way education is delivered today has changed significantly from the traditional classrooms of the past. Therefore, we need to ensure that the legislative framework we have in place supports the education of today's children and future generations. As with members in the other house, I am sure that every member of this council wants all young people to achieve their potential as citizens of South Australia. It is today's year 9 students who will graduate in 2011 with a new SACE. The outcome of our deliberations today will reflect the strength of the legislative foundation that supports them, and future generations, in achieving their potential.

The other house recognised, as have stakeholders involved in shaping this legislation, that to underpin our young peoples' future success it is imperative that the legislation before us is passed and a new board appointed as speedily as possible. Consultation and responsive change

have been the hallmarks of all of the deliberations around the new SACE and the legislation that will support this new senior secondary certificate.

In formulating the original bill, a discussion paper and a legislative advisory group of 40 key stakeholders, which includes each of the school sectors, enabled us to shape a bill with the broad agreement of the overwhelming majority of those stakeholders. Following this council's amendments to the SSABSA bill, there has been ongoing consultation with members of that advisory group. These steps reflect our commitment to work together to ensure that we deliver an effective senior secondary system that enables young people to achieve their potential.

The SSABSA bill, as introduced by the government, links with the new compulsory education age legislation passed last year and the new SACE. They will help create a new education and training landscape for young South Australians. The original bill provided a legislative driver for the Future SACE and, in turn, enable more young South Australians to achieve their potential by learning across the whole education, training and workforce landscape.

This new direction will require new approaches to teach, assess, monitor, track and assist young people as they progress from school, to training and to work. In the interests of young South Australians, the other house agreed to four of the amendments made to the SSABSA bill in this council, and these concern the appointment of the board, the role of the minister in relation to the function of the board, and a minor amendment regarding data about young people of compulsory education age.

However, in disagreeing to the remaining nine amendments, all members in the other house effectively acknowledged that there must be employment certainty for the CEO and staff of the board; our education system as a whole must be able to support young people of compulsory education age by being able to effectively track and monitor their progress and measure their achievement; and we must be able to ensure that the minister responsible for the education of young South Australians is accountable to parliament and has the capacity to fulfil the responsibilities of the education portfolio.

My advice is that amendments Nos 1, 2, 5, 12 and 13 concern the employment arrangements for the CEO and the staff of the board. The bill, as introduced by the government, addresses stakeholder concerns by removing the chief executive of DECS as the employing authority for the CEO of SSABSA and its staff. The amendments proposed in this place would bring the CE of SSABSA and staff within the scope of WorkChoices. While the new federal government plans to overturn WorkChoices, these changes are not expected to go before federal parliament until later this year.

As supported in the other house, it is important that SSABSA staff have certainty over their employment conditions at a time when we are introducing a new SACE. I therefore strongly urge that the committee does not insist upon these five amendments.

Amendments Nos 7 and 9 concern our ability to support and monitor 16 year olds of compulsory education and age. As has been agreed to by all stakeholders and supported by the other house, it is essential that the participation of children of compulsory education age—that is, 16 year olds in approved learning programs—can be appropriately monitored, tracked and supported. A key function assigned in the government's bill provides for SSABSA to have a role in enabling this through the collection of data about this group of young people.

The effect of the amendments is twofold. First, they would restrict the transfer of information relating to individual students disengaged from education and only aggregate data relating to 16 year olds could be provided. Secondly, the board would be able to provide information only to entities within the school education sectors and would prevent the transfer of information to other sectors delivering approved programs, such as TAFE and private registered training organisations.

As the Minister for Education and Children's Services noted when the House of Assembly disagreed to these amendments, safeguards are being put in place to appropriately protect the data. The government has made new regulations under the Freedom of Information Act to prevent third party access to information held by the minister and the Department of Education about 16 year olds and other information that could be used to construct league tables.

Additionally, as recommended last year by an advisory group of education committee stakeholders, it is the minister's intention to make the appropriate regulations under the Education Act to ensure that both the SACE board and the minister establish the necessary protocols with each school sector in order to protect the release of the identity of schools and students.

I am advised that all stakeholders will be fully consulted to help shape developments of any regulations. I am also advised that the Association of Independent Schools of South Australia has accepted the assurances given by the minister. I therefore urge that the committee does not insist upon these two amendments.

The remaining two amendments Nos 10 and 11 relate to a perceived ministerial power over the board. The government's bill strategically connects the board, the education sectors and the minister responsible.

Amendment No. 10 would remove the ability of the minister to seek information from the board that relates not to the board but to a minister's responsibility as minister for education. It is understood and agreed by all stakeholders, including the Association of Independent Schools of South Australia and members of the other house, that this is a reasonable provision.

Amendment No. 11 would remove the minister's limited power to direct the board in the interests of supporting the accountability and performance of the board for which the minister is ultimately answerable to the parliament. This proposed process is transparent, as it requires the minister to table any directions in parliament and the board to report these in its annual report. The proposed power of direction is intended as a safeguard to the board's performance and accountability.

As noted by the minister in the other place, such a limited power is consistent with provisions in other comparable legislation; for example, the Training and Skills Development Act 2003, which the former Liberal government developed, and the Teachers Registration Standards Act 2004, both of which were passed with the support of the Liberal opposition.

As the member for Schubert said in debate in another place last Tuesday, it is all right to direct higher order aspects of management and setting SACE requirements to the minister. I therefore urge this chamber to not insist on these two amendments. The education community members who have been closely involved in the shaping of this legislation all want to see the swift passage of this bill so that we can get on with the task of establishing a new SACE board. In turn, we can provide the support that young South Australians need to achieve their potential through a new SACE and a new education and training environment. I strongly encourage members to take a bipartisan approach to this commitment and urge the committee to not insist on all nine amendments. We all share the goal of wanting young people to do their best, and that approach supports this goal.

The Hon. R.I. LUCAS: I thank the minister for relaying the government's position in relation to the amendments. At the outset, she provided answers to questions that had been asked when we debated the bill in November, and I thank her for that. It is clear that the legal advice confirms the viewpoint put that it will be the new board's decision in relation to the new Future SACE framework.

The minister has obviously taken legal advice to confirm that the preparatory work they are doing is not illegal or unlawful (I do not think anyone suggested that it was) and that it is a decision of the new board, which information the minister gave on behalf of the government when the debate was proceeding in November last year. Will the minister clarify whether, if the parliament agrees to the bill with the amendments as suggested by the government, and now that it has taken legal advice, the minister is now indicating that if some future minister for education decides to have a completely new Future SACE, which may want to incorporate new subjects, change the pattern of learning or a range of those issues, he or she will have the power to direct the SSABSA board on that future framework?

I ask that question in respect of the essence of the legal advice the minister has now read to the committee, and the fact that under clause 17A of the original bill the minister will have the power to direct in relation to any matter relevant to the performance or exercise of a function or power of the board but cannot give a direction in relation to content or accreditation of a subject.

Clearly, a minister would not be able to direct the particular content of a subject, but if a future minister for education wanted to have a completely different framework—require subjects like language at year 12 or everyone having to do English studies rather than a literacy rich subject or any framework like that—is the minister's legal advice now that a future minister has that authority and power?

The Hon. CARMEL ZOLLO: My advice is that the new legislation, if passed, will enable the minister and the schooling sector to request the board to review the development of courses, and that is how the process would be undertaken.

The Hon. R.I. LUCAS: I have a very strong view on this. The committee ought to at least be informed as to the nature of the legal advice, and that response does not answer the question I am asking. I will try to put it as simply as I can. Let us say that a future minister wants to change the Future SACE, which the minister will now implement. Under the current arrangements, that has to be done by the board approving it, but now we are to have a new act with all these amendments. My question is: if a future minister in, say, five years says, 'I want to go back to the old SACE' (or some future variation), who makes that decision? Will it be the minister, with this power to direct, or will it be the board?

This parliament needs a clear answer to that. Is it the board or the minister? I do not propose to raise further amendments at this stage, but I believe the parliament ought to be informed (now that the minister has provided some legal advice that the government had to seek on this issue) whether it is the minister or the board that will be able to make that decision in the future.

The Hon. CARMEL ZOLLO: My advice is that the new act is clear: it will be the board's responsibility.

The Hon. R.I. LUCAS: I thank the minister for that. I am not a lawyer, but I have to say that on the surface of it I cannot understand how that is the case, given ministerial directions. However, the minister has given that undertaking on behalf of the government and said that that is the legal advice the Crown Solicitor (I think) has provided. I would ask the minister: was it the Crown Solicitor or the Solicitor-General who provided advice on this issue?

The Hon. CARMEL ZOLLO: I am further advised that the current legal advice is about the current act, not about the future.

The Hon. R.I. LUCAS: I believe that is contrary to the undertaking the minister gave—

The Hon. Carmel Zollo: The question was about that.

The Hon. R.I. LUCAS: Let us be quite specific on this; and I can only repeat the question, because I think what the minister has just said is in conflict with what she said two responses ago. What I believe the parliament needs to know—and what I, as one member, seek to know—is: when this bill is passed and we have a new act (the law as it will apply in the future), who has the authority? Is it the minister in the future or is it the board in the future that will make the final decision about either coming back to an old SACE or having a future Future SACE? I think that is a pretty simple question.

Clearly the government has received legal advice from (I understand) the Crown Solicitor on this issue, and I think this parliament ought to be informed whether it is the minister or the board who will make the decision. Up until now it has been the board, and it has been independent to that degree. If this government is now instituting that it is the minister then, again, I think the parliament ought to be so informed.

The Hon. CARMEL ZOLLO: Parliamentary counsel advice is that the minister could make such a direction. However, I am further advised that she could not direct the schools to teach particular subjects. The fact is that, within the spirit of this legislation, the minister, the schooling sector and the board together have the responsibility for the SACE and, more importantly, for keeping it current.

The Hon. R.I. LUCAS: I assume that the minister is saying that parliamentary counsel is interpreting the Crown Solicitor's legal advice to the government, or is that parliamentary counsel's independent advice? The minister has outlined the Crown Solicitor's advice and is now attributing this most recent advice to parliamentary counsel. Whilst I have great regard for parliamentary counsel, I would like to be clear that what has been placed on the record is the parliamentary counsel view of the legislation, or is parliamentary counsel saying that that is his view and that it is also what he understands the Crown Solicitor to have advised the government as well?

The Hon. CARMEL ZOLLO: I am advised that the Crown Solicitor's advice was about the current legislation, not future legislation.

The Hon. R.I. LUCAS: Can I clarify that? When you say the 'current legislation', you are talking about the current act, as opposed to the bill before the committee?

The Hon. CARMEL ZOLLO: Yes, the current act.

The Hon. R.I. LUCAS: I think it is a bizarre proposition that the Minister for Education, not this minister, would be seeking advice about the current act. It is fine to get advice about the

current act but also about what the situation is going to be under the future legislation. Anyway, that is the nature of the advice. I understand from what the minister has just said that parliamentary counsel's view is along the lines she indicated when last she spoke.

In relation to that, I think it is clear from what parliamentary counsel has advised the government that the government has now indicated that it will be possible for a future minister for education to revert to a current SACE (that is, the old SACE) or have any version of a future SACE if he or she so wishes.

What parliamentary counsel is advising is that it is ultimately up to the school sectors as to whether or not they offer the SACE. Ultimately, they can teach what they want; they can go to the International Baccalaureate. Frankly, one or two independent schools have looked in a very exploratory way at whether or not they could offer a certificate from another state. If they are unhappy with the South Australian Certificate of Education, what would prevent them from offering some interstate or international accreditation for their year 11 and year 12 studies if they so chose? There are a lot of logical reasons why you would not do that, and no-one has gone down that particular path in any serious way, but some schools obviously do offer the International Baccalaureate in addition to, or in competition with, the South Australian Certificate of Education.

I think members need to be clear that, at some future stage, a minister—and with the greatest respect to my own breed as a former minister for education there have been any number of weird and whacky ministers for education nationally, if I can put it that way, rather than necessarily in South Australia—will have the capacity, if he or she is unhappy with this particular version of SACE (the Future SACE), to impose his or her view on what a future SACE will be. That is the advice the minister has now given to the committee.

In relation to the recommendations for the minister, I indicate (as indicated by the party spokesperson in the House of Assembly) that the Liberal Party will support the compromise position that has been put to the House of Assembly and now to the Legislative Council. We as a party welcome the fact that, in terms of representation on the board (its composition), which was, I guess, the driving point for the Independent Schools Association authorities in South Australia, the government has given ground on that key issue to the independent schools sector.

Put simply, it will mean that the Catholic and independent schools will have a voice on the SSABSA board on key decisions that will be taken in the future, and we welcome that. We also welcome the fact that, as part of the compromise, the government has conceded ground on one of the amendments in relation to the independence of the board and the power of the minister.

The government sought to give the Minister for Education the authority to add any additional function to the SSABSA board without any regulation or legislative change. The minister could just wake up one morning, go through a process (quite separate from parliament) and assign an additional function or power to the SSABSA board. That was opposed by the Legislative Council, and we welcome the fact that the government conceded on that issue.

As the minister indicated, the shadow minister in another place, speaking on behalf of the Liberal Party, indicated that, as part of the compromise, the Liberal Party conceded on a range of other issues that were originally agreed to by the Legislative Council.

A number of issues raised by the minister in the House of Assembly in support and justification of the position put by her and the government were, in my view, frankly wrong. For example, with respect to the amendments relating to the employment of the Chief Executive of SSABSA, I remind members that the current situation is that the Chief Executive of DECS (the government school sector) is, in essence, the employing authority for the Chief Executive of SSABSA. No-one agreed with that; it was an unintended consequence of the government's earlier legislation. In essence, the government's bill will put the minister in charge of the appointment of DECS.

The Minister for Education told the other house that the amendments that we moved as a chamber would put the Chief Executive of DECS in charge of the SACE organisation. That is completely wrong. It is actually close to the situation as it was under the government's old legislation, and it was what the Legislative Council sought to correct; that is, to go back to the position of an independent board, which employed a chief executive who employed their staff, rather than the Chief Executive of DECS.

The minister suggested that it was an unintended consequence of what the Legislative Council had done when, in fact, what she described was her own legislation. There were one or two other examples like that (but I will not go through them all at this stage), where the minister,

frankly, was wrong in what she told the Legislative Council when describing the impact of its amendments.

Finally, I indicate that the Liberal Party has agreed to the compromise. Speaking personally, I still have significant concerns about the Future SACE, but I will not repeat them, as I have gone through them on a previous occasion. I still have concerns but, in the spirit of compromise, we acknowledge that both sides have had to give way on points in which they may still strongly believe. As the government has indicated, it still strongly believes in its original position on the amendments on which it has given way.

I indicate, as one member of the Liberal Party, that I strongly believe in the principle behind the amendments we moved, particularly those relating to the independence of the board. I think a fundamental problem remains, that is, where the minister will have the legal power and the capacity to direct the independent SSABSA board on a range of issues if he or she so chooses. The reality is that a good and sensible minister may well not do so and that we will not find ourselves in those circumstances. However, a future minister does have the legal authority now and, as I indicated, a future minister who wants to have a year 12 subject on nuclear power will be able to direct the board to have a subject on nuclear power; or, if they want to have a subject on the sex education course that SHine was pushing, they can require that as a year 12 subject.

I hope that, in the spirit of what the minister has talked about—cooperation and collaboration, and other words that the minister chooses to use—we do not end up in a position like that. However, I indicate that this parliament, through this process (and I accept that there has been give and take on both sides), has potentially raised the possibility for those sorts of actions by a future minister, and that is what the parliament, by a majority (and I am not sure what the views of other members will be; that is for them to indicate), ultimately will be supporting.

As I said, they are personal views that I have indicated. As I said at the outset, the party's position as enunciated is that we accept the give and take, and we welcome the fact that the government has given ground on some amendments and, in response, the opposition has conceded ground on a range of amendments.

The Hon. D.G.E. HOOD: I wish to make a brief contribution with respect to Family First's position on the agreements that have been reached with respect to the amendments that the Legislative Council made to the bill in the first place. We also have grave concerns about the capacity for a minister to direct a board to begin the teaching of specific subjects, which I think, as the Hon. Mr Lucas rightly pointed out, may in fact not be a problem at all, should the minister be reluctant to use those powers.

However, the fact is that, when this legislation passes, the minister will have those powers, and that has not historically been the case. Family First will certainly be insisting on amendment No. 11, which is the specific one that deals with this issue. We are prepared to consider the views of others on the other amendments, and may not insist on those, but we will certainly be insisting on amendment No. 11 (clause 16, page 11), because it specifically gives the minister that power, which we just cannot accept.

The Hon. CARMEL ZOLLO: I wish to make a few comments in relation to the concerns of the Hon. Dennis Hood. My advice is that the minister could not direct that a specific subject be taught, because that authority rests with the Director-General of Education in government schools and the respective powers in the independent sector.

In relation to the other issue that has been raised by the Hon. Rob Lucas—in particular, the authority of the minister—I need to remind members that the act requires that the three bodies—the school sectors, the minister and the board—work together to keep the act under review. Should the minister do anything outside what the act requires, he or she would be accountable to the parliament and the other two sectors. I move:

That the Legislative Council do not insist on its amendments Nos 1, 2, 5, 7, 9 and 10.

Motion carried.

Amendment No. 11:

The Hon. D.G.E. HOOD: I thank the minister for her response. I have no doubt that she is sincere in her response, but the fact is that Family First is just not convinced. The section states:

The minister may give the board a direction about any matter relevant to the performance or exercise of a function or power of the board.

It does go on to exclude specifically content or accreditation of any subject. However, the wording suggests to us that the powers of the minister will be substantially increased and, indeed, may encroach upon the content of particular subject matter. For that reason, we will seek to insist on that amendment.

The Hon. CARMEL ZOLLO: Again, I make the point that authority over what is taught in the schools does rest, as I said, with the Director-General of Education in public schools and, again, with the respective powers of the independent sectors. I also make the point that schools would not have to teach a particular subject even if the minister were to do something like direct the board.

The CHAIRMAN: The question is: that the Legislative Council insists on its amendment No. 11.

Question negatived.

Amendments Nos 12 and 13:

The CHAIRMAN: The question is: that the Legislative Council insists on its amendments Nos 12 and 13.

Question negatived.

CRIMINAL LAW CONSOLIDATION (RAPE AND SEXUAL OFFENCES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 5 March 2008. Page 2072)

The Hon. SANDRA KANCK (16:05): Over time, I have found that, if I am in a random group of 10 women, during the time of association (over weeks, months, or whatever) in casual conversation I will find that, most likely, seven out of the 10 will, at some time in their lives, have been sexually abused as children, or sexually assaulted or raped as adults. It is, disturbingly, very common.

What is also common is a very low incidence of reporting. Many of those who were children at the time of the abuse did not report because of the pressure they were put under by that family member—otherwise known as emotional blackmail. Many of them have never reported the incidents because they were drunk at the time and, therefore, blamed themselves, or it was a family friend and they thought they would not be believed. Perhaps it was their husband or partner and they did not want others to know that their partner was capable of such vile action. In other instances, the matter has been reported to police but pressure has been applied from the social group or sporting club (to which the offender and victim both belonged) to not pursue any charges. Some ethnic groups do not recognise rape as being possible in marriage, so those women will never report the crime that has happened to them.

Many of the women who have experienced these crimes now suffer depression and mental illness. There is a huge emotional cost, not just to them but to our health services. I know a number of women who suffer from chronic depression, schizophrenia or bipolar disorder and, at the core of the dysfunction, is child sexual abuse. There is a cost to our mental health services and, in not insignificant numbers, to our welfare system, as some of these damaged people go on to have difficulty parenting, so there can be huge social costs as well.

I mention that, in referring to women, I also acknowledge that some men and boys are also abused, assaulted or raped. However, it is women who are overwhelmingly the target. It is the feminist movement that has pursued, for decades, reform in regard to rape and sexual assault laws and procedures.

This bill has been a long time in coming. In 2002, in the ALP election promises, there is an undertaking (number 41) that states:

> Labor will reform, after community consultation, the laws and trial procedures in relation to all forms of sexual assault and rape, with a view to empowering victims of such crimes; in particular, to address the under-reporting of these crimes; to examine means of minimising the traumatic impact of the legal processes upon the victim, including the possibility of separate legal representation for victims of rape; to remove any suggestion within the law of any inherent unreliability in the evidence of rape victims; to establish a presumption against the giving of corroboration warnings regarding the victim's evidence in rape cases unless specified criteria are satisfied; remove the capacity to use a defence based on self-induced intoxication.

In 2005, after an inquiry lasting close to two years, the Legislative Review Committee of the parliament tabled a report, the subject of which was ascertaining reasons for the low conviction rates of sexual assaults in South Australia, and it made recommendations about how these figures might be improved. It was an excellent report and, with its findings and recommendations, one might have expected that the government had all the information it needed to get on with the job of reform. It was there. So, it was somewhat disappointing, from a time perspective, to find the state government announcing that it was going to conduct a review, which duly occurred in 2006.

This bill is the consequence of that review, although this is the second attempt, with an earlier bill introduced a year ago, which was allowed to lapse. I know that the Stop Rape Now coalition contacted the Attorney-General with recommendations for further amendments and, I assume, the delay was to allow improvements to be made to the bill. I commend the Attorney-General for taking into account those who have had gender reconstruction surgery, as I have a couple of friends in this position. If transgendered women are raped, the crime will be equally damaging to them as to those of us born female.

I return to the Legislative Review Committee report, because so much of what was in that report demonstrates the need for the legislation before us. It shows that in South Australia between 1993 and 2002 conviction rates for rape and attempted rape ranged between 1.6 and 3.1 per cent and for sexual assault between 6 and 24 per cent. The figures for rape and attempted rape are astonishingly low when compared with the number of reports to police. I found these figures to be deeply disturbing. I seek leave to have a table incorporated in *Hansard*.

Leave granted.

Rape and Attempted Rape						
Year	Total Reported	Total cleared by police	Total withdrawn, dismissed, charges dropped	Convicted of other offence	Total guilty pleas	Total guilty as charged
1993	741	279	122	4	11	23
1994	697	310	125	22	11	21
1995	630	289	117	14	1	18
1996	614	256	92	9	6	19
1997	580	231	99	14	5	14
1998	610	409	98	9	6	10
1999	603	357	92	9	8	13
2000	632	396	75	3	7	12
2001	691	410	87	7	7	11
2002	628	353	79	8	4	11

The Hon. SANDRA KANCK: The table shows the number of reports made in each of those years and also shows the attrition rate as police have decided not to proceed or to withdraw cases and victims themselves deciding to withdraw. It leaves a final column showing how many rapists were found guilty as charged.

If we go down the right-hand column, 'Total guilty as charged', the conviction rates were as follows: 1993, 3.1 per cent; 1994, 3.01 per cent; 1995, 2.85 per cent; 1996, 3.09 per cent; 1997, 2.41 per cent; 1998, 1.64 per cent; 1999, 2.15 per cent; 2000, 1.89 per cent; 2001, 1.59 per cent; and 2002, 1.75 per cent. It does not take an Einstein to see that the rates of conviction are dropping, which is very concerning. Those figures also show in the column 'Total reported' is that there was a reduction in the number of people reporting rapes in the first instance, as follows: 1993, 741; 1994, 697; 1995, 630; 1996, 614; 1997, 580; 1998, 610; 1999, 603; 2000, 632; 2001, 691; and, 2002, 628. This is all happening at a time when the population is growing. Clearly, there is a trend downwards in the number of people reporting rapes and sexual assaults.

Both these columns are cause for major concern. The number of victims reporting the crime is reducing and within that smaller starting number there was a reduction in the number of successful prosecutions, both in raw number and in percentage terms. These extremely bad

figures have to be seen in their context, and that context makes what are bad figures almost impossible to comprehend.

The committee reported that, of women who have been sexually assaulted, the reporting rate was somewhere between a worst case scenario of only 8.7 per cent and, at best, 33 per cent. Put another way, somewhere between seven and nine out of 10 rape and sexual assault victims do not report the crime. If we take the 2002 figures, where 628 cases were reported to the police, it represents the tip of an iceberg with the real numbers of those crimes being somewhere between 2,000 and 7,000 people.

To consider then that only 11 offenders were found guilty as charged, with four of the 11 pleading guilty (which means that only seven of the cases were actually won), we have an appalling reflection on how we in this state deal with the issue of rape and sexual abuse, and it clearly shows why legislation such as this is needed.

I raise the question of why so many women fail to report the crime. Apart from the number of victims who blame themselves and therefore take no action, the word gets out among women that it is not worth the effort. The Legislative Review Committee's report quotes the Victim Support Service submission about why one person chose not to report the crime to police. She said:

> Why would I bother reporting when I get treated like crap and called a slut and a liar? The jury doesn't believe me because most of the real evidence is inadmissible and there is virtually no chance of conviction. I felt so violated and humiliated I didn't want to tell people because maybe they won't believe me, will blame me or will just not know what to say. How could I possibly make people understand when I couldn't understand myself?

When only 3 per cent at best of those cases that get reported to police result in a conviction, why would you bother? Why would you put yourself through what victims are put through? With my knowledge of the system, I think retribution might be a better option. There are quite a number of things that need to be sorted out in procedures that are not dealt with either in this legislation or the accompanying bill.

I know a woman who was raped about five years ago. At that stage the group within SAPOL that dealt with this crime of rape and sexual assault was the Sexual Assault Referral Unit (SARU). This was about two days after she had been violently raped. The crime had been reported, and she went into the Angas Street police station and quietly said to the officer at the desk, 'Is there anyone here from SARU?' The police officer called out loudly, 'Hey, is there anyone here from the Sexual Assault Referral Unit?' So, of course, everyone sitting there—and, having been there with her, there were probably about 20 or so people waiting for attention—all those people knew that this woman had been sexually assaulted. She was utterly mortified. So, it is things like that and that sort of sensitivity that needs to be developed.

Chapter 5 of the report talks about mock examinations. From what I have heard from women reporting back, this is something that seems to be done as a matter of course. It is where the prosecution puts the victims through a mock trial but without telling them that it is a mock trial. They suddenly turn on them and start asking questions as if they were the defence lawyer, without any forewarning that that is going to occur, and it often results in victims deciding that they will not go ahead with the case.

I would like to give the example of a woman I worked with some years back, whom I will call 'Amy'. She had been sexually assaulted (it was attempted rape) and, like many women, after the event she went home and had, I think she told me, 14 showers that night in order to try to remove any sense of anything about that man. Two days later I convinced her to talk to the police. In this particular case it was an attempt at oral rape and the man had ejaculated in her hair and on the side of her face, but fortunately the police were able to find an earring that she wore and were able to get a semen sample and a DNA match, once she had described who the man was (she had, by the way, met him on a dance floor).

Initially when the police went to the man he denied that anything had happened, but when they had the DNA match he admitted that something had happened—the woman had bruises from the encounter, by the way, to corroborate what happened. His response was that there had been an interaction but she was a woman who liked violent sex. 'Amy' was called to come in, and they went through this process of suddenly turning on her and saying, 'You are just a woman who likes violent sex, you brought it on yourself', and so on. She did not know this was going to happen, she was not forewarned that this was effectively what was going to happen in the trial, and she came back to the office and said, 'Guess what's happened? I've decided that I can't possibly go through it.'

As soon as she told me that (she had gone off and had not told me that she had this meeting) I thought, 'Oh no; if only she had told me I could have perhaps forewarned her that this was going to happen.' However, it was too late; she had withdrawn the charges. She said that all she could hope was that, because there was a positive DNA identification, and because this man was married and had two kids, having got this far it would break up his marriage. That was the best that she could hope for in terms of getting any justice.

So, women know about these things and they are very wary about reporting the crime. There is another downside to this when they do not report, and that is that they are very unlikely to be able to access counselling which might otherwise be available to them. Many women in this situation become permanent victims; others are softened up to become sex workers as a consequence of having lost respect for, and control of, their own bodies.

The manner in which SAPOL and the DPP treat victims is not part of this bill, and it probably cannot be, yet unless we get improvements in what happens in the lead up to charges being laid, and in the court cases themselves, the changes in this bill may not result in substantial improvements to conviction rates. I think there are also other reforms in the area of rape and sexual assault that we, as a state, should be considering, such as the use of an inquisitorial approach to rape cases rather than the win-lose adversarial approach we use in South Australia.

I also believe there is good reason for us to look at including information about previous sexual offences of the accused. The risk of that is that a jury may be substantially convinced to find someone guilty if their previous record is known, but I am speaking only in regard to sexual offences, because the impact of such offences is so great. Perhaps as a first step we could start with those who have previous convictions in regard to children.

I do note with approval the provision in the bill for sexual offence cases against the one person involving a number of victims to be tried together. The minister's explanation does warn that 'the presumption may be rebutted', and I am sure defence lawyers will argue this way on behalf of their clients, but it is a step forward that we have this in the bill. Despite the six years it has taken for the ALP to make good on its election promise of early 2002, we at last have legislation being debated, and the women's groups who have put so much work into lobbying over so many years are happy with the bill. It may not go as far as I would like, but I too am pleased to support the bill.

Debate adjourned on motion of Hon. M. Parnell.

LEGAL PROFESSION BILL

The House of Assembly requested that a conference be granted to it respecting certain amendments to the bill. In the event of a conference being granted, the House of Assembly would be represented at the conference by five managers.

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (16:24): I move:

That a message be sent to the House of Assembly granting a conference as requested by the house; that the time and place for holding it be the Plaza Room at 9am on Tuesday 11 March 2008; and that the Hons B.V. Finnigan, P. Holloway, R.D. Lawson, M.C. Parnell and S.G. Wade be the managers on the part of this council.

The Hon. R.D. LAWSON (16:25): It is interesting that the House of Assembly should have made this request. An examination of the *Hansard* record from yesterday indicates that no such request was made at that time when it conventionally should have been undertaken. I noted that this morning on the *Notice Paper* this issue was not listed for discussion in the House of Assembly.

The Hon. R.I. Lucas: How did they do it?

The Hon. R.D. LAWSON: Apparently, in another place, there was a motion to suspend standing orders to rectify the manifest error that had occurred. It is truly amazing that, in a bill under the control of the supposed first law officer of this state, the correct procedure should not have been adopted. However, we welcome the fact that the government is proposing to have a conference on this issue.

Certainly, speaking from the Liberal Party's point of view, we welcome the opportunity to engage in a process whereby improvements to the bill can be made and some negotiations and discussions can occur about ensuring that the South Australian legal profession comes into the national scheme of professional organisation on 1 July, being the date by which the Law Society has been strongly pressing for the legislation to be introduced in this state.

I regret the fact that the Attorney has on a number of occasions mentioned that the government is not interested in compromise. We believe that the process of having a conference of managers of this kind is for the purpose of exploring compromise and, hopefully, reaching compromise. We will be entering into the process with an open mind and in a positive frame of mind. I urge the Attorney to follow suit.

Motion carried.

CRIMINAL LAW CONSOLIDATION (RAPE AND SEXUAL OFFENCES) AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 2107.)

The Hon. M. PARNELL (16:28): I am pleased to support the second reading of this bill. This is a bill on which there has been much consultation over many years, and I believe it is a bill that has very widespread community support. The offence of rape is one of the most abhorrent on our criminal statute books. It goes well beyond the physical damage and injury that can be caused, and it attacks the very core of our humanity.

It has been said many times before, but I will say again that the crime of rape is overwhelmingly about power and control rather than about sexual urges. Sexual activity without consent is never okay, and the rights or wrongs of that situation are as clear as black and white, but there are grey areas, and there are areas where we as a legislature need to draw the line. We have to define right from wrong; we have to define acceptable behaviour from the unacceptable.

The issues in this bill are quite complex, especially in relation to issues such as consent and coercion and the circumstances in which consent may have been withdrawn. At the end of the day, I am persuaded that the bill does get the balance right.

I want to acknowledge some of the organisations that have contacted me and given me their views on this bill. First of all, we have the Law Society and in particular its Aboriginal Issues Subcommittee; and, secondly, the very detailed submission from the Stop Rape Now coalition. This is a coalition of organisations and individuals committed to the elimination of sexual violence in South Australia. I particularly acknowledge the prime movers in that coalition, namely, Mary Heath and Vanessa Swan.

I have known Mary Heath for over a dozen years, and she is a well respected advocate for human rights and environmental rights and a lecturer in criminal law at Flinders University. I will briefly quote a sentence or two from the Stop Rape Now coalition submission to the Attorney-General, as follows:

> These are the most significant reforms to the law of rape since 1976, and we believe the government is to be congratulated on undertaking a review of this legislation and on proposing a model which represents a very considerable advance on the current state of the law. We also believe that these changes represent a very important and constructive step toward access to justice for people who experience sexual violence. We hope that the government will see to it that they are followed by the resources, education programmes and changes to policy and practice that would see these reforms become fully effective.

I think that does go to the heart of the matter. It is one thing for us to define in legislation the line between right and wrong but, ultimately, the problem of rape and sexual violence is a social and community problem and needs to be dealt with at a great many levels. In another piece of correspondence from the Stop Rape Now coalition, it states:

> While we believe that history shows changing the law will never be enough to end sexual violence, we think these changes are so significant and constructive that it is important that those who support them make their support known.

I thank those groups and individuals who have written to me. I am happy to go on the record as supporting this legislation, and I urge all honourable members to do likewise.

The Hon. D.G.E. HOOD (16:32): I rise to indicate Family First's position on this bill that will ensure that it is easier to convict on charges of rape and other serious sexual offences. Family First strongly supports the idea that guilty sexual offenders must face the real prospect of conviction and then spend a good deal of time behind bars.

I will raise the issue of false claims of sexual abuse or rape later. False allegations (particularly in Family Court proceedings) should be dealt with swiftly and sharply. First, however, it is clear that many victims of rape and sexual abuse are not currently receiving justice. As outlined by the Hon. Ms Kanck, acquittal rates for this type of offending are much higher than for other

major indictable offences. A recent Australian Institute of Criminology report, dated 18 December 2007, notes:

> In 2006, more than 18,000 victim incidents of sexual assault and related offences were recorded by police across Australia. Conservatively, this is estimated to represent only about 30 per cent or less of all victims incidents of sexual offences, as the vast majority of victims do not report to police. Of sexual offence incidences (including rape) which are reported to police, less than 20 per cent result in charges being laid and criminal proceedings being instigated.

The Hon. Ms Kanck quoted figures that were even lower than those. This is not the end of the matter. Once a case reaches court, sexual assault trials are more likely than not to result in acquittal. Acquittal was the result in more than half the cases brought before the higher courts. An Australian Institute of Criminology publication, entitled Acquittals in Higher Courts, dated 16 October 2007, notes:

> Sexual assault trials are more likely to result in an acquittal than a guilty verdict in the higher courts; this occurs in more than half of the cases brought to the higher courts.

In the past three years for which we have the records, acquittals in sexual assault cases have been higher than in all other serious offences. In 2003-04, 61 per cent of defendants charged with sexual assault, and pleading not guilty, were acquitted. In 2004-05, the figure was 57 per cent nationally. In 2005-06 (which is the latest data readily available), the figure was some 58 per cent. This compares with figures of approximately 20 per cent for illicit drug acquittals, and homicide acquittals are in the high 30 percentile.

In 2006, of the 150 cases of unlawful sexual intercourse and rape dealt with by the South Australian District Court, 39.3 per cent of cases resulted in imprisonment, whether suspended or actual, and 1.3 per cent of cases were resolved without conviction. Our acquittal rate following trial was 28 per cent, and another 31.4 per cent of cases were not proceeded with following a not guilty plea. A recent further AIS publication, entitled Juror Attitudes and Biases in Sexual Assault Cases, makes this point:

> Sexual assault has among the highest rates of acquittal and lowest rates of proven guilt compared with other offences. Given that more than 70 per cent of sexual assault incidents are not reported to police and only about one in 10 reported incidents results in a guilty finding, increasing conviction rates for sexual assault is a key issue for the criminal justice system.

Of course, that is exactly what this bill seeks to do. Our current system asks victims of traumatic sexual abuse to jump through a series of hoops to achieve justice. The greatest challenge for victims is to summon the courage to speak to police about the abuser in the first place; the next is to convince police to prosecute; and the final hoop is to secure a conviction.

In clearly defining consent, the bill may make directions to juries all the more simple and make the difficulties faced by victims to achieve an appropriate conviction all the less. I note some disturbing findings from a recent study in 2005, when 210 members of the public were selected as jurors for 18 separate but identical mock trials of rape.

Two juries returned a unanimous not guilty verdict; the other juries did not return a verdict within the time allotted but three-quarters of participants favoured a not guilty verdict. I was astonished when I read the primary reasons given by the mock jurors for entering not guilty pleas, and I will list a few now for the chamber.

The first was that the complainant flirted and danced with the defendant; that is, they believed that there was some degree of encouragement that excused the rape. Secondly, it was said that she did not scream or shout for help, and the mock jurors wondered why not. Thirdly, there was no evidence of injury or medical evidence to support her claim, and it was stated that surely there would be evidence of injury or DNA.

Fourthly, the complainant went back to the party afterwards and did not leave immediately; the mock jury felt that she should have left. Fifthly, the complainant exposed herself and pretended nothing had happened, and it was wondered why she would do such a thing if the rape were genuine. Sixthly, she continued to work with the defendant for two weeks after the incident, and it was suggested by the mock jurors that that was inappropriate. Finally, another reason for the large number of not guilty verdicts given by individual jurors was that the complainant did not report the incident to police for two weeks, and it was suggested that this was an inappropriately long time.

As the report notes, this type of scenario in which sexual assaults occur is, unfortunately for prosecutors, common. Rape is not always committed by strangers. Victims do not always scream for help. Obvious physical injury is actually uncommon, and the majority of victims do not report the incident to police at all. The reality for many sexual assault victims is that, as long as

misinformation about rape and stereotypical beliefs about how a victim would behave exist within the community, the likelihood of convincing a jury that a sexual assault did occur, in the absence of supporting evidence, will remain low. Family First agrees that more needs to be done for victims and, for that reason, it will be supporting the general principles of the bill at the second reading stage.

In essence, the definition of consent has been thoroughly tightened and, in particular, proposed new section 47 will introduce new reckless indifference to consent provisions. A person is recklessly indifferent, and thus subject to the rape provisions, if he is:

(a) aware of the possibility that the other person might not be consenting to the act, or has withdrawn consent to the act, but decides to proceed regardless of that possibility; or

(b) is aware of the possibility that the other person might not be consenting to the act, or has withdrawn consent to the act, but fails to take reasonable steps to ascertain whether the other person does in fact consent, or has in fact withdrawn consent to the act before deciding to proceed; or

(c) does not give any thought as to whether or not the other person is consenting to the act, or has withdrawn consent to the act, before deciding to proceed.

This provision significantly expands the number of complaints that would fall within the definition of the offence. One strong submission recently received by Family First indicates that the wording is too strong, as follows:

> Subsection (c) of this new definition seems to establish a requirement on a participant in an act of sexual intercourse to be continually giving thought throughout the duration of the act to whether or not the other person may have withdrawn consent to the act.

The submission makes a convincing point. However, in the view of Family First, the pendulum has already swung too far in the direction of the accused and, on balance, the new provisions will work to ensure that more victims receive justice. Certainly, Family First believes that consent can be withdrawn and that sexual intercourse should stop if it does.

There are some provisions in this proposed legislation that discuss the possibility of rape within marriage, and I would like to briefly address some of them. Marriage is, indeed, a sacred and time-honoured institution, and members are aware that Family First will always strongly defend marriage. Prior to 1976, the definition of rape in South Australian law was 'having sexual intercourse with a woman, [who is] not one's wife, without her consent'.

Since 1976, the offence of rape can be committed by a spouse. Family First does not argue with that. In this day and age, unfortunately, a large number of people are separated, even though they remain married. Some people, to all intents and purposes, are in fact divorced, although they have not yet reached the point of filing the paperwork for divorce. Non-consensual sex between separated married couples is, rightly, in my view, unlawful and wrong.

Another major change is found in proposed new section 46(3), which provides that consent is not 'free and voluntary' if it occurs when the victim is 'affected by a physical, mental or intellectual condition or impairment such that the person is incapable of freely and voluntarily agreeing or if the person is unable to understand the nature of the activity'.

The scenario put to me was one where we have an elderly married couple, perhaps in their 70s or 80s, who have been married for a long time—perhaps 50 years. They would have been engaged in regular sexual relations since their marriage began. This provision would mean that, if one of them contracted dementia, for example, the other would not be able to continue engaging in sexual relations with them. Many would argue that continuing sexual relations in this case would be insensitive or may be wrong. But is it really rape, and does it really deserve life imprisonment?

Family First supports the proposition that people who take advantage of another's intoxication with alcohol or a drug are guilty of serious sexual misconduct.

With respect to clause 10, I am concerned about the exemption to incest granted to adopted children. The provision would allow an adoptive parent to legally engage in sexual relations with an adopted child or grandchild once they attain the age of consent. I have concerns about the appropriateness of that exemption.

Family First is also concerned about the epidemic of false claims of sexual abuse made in Family Court proceedings. We will be making further comments about that in the future, but we will not stall this bill by insisting on amendments at the present time.

With those concerns being raised, and with the request for comment on those concerns, Family First will support the second reading of the bill. We reserve our position with respect to several of the provisions, such as clause 10, when it comes to the committee stage, and I reiterate our concern about false allegations. It is something that this bill raises the possibility of, and we will need to explore that issue further during the committee stage in order to finalise our position on the bill.

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (16:43): I thank the members of the opposition and the other members who have spoken in this debate for their contributions and their indications of support for this legislation. At the second reading stage, I would like to clarify and correct some things mentioned during debate on the bill on 5 March.

The Hon. Robert Lawson said that we do not need to define the consent to sexual activity in the new laws on rape and sexual offences, because the common law is clear on this. The government disagrees. Consultation on this bill, and responses to the discussion paper prepared by Liesl Chapman, showed widespread differences of opinion on what the common law is and what the law should be on this topic. That is why the government thinks it necessary to clarify the law on consent to sexual activity in legislation.

The bill gives a simple definition of consent to sexual activity—that is, free and voluntary agreement to it—and then gives examples of circumstances that will vitiate consent. The companion bill, the Statutes Amendment (Evidence and Procedure) Bill 2007, sets out common law directions to juries about circumstances or conduct that should not be taken, of themselves, to constitute consent (for example, that a person is not to be taken to have consented to sexual activity merely because she did not physically resist it).

As the Attorney-General has explained and as the honourable member acknowledges, this legislation on consent to sexual activity has the backing of judicial authority. That is important, but equally important is that the legislation sends a clear message about the boundaries of lawful sexual behaviour. I also point out that South Australia is the only Australian jurisdiction not to have legislated in this way and that other Australian jurisdictions, the United Kingdom, Canada and New Zealand have used definitions in these terms to clarify the bounds of sexual conduct under the law.

I wish to clarify the honourable member's statement that the government has amended the definition of 'sexual intercourse' to introduce what he says are the new concepts of fellatio and cunnilingus, thereby changing and distorting definitions based on what he describes as 'ordinary concepts of language'. This bill does nothing of the sort. Sexual intercourse has been defined to include fellatio and cunnilingus for nearly 23 years, since November 1985. The only change made by this bill is to include a continuation of sexual intercourse—that is, sexual intercourse by penetration, fellatio or cunnilingus—and to ensure that references to sexual organs in the definition will include surgically constructed or altered sexual organs.

The reconstruction of the old offence of buggery with an animal is necessary statutory revision and is needed because compelled bestiality will now be rape, and the definition is necessary for that.

I turn now to correct the honourable member's more serious misapprehension about bestiality. He is critical of the bill in that, in his words:

> ...to describe bestiality, namely, sexual activity with an animal, as rape seems to be a bizarre notion. There is already an offence in the Criminal Law Consolidation Act which says that the offence of bestiality is a particular offence: it is not rape, it is bestiality, and one can be charged with that.

He went on to say:

> To my way of thinking it [that is, bestiality] is not rape as it is commonly understood. This is a way of distorting the criminal law.

The bill does not make bestiality rape or describe it as rape. It says that rape includes compelling another person to engage in an act of bestiality knowing that the person being compelled does not consent to it, or being recklessly indifferent to the other person's consent. The government's view is that, if you were the victim of such a compelled act, you would certainly feel raped, and in a particularly terrible way.

I emphasise that this new compelled rape offence is in addition to the offence of bestiality itself. That offence is when a person willingly engages in sexual activity with an animal. I also note again, having made this clear in my second reading explanation, that a person who is raped by being compelled to have sex with an animal will have a defence of duress to any charge of

bestiality and, for that reason, will not be charged with it. Again, I thank members for their contribution to the bill.

Bill read a second time.

SERIOUS AND ORGANISED CRIME (CONTROL) BILL

Adjourned debate on second reading.

(Continued from 4 March 2008. Page 1998.)

The Hon. S.G. WADE (16:48): The fact that this bill is before us today is testament to the government's failure to address effectively serious and organised crime. The Blair government, from which this government takes the lead on law and order, used the slogan 'tough on crime, tough on the causes of crime'. South Australian Labor talks tough on crime, but talk is cheap. Labor is certainly not tough on the causes of crime. In 1987 Labor changed the law to allow people to grow some 10 cannabis plants and to be fined a mere $150 for what would have a street value of the order of $20,000. South Australia became the cannabis capital of Australia.

This state's lax laws on cannabis have contributed significantly to this state's coming to be regarded as a drug-manufacturing centre for the entire country, and the bikie gangs and organised crime have been fostered through that culture. Labor has not changed. Yesterday we saw Labor's hippy-hempy tradition shine through again when, on behalf of the government, the Hon. Russell Wortley—our own resident relic of the 1970s—defended the government's refusal to support the Hon. Dennis Hood's attempt to tighten the cannabis laws.

On the one hand the government brings in this bill to say, 'We're being tough on outlaw motorcycle gangs', yet on the other hand it opposes efforts to try to constrain the networks that supply drugs to those very same gangs. How can the government talk tough on crime when it is resolute in protecting the causes of crime? It is almost eight years since Mr Rann said 'It's time.' On 16 November 2000, he said:

> It's time we tackled the problem. In South Australia too much crime has been associated with these bikie fortresses.

In the 2002 election campaign, he told South Australians:

> All South Australians are entitled to be safe and feel safe and feel secure in their homes, in their schools, on the streets or wherever they may be.

But where are we six years later? Paskeville; networks of drugs and crime running through city clubs, hotels and bars; the shooting at the Tonic nightclub; and numerous outbreaks of violence between rival gangs. The government's own briefing on this bill highlighted the growth in the problem. We are told that in 2001 six outlaw motorcycle clubs operated in South Australia, with nine chapters. By 2007 we had eight clubs with 13 chapters—a 33 per cent increase in clubs under Rann and more than a 33 per cent increase in chapters. In 2001 Operation Avatar was established to tackle serious crime, violence and anti-social behaviour and achieved hundreds of arrests. Police advise that over 600 arrests were made due to the work of Operation Avatar. In 2007 the Crime Gangs Task Force was established and is continuing the work of Avatar.

SAPOL intelligence indicates that outlaw motorcycle gangs are involved in many and continuing criminal activities, including murder, drug manufacture, importation and distribution, fraud, vice, blackmail, intimidation of witnesses, serious assaults, the organised theft and re-identification of motor vehicles and motorcycles, public disorder offences, firearms offences and money laundering. They may represent a small proportion of the state's population but the police advise they represent a significant proportion of criminal activity in this state. Outlaw motorcycle gang crime affects all society. A particularly disturbing development is that outlaw motorcycle gangs are increasingly morphing into legitimate industries and using professionals to insulate their criminal activity from law enforcement.

A distinctive feature of outlaw motorcycle gangs is that their structure—their hierarchical and secretive approach—serves to protect and insulate them from law enforcement. In particular, they work to insulate their principals. They are extremely difficult to penetrate. Apparently a person can spend at least a year moving from being an interested party to a prospect and then onto becoming a member. These groups operate under a code of silence with a culture of intimidation, violence and corruption, and they use every measure they can to exploit the justice system.

SAPOL advises that this bill's strategy is not to outlaw motorcycle gangs but rather to penetrate their protective shield and to focus on the gangs' associated activities and try to disrupt

them. I appreciate that there is some concern in the parliament and the community that declaring organisations under this bill may simply serve to push them underground. My understanding from the briefing from the police is that the strategy is that fracturing the organisations and their hierarchical structure will force the principals to operate in smaller organisations which, if you like, puts them closer to the evidence and might also serve to break down the culture and the communication systems.

Gangs are becoming less hierarchical, anyway, and this concerns me. The brief we were given by the police indicated that the Finks, for example, the group that has expanded particularly quickly over recent years, is already moving to a less hierarchical structure. We are told that the Finks has expanded rapidly over the past five years. Whereas it used to take two to three years to become a prospective member of the Finks, it now takes only a matter of months. The Finks apparently—

The Hon. R.I. Lucas interjecting:

The Hon. S.G. WADE: Exactly; there are more finks under Rann, as the Hon. Rob Lucas indicates! The Finks apparently do not have strict structure. Although they might still have a nominated spokesman when they are making public statements, and so on, their hierarchy is much more decentralised. They may be less affected by these laws, and they are actually one of the groups that is growing most rapidly. Of course, that is a reality. Gangs do change; and we have seen in other jurisdictions that, as these sorts of laws are introduced, gangs do adapt. I do not criticise the police for developing a system to which people will adapt: that is the reality of a dynamic environment, but I am concerned that one of the most dynamic groups, if you like, is the one that is least likely to be affected by this legislation.

The government has taken the view that outlawing the organisations is not the best strategy. It has taken the declared organisations approach. The opposition will support this bill. The opposition notes the government's view, but it does reserve the right to insist on further amendments in the future. In this context, it notes the views of the Director of Public Prosecutions, Mr Steve Pallaras. Mr Pallaras was a former top prosecutor, a senior crown counsel in Hong Kong, and he had experience with triad gangs there.

The problem with the triad gangs in Hong Kong is similar to what afflicts us in relation to motorcycle gangs. The difficulty with policing these gangs is that it is hard enough to catch a principal breaking the law but it is even harder to get witnesses to testify against them. On ABC Radio, Mr Pallaras stated:

> The same issues apply in our jurisdiction. People are terrified to give evidence against bikies.

I ask the council to stop and reflect on that statement for a moment. The Director of Public Prosecutions in this jurisdiction is telling us that his ability to access witnesses in criminal prosecutions against gangs is inhibited because of that of intimidation.

We should take some encouragement from Hong Kong. In the other place the member for Heysen reflected on the success of the crime fight in Hong Kong. Triad numbers in the 1970s were 5 per cent of the population, and triad members outnumbered the police five to one. Corruption throughout public organisations was rife. For example, firemen wanted water money before they turned on the water to fight a fire. This led to public protests, and that is what led to the establishment of the ICAC in 1974. Indeed, one of its first acts was to extradite the Chief Inspector of Police.

An honourable member interjecting:

The Hon. S.G. WADE: Timothy Tong Hin-Ming said that for 13 years Hong Kong has been the world's freest economy in terms of corruption and, indeed, 96.4 per cent of the respondents in a recent survey had not come across a single incidence of corruption in the past 12 months. So, the tactics in Hong Kong have obviously had a vast impact. As an honourable member commented as I was reading that, it certainly does highlight the value of an Independent Commission Against Corruption.

Honourable members: Hear, hear!

The Hon. S.G. WADE: The opposition will support the declared organisations scheme in this bill; the opposition, though, is not convinced that the government should not have gone further and outlawed outlaw motorcycle gangs.

The government acknowledged in the second reading explanation of the Attorney-General that this legislation does involve giving unprecedented powers to the police and to the Attorney-

General to combat serious and organised crime. It is based on terrorism legislation and raises significant issues in relation to civil liberties. It is vital that we ensure that these powers are used appropriately and responsibly. The government tells us that the objects of the legislation will constrain the use of the powers. I am not convinced.

The members for Mitchell and Heysen, in another place, suggested that the calibre of the incumbents in the relevant offices should provide reassurance to the parliament. I, for one, am not reassured. My experience is that, in policy and practice, I have been greatly disturbed by the Attorney-General's understanding of his duties as Chief Law Officer of this state. Last week I expressed my concern about the Attorney-General's failure to defend the judiciary when judicial sentencing was publicly challenged recently. Since then, the Attorney-General raised the prospect of directing the DPP to appeal against a sentence on the very day the sentence was handed down. How can the public and, in particular, the defendant involved have confidence in an independent, objective prosecutorial decision-making process if the DPP is making that decision under the threat of a direction from the A-G?

In this regard the opposition favourably notes the elements of oversight in this bill. The bill provides that before 1 July each year the Attorney-General must appoint a retired judicial officer to conduct a review on whether the powers under the act have been used appropriately having regard to the objects of the legislation. The Attorney-General must table a copy of the report in both houses of parliament.

The bill also requires the Attorney-General to conduct a review of the operation and the effectiveness of the legislation as soon as practicable after the fifth anniversary of the commencement of the legislation. The Attorney-General must prepare a report based on the review and table a copy of the report in both houses of parliament. The opposition also notes favourably that the bill contains a sunset clause. We will propose to change it, but we do welcome it.

The opposition has a number of concerns about provisions of the bill from the perspective of trying to ensure that innocent parties are not inadvertently affected.

Rather than delay the implementation of the declared organisation regime, we intend to support the bill. In the period leading up to the sunset of the bill, we propose a review of the act, and that review will allow consideration of four years of operation of the bill and an opportunity for less hurried consideration of how the civil liberties of innocent parties can be protected under the act. The opposition supports the bill.

The Hon. SANDRA KANCK (17:00): The Serious and Organised Crime (Control) Bill is one of the most important and alarming pieces of legislation to come before this parliament. It is important because it concerns some of our most important freedoms and checks on government power. I refer to three things: the freedom of association, judicial review and conviction on the basis of secret evidence. This bill has potentially profound consequences not just for civil liberties—I know that the government despises civil libertarians—but also for more every day and grass-roots activities like sports organisations and volunteering to help charities.

When such matters are at stake, we should not allow ourselves to be panicked into passing such legislation without subjecting it to rigorous scrutiny. I find this legislation alarming because it is based on the same powers and rhetoric developed to fight terrorism in the day-to-day fight against crime. The government has failed to make a case for such severe laws, and this bill may not be the most effective response to organised crime.

There are many aspects to this bill that I oppose, and I certainly heard what the Hon. Stephen Wade said: that the opposition will be supporting the bill. I also note the comments made by his leader, Martin Hamilton-Smith, that the bill does not go far enough—and I wonder how much more of our freedom he wishes to have eroded. Nevertheless, it looks as though it will pass the second reading; therefore, when we get to committee I will attempt to ameliorate what is a very bad bill.

At this stage, I have more than 20 amendments in mind. When we debate those amendments in committee, I will give detailed arguments about the provisions of the bill, but I think it is highly dangerous to give enormous powers to the police without an ICAC in place.

I want to confine my remarks at this point to three specific points about the bill. First, it will give the Attorney-General power to send a person to gaol not for what they do but for who they know; secondly, it allows decisions to be taken on the basis of secret evidence that is not provided to the accused; and, thirdly, it strictly limits judicial review in that there is limited independent scrutiny.

The provisions that could send a person to gaol for who they know, not what they do, are contained in section 10, which deals with the declaring or outlawing of an organisation, and section 35, which deals with the new offence of criminal association. These two sections work together in this way: the Attorney-General, using section 10, could declare that an organisation is a criminal organisation even if only a few of its members plan criminal activities.

Using section 14, a David Hicks style control order could be placed on the following:

1. any member of a declared organisation;

2. a former member of such an organisation;

3. someone who has committed a crime in the past—and how far back we do not know; or

4. anyone who associates with a member, or former member, of a declared organisation, or a person with a criminal history.

Under section 35, a person could go to gaol for five years for associating with a person under a control order six or more times a year, even if that person has not committed a crime. Association can be in person or via a phone call, fax, email or text message. The prosecution does not even have to prove that you are associating to commit a crime: you have to prove that you were not. Obviously a lot of people are going to be watched in this tallying up of six interactions. Presumably, as soon as a person associates with someone under a control order or someone who used to belong to one of these gangs subject to a control order or someone with a criminal record, that person's name will go on a database and they, too, will be watched. This raises some very interesting questions about how the information is collected, whether phones will be tapped and, if so, how that tapping will be authorised, whose phones will be tapped and on what basis, whose names are recorded and how one finds out if one's name is on such a database. It has shades of Don Dunstan and the Special Branch, and this is a bill coming from a political party that dares to invoke Don Dunstan's name. I say: shame on the Labor Party.

The government has some exemptions. For example, you can associate with people such as your doctor, teacher, classmate, therapist, employer and your immediate family. That seems reasonable until you consider it for at least five seconds. Then you start to think through just how complex and fluid the web of associations is in a healthy society. Immediate family is the first problem. This bill is based on an arrogantly narrow Anglo-Saxon nuclear family perspective. It just will not work for indigenous people where, in many cases, a wider range of people play a role in child rearing, or for some from European cultures where the extended family is normal. It does not consider that regular association occurs in most families between aunts, uncles, nephews and nieces.

For example, if an indigenous person who is (or was) a member of a declared organisation or has a criminal record or associates with people with a criminal record falls ill and his nephew moves in to look after him, the nephew could be sent to jail for five years under the criminal association provisions. For example, the Attorney-General could declare the Gang of 49 as a controlled organisation under this legislation. Many of the people in that group, as is well known, are Aboriginal people living with extended families—in fact, some might call them broken families. This legislation could guarantee that an aunt could be accused of criminal association by taking into her home her nephew or perhaps, if the relatives are scared of doing that, it might guarantee that young man's homelessness. I do not think that would help things along.

Let us just think through the notion of associating with a person with a criminal record. One of our great failures as a society is that a high proportion of indigenous people in South Australia spend time in gaol, much higher than people with white skin. So, it is going to be pretty difficult for many indigenous people to avoid associating with people with a criminal record. Some of our multicultural communities will also have similar problems. The Attorney-General has said that there is no intention to use these powers against legitimate protests and advocacy, but as this bill is worded it will not stop an unscrupulous or overly zealous attorney-general from squashing protest and dissent.

The bill concentrates unprecedented powers in the hands of the Attorney-General and removes the usual checks and balances. History shows that power will eventually be abused, even in Australia. In the 1970s, the police Special Branch spied on thousands of ordinary South Australians and kept records about them. In 2004, Cornelia Rau disappeared into the Baxter Immigration Centre. In 2006, US peace activist Scott Parkin was deported on the basis of so-called secret information—a decision which was later overturned on appeal. In 2007, Dr Mohamed

Haneef was deported and another decision was overturned on appeal and, of course, the overturning proves the abuse of power.

Quite clearly, authorities abuse their powers and they get it wrong. If the sorts of power envisaged in the Serious and Organised Crime (Control) Bill had existed in the past, certain key moments in history could have turned out very differently. Liberal state governments with these powers could have colluded with the Howard government to outlaw the Maritime Union of Australia during the 1998 waterfront strike. Let me tell you that a lot of unions have worked out already that this bill could be applied to them. These sorts of powers could have been used against the Wilderness Society over the Franklin River blockade. This protest, like most historic protests, included radical militant elements. On the Franklin, this group was the Night Action Group (NAG), whose manuals included information on the development of skills for disabling bulldozers and destroying power stations. Had similar legislation existed there and then, a pro-development state government wanting to make a show of strength could have used that web of associations in the environment movement to shut down the Franklin protest.

In the 1980s and 1990s I participated in protests against the Nurrungar US base. The peace-loving Christians held a candlelit midnight service at the gates, while the anarchists pulled down the fences. Those of us who were there were not evil people; we were not criminals, but many of us effectively could have been classified as such had this legislation been passed.

Think back just five years to the escapes from Woomera. Some protesters pulled down fences and helped the refugees escape. Many others hid escaped refugees. The supporters of refugees were members of organisations that could have been shut down under the criminal association powers of this legislation.

Let us think about how these powers would be used in future. Two possible sites for nuclear reactors have been identified in South Australia: one at Port Adelaide and one in the South-East. It is very certain that, if there was a project to build a nuclear power station here in South Australia, it would spark an immense protest and, like the Franklin, it would include radical and mainstream elements. The government of the day could use this association power to crush a protest against building a nuclear power plant in South Australia if only a few members of the organisation seriously damage machinery at the construction site.

Despite what the Attorney-General says, the criminal association powers of this bill could be used to trump any clauses designed to allow protest and dissent. The lines between groups and activities at any significant protest inevitably blur, and that blurring could be used to shut down legitimate action and protest.

Some members in this place will not find these sort of arguments persuasive, because they sneer at the phrase 'civil liberties'; they think civil liberties are a relic of some more golden age, a luxury we now have to discard. Most people here will probably never participate in a protest, so it can be dismissed as being of no relevance to them.

So, let us make this more every day. Let us consider your local football club or church welfare group. Remember, as I pointed out earlier, how wide the net is cast. A control order can be placed on any member or former member of a declared organisation or someone who has committed a crime in the past or someone who associates with any one of these.

Friends with a history of playing football tell me it is not usual for community sports teams to be coached by people who are members of bikie gangs, associated with bikie gangs or have criminal records. That has to happen statistically as communities are made up of a variety of people, including those with criminal records, often from a wild, misspent youth. Remember, football, sport in general or any community activity is not exempted by the provisions of this bill.

These people, especially in small towns, are legitimate members of the community and they are reintegrated and rehabilitated through sport and other pursuits. All you need is one person who is a member of a declared organisation, someone with a criminal history or someone who associates with people with a criminal record in a football team or club and most of that community football club could fall foul of these laws.

Imagine the dilemmas created by that local club. Could you allow any of these people to play football or have a drink after the game with them? Do you sack the coach of the under 11s because 20 years ago he held up a service station? Do you ban these people from attending the football presentation night? If it is the parent of a child in a junior team, can you talk to them while the match is going on?

What about the local school? Most people with criminal records serve their time and then re-enter the community. We generally work on the principle that once people have served their time they have that right. We should recognise that school communities will or could include members of declared organisations, people with a criminal record or people who associate with such people.

The exemption in the bill relates to your education and not that of your children, so do we ban Jock, who was once a member of the Finks, from running the sausage sizzle at the school fete as he has done for the past five years? Should the principal kick Mary off the parents and friends association because she is friendly with a friend of a former Gypsy Joker? Do we start a system of apartheid where every person at the school gate waiting to collect their child shuns the man wearing leather for fear that he could be one of the people targeted by the Attorney-General?

A number of charities employ people who are or were members of bikie gangs or have criminal records. I know of one program that is actually run by a person with a criminal record. In meetings with people concerned about these issues, the point has been raised that, at the grassroots, any volunteer who wanders in the door will be accepted with open arms. They may, over time, take on positions of responsibility. Then, at some point, it transpires that this person is or was a bikie, has a criminal record or associates with such people. What then? Do they get shown the door; chucked off the management committee?

Are we, through this legislation, ensuring that some people with criminal records can never be rehabilitated, never be able to mix in society? Will we be forcing them to continue criminal activity by shunning them? Is this the sort of society we want to encourage? There are organisations where volunteers deliberately reach out to criminals, former criminals and bikies. The Longriders Christian Motorcycle Club exists to minister to bikies. Some of them have committed crimes in the past but they have converted to Christianity, and their outreach includes deliberately associating with just the sort of people this bill is targeting.

They want these people to do what they have done: to leave that lifestyle and convert to Christianity. This is not covered in this bill. This activity is not employment and the legislation does not exempt volunteers. So what is this group to do? Our clubs, our charities and our communities absolutely rely on an open-door policy.

If we vet everyone who walks through the door, wanting to know what they have ever done, who their friends are and what those friends have ever done, will we kill the culture of community and volunteerism? I fear so. The absurdities and injustices begin to multiply once you adopt a policy of guilt by association.

It gets worse. Clause 41(1) of the bill strictly limits judicial review of declarations and control orders. That means that there is limited opportunity to appeal decisions that can have a major impact on our freedoms. It gets worse still. Under the bill, the Attorney-General would not even have to disclose the reasons for making a decision such as outlawing an organisation or making a control order for those affected by the decision.

This is very similar to the Howard-inspired terror laws. The implications of this bill are truly breathtaking. The adoption of criminal association has the potential to make this much more threatening than the measures in the various terror laws because, in those acts, measures like preventative detention were linked at least to a suspicion of terrorist action. Let us compare the threat posed by terrorism with the threat posed by bikies.

The threat posed by terrorists could involve attacks that are designed to maximise death and destruction: the World Trade Centre and the Bali bombings are obvious examples. These are rare events but they are potentially catastrophic; they have more of the flavour of a war. Bikie crime is crime: not terrorism. The activities are not designed to maximise death and destruction. Crime is a problem, but it is not a crisis or an emergency; therefore it deserves a more considered approach.

Are these measures justified? Just how big a problem is bikie crime? This is what we know from the parliamentary briefing and the statements by police and the Attorney-General to date. There are not many bikies. The Attorney-General and the police have referred to 250 badged members in South Australia. However, they say that the number is growing and that that should be monitored. That is their argument, but even those figures are disputed.

We have heard examples of crime perpetrated by bikies over the last decade. Some of them are dreadful crimes but, as I said, there are a limited number, and I keep hearing the same half dozen. There have been numerous arrests and seizures of firearms and drugs through Operation Avatar and the Outlaw Motorcycle Gangs Task Force. You could take this one of two

ways: either this is the tip of a very big iceberg and we should be alarmed, or that we are having great successes.

But is that enough to justify this bill to diminish our freedoms? The problem is we simply do not have the evidence so far to support it. My office has approached the Attorney-General's office seeking further information about the extent of the threat, but so far all they have been able to provide is the statistics relating to arrests and seizures. I am hopeful that, before we reach the committee stage, more useful information might be forthcoming.

It is worth comparing our experience in South Australia of fighting organised crime to that of other countries. Hong Kong had a huge problem with criminal gangs known as Triads. At one point, one in 13 members of the population were Triad members and the police were outnumbered five to one. That is a very different situation from that which we have in South Australia. Italy, of course, has had the Mafia killing judges, and it is well-known that corruption in parts of Italy is systemic and pervasive—but this is South Australia, not Italy. The United States has also had immense problems with organised crime, corruption and gangland wars, and it is worth noting that this was at its worst during the days of alcohol prohibition—and we are moving very much more towards that model with drug prohibition.

We appear to have much less of a problem than these three countries, but our leaders want to go much further than they have. The day before this legislation was introduced in the House of Assembly, the Premier, Mr Rann, told the house that, 'These are the toughest anti-outlaw bikie gang laws that we can find anywhere in the world where these gangs operate.' Why is that needed? Why do we need tougher laws than are needed in Hong Kong, the US or Italy?

I want to ask a few commonsense questions and make some observations that occur to me in relation to this bill. First, if we crush bikie gangs, will crime disappear or just move to other forms? This is an important question that has not been answered. SAPOL says that it has all the badged bikies under surveillance, and this raises the question of whether there is some advantage to having your enemy wearing a highly visible uniform and congregating in highly visible clubhouses. I remember a Social Development Committee inquiry into prostitution about 10 years ago where members of the vice squad came and told us that they much preferred to have most of that activity centred around Hindley Street because they know where it is and it makes it a whole lot easier to keep an eye on it.

Is the bill too focused on methodologies of the past? Does a bill that is ostensibly aimed at bikies make sense in the world of fluid networks and cyber crime? These are vital policy questions that need to be answered before we go too far with draconian legislation. This bill asks us to surrender important rights and freedoms and casts so wide a net that it could potentially affect many areas of our community activity. In doing that it could change the very character of our clubs and community organisations.

There are times of great emergency—a war or health epidemic—where draconian measures may become necessary. Organised crime is a problem and it should be monitored. It should be controlled and we should do what we can to stamp it out, and we may need special measures. For example, the government's bill giving the police power to bar people from nightclubs is a targeted measure that is worth considering. It is a far better set of laws, as it deals with a person perceived as a problem and does not target people by association.

However, organised crime is not in the same league as terrorism or war, so we should not be panicked into surrendering our freedoms. Whenever a government demands new powers we, in turn, should demand that they make the case. This was done in 1951 when the federal government wanted to ban the Communist Party. This removal of freedom of association was considered so important that the whole nation became involved in the debate and a referendum was held to determine whether such a loss of freedom was justified—and the people of Australia decided that it was not.

Here in South Australia we have had limited debate within our parliament—and hardly anywhere else—over a period of 2½ weeks, regarding the need to once again put freedom of association at risk in our society. I remind members of the opposition that Sir Robert Menzies said, in 1942, that 'Freedom of association is of the first order of importance in the world of liberty.' I remind all members of Article 22 of the UN Covenant on Civil and Political Rights which begins, 'Everyone shall have the right to freedom of association with others...'

On the information presented so far we do not know how big a threat organised crime is, we do not know what proportion of organised crime is due to motorcycle gangs, and we do not

know whether these are the sorts of measures that are most needed in a world of cyber crime. We need to have a much closer look at all these issues, and we need to give this bill the scrutiny it deserves.

I will shortly move that this bill be referred to the Legislative Review Committee, and I refer members to section 12 of the Parliamentary Committees Act, which provides:

> The functions of the Legislative Review Committee are—
>
> (a) to inquire into, consider and report on such of the following matters as are referred to it under this act:
>
> (i) any matter concerned with legal, constitutional or parliamentary reform or with the administration of justice...

So, I move:

> Leave out all words after 'That' and insert 'the bill be withdrawn and referred to the Legislative Review Committee for its report and recommendations'.

In concluding, I wish now to take the words of Pastor Martin Niemoller, who, in 1945, had this to say about the advance of Nazism in Germany:

> First they came for the communists, and I didn't speak up because I wasn't a communist. Then they came for the Jews, and I didn't speak up because I wasn't a Jew. Then they came for the Catholics, and I didn't speak up because I was a Protestant. Then they came for me, and by that time there was no one left to speak up for me.

This bill is not just about bikies, as the government claims; it erodes fundamental freedoms and I, for one, will fight it. I oppose the second reading.

The Hon. D.G.E. HOOD (17:26): I rise to support the second reading of this bill. It is a very important bill and deserves careful consideration. The target of this bill, despite its generic name, is clearly to outlaw particular motorcycle gangs. It has been put to me in a briefing that bikies are the principal target of this bill, and the reason they are described generally as a declared organisation and not specifically named by club name or generic description is to ensure that bikies do not try to change their spots to get around the law.

From the outset, I think this answers the calls that some people from other groups have made that they might be targeted by this legislation. We are talking about the approximately eight outlaw motorcycle clubs with 13 chapters, that have grown to that number since being six clubs with nine chapters back in 2001. To my mind, the Triads, or similar gangs, would be next on the list, but then for groups beyond that I understand the government would use other criminal laws, including the public order offences bill (coming to us soon), to deal with less serious behaviour.

If a terrorist cell were operating here in South Australia that matter would be referred to the federal police and if a paedophile ring was operational then that too might be a federal matter. Otherwise, I understand that existing laws would be used, such as child pornography possession and abduction laws, to stop their activities. In short, we are assured that, despite the relatively generic terms used in this bill, the bill's target is outlaw motorcycle gangs and other serious organised crime gangs, and that is all.

The reason that we are reforming the present criminal laws is that SA Police have been unable to secure convictions against the major operators in the bikie world or criminal underworld. I think it is unfair to say that it is a failure on the part of the police; rather, it is a failure on the part of this parliament and the justice system in general to be flexible and responsive enough to modern-day policing needs and the demands of dealing with organised crime.

I think it quite fair to say that the courts, be it the judiciary or the lawyers, are stacked with civil libertarians. Indeed, some members of the judiciary have represented—

The Hon. Sandra Kanck interjecting:

The Hon. D.G.E. HOOD: Well, they can be abused, is the point. The civil libertarian bent of the judiciary is obviously not only demonstrated by the way that police have been frustrated by court rulings concerning organised crime, but also the weak sentences imposed upon those who perpetrate serious crimes. Organised crime is not just a state issue, or even a national issue; it is an international issue. Being, as it is, submerged in the underworld, it is hard to get a good grasp on organised crime from the international to the local level. However, I understand that not only are international organised crime gangs directly or indirectly operating in South Australia but also in cooperation with gangs in South Australia to achieve their criminal aims.

One of the major sources of trade amongst organised crime syndicates is illicit drugs, and certainly there have been suggestions in the past that South Australia's cottage industry of growing cannabis, supported as it is by weak criminal laws and weak sentencing, filters through the bikie gangs into other networks interstate and, indeed, overseas.

One of the best ways to deal with organised crime is to have harmonised national and international laws to attack organised crime. It is admirable that this government has not been paralysed by the inertia that strikes the Council of Australian Governments and the like and stuck with what it believes to be good reforms in this area. Certainly, I hope these reforms not only work but might become model laws nationwide, because I think a potential weakness in the implementation of these laws is the interstate jurisdictional issue.

Without equivalent laws interstate, we might see organised crime simply move its brains trust interstate and potentially conduct raids in South Australia. That might be far-fetched but, if it did occur, it might make bikies wonder what was the point of bothering with South Australia any more, not that that would necessarily be a bad outcome. Indeed, that might be good for us, but it certainly would not solve the problem.

I do not agree with the Wild West approach of 'Get out of my town'. We need a uniform approach but, failing action by the other states, it is appropriate that we introduce such reforms on our own. On that note, I add that we were told at the briefing that our Commissioner Hyde is at the forefront of a national committee setting up a national approach to this issue. So, we will see the developments on that front.

In this bill, essentially two things will occur: a control order and the offence of criminal association. These are the two most powerful tools this reform will give the South Australia Police, and both hang upon the Attorney-General's declaration, upon advice, that a group is a declared organisation. It will then become an offence to associate with a person whom you know is a member, or are reckless about not knowing whether they are a member, of a declared organisation. More often than not, we are talking about people who proudly wear the club colours or who wear tattoos or other distinctive markings. Exemptions apply, and I will touch on those in a moment.

The control order aspect allows South Australia Police to apply to the court to bar specific individuals from associating with other members of declared organisations, restrict their entry to certain premises (such as clubrooms and the like) and, indeed, apply other restraints. These applications are made ex parte and are therefore served upon the defendant, having immediate legal effect.

Before the civil libertarians protest about that, let them note that this is precisely what we have done federally concerning terrorism suspects and precisely what is the case for (usually) men who are accused of perpetrating domestic violence. So, the parliaments of this nation have previously seen fit to allow ex parte restraint in merited circumstances. Against this background, I think that ex parte restraint for bikies has merit.

I have received expressions of concern from groups that one could call bikers, or legal motorcycle groups. They are concerned that they will be unfairly targeted by these laws. I have considered this carefully and have decided that I am satisfied that they have no genuine reason for concern. I note, for instance, that in the last sitting week the Attorney-General put on the record in the other place that he is not chasing the Longriders, so called. The target of this legislation will be groups that 'meet to organise and conduct serious crime'—and that is the key term.

Some summary offences might be added to the list and, whilst the government is considering whether some summary explosives offences might become part of that list, I strongly suggest that offences concerning running a brothel could be considered as well. However, Christian motorcycle clubs or general motorcycle club enthusiasts, such as the Ulysses Club, do not run brothels, they do not grow cannabis, and they do not get in involved in gun fights with one another on beaches or in restaurants. Therefore, clearly these clubs have nothing to fear from these laws.

Moving along, I will not retrace similar laws in other jurisdictions, which the shadow attorney-general did a good job of doing in the other place. It is worth highlighting some of the recent issues raised in the media concerning outlaw motorcycle groups, as it demonstrates for the record some of the issues weighing on the parliament at this time. I will start with the recent story concerning Mr Karim Awad which I recall appeared on the front page of the *Sunday Mail* last weekend—and thank goodness for a good news story on the front page of a newspaper for once.

Mr Awad, a former chief of the Rebels motorcycle group, thanks to the love and need of an autistic girl and also due in no small part to the work of one of the Christian churches, has turned his back on being a bikie. As an aside, I think this is a point to be borne in mind when we are considering what might be lawful encounters between bikies and counsellors and the like.

A prison chaplain, for instance, might be a person who is called upon to counsel a person in gaol who is a known member of an outlaw motorcycle group. We think there ought to be a clear exemption for chaplains and other counsellors of that nature—indeed, some of them might be part of the Longriders motorcycle club—otherwise how will bikies be reformed? How will we be able to convince them, as in the case of Mr Awad, to leave their life of crime?

Therefore, Family First calls upon the Attorney-General to ensure appropriate protection for the good work of churches and other community groups who try to reform hardened criminals through frequent meetings, counselling and the like.

I note that recently that the media described the New South Wales police operation 'Operation Ranmore' as having laid 111 charges against members of outlaw motorcycle gangs since May 2007, thanks to the new, tough anti-bikie legislation there.

Furthermore, they have made some 390 arrests. This is a very good outcome, and I contrast that with what might be possible after this bill becomes law. I was told in a briefing that there are 250 full members of outlaw motorcycle gangs in South Australia who are primary targets for SAPOL once the bill is proclaimed, and perhaps another 250 nominees or prospects who also might be targeted by these reforms. SAPOL also advises that each of these people might have up to say 10 people associated with them who might be under consideration. If Operation Ranmore, using New South Wales tough new anti-bikie laws, could see 111 charges laid in nine months, we should see some significant results early in the life span of this new act.

Family First calls upon the Minister for Police in this place to ensure that there are adequate resources to make use of this legislation to its full effect. In a briefing it was put to us that SAPOL has received a significant increase in funding for the crime gang task force to the tune of some $15 million over five years, as well as some additional 22 officers beyond that funding increase. This is a welcome move, but I also hope that the clearing of logjams caused by outdated criminal laws assist the existing task force and Operation Avatar to achieve major results quickly.

A particular resourcing issue that I want to put on the record is my concern that the government adequately resources SAPOL for surveillance and to use the latest technology to monitor internet activity. It seems that almost every month new technologies emerge that enable people to communicate with each other in a different way and, if bikies can afford Queen's Counsel to get around the criminal law, surely they can afford the latest technology to get around such investigations. I call on the government to adequately resource SAPOL to respond to the technology countermeasures that bikies might use in order to get around this legislation.

I have in my notes a list of incidents that demonstrate how active and violent bikies have become across Australia. I note, too, that these groups have interstate and international connections so events interstate are relevant to our considerations. I could list a lot of incidents but I will focus on the most recent incidents, and I will explain their relevance to this debate. *The Advertiser* reported on 20 February this year that youth street gangs are being ordered by bikies to commit increasingly violent crimes in metropolitan Adelaide, with special SAPOL police operations targeting three gangs called Team Revolution, Middle East Boys and Rule the Streets.

This recruiting of youths and youth gangs is a major reason why Family First is sympathetic to this bill. While the young adult children of our families are getting locked up in gaol, the bikies and their presidents and enforcers, and the like, are staying out of gaol and just using their criminal network to recruit more teenagers and young adults to do their dirty work. We need laws such as this to target the big criminals, not the petty criminals; and I think most people would agree with that.

On 24 February in *The Advertiser* there was a report on the alleged facial knife attack in the Adelaide Remand Centre upon the man accused of the suspicious death of 3 year old David Mamo. It is alleged that the boy is a descendant of a Finks motorcycle gang member. Of course, this matter is before the courts but, if proven, let the record show it demonstrates how brazen such acts can be.

On 29 February 2008 shots were fired at the home of a Finks associate on the Gold Coast. The *Gold Coast Bulletin* reported a bikie source saying, tellingly for South Australians, that 'it is Finks in the news again' and that 'it is not going to impress Finks bosses in Adelaide because they

have recently told the Gold Coast chapter to cool things down and stay out of pubs and clubs and, most importantly, to stay out of the news.' Indeed, on the same day the *Bulletin* reported that a Finks associate had been found in a Gold Coast house with '5,000 ecstasy tablets downstairs'. This demonstrates the importance of this law working across borders to the full extent of the law, and I urge the government to bring the bill back again if jurisdictional issues are holding up the implementation of these laws. Clearly, relevant criminal associations exist interstate, and it would be awful if this bill was frustrated because of interstate and jurisdictional problems.

Further, on 2 March this year, the *Sydney Morning Herald* told the story of a woman who tried to open her own tattoo parlour. It was firebombed three times in the first three months by bikie groups trying to protect their monopoly on the tattoo industry. Overnight, on 2 and 3 March 2008, we heard of shootings at Kings Cross that are now being investigated by Operation Ranmore. There is some suggestion of a link between current and former Australian Rugby League players with these incidents; that remains to be seen, of course.

Another persuasive matter reported in the media was that the Director of Public Prosecutions called for laws of this nature on 19 February on ABC News. He said:

> I think that the terrorism issue, the guns issue and the bikies issues are the sorts of issues that are important enough for us to have a radical look at the way we frame criminal laws. We shouldn't have to wait for people to be caught in the act of committing offences and then charge them or arrest.

He continues:

> If it is the association itself that is the cause or at least the source of the criminal conduct, then the association itself ought to be unlawful.

In closing, I address the combined effect of this mechanism to declare organisations and the appropriate clauses. We must make a stand against activist judges who misunderstand whose job it is to make these laws and whose job it is to pass sentence. When judges seek to interpret the law to meet their own biases and points of view about such things as organised crime or the effectiveness of the prison system, they overstep their mandate and, indeed, overstep the role for which they have been appointed.

When declaring an organisation to be a declared organisation, the Attorney-General is not required to disclose all matters he was aware of when making the declaration. As he points out, that position has been held as a valid law by a High Court decision last month concerning a fortification removal order against the Gypsy Jokers in Western Australia.

In short, this bill will no doubt cause heated debate in the chamber. At the end of the day, such is the risk to the community that, as the DPP has said, serious and quite radical laws are required. Family First is favourable to these laws and looks forward to the committee stage.

The Hon. I.K. HUNTER (17:41): I note the glowing endorsement of this legislation given by the Hon. Stephen Wade in his speech and his indication that the Liberal Party will be voting for it. I, too, will vote for the bill. The objectives outlined in the measure are in response to the continuing antisocial activities of criminal gangs, activities which of course cannot be tolerated. Legislation of the kind before us today is aimed at protecting the rights and liberties of ordinary people in the community but, by their very nature, we must be alive to the potential for such measures to constrain some rights and liberties.

I am heartened somewhat by the measures contained within the bill that allow for regular reviews. I also support the provision for a sunset clause. Mr President, you would be aware that Benjamin Franklin is usually credited with the observation that 'those who would give up essential liberty to purchase a little temporary safety deserve neither liberty nor safety'.

Therefore, we must be vigilant about protecting our rights, and that is why I wholeheartedly support the inclusion of regular and comprehensive judicial review so that, at each step of the way, we can be assured that some of our rights are not traded away. Having said that, I believe that a good argument can be made for an annual review of the legislation covering its operation and effectiveness in achieving its stated aims, given that there is already provision for an annual review to determine whether powers under the act are exercised in an appropriate manner.

In voting for the bill, I hope and trust that the government will continue to support other measures addressing antisocial and criminal behaviour. We need to continue to pursue approaches, such as community crime prevention programs, and to raise public awareness of the implications of committing a particular offence and, of course, give people the opportunity to choose life options that do not involve resorting to criminal behaviour.

There is a danger of becoming too reliant on 'tough on crime' initiatives to the exclusion of multifaceted approaches—a danger I know that this government is aware of and careful to avoid. There is a very real risk that last-resort options (and I think particularly of the public safety orders set out in part 4 of the bill) may become first-resort options for police and an easy way for the authorities to appear proactive and take action when there is insufficient evidence for an actual criminal prosecution.

I believe that in recent years we have seen in many areas an erosion of civil liberties in the name of security. This is especially so in the case of the previous federal government's response to the threat of terrorism and the control orders imposed on people like Jack Thomas. As Julian Burnside says in his most recent book, *Watching Brief*, terrorism is not new. The 20th century is littered with examples of terrorist activity. Throughout all this, democracy has proved itself robust enough to withstand the risk without compromising its essential beliefs.

The same principles should apply to the criminal law: we need to be ever careful not to compromise its essential elements that are supposed to safeguard justice. I am compelled to say that I am instinctively uncomfortable with any legislation that makes people guilty by association. Part 5 of the bill makes it an offence, punishable by up to five years' imprisonment, knowingly to associate with members of declared organisations, or control order subjects, on more than six occasions over a 12 month period. While I can see the sense in disrupting the activities of criminal gangs in this way, it is a slippery slope and potentially wide open to abuse. Therefore, I am comforted somewhat that the 'Objects' clause of the bill seeks to narrow its operation.

The problem of sustaining a charge of guilt by association was most spectacularly highlighted, of course, by the recent case of Dr Mohamed Haneef. The attempt by former immigration minister, Kevin Andrews, to cancel Dr Haneef's visa was ultimately rejected by the full bench of the federal court, who declared it unlawful, in part, because the nature of the association which Dr Haneef had with his family members was not capable of supporting a reasonable suspicion that Dr Haneef knew of, or was sympathetic to, supported, or was involved in any way in criminal conduct undertaken by his cousins. In other words, mere association and admitted regular contact with those suspected of criminal activities was deemed insufficient evidence to target Haneef and, in fact, tar him with the same brush.

I am not suggesting the same would occur with this bill before us today. I merely point out that it is a risk we take when we start down this path. Additionally, I believe that another danger for us to be aware of in passing legislation of this kind is the possible impact it may have on police informant networks. The association provisions of part 5 may have the unfortunate effect of deterring people who regularly, or occasionally, come forward to help police with their inquiries. There is the danger that these informants will lose confidence in the police and the flow of information to police may then dry up. Therefore, it follows that police may need to use extra resources to find the information that formerly had flowed naturally from the trust relationships that they had encouraged in their informant networks.

As I said, I will be voting for this bill and I urge all members to do the same. However, we must accept that it may turn out to be the case—after it has been through the review process—that the measures have a limited effect on the commission of crime. Indeed, there is some evidence from Canada that such legislation may be counterproductive, despite the fact (as alluded to by the Hon. Mr Hood) that many arrests have taken place, an unintended result in that country is that hard criminal elements in the outlaw motorcycle gangs have been forced further underground and, according to Professor Art Veno of the Centre for Police and Justice Studies at Monash University, to behave more like Triads and criminal gangs of their ilk. But, of course, we need to try. It is vitally important that criminal elements in bikie gangs are pushed out of this state, and this government's determination to do so is to be applauded and supported, but we always need to proceed with caution in these matters.

Again in *Watching Brief*, Julian Burnside QC reminded us that history shows that basic liberties are lost not all at once, but in small steps. This is as good a time as any to call, as Burnside has, for a codified bill of rights for Australia to guard against the incremental erosion of human rights. Victoria has already passed its charter of human rights and responsibilities. A charter of this sort is important—

The Hon. Sandra Kanck interjecting:

The Hon. I.K. HUNTER: Please don't damn me with faint praise. A charter of this sort is important because all proposed legislation, and its interpretation by courts and other authorities, needs to be held against the charter and accepted or rejected on the basis of its adherence to the

rights implicit therein. As a parliament and as a community, we clearly need to find practical solutions to the problems of criminal gangs.

I will be voting for this bill. I hope that its provisions are used judiciously and responsibly. I look forward to parliament scrutinising its review on a regular basis, and I trust that, if it is indeed shown that these measures do not adequately achieve their intended purposes, they will be repealed and replaced with more effective instruments.

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (17:48): I thank all members for their contribution to this debate, particularly those who indicated support for this bill. I will go through some of the comments made during the debate. The other day the Hon. Mark Parnell was referring to bikers and trying to suggest that, somehow or other, this legislation was aimed at, or would catch, virtually anyone who rode a motorcycle. Let me say that I rode a motorcycle for nearly 20 years, I was even a member of a motorcycle club. I think that there are more than 100,000 registered motorcycles in the state.

Thousands of members of motorcycle clubs—as with members of motor car clubs and other clubs—are there for the enjoyment and social interests of their clubs. They are not there for criminal outlaw activity. This bill is very much aimed at the handful of groups we have in the community—as has been suggested during debate, about 250 hard-core members, plus a few associates—that are heavily into organised crime. That is what this bill is about. To try to suggest that, just because someone has a leather jacket or rides a Harley or any other sort of motorcycle, somehow or other they are targets is a dishonest argument.

The fact is that the criminal outlaw motorcycle gangs are not only national organisations but, in some cases, they are international crime organisations and are responsible for the distribution of drugs, in particular, and other forms of criminal activity on a world scale. That is why, just like with other forms of organised crime, we have to fight that crime. However, we have to do it in a different way from the way in which we deal with ordinary crime. For years we have been fighting ordinary crime. It is well recognised that the police forces can catch those at the street level of crime, but catching the principals of organised crime is a much harder task to perform. We have seen that with many organised crime gangs, whether they be the Mafia, the Triads or the other ethnic crime gangs that have been referred to, or other forms of organised crime.

The fact is that, inevitably, the principals of organised crime are removed from the day-to-day crime operations, but we know that those organisations, particularly in this country, are very significant in the distribution and manufacture of drugs. Also, because their principal profits come out of crime activities, they are often associated with legitimate organisations to launder money. They cause immense harm to our society, and I think that is what needs to be borne in mind. This legislation certainly is severe in many ways, and it certainly confronts the issue of human rights, but we also have to consider the rights of the thousands of people who are the victims of the criminal activities of these organisations, and that is why the government is introducing this legislation.

We should also understand that these organisations are becoming increasingly effective, and that is because, like other organised crime organisations, they intimidate witnesses and other people as part of their crime. So, the wearing of colours is so important to their effectiveness as criminals, in many cases, in terms of intimidating witnesses who might testify against them for their criminal activities or just in terms of intimidating those people into accepting their criminal behaviour.

Also, of course, these organisations operate with codes of silence. Because these organisations have developed over decades, they are used to the traditional laws and the civil liberty jurisdiction which have developed over centuries and to which the Hon. Sandra Kanck and others adhere—and one can understand why they do so; the civil liberties were hard won. However, these crime organisations have discovered ways to get around the conventions of our criminal justice system. They are flouting it at will, and they are causing enormous damage to our society. That is why we need to consider legislation such as this.

In his comments, the Hon. Stephen Wade said something along the lines that the opposition reserves the right to toughen this legislation. So does the government. This is a new approach, and this bill needs to be seen in conjunction with the Firearms Act and other legislation and measures that the government is taking to deal with this type of crime. However, this is the first step and, as the Hon. Ian Hunter has pointed out, that is why we need to observe closely the performance of this legislation into the future; to ensure that it is achieving its objective. If not, we should try some other method.

However, what is important is that we try to deal with the evils of organised crime, particularly those from the outlaw criminal motorcycle gangs and their associates, which are growing in extent and also growing in their criminal influence within this country.

But we do need to ensure that this legislation is closely watched. There are checks and balances that were put into this bill at the insistence of the government when this matter was being discussed, and it is appropriate that that should have been done. But I would suggest that if there is any abuse of the system, it would very quickly weaken support for this bill, and I know as Minister for Police that the police are well aware that in seeking these unprecedented measures (in this state's terms) they have the responsibility to ensure they are used wisely and properly in dealing with those organised crime institutions because, if they do not, they will very quickly lose support for such measures. I do not believe that will be the case. South Australia Police is a very professional organisation, and a lot of care and thought has gone into these proposals to ensure they are effective in dealing with the organised crime problem that we face and to put as many protections as we can into this legislation.

Again I remind those people who have talked about human rights that, as well as our broad human rights, we also have to consider the rights of victims. There are many people—the people you do not hear about—who are victims of organised crime and whose lives are shortened through drug addiction as a consequence of the drugs being peddled by these sorts of organisations. So it is always the trade-off we have to make. Of course human rights are important, but so are the rights of victims. It is our job as legislators to ensure we get the balance right and that when we pass legislation such as this we observe it carefully and make sure it is operating correctly. I certainly endorse the Hon. Ian Hunter's comments in relation to that.

There are many other points I can make. We will have plenty of discussion, I am sure, during the committee stage of the bill, and I look forward to resuming that when we come back in a few weeks.

The council divided on the amendment:

AYES (2)

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

NOES (15)

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

Majority of 13 for the noes.

Amendment thus negatived.

Bill read a second time.

STATUTES AMENDMENT (REAL PROPERTY) BILL

Received from the House of Assembly and read a first time

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (18:04): 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.

Successive Registrars-General have recommended practical amendments to the Real Property Act 1886, the Community Titles Act 1996 and the Strata Titles Act 1988, the Bills of Sales Act 1886 and the Stock Mortgages and Wool Liens Act 1924.

The process of drafting a comprehensive Bill to deal with these problems started under the previous government and has continued since then, with consultation between Parliamentary Counsel, the Attorney-General's Department and the Lands Titles Registration Office.

The proposed amendments are mostly minor and technical in nature. Nevertheless, recognising that the amendments would be of interest to land law specialists, the Government released a consultation draft of the Bill in July, 2003 for public comment.

Some changes to the Bill have been made as a result of this consultation. Some other matters have been added to the Bill since the consultation period ended on the advice of the Lands Titles Registration Office.

There are many amendments, more than 80 in all, dealing with a wide range of technical matters. The amendments will improve the administration and efficiency of South Australia's land management system.

Definition of 'allotment'

The word 'allotment' is used in two different contexts in the Real Property Act. For purposes of land division and amalgamation under Part 19AB, 'allotment' is defined (except for the purposes of s223LB) so as to exclude community or development lots or common property within the meaning of the Community Titles Act, or a unit or common property within the meaning of the Strata Titles Act. That is because the division and amalgamation of parcels of land under the Community Titles Act or Strata Titles Act is subject to the specific provisions of those Acts in addition to the general land division provisions in Part 19AB. In other contexts within the Real Property Act, for example sections 51E, 90B, and 90C, a broader meaning of the word 'allotment' is intended. However, there is no definition of the word as it applies to any Part other than 19AB.

The Bill therefore amends section 3 of the Real Property Act to insert a broad definition of 'allotment' that will apply to sections 51E, 90B, and 90C.

Replacement of term 'licensed land broker'

Several provisions in the Real Property Act still refer to a 'licensed land broker'. This term ceased to be used when the Land Agents, Brokers and Valuers Act 1973 was replaced by the Land Agents Act 1994 and the Conveyancers Act 1994. 'Licensed land brokers' are now referred to as 'registered conveyancers'.

The Bill amends the Real Property Act to replace references to 'licensed land brokers' with 'registered conveyancers'.

Registration of dealings in the order intended

Often instruments affecting the same interest in land are lodged in the incorrect order where it is clear on the face of the documents what order they were intended to be lodged. For example, a series of documents may be lodged with a transfer of land being presented before an existing mortgage is discharged.

Section 56 of the Real Property Act directs that the Registrar General must register the documents in the order that they are presented. Given this requirement, it is necessary to withdraw the document that is out of registrable order temporarily and then re lodge that document in its correct order. This process incurs an administration fee and is time consuming for both the Registrar General and the parties. The process can be further complicated where other documents are lodged over the same certificate of title after the series requiring temporary withdrawal.

To address this the Bill amends section 56 to authorise the Registrar General to register a series of documents affecting the same land in an order that gives effect to the intention of the parties. Where the intention of the parties appears to the Registrar General to be in conflict, the order of registration will remain the order in which the dealings were lodged for registration. The proposed amendment is based upon similar provisions in the New South Wales' Real Property Act.

Permitting the Registrar-General to issue a new certificate of title

The automation of the land titles register means that it is easier and more effective for the Registrar General to issue a new certificate of title when amendments or corrections need to be made, rather than making alterations on the face of existing certificates of title.

In recognition of this the Bill inserts a new Section 78A into the Real Property Act, authorising the Registrar General to issue a new certificate of title whenever he is required by legislation to amend or update an existing certificate of title.

Expanding the list of 'short form' easements

Section 89A of the Real Property Act provides that, where an instrument refers to a short form easement set out in the Sixth Schedule, the instrument will, unless the contrary intention appears, be taken to incorporate the corresponding long form of that easement as set out in the Sixth Schedule. There are nine short form easements incorporated in the Sixth Schedule. Given the benefits of using short form easements rather than transcribing the long form of an easement in all instruments, the Bill adds these additional short form easements to the Sixth Schedule:

- an easement for the transmission of telecommunication signals by underground cable. This easement is similar in terms to the existing easement for the transmission of television signals by underground cable;
- an easement for the transmission of telecommunication signals by overhead cable. This easement would deal with telecommunication signals that are transmitted by overhead cable;
- an easement for support. Such an easement would arise where a party requires the support of a structure on the servient land. Examples would include a right to support from a retaining wall;

- an easement to park a vehicle. There are cases where it is necessary for the grantee of an easement to park and leave a vehicle or moor a boat or vessel on the right of way. Therefore, there is a need to provide that the grantee will enjoy a free and unrestricted right of way over a defined portion of the servient land and have the right to park and leave a vehicle. The right to park may be in a designated portion of the right of way or over the entire right of way;

- a right of way on foot. There are occasions where a right of way is granted but limited to pedestrian access. It is envisaged that this short form easement could be used in such cases.

'Right of Way' heading to Schedule 5

Section 89 of the Real Property Act provides that the words 'a free and unrestricted right of way' in any instrument will be deemed to imply the words set out in Schedule 5. Schedule 5 provides:

A full and free right and liberty to and for the proprietor or proprietors for the time being taking or deriving title under or through this instrument, so long as he or they shall remain such proprietors, and to and for his and their tenants, servants, agents, workmen, and visitors, to pass and repass for all purposes, and either with or without horses or other animals, cart, or other carriages.

At times confusion arises because Schedule 5 is headed simply 'Right of Way', and some conveyancers and solicitors are under the erroneous belief that the words 'right of way' in an instrument will be deemed to imply Schedule 5 words. To avoid any ambiguity the Bill amends the heading to Schedule 5 so that it refers to 'A free and unrestricted right of way'.

Land 'registered' under this Act

Section 90B of the Real Property Act refers to 'land registered under this Act' and 'land not registered under this Act'. This wording is inconsistent with that used throughout the remainder of the Act. The Bill amends section 90B to make it consistent with the remainder of the Act in describing land as 'under the provisions of this Act'.

Extension of a mortgage or encumbrance to an easement created appurtenant to the encumbered land

When an easement is granted appurtenant to land that is subject to an existing mortgage or encumbrance, a collateral mortgage or encumbrance must be lodged for the mortgagee or encumbrancee to be able to transfer that appurtenant easement when exercising a power of sale. Without lodging a collateral mortgage or encumbrance, the new certificate of title will only observe that the mortgage or encumbrance is over the land, and not over the appurtenant easement. The need to prepare and register a collateral mortgage or encumbrance would be avoided if the existing mortgage or encumbrance over the dominant land automatically extended to cover a subsequently created easement. This would be consistent with the current procedures for the creation of easements by a plan of division or community division.

The Bill amends the Real Property Act to insert a new section 90F, and make a consequential amendment to section 90A, to provide that if, when an easement is granted over servient land, the dominant land or any part of it is subject to a mortgage or encumbrance, the easement is also subject to the mortgage or encumbrance if the instrument granting the easement provides that it is subject to the mortgage or encumbrance and the mortgagee or encumbrancee has endorsed his consent to that on the instrument.

Creation of an easement by reservation to the grantor

The common law does not permit an easement to be created by reservation on the transfer of land. Instead, the purchaser must consent to a re grant of the easement to the vendor. This has the same end effect as a reservation but requires the execution of extra documentation.

This common law rule has been abrogated in New South Wales, Victoria, Queensland and Tasmania, however, it continues to apply in South Australia even though permitting reservation of an easement would not adversely affect a transferee because the transferee must endorse the transfer document that would refer to the reservation.

To bring the law in South Australia into line with these other jurisdictions, the Bill amends the Real Property Act to insert a new section 96AA to allow the creation of an easement by reservation.

Registering or recording the vesting of an estate or interest by operation of law without the necessity of a formal application

Section 115A of the Real Property Act provides that, on receiving an appropriate application, the Registrar General may register an estate or interest that has vested by operation of law.

This vesting by operation of law could be streamlined if the Registrar General could update the register of his own motion rather than only on application.

In light of this, the Bill repeals section 115A of the Real Property Act and replaces it with a new provision that will allow the Registrar General to update the register by his own motion where a vesting by operation of law has come to his attention.

This amended provision will not enable the Registrar General to deprive any person of his or her interest in land. It permits the Registrar General to update the Register to reflect something that an Act has already done. The Registrar General is of the opinion that the wording of this amendment would require him to make a notation on the title referring to the statute under which the transfer or vesting occurred. He has advised that the notation would appear either on the certificate of title itself or on the Historic Search for that title.

New section 115A is also drafted so as apply where the person acquiring an estate or interest in land by operation of law is other than the Crown in right of the State or the Commonwealth.

Discharge or extinguishment of proprietary interests as a consequence of consent to a grant of easement

When an easement is granted over land that is subject to a registered mortgage or encumbrance, it is general practice to discharge the mortgage or encumbrance over the portion of land forming the easement. The partial discharge occurs to avoid extinguishment of the easement in accordance with section 136 of the Real Property Act where a power of sale is exercised over the servient land. The Bill accommodates this general practice by inserting a new provision, section 144, which provides that, if a mortgagee or encumbrancee consents, an existing mortgage or encumbrance will be partially discharged to the extent of the new easement.

Inclusion of the words 'with no survivorship' in a mortgage, encumbrance or lease

Section 162 of the Real Property Act prohibits the inclusion of trust details on Real Property Act instruments. Section 163 provides a partial exception to this prohibition by requiring the words 'with no survivorship' to be used on a transfer where the interest received will be held by trustees.

For many years the Registrar General has also allowed the words 'with no survivorship' to be used on mortgage, encumbrance and lease instruments. It is not clear whether this practice is authorised by the Real Property Act even though section 164 clearly permits the registered proprietor of an interest to apply for the inclusion of those words on an instrument.

The Bill amends sections 163 and 164 to make it clear that the words 'with no survivorship' may be included on a mortgage, encumbrance or lease instrument.

Requirement to provide an 'office copy' of specified documents

Section 176 of the Real Property Act deals with an executor, administrator or Public Trustee being registered as proprietor of property forming the deceased's estate, and section 184 deals with a person being registered as the proprietor of land by dint of a court order. In both sections there is reference to a person providing an 'office copy' of the probate, letters of administration or order (as the case may be). In current practice, there is no relevance to the use of the word 'office' in this section.

The Bill therefore amends section 176 and 184 so that the requirement is to provide a 'copy' (as distinct from an 'office copy') of the probate, letters of administration or order (as the case may be).

Where two or more executors or administrators, all to concur in every instrument relating to the estate or interest of the deceased proprietor

Section 179 of the Real Property Act provides that, where probate or letters of administration are granted to two or more persons, all of them must concur in every instrument relating to the 'real estate' of the deceased registered proprietor. The reference to 'real estate' dates back to the time when there was a distinction between the transfer of real property and the transfer of personality (mortgages and encumbrances) or chattels real (leases).

There is no justification for approaching the administration of a subsidiary estate or interest in land any differently from administration of a freehold estate in land. The Bill therefore amends section 179 to replace the words 'real estate' with 'land'.

Meaning of 'contiguity' for the purpose of division and amalgamation under the Real Property Act

The Real Property Act contemplates the division and amalgamation of part allotments that are contiguous with whole allotments. For the purposes of the division and amalgamation provisions of the Act, an allotment will be considered contiguous with another allotment if they abut one another or are separated only by a street, road, thoroughfare, travelling stock route, a reserve or other similar open space dedicated for public purposes. However, this extended definition of contiguity applies only to whole allotments. Any part allotment must physically abut another allotment or part allotment to be considered contiguous with that allotment or part allotment. Owing to the limitation in the definition of contiguity, a part allotment would not be considered contiguous with another part or whole allotment if they were separated by a street, road, thoroughfare, travelling stock route, a reserve or other similar open space dedicated for public purposes.

This appears to be contrary to Parliament's intention that the position of a road, thoroughfare, reserve or similar area should not be relevant when determining whether land parcels are contiguous. The Bill therefore amends sections 223LA(3) and (4) of the Act to make clear that part allotments should also be considered to be contiguous with other part or whole allotments notwithstanding that they may be separated by a street, road, thoroughfare, travelling stock route, reserve or other similar open space.

Restrictions on division involving more than one part allotment

Section 223LB(2) of the Real Property Act imposes a restriction on the granting, selling, transfer etc., of an estate or interest (except a right-of-way or other easement) over a land parcel unless certain criteria are met. Amongst other things, conveyance is allowed if the land parcel constitutes 'an allotment or allotments and a part allotment that is contiguous with that allotment or with one or more of those allotments'.

This provision was inserted in the Act to ensure that a person could not deal in isolation with a part allotment or part allotments of land. Essentially, one or more part allotments may only be dealt with if they are contiguous with one or more full allotments of land. By dint of the wording of the provision, a person would only be able, in a single transaction, to deal with one part allotment that is contiguous with one or more allotments. A person would not be able to deal, in a single transaction, with more than one part allotment, despite all parts being contiguous with each other, and at least one part being contiguous with one or more allotments. Such an intention

would have to be carried out through a successive series of transactions. There is no justification for this. The Bill therefore amends section 223LB to enable a person, in one transaction, to deal with a number of part allotments that are in some respect contiguous with one or more allotments.

Vesting by deposit of plan

Section 223LE of the Real Property Act provides that on the deposit of a plan of division, an estate or interest will vest, as specified in the plan, in a person to the extent it is not already vested. Subsection (3)(a) limits section 223LE by providing that an estate in fee simple can vest in a person only if that person was the proprietor of an estate or interest in some part, or the whole, of the land before division.

The limitation in subsection (3)(a) was inserted to prevent persons being vested with an estate in fee simple in the land on deposit of the plan when that person was not the holder of the estate in fee simple of the land before division. However, the wording of the provision could mean that a person who is simply the owner of an encumbrance (such as a lease or easement) over the undivided land could be vested with an estate in fee simple in the land. This was never intended. The Strata Titles Act and the Community Titles Act both restrict the vesting of an estate in fee simple for any of the created units or lots to a person who possessed an estate in fee simple over the land before division. The Bill therefore amends section 223LE(3)(a) to provide that the deposit of the plan of division will serve to vest an estate in fee simple, in allotments created by the division, only in a person who was the registered proprietor of an estate in fee simple in the land before division.

Certification of documents

Section 273(1) of the Real Property Act requires that all applications to bring land under the Act and all instruments that purport to deal with land to be certified as correct, except those exempt by regulation.

Certification of instruments is extremely important as it is not feasible for the Registrar General to be in a position to know, or be able to ascertain definitively, the genuineness or correctness of every instrument that is lodged for registration and which can affect interests in the land in question. Certification pursuant to section 273 is intended to provide some assurance to the Registrar-General that a particular instrument is registrable. Matters being certified include matters as to the instrument's creation and execution, the details underlying the transaction, and the identity of the persons executing the instrument as parties to the transaction.

In practice, certification is usually provided by the registered conveyancer or legal practitioner acting for the benefiting party.

However, to do so, that party's conveyancer or legal practitioner must rely upon the other party's solicitor or conveyancer having carried out the appropriate checks as to the identity of their client, and that the documents effect a dealing in the manner required, as they have no personal knowledge as to the correctness of other party's identity or the information the other party has included in the documentation.

Certification is therefore premised in many cases upon the certifier being able to rely upon information provided by the other party's (transferor's) solicitor or conveyancer.

The Crown Solicitor has advised that section 273 requires the person certifying an instrument to have actual personal knowledge as to the matters being certified (being matters as to the instrument's creation and execution, the details underlying the transaction, and the identity of the persons executing the instrument as parties to the transaction). Although a solicitor or conveyancer will have personal knowledge of all of these matters insofar as they relate to those parts of the documents the solicitor or conveyancer prepared for his client, he will not (or is unlikely to) have personal knowledge of the relevant matters relating to the other party.

Given the Crown Solicitor's advice, the Registrar General would prefer that certification be given by or on behalf of each side of a land transaction, that is, dual certification.

However, the Crown Solicitor has also advised that dual certification is arguably not permitted under section 273 as this provision is expressed in the singular; it speaks of an instrument being endorsed with 'a' certificate. As such, the Registrar General cannot lawfully demand that any instrument bear more than on certification and cannot lawfully refuse to register an otherwise registrable instrument that bears only one certification.

Although it would be possible for the Registrar General to make dual certification a matter of non mandatory policy and practice, this is not advised as a person must certify as to the correctness of the whole instrument, making the value of a second certification negligible at best, and such a policy could be problematic as dual certification may confuse issues of liability and potentially interfere with the operation of the sanction in section 232 of the Real Property Act against false and misleading certification.

As dual certification cannot be accommodated administratively, the Registrar General has recommended that section 273 be amended so as to allow for dual certification of instruments in appropriate circumstances.

In accordance with the Registrar General's recommendation, the Bill amends section 273 by deleting subsection 273(1) and replacing it with two new subsections.

New subsection (1)(a) provides that applications to bring land under the provisions of the Act must continue to be certified by or on behalf of the applicant. New subsection (1)(b) provides:

- in the case of instruments of a prescribed class, for certification by or on behalf of each party (dual certification); or
- in the case of instruments that are not of a prescribed class, for certification by or on behalf of the party claiming under or in respect of the instrument.

New subsection (1a) provides that a certificate under subsection (1) may be signed by solicitor or conveyancer.

Repeal of obsolete provisions

Part 19AB, Division 4A of the Real Property Act was enacted in 1992 to deal with the amalgamation of allotments in exchange for division of land. The legislation was directed at the owners of land in the Mount Lofty Ranges Water Protection Area, and formed part of the then Government's Mount Lofty Ranges Management Plan.

Division 4A is now obsolete because the 'transfer of title' scheme, that the provisions supported, was abandoned in 1994.

As there is no intention to reactivate this scheme, the Bill repeals Division 4A of Part 19AB.

The Bill also repeals section 200 as this provision refers to the jurisdiction of the local courts and the Local Courts Act 1926.

Duplicate instruments

A number of provisions in the Real Property Act, Community Titles Act and Strata Titles Act require the production of, or notation by the Registrar General on, duplicate instruments. The production of duplicate instruments is time consuming and labour intensive. It provides little, if any, benefit to the public.

The Bill removes all legislative obligations for persons to produce, or for the Registrar General to place notations on, duplicate instruments.

Reducing the appurtenance of an easement

Generally, all persons with an estate or interest in either dominant or servient land must consent before an easement or its appurtenance is varied. There is an exception to this rule whereby the proprietor of dominant land may unilaterally vary the appurtenance of an easement through the transfer or conveyance of a portion of the dominant land without the easement being appurtenant. Consent is not required from persons with an interest in the servient land because the burden over the servient land is only being reduced.

However, the exception operates only where there is the transfer or conveyance of the portion of the dominant land. The exception does not apply where the reduction is effected by the deposit of a plan of land division. Currently, a developer needs the consent of the person with an interest in the servient land or needs a waiver from the Registrar General. There is no rationale for this distinction. The Bill therefore amends the relevant provisions of the Real Property Act, Community Titles Act and Strata Titles Act to allow an easement to be extinguished in respect of part of the dominant land by the deposit of a plan of division without the consent of those with an interest in the servient land or a waiver from the Registrar General.

Lodgement of a Memorandum of standard terms and conditions for encumbrances, bills of sale, stock mortgage or wool lien

Section 129A of the Real Property Act allows a person to deposit 'standard terms and conditions' for mortgage documents with the Registrar General. Subsequent mortgage instruments may refer to the deposited standard terms and conditions and those terms and conditions would then become part of the arrangement as if they were set out verbatim in the document. The mortgagee must have provided the mortgagor with a copy of the deposited standard terms and conditions. The advantage of this practice is that the original and duplicate mortgage instruments will be considerably shorter. A similar provision, section 119A, provides the same with respect to leases.

Industry participants have recommended amendments to the Real Property Act to allow the depositing of standard terms and conditions for encumbrances. Although it is unlikely that such provisions will be used extensively, the Government accepts that the capacity to deposit standard terms and conditions for encumbrances will be beneficial for some. The Bill therefore amends section 129A to insert a provision to allow a person to deposit standard terms and conditions for an encumbrance.

The same principle can be applied to bills of sale, stock mortgages and wool liens. As such the Bill amends the Bills of Sale Act to insert a new section 11A to allow a person to deposit standard terms and conditions of a bill of sale. Consequential amendments are also made to the Stock Mortgages and Wool Liens Act to insert a new section 18A that provides that section 11A of the Bills of Sale Act applies equally to stock mortgages and wool liens.

Varying or extinguishing 'statutory encumbrances' on deposit of a plan of division, or a plan of community or strata division

A number of provisions in the Real Property Act, Community Titles Act and Strata Titles Act provide for the creation, variation or extinguishment of estates or interests in land (with varying conditions and exceptions to the rule) on deposit of a plan of division. These provisions effectively remove the need for additional documentation to create, vary, or extinguish an estate or interest by providing that it automatically occurs as specified in the plan. Other provisions require applicants to satisfy the Registrar General that persons affected consent to the plan.

Statutory encumbrances, however, are not estates or interests in land. Examples of statutory encumbrances include aboriginal heritage agreements, agreements relating to the management, preservation or conservation of land and heritage agreements created under various statutes. This means that the creation, variation or extinguishment of statutory encumbrances cannot occur simultaneously with the deposit of the plan. Additional documentation must be completed and noted against the title, and this takes time and money.

To address this, the Bill amends the Real Property Act, Community Titles Act and Strata Titles Act so that a statutory encumbrance can be varied or extinguished as specified in a plan of division. The creation of statutory encumbrances will continue to require full documentation.

It is important to acknowledge that there are other parties who, according to the relevant legislation, must be involved in the process of varying or terminating a statutory encumbrance. For example, under the Heritage Places Act 1993, the Minister must first seek and consider the advice of the Authority established under the Act before agreeing with the landowner to vary or terminate an agreement made under that Act.

Therefore, the amended provisions require the holder of the statutory encumbrance to endorse the application and to certify that the consultative process in the Act under which a statutory encumbrance is varied or terminated has been satisfied.

The Bill amends the Real Property Act, Community Titles Act and Strata Titles Act in slightly different ways, although the principle is the same. In each case, both 'statutory encumbrance' and 'holder' are defined. Each Act is to have a new section to specifying what must be included in an application if it is to be successful in varying or extinguishing a statutory encumbrance. Finally, each Act will require an applicant to provide a certificate from the holder of the statutory encumbrance, certifying consent to the deposit of the plan of division. There is, however, a minor difference between the Strata Titles Act and the Community Titles Act in that, under the Community Titles Act, a statutory encumbrance is already included in the definition of an encumbrance, and holders of registered encumbrances are already required to consent to deposit or amendment of community plans.

Requirement to lodge a certificate under section 51 of the Development Act

Section 223LD of the Real Property Act provides for an application for the division of land to be made by registered proprietor of land. Section 12 of the Strata Titles Act provides for an application for the amendment of a deposited strata plan to be made by the strata corporation.

Section 14 of the Community Titles Act provides for the registered proprietor of an estate in fee simple in land comprising an allotment or allotments, or comprising a primary lot or a secondary lot, for the division of the land by a plan of community division. Sections 52 and 58 of the Community Titles Act provide, respectively, for applications:

- by the community corporation, for the amendment of a deposited community plan; and
- by the registered proprietor of an estate in fee simple in a development lot, for the division of the development lot in pursuance of the development contract and for the consequential amendment of the community plan.

In each case the application is made to the Registrar General and must be accompanied by a certificate from the Development Assessment Commission under section 51 of the Development Act 1993.

With the introduction of Electronic Development Application Lodgement and Assessment and the proposed introduction of Electronic Plan Lodgment it is proposed that an application no longer be accompanied by the section 51 certificate. Rather, the Commission will issue the section 51 certificate in electronic form and store it on its system. The Lands Titles Registration Office will then access the Commission's systems to view or down load a hard copy of the approval.

The Registrar-General has therefore recommended that the requirement that an application under section 223LD of the Real Property Act, section 12 of the Strata Titles Act and sections 14, 52 and 58 of the Community Titles Act provisions be accompanied by a section 51 certificate be replaced with a requirement the Registrar General be satisfied that:

- the Commission has given a certificate under section 51; and
- the certificate is in force in relation to the development proposed.

Amendments implementing the Registrar General's recommendations are included in the Bill.

Community Plan conforming to requirements of Community Titles Act

Section 22 of the Community Titles Act provides that when the Registrar General receives an application for division of land by a community plan and the plan complies with 'the requirements of the Act' then the Registrar General must deposit the plan in the Lands Titles Registration Office. This means that, to enable them to be filed, the Registrar General must be satisfied with the physical form of the plan and that the scheme description, the by laws and the development contract include all content that is mandatory under the Act.

The Community Titles Act does not envisage the Registrar General giving a legal opinion as to the validity or effect of all provisions in these documents when they are lodged. It would be neither appropriate nor practical for the Registrar General to do so.

Nevertheless it is undesirable for scheme descriptions, by-laws or development contracts to be filed if they are inconsistent with the Act.

The Bill therefore amends sections 30, 31, 34, 39, 47 and 50 of the Community Titles Act to require the person who prepared the scheme description, by laws and development contract to certify that they have been correctly prepared in accordance with the Act. In the case of amendment to a scheme description, variation of by laws or variation or termination of a development contract, an officer of the corporation may provide the certification. This is consistent with the obligations imposed by section 273 of the Real Property Act on persons making applications under that Act. The form of the certification is to be as prescribed by regulation.

Consequential amendments to section 232 of the Real Property Act make it an offence to falsely or negligently certify such correctness.

The amendment is a discretionary one and still allows the Registrar General to examine any matter or thing that has been certified, whether that be the proposed new certificates to deal with the by-laws, scheme description and development contract, the surveyor's certificate or the valuer's certificate.

Avoiding the need for a development contract

The Community Titles Act permits both staged developments and the imposition of future obligations on purchasers. Both are regulated by requiring a developer to lodge a scheme description and development contract. The scheme description and other documents are lodged first with the relevant planning authority along with the plan of land division. If the relevant authority approves the scheme description and plan the documents are lodged with the Registrar-General along with an application for land division. If all legal requirements have been satisfied, the Registrar General then deposits the plan upon which the community corporation is established. The developer and purchaser are then bound to fulfil their obligations under the scheme description and development contracts.

In recent years some large developers have failed to lodge development contracts, relying upon statements in their scheme description that future development is 'expected', 'envisaged' or equivocal words to that effect. This creates a risk that off the plan purchasers might be misled as to the obligation of the developer to actually carry out the proposed development.

To address this, and provide greater protection to off-the-plan purchasers, the Bills amend sections 13 and 14(4) of the Community Titles Act to require the lodgement of a development contract where the scheme description indicates that further development 'is to' occur or 'is likely to' occur.

Registered leases

Section 23(7) of the Community Titles Act provides that where land to be divided by a community plan is subject to a registered encumbrance (not being a statutory encumbrance or an easement), the encumbrance will not be registered on the certificate for the common property and the encumbrance will be taken to be discharged to that extent. Encumbrances include leases and mortgages.

Under this provision, common property cannot be leased at the time of the deposit of the plan, because the community corporation that would own the common property would not exist until after the deposit of the plan. However, it is possible, with the lessee's agreement, to specify that the land subject to the lease is to be, at least initially, a community lot over which a lease can subsist. Then, after the deposit of the plan, the plan can be amended, with the land designated as common property, and leased from the community corporation. This is an expensive and costly method of achieving an outcome that all parties desired from the outset.

The Bill amends section 23 so that an existing lease can exist over common property created by the deposit of a plan of community division, where this is provided for in the plan. Potential purchasers who will become members of the corporation on deposit of the plan should be made aware of the lease by being given or by requesting a copy of the scheme description if one is required, or by their conveyancer's search of the register, or both.

Amendment of community plan where common property unaffected

Section 52 of the Community Titles Act provides for the amendment of a deposited community plan on the application of a community corporation.

Subsection 52(2)(a) requires an application for amendment to have the unanimous approval of the corporation. This protection is necessary to prevent a majority changing lot entitlements or disposing of common property against the wishes of (or to unfairly prejudice) a minority.

However, where two or more owners wish to alter their boundaries in a manner that would not affect any other owners or the common property this requirement for unanimous approval is unnecessary. Particularly for minor amendments of the community plan, the need to obtain a unanimous resolution is inhibitive.

Therefore, the Bill amends section 52 so that an application to amend a community plan may be lodged under section 52(1) by any two or more contiguous lot owners without the need for any corporation consent provided that the proposed amendment:

- does not affect common property;
- does not alter the total number of community lots in the community parcel;
- does not affect the aggregate of the lot entitlements of the amended lots;
- does not alter the boundary of the community parcel;
- is not contrary to a scheme description, by laws, or development contract;
- in the case of a secondary plan, is not contrary to the scheme description or by laws of the primary scheme;
- in the case of a tertiary plan, is not contrary to the scheme description or by laws of the primary or secondary scheme.

Permitting the Registrar-General to prescribe scales for survey plans

Under these provisions of the Community Titles Act:

- section 14(4), that deals with applications for a community plan;

- section 52(4)(f)(ii), that deals with amendment of deposited plans;
- section 58(3)(e), that deals with the division of a development lot; and
- section 60(3)(f) that deals with amalgamation of plans,

the certificate of a licensed surveyor must be correctly prepared in accordance with the Act 'to a scale prescribed by regulation'.

The Registrar-General publishes a Manual of Survey Practice Volume 1 (Plan Preparation Guidelines). This Manual sets out standards to be observed by professional surveyors to ensure that their work meets the Registrar General's requirements. The Manual is updated from time to time in accordance with the Registrar General's requirements.

The Registrar-General has recommended that scales be contained within the Manual rather than be prescribed by regulation. These requirements have been deleted from both the Strata Titles Act and Real Property (Land Division) Regulations to enable the Registrar General greater flexibility and a centralised plan requirement publication in preparation for Electronic Plan Lodgement into the Lands Titles Office.

In accordance with the Registrar General's advice, the Bill amends subsections 14(4), 52(4)(f)(ii), 58(3)(e) and 60(3)(f) of the Community Titles Act to replace references to 'scale prescribed by regulation' with 'scale determined by the Registrar General'.

Schedule of lot entitlements

Sections 14, 58, 60 and 69 of the Community Titles Act require an application for division of land, amendment of a plan, division of the development lot in pursuance of the development contract (and consequential amendment of the plan) and amalgamation of two or more plans to be accompanied by certificates from:

- a surveyor certifying that the plan or amended plan has been correctly prepared to a scale prescribed by regulation;
- and a valuer certifying that the schedule of lot entitlements included in the plan is correct.

Section 3 of the Act defines 'schedule of lot entitlement' to mean 'the schedule of lot entitlements included in a plan of community division'. A number of other provisions refer to 'a schedule of lot entitlements' being included in a plan or application.

The effect of these provisions is to make the schedule of lot entitlements part of the plan. This means that, at the time of certification of the plan by the surveyor, the schedule of lot entitlements must be included.

This is unnecessary. The surveyor, in certifying the plan, is not validating the valuer's certificate, only that the schedule of lot entitlements is with the plan.

The position is the same under the relevant provision of the Strata Titles Act.

The Registrar-General advises that the current practice is inconsistent with the schedule of lot or unit entitlements being part of the plan. Generally the schedule is completed (and certified as being correct) by the valuer after the surveyor has certified the plan. Both the plan and the schedule are certified as correct, however, the schedule does not form part of the plan at the time it is certified by the surveyor.

The Registrar-General has recommended that the Community Titles Act and Strata Titles Act be amended to accommodate this practise.

The Bill contain amendments to sections 3, 14, 58, 60 and 69 of the Act make clear that a schedule of lot entitlements is not considered part of the plan. A similar amendment to section 5 of the Strata Titles Act is also included.

Receipts generated by a computerised trust account program

Regulation 18(2)(b) of the Strata Titles Regulations 2003 and Regulation 31(2)(b) of the Community Titles Regulations 1996 provide that receipts for an agent's trust funds can be generated by a computer program, if the program 'automatically makes a separate contemporaneous record of the receipt, so that at any time a hard copy of the receipt may be produced'. These regulations are consistent with regulations under the Legal Practitioners Act 1981, Conveyancers Act 1994, and Land Agents Act 1994 that permit computerised trust accounting. There is a question, however, over whether these regulations meet the obligation in the Strata Titles Act and Community Titles Act (sections 36G(2)(b) and 126(2) respectively) that an agent 'make and retain a copy of the receipt'.

To remove any doubt, it is appropriate that section 36G of the Strata Titles Act and section 126 of the Community Titles Act be amended to ensure that there is no conflict between the provisions of the Act and the respective Regulations. Section 36G(4) of the Strata Titles Act and section 126(4) of the Community Titles Act already provide that accounts and records 'referred to in this section' must be retained 'in a legible written form, or so as to be readily convertible into such a form, for at least five years'. Computer records are of course 'readily convertible' into 'legible written form' although it is not clear whether the description of 'accounts and records referred to in this section' also includes copies of receipts under subsection (2)(b).

The Bill therefore amends section 36G(4) of the Strata Titles Act and section 126(4) of the Community Titles Act so that 'accounts and records' includes also 'copies of receipts under subsection (2)(b)'.

Jurisdiction of the Magistrates Court

Section 100 of the Community Titles Act provides that an application may be made to the District Court to appoint an administrator to a community corporation. Under s149, an application may be made to the District Court for relief from provisions requiring a special or unanimous resolution of the corporation.

The Strata Titles Act contains comparable provisions to sections 100 and 149 at sections 37 and 46. However, under the Strata Title Act, applications are made to the Supreme Court rather than the District Court.

These provisions are separate from the more commonly used dispute settling provisions of each Act. Sections 141 and 142 of the Community Titles Act and section 41A of the Strata Titles Act permit applications to settle community title and strata title disputes to be made to the Magistrates Court and for the application to be treated as a minor civil action, with minimal formality.

This creates a problem if resolution of a dispute before the Magistrates Court requires the appointment of an administrator or relief from provisions requiring a special or unanimous resolution of the corporation. In such cases the Magistrates Court has insufficient jurisdiction to make the requisite orders. It would be necessary for the parties to commence a second action, in either the District Court (if under the Community Titles Act) or the Supreme Court (if under the Strata Titles Act) before, perhaps, returning to the Magistrates Court to finalise settlement of the dispute.

These anomalies impose an expensive and unnecessary burden on parties to litigation under the two Acts.

To address this, and to ensure matters that are commenced in the Magistrates Court can be heard in that jurisdiction in their entirety, the Bill amends sections 142, 149 of, and inserts a new 149A into, the Community Titles Act and amend sections 37, 41A, 46 of, and insert new section 48A into, the Strata Title Act. The effect of these amendments is to confer jurisdiction on the Magistrates Court so that disputes requiring either the appointment of an administrator or relief from provisions requiring a special or unanimous resolution of the corporation may be settled before the one court.

Repeal of provisions permitting new applications under the Strata Titles Act

Part 2 Division 2 of the Strata Titles Act comprises sections 7 and 8 of that Act. Section 7 provides for applications for deposit of strata plans, while section 8 provides for the depositing of strata plans by the Registrar General where an application has been made under section 7, the legislative requirements in relation to the application have been satisfied and the plan conforms to the requirements of the Act.

Section 8 was amended by the Statutes Amendment (Community Title) Act 1996 to include new subsection (1a). Subsection (1a) authorised the Governor to issue a proclamation to prevent new divisions under the Strata Titles Act after the commencement of Community Titles Act.

In November, 2001, the Governor made a proclamation under subsection (1a), the effect of which was to stop the lodgement of new strata plans under the Strata Titles Act subject to a transition period for 'proceedings' that had commenced before 1 January, 2002. From that date, applications for the deposit of new plans are to be made only under the Community Titles Act.

Under the transitional provisions, 22 new plans under the Strata Titles Act were deposited in 2002, 11 in 2003, and three in 2004. No plans have been lodged since the beginning of 2005.

The Registrar-General has therefore recommended that sections 7 and 8 and the transitional provisions be repealed. In accordance with this advice, the Bill repeals Part 2, Division 2 and the transitional provision (in clause 5 of the Schedule 2) of the Strata Titles Act.

Technically it is possible that a developer who applied for land division consent before 1 January, 2002, (thereby commencing 'proceedings') could apply to deposit a plan under the Strata Titles Act. Even if a pre-2002 land division application were to lead to an application for deposit of a strata plan, the developer would not be disadvantaged by being required to make the application under the Community Titles Act, rather than the Strata Titles Act.

I commend this Bill to the House.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of Bills of Sale Act 1886

4—Insertion of section 11A

Section 129A of the Real Property Act 1886 allows a person to deposit a copy of 'standard terms and conditions' for mortgage documents. That has the effect of making original and duplicate mortgage instruments considerably shorter. This clause proposes to insert a new section 11A into the Bills of Sale Act 1886 to permit a similar procedure to apply to bills of sale. As with mortgages, the grantee must provide the grantor with a copy of any standard terms and conditions. There are similar clauses in the measure about encumbrances (clause 47) and stock mortgages and wool liens (clause 73).

Part 3—Amendment of Community Titles Act 1996

5—Amendment of section 3—Interpretation

This clause inserts a definition to clarify who will be taken to be the 'holder' of a statutory encumbrance and inserts into the existing list of statutory encumbrances in the Community Titles Act 1996 an additional 4 examples of statutory encumbrances. It also amends the definition of schedule of lot entitlements to provide that the schedule may be annexed to, rather than included in, the plan.

6—Amendment of section 13—Staged development and development contracts

Section 13 of the Community Titles Act 1996 requires developers to execute development contracts in respect of certain matters provided for in a scheme description (such as future division of the community parcel, erection of buildings or other future improvements or division or other development of a community lot). This amendment is proposed to make it clear that even if the scheme description only indicates that things are likely to happen, the requirement to execute a development contract will apply.

7—Amendment of section 14—Application

The clause removes the requirement that the application be accompanied by the certificate from the Development Assessment Commission (under section 51 of the Development Act 1993) and instead requires the Registrar General to satisfy himself or herself that the certificate has been issued and is in force in relation to the development.

In addition, the clause makes an amendment consequential to clause 6, amendments consequential to the new definition of schedule of lot entitlements and is 1 of several provisions in the measure that would allow the Registrar General to prescribe the scale for plans to be submitted to the Registrar General under the Act (instead of being prescribed by regulation).

8—Insertion of section 15A

This clause proposes to insert a new section 15A into the Community Titles Act 1996. The clause permits an application for deposit of a plan of community division to vary or terminate a statutory encumbrance, provided the application is accompanied by—

- a certificate from the holder of the statutory encumbrance, certifying that the requirements for varying or terminating the statutory encumbrance (under the other relevant Act) have been complied with; and
- any other documentary material required by the Registrar General.

This clause does not apply to the creation of a statutory encumbrance, only to its variation or termination.

9—Amendment of section 16—Consents to application

Generally, all persons with an estate or interest in either dominant or servient land must consent before an easement or its appurtenance is varied. There is an exception to this rule for a proprietor of dominant land, who may unilaterally vary the appurtenance of an easement by transferring or conveying of a portion of the dominant land without the easement being appurtenant. Consent is not required from persons with an interest in the servient land because the burden over the servient land is only being reduced. However, currently the exception operates only where there is the 'transfer' or 'conveyance' of the portion of the dominant land. The exception does not apply where the reduction is effected by the deposit of a plan. A developer needs the consent of the person with an interest in the servient land or needs a waiver from the Registrar General. This clause proposes to amend section 16 of the Community Titles Act 1996 to allow a developer to divide the dominant land and state in the plan of division that part of the land will be without the appurtenant easement, without being required to obtain consent from the owner of the servient tenement or a waiver from the Registrar General.

10—Amendment of section 23—Vesting etc of lots etc on deposit of plan

Under section 23(7)(b) of the Community Titles Act 1996, common property cannot be leased at the time of the deposit of a community plan. To arrange a lease of land that is to be common property, it is necessary to specify that the land subject to the lease is to be, at least initially, a community lot over which a lease can subsist. Then, after the deposit of the plan, the plan can be amended, with the land designated as common property, and leased from the community corporation. This clause proposes to amend section 23 of the Community Titles Act 1996 to provide that an existing lease can exist over common property created by the deposit of a plan of community division, where this is provided for in the plan. Potential purchasers who will become members of the corporation on deposit of the plan should be made aware of the lease by being given or by requesting a copy of the scheme description, or by their conveyancer's search of the register, or both.

11—Amendment of section 30—Scheme description

Section 14 of the Community Titles Act 1996 requires an application for division of land by a community plan to be accompanied by the scheme description, by laws and any relevant development contract. Section 22 of the Act provides that when the Registrar General receives an application for division of land by a community plan, and the plan complies with 'the requirements of the Act', then the Registrar General must deposit the plan in the Land Titles Registration Office. This clause (relating to the scheme description) is 1 of a number of provisions in the measure that requires these documents to be endorsed with a certificate indicating that they have been correctly prepared in accordance with the Act. The form of the certification is to be as prescribed by regulation. Because this Act and the Real Property Act 1886 are to be read as 1 Act (see section 5 Community Titles Act 1996), the penalties applicable under that Act for false or negligent certification would apply to this certification.

12—Amendment of section 31—Amendment of scheme description

This clause requires that an amended scheme description be certified as having been correctly prepared in accordance with the Act (for consistency with section 30 as proposed to be amended by the measure).

13—Amendment of section 34—By-laws

This clause requires that by laws be certified as having been correctly prepared in accordance with the Act.

14—Amendment of section 39—Variation of by laws

This clause requires that varied by laws be certified as having been correctly prepared in accordance with the Act (for consistency with section 34 as proposed to be amended by the measure).

15—Amendment of section 47—Development contracts

This clause requires development contracts to be certified as having been correctly prepared in accordance with the Act.

16—Amendment of section 50—Variation or termination of development contract

This clause requires that a varied development contract be certified as having been correctly prepared in accordance with the Act (for consistency with section 47 as proposed to be amended by the measure).

17—Amendment of section 52—Application for amendment

The amendments proposed by subclauses (1) and (2) would allow, in certain specified circumstances, the owners of community lots affected by an amendment to apply for amendment of a deposited community plan (where currently the application must always be made by the community corporation). Subclause (3) is similar to the amendment in clause 9 of the measure (but relates to amendment of a deposited community plan, rather than the deposit of the plan). Subclause (5) allows the Registrar General to prescribe the scale for any new plan required as a result of the amendment (rather than having the scale prescribed by regulation). Subclause (4) removes the requirement that the application that affects the delineation of lots or common property, or that creates new lots, be accompanied by the certificate from the Development Assessment Commission (under section 51 of the Development Act 1993) and subclause (6) instead requires the Registrar General to satisfy himself or herself that the certificate has been issued and is in force in relation to the amendment.

18—Amendment of section 53—Status of application for amendment of plan

This clause is consequential to clause 17.

19—Insertion of section 53A

This clause proposes to insert a new section 53A into the Community Titles Act 1996. This section is similar to the proposed new section 15A (see clause 8) but applies to an application for amendment of a deposited community plan, rather than an application to deposit.

20—Amendment of section 55—Vesting etc of interests on amendment of plan

This clause is consequential to clause 17.

21—Amendment of section 58—Amendment of plan pursuant to development contract

This clause allows the Registrar General to prescribe the scale for any new plan required as a result of an amendment necessitated by a development contract (rather than having the scale prescribed by regulation). The clause also removes the requirement that the application be accompanied by the certificate from the Development Assessment Commission (under section 51 of the Development Act 1993) and instead requires the Registrar General to satisfy himself or herself that the certificate has been issued and is in force in relation to the development. The clause also contains an amendment consequential to the amendment to the definition of schedule of lot entitlements.

22—Amendment of section 60—Amalgamation of plans

This clause would allow the Registrar General to prescribe the scale for any new plan required as a result of an amalgamation (rather than having the scale prescribed by regulation).

23—Amendment of section 65—Application to the Registrar General

This is 1 of 16 clauses in the Bill that remove legislative obligations for persons to produce, or for the Registrar General to place endorsements on, duplicate instruments. Section 65 deals with an application to the Registrar General to cancel a deposited community plan. The proposed amendment removes the obligation on an applicant to produce duplicate instruments (if any) for the registered encumbrances (if any) over the lots and common property. It does not affect the obligation to produce the duplicate certificate of title.

24—Amendment of section 67—Application to the Court

This is 1 of 16 clauses in the Bill that remove legislative obligations for persons to produce, or for the Registrar General to place endorsements on, duplicate instruments. Section 67 deals with an application to the Court for an order cancelling a deposited community plan. The clause removes the obligation on an applicant to produce duplicate instruments (if any) for the registered encumbrances (if any) over the lots and common property. It does not affect the obligation to produce the duplicate certificate of title for the lots and common property.

25—Amendment of section 69—Cancellation

This clause is consequential to the amendment to the definition of schedule of lot entitlements.

26—Amendment of section 100—Administrator of community corporation's affairs

This clause would allow an application to be made to the Magistrates Court or the District Court for the appointment of an administrator of a community corporation (currently such an application can only be made to the District Court).

27—Amendment of section 126—Keeping of records

Regulation 31(2)(b) of the Community Titles Regulations 1996 provides that receipts can be generated by a computer program, if the program 'automatically makes a separate contemporaneous record of the receipt, so that at any time a hard copy of the receipt may be produced'. These regulations are consistent with regulations under the Legal Practitioners Act 1981, the Conveyancers Act 1994, and the Land Agents Act 1994 that permit computerised trust accounting. Section 126(2) of the Community Titles Act 1996 requires an agent to 'make and retain a copy of the receipt'. Section 126(4) of the Community Titles Act 1996 provides that accounts and records 'referred to in this section' must be retained 'in a legible written form, or so as to be readily convertible into such a form, for at least five years'. Computer records are of course 'readily convertible' into 'legible written form'. In order to remove any suggestion that the description of 'accounts and records referred to in this section' might not include copies of receipts under subsection (2)(b), this clause amends section 126(4) so that 'accounts and records' includes also 'copies of receipts under subsection (2)(b)'. Clause 82 makes an equivalent amendment to the Strata Titles Act 1988.

28—Amendment of section 142—Resolution of disputes

This clause is consequential to clause 31.

29—Insertion of section 145A

Clause 7 of this Bill amends section 14(4) of the Community Titles Act 1996 to require an applicant to certify that the scheme description, by laws and development contract (if any) have been correctly prepared in accordance with that Act. This clause inserts a new provision, section 145A, entitling the Registrar General to rely on such a certificate.

30—Amendment of section 149—Relief where unanimous or special resolution required

This clause would allow an application to be made to the Magistrates Court or the District Court for relief from a requirement to have a unanimous or special resolution of the community corporation (currently such an application can only be made to the District Court).

31—Insertion of section 149A

This clause inserts a new section into the principal Act providing that applications to the Magistrates Court under the Act are to be dealt with as if they were a minor civil action within the meaning of the Magistrates Court Act 1991 (subject to any prescribed modifications).

32—Insertion of section 151A

This clause inserts a new section 151A into the principal Act, consequentially to clauses 12, 14 and 16.

Part 4—Amendment of Real Property Act 1886

33—Amendment of section 3—Interpretation

The word 'allotment' is used in 2 different senses in the Real Property Act 1886. For purposes of land division and amalgamation, under Part 19AB of the Act, the word 'allotment' is generally defined (except for the purposes of section 223LB) in such a way as to exclude community or development lots or common property within the meaning of the Community Titles Act 1996, or a unit or common property within the meaning of the Strata Titles Act 1988. That is because the division and amalgamation of parcels of land under the Community Titles Act 1996 or the Strata Titles Act 1988 are subject to those 2 Acts rather than Part 19AB of the Real Property Act 1886.

In other contexts within the Real Property Act 1886, namely in sections 51E, 90B, and 90C, it is apparent that a broader meaning of the word 'allotment' is intended, but there is no definition of the word that applies to any Part other than Part 19AB. Therefore this clause amends section 3(1) of the Real Property Act 1886 to include a broad definition of 'allotment' that will apply to sections 51E, 90B, and 90C.

34—Amendment of section 19—Solicitor not to engage in private practice

Several sections of the Real Property Act 1886 contain references to a 'licensed land broker'. There was a change of terminology when the Land Agents, Brokers and Valuers Act 1973 was replaced by the Land Agents Act 1994 and the Conveyancers Act 1994. What were formerly referred to as 'licensed land brokers' are now referred to as 'registered conveyancers'. This clause updates a reference in keeping with this change.

35—Amendment of section 56—Priority of instruments

This clause does 2 things. Firstly, sub clauses (1) and (2) amend section 56 to permit the Registrar General to give effect to the intention of parties who lodge documents in the incorrect order. Where the intentions of the parties appear, to the Registrar General, to be in conflict, the order of registration will remain the order in which the dealings were lodged for registration. The proposed amendment is based upon similar provisions in the Real Property Act 1900 of NSW.

Secondly, sub clause (3) is 1 of 16 provisions in the Bill that remove legislative obligations for persons to produce, or for the Registrar General to place endorsements on, duplicate instruments. Section 56(4) deals with a memorandum of the variation of an order of priority. The subclause removes the Registrar General's obligation to

have the memorandum endorsed on every mortgage or encumbrance affected. It does not affect the Registrar General's obligation to have the memorandum endorsed on the certificate of title.

36—Amendment of section 58—Where 2 or more instruments presented at same time

This is 1 of 16 clauses in the Bill that remove legislative obligations for persons to produce, or for the Registrar General to place endorsements on, duplicate instruments. Section 58 deals with the Registrar General's obligations when presented with 2 or more instruments, executed by the same proprietor, and that purport to affect the same estate or interest, perhaps in a conflicting manner. This clause removes the Registrar General's discretion in these circumstances to register such an instrument on the basis of the presentation of any evidence other than a duplicate certificate of title.

37—Insertion of section 78A

The automation of the land titles register means that it is easier and more effective for the Registrar General to issue a new certificate of title when amendments, corrections etc are to be made, rather than making alterations on the face of existing certificates of title. This clause inserts a new section 78A into the Real Property Act 1886 authorising the Registrar General to issue a new certificate of title whenever required by legislation to amend or update an existing certificate of title.

38—Amendment of section 80H—Cancellation of instruments

This is 1 of 16 clauses in the Bill that remove legislative obligations for persons to produce, or for the Registrar General to place endorsements on, duplicate instruments. Section 80H requires the Registrar General, after issuing a new certificate of title, to cancel any existing certificate of title, as well as any instrument, entry or memorial in the Register Book altogether or to such extent as is necessary to give effect to the certificate issued. This clause removes the obligation on the Registrar General to endorse every instrument so cancelled, but does not affect the Registrar General's obligation to endorse each cancelled certificate of title.

39—Substitution of section 90A

This clause does 2 things. Firstly, the proposed new section 90A(1) replaces what is now section 90A but changes the words 'land registered under this Act' to the words 'land under the provisions of this Act' to ensure consistency with wording used elsewhere in the Real Property Act 1886. Secondly, the insertion of section 90A(2) is consequential to clause 41, which inserts a new section 90F. Subsection (2) provides that the provisions of section 90F apply only to 'land under the provisions of this Act' (ie. proposed new section 90F is not to apply to any old system land).

40—Amendment of section 90B—Variation and extinguishment of easements

This clause mirrors the proposed new section 90A(1) by changing the expressions 'land registered under this Act' and 'land not registered under this Act' to 'land under the provisions of this Act' and 'land not under the provisions of this Act' (respectively).

41—Insertion of section 90F

When an easement is granted appurtenant to land that is subject to an existing mortgage or encumbrance, a collateral mortgage or encumbrance must be lodged for the mortgagee or encumbrancee to be able to transfer that appurtenant easement when exercising a power of sale. Without lodging a collateral mortgage or encumbrance, the new certificate of title will only observe that the mortgage or encumbrance is over the land, and not over the appurtenant easement. This clause inserts into the Real Property Act 1886 a new section 90F, to provide that where an easement is created, any existing mortgage or encumbrance over the dominant land will be deemed to extend to cover the appurtenant easement if the mortgagee or encumbrancee has made an endorsement to this effect on the instrument creating the easement.

42—Insertion of section 96AA

The common law does not permit an easement to be created by reservation on the transfer of land. Instead, the purchaser must consent to a re grant of the easement to the vendor. This has the same end effect as a reservation but requires the execution of extra documentation. This common law rule has been abrogated in New South Wales, Victoria, Queensland and Tasmania, but still exists in South Australia. This clause inserts a new section 96AA into the Real Property Act 1886, to allow the creation of an easement by reservation.

43—Substitution of section 115A

The proposed substitution of section 115A does 2 things. Firstly, it would allow the Registrar General to update the register where a vesting by operation of law has occurred, whether or not someone has applied for that to occur. Secondly, in the proposed new section, all references to an 'acquiring authority' have been removed so that it applies to any person acquiring an estate or interest in land by operation of law.

44—Amendment of section 120—Lease may be surrendered by separate instrument

This is 1 of 16 clauses in the Bill that remove legislative obligations for persons to produce, or for the Registrar General to place endorsements on, duplicate instruments. Under section 120(1), a registered lease may be surrendered by instrument in the appropriate form, signed by the lessee and lessor. This clause proposes to substitute a new subsection (2) in that section, so that if the Registrar General is of the opinion that it is necessary or desirable to do so, the Registrar General may endorse the surrender on the duplicate certificate of title, without having to endorse copies of the lease also.

45—Amendment of section 121—Registrar General may enter surrender

This is 1 of 16 clauses in the Bill that remove legislative obligations for persons to produce, or the Registrar General to place endorsements on, duplicate instruments. Under section 121, the Registrar General may, upon application by the lessor, make an entry in the Register Book of the surrender of a lease. This clause removes any obligation for the Registrar General to make an endorsement on the lease also.

46—Amendment of section 126—Registrar General to note particulars of re entry in Register Book

This is 1 of 16 clauses in the Bill that remove legislative obligations for persons to produce, or for the Registrar General to place endorsements on, duplicate instruments. When a lessor has lawfully re entered and taken possession of lease premises, the Registrar General shall, under section 126, note the re entry in the Register Book. This clause removes any obligation for the Registrar General also to 'cancel such lease if delivered up to him for that purpose'.

47—Amendment of section 129A—Standard terms and conditions of mortgage or encumbrance

Section 129A of the Real Property Act 1886 allows a person to deposit with the Registrar General 'standard terms and conditions' for mortgage documents. The advantage of this practice is that the original and duplicate mortgage instruments are considerably shorter. Under subsection (3), the mortgagee must have provided the mortgagor with a copy of the deposited standard terms and conditions. A similar provision (section 119A) exists with respect to leases. This clause amends section 129A to provide that encumbrances may be treated in the same way as mortgages, permitting a person to deposit standard terms and conditions of an encumbrance.

48—Amendment of section 143—Discharge of mortgages and encumbrances

This is 1 of 16 clauses in the Bill that remove legislative obligations for persons to produce, or for the Registrar General to place endorsements on, duplicate instruments. Section 143 provides for the discharge of mortgages and encumbrances, subject to production of the duplicate mortgage or encumbrance. This clause amends section 143 so that such production is not necessary unless the Registrar General requires it.

49—Insertion of section 144

When an easement is granted over land that is subject to a registered mortgage or encumbrance, it is general practice to discharge the mortgage or encumbrance over the portion of land forming the easement. The partial discharge occurs to avoid extinguishment of the easement in accordance with section 136 of the Real Property Act 1886 where a power of sale is exercised over the servient land. This clause aims to streamline the process by inserting a new section 144 to provide that where an easement is to be created over land subject to a mortgage or encumbrance, that mortgage or encumbrance will be partially discharged so that it is subject to the easement, provided that the mortgagee or encumbrancee consents to the grant of easement.

50—Amendment of section 145—Entry of satisfaction of annuity

This is 1 of 16 clauses in the Bill that remove legislative obligations for persons to produce, or for the Registrar General to place endorsements on, duplicate instruments. When an annuity or other secured sum of money is discharged and no longer payable, section 145 requires the Registrar General to make an entry in the Register Book, and also on the encumbrance or other instrument of title. This clause removes the obligation on the Registrar General to make the entry on the encumbrance or other instrument of title. It does not alter the Registrar General's obligation to make the entry in the Register Book.

51—Amendment of section 148A—Entry in Register Book where rights of mortgagee barred by Statute

This is 1 of 16 clauses in the Bill that remove legislative obligations for persons to produce, or for the Registrar General to place endorsements on, duplicate instruments. When the rights of a mortgagee to bring an action for the money secured by the mortgage are barred by the Limitation of Actions Act 1936, section 148A authorises the Registrar General to make an entry to that effect in the Register Book, on the mortgage, on the duplicate certificate or other instrument of title, and on the duplicate mortgage if produced to him. This clause amends section 148A by removing references to the mortgage, the duplicate certificate or other instrument of title and the duplicate mortgage. The clause does not affect the operation of subsection (2), which provides that the mortgage is deemed to be discharged by the Registrar General's entry in the Register Book.

52—Amendment of section 163—Insertion of the words 'with no survivorship' in instruments

Section 162 of the Real Property Act 1886 prohibits the inclusion of trust details on Real Property Act instruments. However, section 163 provides a partial exception to this prohibition by permitting the words 'no survivorship' to be used on a transfer where the interest received will be held by trustees. In practice, the words 'no survivorship' are also used on mortgage, encumbrance and lease instruments. Section 164 clearly permits the registered proprietor of an interest to apply for the inclusion of those words on an instrument. This clause of the Bill amends section 163 to make it clear that 'with no survivorship' may be included on a mortgage, encumbrance or lease instrument.

53—Amendment of section 164—Trustees may authorise insertion of those words

This clause does 2 things. Firstly, subclause (1) is consequential to clause 52. Secondly, subclauses (2) and (3) make this clause 1 of the 16 clauses in the Bill that remove legislative obligations for persons to produce, or for the Registrar General to place endorsements on, duplicate instruments. Section 164 permits any joint proprietors or joint trustees to authorise the Registrar General to insert the words 'no survivorship' upon the original certificate, or other instrument of title, evidencing their title to such estate or interest, in the Register Book, or filed in the office of the Registrar General, and also upon the duplicate of such instrument. Subclauses (2) and (3) limit this power of authorisation to 'the original certificate' and 'in the Register Book'.

54—Amendment of section 169—Disclaimers

This clause is 1 of the 16 clauses in the Bill that remove legislative obligations for persons to produce, or for the Registrar General to place endorsements on, duplicate instruments. Section 169 permits a person who claims to have been registered without his consent, to disclaim an estate or interest in land. If the Registrar General is satisfied that is the case, the Registrar General will make a correction 'in the Register Book and on any certificate or other instrument of title as are necessary for that purpose, and by cancelling any certificate or other instrument of title that it is necessary to cancel.' This clause provides that the correction and cancellation need only be made to the Register Book and the certificate, and not any other instrument.

55—Amendment of section 176—Application to be made in such case

This clause does 2 things. Firstly, sub clause 38(1) is another of the 16 provisions that remove legislative obligations for persons to produce, or for the Registrar General to place endorsements on, duplicate instruments. Section 176 deals with applications by executors, administrators, or the public trustee after the death of a registered proprietor. Subclause (1) provides that such persons need only present to the Registrar General the 'duplicate certificate' and not any 'other instrument of title'. Secondly, section 176 refers to 'an office copy of the probate, letters of administration, or order'. In current practice, there is no relevance to the use of the word 'office' in this section. Therefore, subclause (2) amends section 176 so that it is only necessary to provide a 'copy' (as distinct from 'office copy') of the probate, letters of administration or order (as the case may be).

56—Amendment of section 179—Where two or more executors or administrators, all must concur

Section 179 provides that where probate or letters of administration are granted to 2 or more persons, all of them must concur in every instrument relating to the real estate of the deceased registered proprietor. The reference to 'real estate' dates back to the time when there was a distinction between the transfer of real property and the transfer of personalty (mortgages and encumbrances) or chattels real (leases). This clause replaces the reference to 'real estate' with a reference to 'land'.

57—Amendment of section 184—Order of Court vesting land

This clause makes the same change as subclause (2) of clause 55. It removes the word 'office' from the phrase 'office copy' as the word has no relevance in current practice.

58—Repeal of section 200

Section 200 of the Real Property Act 1886 confers jurisdiction on 'Local Courts of full jurisdiction' to hear 'actions in respect of land under the provisions of this Act' pursuant to the Local Courts Act 1926. This appears to be a reference to the Local and District Criminal Courts Act 1926 that was repealed in 1991. In dozens of other provisions of the Real Property Act 1886, powers are granted to 'the Court'. Since the commencement of the Statutes Amendment (Attorney-General's Portfolio) Act 2002, on 3 March 2003, 'Court' has been defined in section 3 to include the District Court, at least for the purposes of section 191, Part 17 and Schedule 21 of the Real Property Act 1886. For the purposes of other sections of the Real Property Act 1886, 'Court' is the Supreme Court or 'any other court or tribunal constituted under the law of this State or the Commonwealth'. Section 200 is therefore redundant, and so this clause provides for its repeal.

59—Amendment of section 220—Powers of Registrar General

This clause is 1 of the 16 clauses in the Bill that remove legislative obligations for persons to produce, or for the Registrar General to place endorsements on, duplicate instruments. The amendment of paragraph (c) and repeal of paragraph (k) are consistent with this legislative policy.

60—Amendment of section 223LA—Interpretation

This clause does 2 things. Firstly, sub clauses (1) and (2) are part of a scheme of 3 clauses in Part 4 of the Bill (the others being clause 63 and clause 65) that together provide for a scheme of extending and extinguishing 'statutory encumbrances' on deposit of a plan of division. Subclause (1) amends section 223LA to define a 'holder' and subclause (2) amends section 223LA to define a 'statutory encumbrance'.

Second, subclauses (3), (4), (5) and (6) amend subsections 223LA(3) and (4) of the Real Property Act 1886 to make it clear that part allotments should be considered to be contiguous with other part or whole allotments notwithstanding that they may be separated by street, road, thoroughfare, travelling stock route, a reserve or other similar open space. This will permit part allotments considered contiguous under section 223LA to be divided and amalgamated under the provisions of section 223LB.

61—Amendment of section 223LB—Unlawful division of land

Section 223LB(2) enacts a restriction on the granting, selling, transfer etc of an estate or interest (except a right of way or other easement) over a land parcel unless certain criteria are met. Amongst other things, conveyance is allowed if the land parcel constitutes 'an allotment or allotments and a part allotment that is contiguous with that allotment or with one or more of those allotments'. The provision was inserted in the Act to ensure that a person could not deal in isolation with a part allotment or part allotments of land. 1 or more part allotments may be dealt with only if they are contiguous with 1 or more full allotments of land.

By virtue of the wording of the provision, a person would only be able, in a single transaction, to deal with 1 part allotment that is contiguous with 1 or more allotments. A person would not be able to deal, in a single transaction, with more than 1 part allotment, despite all parts being contiguous with each other, and at least 1 part being contiguous with 1 or more allotments. Such an intention could, however, be carried out through a successive series of transactions. The clause amends section 223LB to enable a person to deal in 1 transaction with a number of part allotments that are in some respect contiguous with 1 or more allotments.

62—Amendment of section 223LD—Application for Division

This clause amends section 223LD to remove the requirement that an application for division be accompanied by the certificate from the Development Assessment Commission (under section 51 of the Development Act 1993) and instead requires the Registrar General to satisfy himself or herself that the certificate has been issued and is in force in relation to the development.

63—Insertion of section 223LDA

This clause is 1 of 3 clauses in Part 4 of the Bill (the others being clause 60 and clause 65) that together provide for a scheme of extending and extinguishing 'statutory encumbrances' on deposit of a plan of division. The clause inserts a new section 223LDA into the Real Property Act 1886 to specify what must be included in an application if it is to be successful in varying or extinguishing a statutory encumbrance. It would permit an application for deposit of a plan of division to vary or terminate a statutory encumbrance, provided the application is accompanied by a certificate from the holder of the statutory encumbrance certifying that the requirements for varying or terminating the statutory encumbrance (under the other relevant Act) have been complied with, and any other material required by the Registrar General. This clause does not apply to the creation of a statutory encumbrance, only to its variation or termination.

64—Amendment of section 223LE—Deposit of plan of division in Lands Titles Registration Office

According to section 223LE of the Real Property Act 1886, on the deposit of a plan of division an estate or interest will vest, as specified in the plan, in a person to the extent it is not already vested. Subsection (3)(a) limits this general provision by providing that an estate in fee simple can vest in a person only if that person was the proprietor of an estate or interest in some part, or the whole, of the land before division. The limitation in subsection (3)(a) was inserted to prevent persons from avoiding stamp duties by being vested with an estate in fee simple in the land on deposit of the plan when that person was not the holder of the estate in fee simple of the land before division. However, the wording of the provision could mean that a person who is simply the owner of an encumbrance (such as a lease or easement) over the undivided land could be vested with an estate in fee simple in the land. It was never intended that the holder of a lesser estate or interest in undivided land be capable of being vested with an estate in fee simple in the divided land.

The Strata Titles Act 1988 and the Community Titles Act 1996 both restrict the vesting of an estate in fee simple for any of the created units or lots to a person who possessed an estate in fee simple over the land before division. This clause amends section 223LE(3)(a) to provide that the deposit of the plan of division will serve to vest an estate in fee simple, in allotments created by the division, only in a person who was the registered proprietor of an estate in fee simple in the land before division.

65—Amendment of section 223LH—Consent to plans of division

This clause does 2 things. Firstly, subclause (1) is part of a scheme of 3 clauses in Part 4 of the Bill (the others being clause 60 and clause 63) that together provide for a scheme of extending and extinguishing 'statutory encumbrances' on deposit of a plan of division. Subclause (1) amends section 223LH to require an applicant to provide a certificate from the holder of the statutory encumbrance, certifying consent to the deposit of the plan of division.

Secondly, subclause (2) is complementary to clauses 9 and 17 (in Part 3) and clause 77 (in Part 6). It amends section 223LH of the Real Property Act 1886 to permit the deposit of a plan of division to extinguish an easement in respect of part of the dominant land, without the requirement to obtain consent from the owner of the servient land, provided that rights under the easement continue in respect of some other part of the dominant land.

66—Repeal of Part 19AB Division 4A

This clause provides for the repeal of Division 4A of Part 19AB of the Real Property Act 1886.

67—Amendment of section 232—Penalty for certifying incorrect documents

This clause is consequential to clause 7. Section 232 already provides a penalty for 'any person who shall falsely or negligently certify to the correctness of any application or instrument'. This clause would provide that the same penalty applies to any 'other document that is required to be certified.' This would include documents certified under clause 7, because under section 5 of the Community Titles Act 1996, that Act and the Real Property Act 1886 are to be read together as a single Act.

68—Amendment of section 273—Authority to register

This clause amends section 273 to require certification of an instrument by each party to the instrument or by a solicitor or registered conveyancer.

69—Amendment of section 274—Solicitors and conveyancers to be generally entitled to recover fees for work done under this Act

This clause replaces a reference to 'licensed land broker' with a reference to 'registered conveyancer'.

70—Amendment of section 277—Regulations

This clause replaces a reference to 'licensed land broker' with a reference to 'registered conveyancer'.

71—Substitution of heading to Schedule 5

Section 89 of the Real Property Act 1886 provides that the words 'a free and unrestricted right of way' in any instrument will be deemed to imply the words set out in Schedule 5. Confusion occasionally arises because

Schedule 5 is headed 'Right of Way', and some conveyancers and solicitors are under the erroneous belief that the words 'Right of Way' in an instrument will be deemed to imply Schedule 5 words. This conclusion is not supported by section 89. Therefore this clause amends the heading of Schedule 5 to refer to 'A free and unrestricted right of way'.

72—Amendment of Schedule 6—Short forms of easements and their interpretation (section 89A)

Section 89A of the Real Property Act 1886 provides that, where an instrument refers to a short form easement set out in the sixth schedule, the instrument will, unless the contrary intention appears, be taken to incorporate the corresponding long form of that easement as set out in the sixth schedule. There are presently 9 short form easements incorporated in the sixth schedule, including an easement for water supply purposes, an easement for transmission of electricity by overhead cable, party wall rights, etc. This clause provides for a number of additional short form easements to be included in the sixth schedule as follows:

- an easement for the transmission of telecommunication signals by underground cable. This easement is similar in terms to the existing easement for the transmission of television signals by underground cable;
- an easement for the transmission of telecommunication signals by overhead cable;
- an easement for support;
- an easement to park a vehicle;
- a right of way on foot.

Part 5—Amendment of Stock Mortgages and Wool Liens Act 1924

73—Insertion of section 18A

This clause is complementary to clause 4 and clause 47. Section 129A of the Real Property Act 1886 allows a person to deposit a copy of 'standard terms and conditions' for mortgage documents. That has the effect of making original and duplicate mortgage instruments considerably shorter. As with mortgages, the grantee must provide the grantor with a copy of any standard terms and conditions. Clause 4 inserts a new section 11A into the Bills of Sale Act 1886 to permit a similar procedure to apply to bills of sale. This clause inserts a new section 18A into the Stock Mortgages and Wool Liens Act 1924, to provide that section 11A of the Bills of Sale Act 1886 equally applies to stock mortgages and wool liens.

Part 6—Amendment of Strata Titles Act 1988

74—Amendment of section 3—Interpretation

This is the first of 3 clauses in Part 6 (the others being clause 77 and clause 78) that together provide for a scheme of extending and extinguishing 'statutory encumbrances' on amendment of an existing, deposited strata plan. The scheme mirrors clauses 6, 8 and 19, that amend the Community Titles Act 1996. This clause defines the 'holder' of a statutory encumbrance, and inserts into the existing list of statutory encumbrances in section 3 an additional 2 examples of statutory encumbrance and, for consistency with other legislation, deletes an unnecessary entry relating to the Retirement Villages Act 1987.

75—Amendment of section 5—Nature of strata plan and requirements with which it must conform

This clause removes the requirement that a strata plan 'include' a schedule of unit entitlements and replaces it with a requirement that a strata plan have such a schedule annexed to it (consistently with amendments to the Community Titles Act 1996 proposed by Part 3 of the measure).

76—Repeal of Part 2 Division 2

This clause repeals the provisions that allow new applications for deposit of a strata plan to be made under the Strata Titles Act 1988.

77—Amendment of section 12—Application for amendment

This clause does 4 things. Firstly, subclause (1) amends section 12 of the Strata Titles Act 1988, so that if units or common property are subject to a statutory encumbrance, a strata corporation applying to amend its strata plan must provide evidence to the satisfaction of the Registrar General that the holder of a statutory encumbrance consents to the amendment. Secondly, subclause (2) is complementary to clauses 9 and 17 (in Part 3) and subclause (2) of clause 65 (in Part 4). It amends section 12 of the Strata Titles Act 1988 to permit the amendment of a strata plan to extinguish an easement in respect of part of the dominant land, without being required to obtain consent from the owner of the servient tenement, provided that rights under the easement continue in respect of some other part of the dominant land.

Thirdly, section 12 is amended to remove the requirement that an application for amendment that affects the delineation of units or common property be accompanied by the certificate from the Development Assessment Commission (under section 51 of the Development Act 1993) and instead requires the Registrar General to satisfy himself or herself that the certificate has been issued and is in force in relation to the amendment.

Finally, minor amendments are made to section 12(5) and (5a) by way of clarification.

78—Insertion of section 12A

This clause inserts a new section 12A into the Strata Titles Act 1988. The clause permits an application for amendment of a deposited strata plan to vary or terminate a statutory encumbrance, provided the application is accompanied by a certificate from the holder of the statutory encumbrance, certifying that the requirements for

varying or terminating the statutory encumbrance (under the other relevant Act) have been complied with, and any other documentary material required by the Registrar General. This clause does not apply to the creation of a statutory encumbrance, only to its variation or termination.

79—Amendment of section 16—Amalgamation of adjacent sites

This clause replaces a reference to a schedule of unit entitlements 'included' in a plan with a reference to such a schedule 'annexed to' the plan.

80—Amendment of section 17—Cancellation

This clause is 1 of the 16 clauses in the Bill that remove legislative obligations for persons to produce, or for the Registrar General to place endorsements on, duplicate instruments. Section 17 provides for the cancellation of a deposited strata plan. The clause removes the need for a strata corporation, lodging an instrument of cancellation, to provide to the Registrar General any duplicate instrument. It does not affect the strata corporation's obligation to provide the duplicate certificate of title for every unit and the common property, and 'any other documentary material as the Registrar General may require'.

81—Amendment of section 17A—Procedure where the whereabouts of certain persons is unknown

This clause makes a consequential amendment to section 17A to delete the reference to Division 2 (which is proposed to be deleted by clause 76).

82—Amendment of section 36G—Keeping of records

This clause amends section 36G(4) of the Strata Titles Act 1988 to remove any suggestion that the description of 'accounts and records referred to in this section' might not include copies of receipts under subsection 36G(2)(b). This amendment corresponds to the equivalent amendment to the Community Titles Act 1996, in clause 27 of the Bill.

83—Amendment of section 37—Administrator of strata corporation's affairs

This clause would allow an application to be made to the Magistrates Court or the Supreme Court for the appointment of an administrator of a community corporation (currently such an application can only be made to the Supreme Court).

84—Amendment of section 41A—Resolution of disputes etc

This clause is consequential to clause 86.

85—Amendment of section 46—Relief where unanimous resolution required

This clause would allow an application to be made to the Magistrates Court or the Supreme Court for relief from a requirement to have a unanimous resolution under the Act (currently such an application can only be made to the Supreme Court).

86—Insertion of section 48A

This clause inserts a new section into the principal Act providing that applications to the Magistrates Court under the Act are to be dealt with as if they were a minor civil action within the meaning of the Magistrates Court Act 1991 (subject to any prescribed modifications).

87—Amendment of Schedule 2—Transitional provisions

This clause deletes clause 5 of Schedule 2 (consequentially to the repeal of Part 2 Division 2).

Debate adjourned on motion of Hon. S.G. Wade.

STATUTE LAW REVISION BILL

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

The Hon. P. HOLLOWAY (Minister for Police, Minister for Mineral Resources Development, Minister for Urban Development and Planning) (18:10): I move:

That this bill be now read a second time.

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

Leave granted.

This Bill makes minor technical amendments to various Acts following the enactment of the Statutes Amendment (Domestic Partners) Act 2006, the South Australian Co-operative and Community Housing Act 2007 and the Local Government Act 1999. The amendments either correct minor drafting errors or are consequential on legislation passed later than the domestic partners reforms.

The Bill amends seven Acts. First, it amends the Criminal Assets Confiscation Act 2005 to correct references in the definitions of 'proceeds' and 'instruments' of crime. The reference to the De Facto Relationships Act 1996 needs correction because that Act has been renamed the Domestic Partners Property Act 1996.

Second, it amends the Dental Practice Act 2001 consequentially upon the amendments recently made by the Pharmacy Practice Act 2007. The Pharmacy Practice Act, by Schedule 1, amends the Dental Practice Act to insert required definitions into section 69, governing Part 7, which is, relevantly, concerned with various protections

against corruption. The new law deletes obsolete definitions from section 3. The Schedule, however, does not delete the former definition of 'spouse', and it should. The definition is not needed because the term is defined in section 69, as amended, being the only place where it is used.

Third, it amends the Domestic Partners Property Act itself to make minor consequential changes that were overlooked when that Act was amended. In some places, the expression 'de facto' partner still remains where the reference should be to a 'domestic' partner.

Fourth, it amends the Fire and Emergency Services Act 2005 to include a reference to a 'domestic partner' in the definition of a 'relative'. This is relevant to the definition of an 'associate' for the purposes of conflicts of interest for members of the board of the Fire and Emergency Services Commission. That is, if a board member would have a conflict of interest because of the involvement of his spouse in a matter coming before the Board, the same will apply in the case of involvement of a domestic partner. The same will be true for members of the Bushfire Prevention Advisory Committee.

Fifth, it amends the Local Government Act, in two ways. The first amendment is to section 182A, dealing with postponement of council rates for seniors. Postponement is only available if the land is owned entirely by the ratepayer or by the ratepayer together with a spouse. That should also include a domestic partner. Second, there is an amendment to Schedule 1A, about stormwater management. Section 20(4) was inserted in error as the Authority is not caught by section 33 of the Public Corporations Act.

Sixth, it amends the Passenger Transport Act 1994 to remove definitions of the terms 'relative' and 'spouse'. It has been noticed that the Act does not otherwise use those terms.

Finally, the Bill amends the South Australian Co-operative and Community Housing Act to correct references to the 'Authority' to refer, as appropriate, either to the Minister or the South Australian Housing Trust. This follows from the amendments last year that removed references to 'the Authority' from the Act.

I commend the Bill to the House.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause is formal.

2—Amendment of Acts specified in Schedule 1

This clause provides that the Acts specified in Schedule 1 are amended in the manner indicated in that Schedule. Subclause (2) is a device for avoiding conflict between the amendments to an Act that may intervene between the passage of this measure and the bringing into operation of the Schedule.

Schedule 1—Amendments

The Schedule specifies the Acts and proposed amendments to those Acts.

Debate adjourned on motion of Hon. S.G. Wade.

LEGAL PROFESSION BILL

The House of Assembly agreed to the time and place appointed by the Legislative Council for holding the conference.

At 18:11 the council adjourned until Tuesday 1 April 2008 at 14:15.