# LEGISLATIVE COUNCIL

## Tuesday 14 October 2008

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

## ANSWERS TO QUESTIONS

**The PRESIDENT:** I direct that the following written answers to questions be distributed and printed in *Hansard:*

### RETURNING HOME PROJECT

**510 The Hon. J.M.A. LENSINK** (14 November 2006) (First Session).

1. In which month and year did the Returning Home project commence operation?

2. How many clients have been referred from Glenside to the Returning Home project in each month from its commencement until the present time?

**The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy):** The Minister for Mental Health and Substance Abuse has advised that the Department of Health has provided the following information:

1. In December 2004, assessment of Glenside's rehabilitation and recovery service inpatients began to identify residents who would be suitable to receive a support package under the Returning Home program.

Three non-government organisations (Neami, Life Without Barriers and Richmond Fellowship) were contracted in July 2005. The project progressed with the transfer of care of patients from inpatient facilities to their own communities with high level packages of care provided in partnership between community mental health services and NGOs.

2. As at 30 April 2008, 54 Glenside patients had transferred to the community under the Returning Home program. The number of discharges per month is detailed below:

| Month | Total discharges |
|---|---|
| 2005-02 | 1 |
| 2005-05 | 2 |
| 2005-06 | 3 |
| 2005-07 | 1 |
| 2005-08 | 1 |
| 2005-09 | 3 |
| 2005-12 | 3 |
| 2006-01 | 2 |
| 2006-02 | 2 |
| 2006-04 | 1 |
| 2006-05 | 2 |
| 2006-06 | 1 |
| 2006-07 | 1 |
| 2006-08 | 1 |
| 2006-11 | 2 |
| 2007-01 | 1 |
| 2007-02 | 1 |
| 2007-03 | 1 |
| 2007-04 | 1 |
| 2007-05 | 3 |
| 2007-06 | 3 |
| 2007-07 | 2 |
| 2007-08 | 2 |
| 2007-09 | 2 |
| 2007-10 | 2 |
| 2007-11 | 1 |

| Month | Total discharges |
|---|---|
| 2007-12 | 1 |
| 2008-01 | 2 |
| 2008-02 | 2 |
| 2008-03 | 1 |
| 2008-04 | 1 |

The rate per month varies according to the person's readiness. Many of the people targeted by this program have been inpatients for many years and transition back to community living has been approached very gradually.

**SOUTHERN EXPRESSWAY**

**268 The Hon. D.G.E. HOOD** (7 May 2008) (Second Session). Can the Minister for Transport advise:

1. Have any feasibility studies been conducted into allowing the Southern Expressway to run in both directions outside of peak hours and on weekends, and

2. If so, will the minister release any such reports?

**The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business):** The Minister for Transport has provided the following information:

The Department for Transport, Energy and Infrastructure has advised that no studies have been conducted into the Southern Expressway running in both directions.

**RAIL LINE, SOUTHERN SUBURBS**

**282 The Hon. D.G.E. HOOD** (3 July 2008) (Second Session). Will the Minister for Transport commit to reserving the corridor of land known as the old 'Willunga line' rail corridor for a possible future rail line to the southern suburbs?

**The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business):** The Minister for Transport has provided the following information:

The government has no plans to dispose of the former Willunga rail corridor.

**RAIL LINE, NORTHERN SUBURBS**

**283 The Hon. D.G.E. HOOD** (3 July 2008). (Second Session). Will the Minister for Transport commit to reserving the corridor of land known as the old 'Northfield line' rail corridor for a possible future rail line to the northern suburbs?

**The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business):** The Minister for Transport has provided the following information:

The government has no proposal at this stage to dispose of the former Northfield rail corridor.

**PAPERS**

The following papers were laid on the table:

By the President—

Auditor-General's Report, 2007-08—
Parts A and B (Volumes I-V)
Part C

By the Minister for Mineral Resources Development (Hon. P. Holloway)—

Reports, 2007-08—
ANZAC Day Commemoration Council
Promotion and Grievance Appeals Tribunal
The Legal Practitioners Education and Admission Council
Rules of Court—

Magistrates Court—Magistrates Court Act 1992—
Court—Civil—Amendment No. 31
Amendment No. 32
Supreme Court—Supreme Court Act 1935—
Amendment No. 5
Amendment No. 102

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

Wattle Range Council—Penola Heritage Development Plan Amendment Report by the Council

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

Regulations under the following Acts—
Workers Rehabilitation and Compensation Act 1986—
Claims and Registration—Schedule
General—Medical Panels
General—Transitional Provisions

By the Minister for State/Local Government Relations (Hon. G.E. Gago)—

Regulations under the following Acts—
Motor Vehicles Act 1959—Schedule 7—Demerit Points
Rail Safety Act 2007—
Alcohol and Drug Testing
General
Road Traffic Act 1961—
Miscellaneous—Schedule 9—Expiation Fees
Road Rules—Ancillary and Miscellaneous—Bus Lanes
Upper South East Dryland Salinity and Flood Management Act 2002—Amendment of Act
Rules under Acts—
Road Traffic Act 1961—Australian Road Rules

By the Minister for Consumer Affairs (Hon. G.E. Gago)—

SA Lotteries—Report, 2007-08
Regulations under the following Act—
Land and Business (Sale and Conveyancing) Act 1994—Sale and Conveyancing

## CRIMINAL LAW (UNDERCOVER OPERATIONS) ACT

**The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:20):** I table a copy of a ministerial statement relating to the Criminal Law (Undercover Operations) Act 1995 made on Thursday 25 September 2008 by my colleague the Attorney-General.

## GLOBAL FINANCIAL CRISIS

**The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:21):** I table a copy of a ministerial statement relating to the global financial crisis and updated budgetary position made earlier today in another place by my colleague the Treasurer.

## PORT AUGUSTA PRISON

**The Hon. CARMEL ZOLLO (Minister for Correctional Services, Minister for Road Safety, Minister for Gambling, Minister Assisting the Minister for Multicultural Affairs) (14:21):** I seek leave to make a ministerial statement about the Port Augusta Prison.

Leave granted.

*Members interjecting:*

**An honourable member:** We've got it under control.

**The Hon. CARMEL ZOLLO:** We certainly have got it under control. I have sought leave to make a ministerial statement about a serious incident that occurred at Port Augusta Prison last week and to provide the chamber with some facts about the current management of our state's correctional services system. As honourable members would be aware, on Thursday 9 and Friday 10 October there was an incident at Port Augusta Prison. This matter is now subject to both a departmental and a criminal investigation by SAPOL. While many aspects of this incident are still to be fully investigated, I would like to provide some important information to this chamber.

I can advise the chamber that shortly before 4pm on Thursday 9 October 2008 the incident occurred in Bluebush Unit 3 at Port Augusta Prison. This is part of the high security section within the inner perimeter of the prison. I am advised that officers noticed a number of prisoners who were in an agitated state and, because of the aggressive nature of the prisoners, the area was immediately secured and staff withdrew. Thankfully, no staff member was injured. The safety and welfare of staff in the correctional services system is always considered to be of paramount importance. Port Augusta Prison that day (last Thursday) had five vacant beds, and across the prison system there were more than 50 vacant beds on that day. The number of beds in use on the day of the incident was 50 less than the capacity of the system. That capacity level is agreed and accepted by the Public Service Association, the union that represents prison officers.

Initial investigations have suggested that this incident resulted as a response of some prisoners to the cancellation of an exercise session. The immediate action taken by DCS officers was aimed at protecting prison officers. The safety of departmental staff and the good order of the system is of the utmost priority. The prison's emergency response group was alerted, all other prisoners were secured in their cells, and SAPOL and other emergency services were notified. Police arrived and assumed control of the situation consistent with the agreed procedures between the two agencies. After 24 hours of negotiation, the prisoners concluded their protest peacefully and officers were able to resume control of the facility. I thank the SAPOL officers and other emergency services personnel for their professionalism in responding to this incident.

It is regrettable that the resources of SAPOL and emergency services had to be used because of the reckless and completely unwarranted action of the prisoners. The government does not intend to relinquish control of the prison system to inmates, some of whom have been convicted of heinous crimes such as murder, rape and armed robbery. They have been imprisoned as punishment for their crimes and are not in a position to dictate the terms of their punishment.

Damage to the facility is extensive and, as a result, it has been necessary to remove all prisoners from Units 3 and 4 of Bluebush Division requiring the relocation of approximately 90 prisoners. Some prisoners have been transferred to Adelaide facilities while others remain at Port Augusta Prison. The City Watch House is also currently being used to accommodate remand prisoners. A detailed assessment of the damage is still being prepared. However, I can advise the chamber that damage to Unit 3 is extensive. Damage has also occurred in Unit 4 of the Bluebush Unit. I was advised that there may have been a risk of asbestos contamination in the damaged units.

It is too soon to give an accurate assessment of the cost of restoring the facility to operational levels. I can advise the chamber that every effort will be made to fast track the repairs to Port Augusta Prison to ensure that it is available to accommodate prisoners as soon as possible. I was advised this morning that the removal of asbestos from Port Augusta Prison has commenced and should be completed by tomorrow morning. I am also advised that a staged return of prisoners to Port Augusta Prison will occur, and it is expected that eight to 10 cells will be available within two to three weeks.

The arrangements in place to accommodate prisoners are interim arrangements; they are not long term, and we are working to ensure the return of all available cells at Port Augusta as soon as possible. We are hopeful that, with the cooperation of the PSA and the staff in our correctional services facilities, this interim period will be as short as possible. SAPOL is currently investigating this incident and I do not wish to pre-empt the investigation. As previously planned, an additional 83 beds (approximately) will be installed at Mobilong prison, Mount Gambier Prison, and the Cadell Training Centre.

Given some of the information that has been reported regarding this incident, I would like to advise the chamber of the following: several Aboriginal prisoners chose to sleep outside on camp beds in a courtyard (within the secure perimeter, of course) on the night following the disruption; they were not made to do so but chose to do so rather than sleep in the holding cells. I can confirm that, following the disturbance, 41 prisoners were placed in the yard until such time as they could

be transported to Adelaide. They were handcuffed for security purposes and a search was undertaken for any weapons. I support this action: the safety of custodial officers is paramount.

There has been much comment recently about the practice of doubling-up. I would like to place on record that two beds to a cell is common practice and is not inhumane. Presently, the Port Augusta Prison is locked down and is expected likely to remain so for the next few days, while alternative accommodation is found for some prisoners and a more detailed assessment of damage is undertaken. Nevertheless, prisoners are now being allowed out of their cells in groups of 20 for association, exercise and phone calls. They are allowed out for an hour and a half each. They also have access to showers.

The good order and safety of our prison system remains our highest priority. This government wants to work with the PSA to ensure its continued cooperation in the management of the correctional services system. What happened last Thursday is of concern and I want to know exactly how it happened. On the day of the incident I asked the Chief Executive of Correctional Services to launch an immediate investigation. That investigation, as well as the investigation by SAPOL, is proceeding. I have asked the Chief Executive of the Department of Correctional Services to conduct an investigation into this most serious breach of security.

The government recognises that we have more prisoners in the system than ever before, but that is because this government has refused to be soft on crime and is locking up more people for doing the wrong thing. I would rather see two prisoners locked up in one cell than being out in the community—and I am sure that the public would agree.

*Members interjecting:*

**The Hon. CARMEL ZOLLO:** The opposition does not agree, but I am sure that the public would agree. Having two prisoners to a cell is not a breach of human rights. It is not overcrowding; it is something that has occurred in prison systems for a very long time. This government has taken steps to plan for the future of our state's prison system in the 2007-08 budget where funding for 240 extra bed spaces was allocated and nearly all have been installed.

The Rann government also announced as part of the 2008-09 budget a $35 million commitment to install 209 additional bed spaces over the next four years. The government has also started an aggressive recruitment campaign. So far this year, 134 new prison officers have been trained. The government is well on track to meet its target of 200 before the year is out.

As I have previously advised, we are working to fast-track the repairs to the cells. We will work with the PSA to ensure that the current situation is manageable. I would like to place on record my thanks for the cooperation of the Public Service Association in yesterday lifting its bans on prisoner movements.

I am advised that the Department of Correctional Services will be putting contingency options and interim proposals to the PSA today to allow for the continued movement and accommodation of prisoners and to ensure the safety and security of the system and of correctional services officers.

Our state prisons are well managed and run, and our state's prison officers are well trained and resourced and should be commended for their professionalism. I am hopeful that the prison officers and the union will work with the government over the coming months to ensure that interim arrangements are put in place while work is fast-tracked to complete the repairs to the correctional services system.

## QUESTION TIME

### STRUCTURAL ENGINEERING CALCULATIONS

**The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:34):** I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning a question about the discussion paper on checking structural engineering calculations.

Leave granted.

**The Hon. D.W. RIDGWAY:** I am disappointed that the minister has not today tabled the letters of complaint that he claims he received in relation to the current system, in particular, the checking of structural engineering calculations. He tabled one letter from the Port Adelaide Enfield council, and he claims that there are a number of other letters that he will table. Unfortunately, as

yet, that has not happened. I can only assume that it has slipped his mind but that he will do so shortly.

I have read with interest this particular letter. In a previous answer to a question, the minister claimed that this letter, and all the others that he has received—which as yet we have not seen—are reasons why he has asked the Building Advisory Committee to circulate the discussion paper entitled 'Checking structural engineering calculations'. It is interesting to note this particular letter, written (I think) by the Director, Environmental Services at the Port Adelaide Enfield Council. I will briefly quote some of it, as follows:

> My concern is the certification or approval of structural engineering designs by private certifiers who do not have the qualifications or competencies to properly make such certification.

He goes on:

> In my experience, significant safety issues can and do arise from this practice. A recent example that has come to my attention in relation to a development at—

and he has blanked out the address—

illustrates the problems that arise from this practice and is discussed below.

It continues with a commentary on particular issues that were raised. The example is:

> On [a date] 2007 development approval was granted to an application for development approval to construct a four-storey apartment building with under croft parking and a retaining wall on [the said] land...On 19 April 2008 council received a letter from the owners and residents of the land adjacent...expressing concern about the construction works occurring on the land.
>
> Council officers inspected the site and observed there were problems with the construction works that had occurred on the land.
>
> Council's engineer reviewed the engineering calculations that accompanied the application and formed the view that the calculations had been made in error. This was raised with the developer's engineer who accepted an error had been made and cooperated with the council to work towards a resolution of the problem for the client.

The environmental services director goes on to state:

> It is my understanding that while the private certifier who assessed the development application did have qualifications required under regulation 87 to enable him to assess the application, he did not have qualifications in engineering matters.

He states:

> I have not been able to verify this belief. While Planning SA maintains a register of private certifiers for public inspection, it does not provide details of the qualifications or expertise of particular private certifiers.

He then goes on:

> The engineer concluded that the cumulative effect of the errors could have led to possible collapse of the retaining wall.

At the end of the letter he states:

> This letter does not comprise a complaint pursuant to regulation 99B.

In fact, regulation 99B has been superseded by regulation 103—Complaints relating to building work assessment. It provides:

> (9) Subject to the operation of subregulations (6) and (7)—

which is whether the complaint is made by a member of the public or against the private certifier of the council—

the minister must, after receiving a complaint—

> (a) refer the matter to an authorised officer for investigation...

My questions are:

1. Given that this is the only letter that the minister has tabled at this stage (and it raises some interesting safety issues), has he received any formal complaints in relation to and consistent with new regulation 103, which supersedes regulation 99B?

2. If so, how many complaints has the minister received?

3. What is the outcome of these investigations?

**The PRESIDENT:** The minister can answer those question if he understood them.

**The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:38):** I think the Leader of the Opposition is trying to play catch up. I think the penny finally dropped when he read the letter. Since he has been going in to bat for those who want to remove these regulations and put things at risk, he is desperately trying to catch up, and now he has tried to make it look as though he is on the side of the angels and actually defending good practice within the building industry.

In fact, of course, the Leader of the Opposition was only too willing to attack, under parliamentary privilege, a member of my staff and the chair of the Building Advisory Committee, a person who is a fellow of the Institute of Building Surveyors, as I understand it, with some 30 or 40 years of experience. We will be addressing both of those matters. He is prepared to attack them when, in fact, those people are trying to deal with the very complex issue of assessing building calculations to ensure that they are safe. Not only that—

**The Hon. D.W. Ridgway:** More red tape.

**The Hon. P. HOLLOWAY:** More red tape. Let that go on the record. Quite clearly, the Leader of the Opposition is saying that they are quite happy with the way things are. They think that people who are not qualified should be checking the calculations. That is his viewpoint, and he has used the words 'red tape'.

If I were a member of the opposition, I would be a bit concerned about what their leader is saying and what viewpoints he is putting in relation to their policy. Yes, I have tabled one letter from the Port Adelaide Enfield council—

**The Hon. D.W. Ridgway:** What about the rest?

**The Hon. P. HOLLOWAY:** There is another letter from the Onkaparinga council about a serious matter. I am just getting—

*The Hon. D.W. Ridgway interjecting:*

**The Hon. P. HOLLOWAY:** As I told the leader last time, if there are legal issues arising from it, those matters should be looked at. However, that related to a public structure in the southern suburbs, in the Onkaparinga council. If I delete some specific information, I may be able to table that letter very shortly. The point is that the Leader of the Opposition, presumably representing his party, is going in to bat for a group of people who are trying to say that a situation should continue which the Coroner has criticised and about which he has raised issues in relation to the tragic death of two people following the collapse of the Riverside Golf Club building.

If the Coroner's report states, 'You need to go out and check what is happening here and things need to be done,' I think that his recommendation should be given very careful consideration. There is a trade-off here between public safety and ensuring that there is proper risk management. We cannot afford to have over-regulation, which adds costs that are not commensurate with the risk being protected. We do have to have a balance here between public safety and risk, and that is why the government is giving very careful consideration to these matters.

This is a difficult issue, even for the Local Government Association, where even councillors are divided about the application of some of these measures. Again, they are striving to achieve the balance—you cannot check every single structure—so that appropriate scrutiny is given to structures that may put the public at risk. That has to be traded off against good risk management and ensuring that we do not have unnecessary red tape. In relation to the number of complaints I have had, councils have written to me complaining about certain behaviour. Unfortunately, as the act is worded at the moment, I have written back to the councils saying that they will need to provide statutory declarations so that I can take action. However, councils are reluctant to do so because of the amount of paperwork and other things involved.

*The Hon. D.W. Ridgway interjecting:*

**The Hon. P. HOLLOWAY:** That in itself raises issues of public interest, in which members of this parliament should be interested. Not only do we have the issue of what happens in relation to the checking, we also have the question of discipline. What happens if someone does breach these regulations in a very serious way?

*The Hon. D.W. Ridgway interjecting:*

**The Hon. P. HOLLOWAY:** Well, there are various degrees. If the council does not make a formal complaint, there is very little I can do, other than to write to the people concerned to tell them that a complaint has been made. The act, as the honourable member will find if he has a look at it, does not contain very detailed provisions about how one might deal with complaints. Indeed, representatives of the Institute of Building Surveyors, when they came to see me some time ago, told me that, if one of their members were to face disciplinary action, there is no formal measure for them even to know that has happened, let alone to take action.

When answering a previous question, I informed the council that in New South Wales there was a select committee in relation to the accreditation of building surveyors. In that state, it is not up to the institute to do this; rather it has been handed over to an arm of government, following concerns being raised. I am not proposing that such a thing happen at this stage but, quite clearly, there are important issues of public safety that need to be discussed. I suggest that, rather than listening to one group in the debate which has a particular axe to grind, the Leader of the Opposition should inform himself about the wider debate and perhaps make a contribution when the matter is introduced in this chamber, as it needs to be, because these are very important and complex issues. They involve a whole range of issues, not just the matter of checking structural calculations by non-engineers but also matters relating to discipline and the accreditation of people.

**The Hon. D.W. Ridgway:** But falsely representing their qualifications.

**The Hon. P. HOLLOWAY:** I will be dealing with that shortly in a statement. I think that members opposite would be better advised to inform themselves of this quite complex issue and to contribute to the debate because it is important for the public of South Australia that we get the balance right here so that we do not have unnecessary regulation. But, at the same time, we can ensure that, on a proper risk management basis, the public is protected.

## GLENTHORNE FARM

**The Hon. J.M.A. LENSINK (14:45):** I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning questions about Glenthorne Farm.

Leave granted.

**The Hon. J.M.A. LENSINK:** Honourable members may recall that I raised this issue in November last year to this minister in relation to freedom of information documents which demonstrated the intention to sell some 30 per cent of this site for public housing. The minister, at that stage, advised that he had not had any meetings with Adelaide University (the current owners of that site) and would get back to us with further information, if the university communicated with him in relation to the proposal. Adelaide University has recently revealed that it intends to sell 40 per cent of the site for public housing in order to fund its reforestation program. My questions are:

1. Is the minister aware of these current proposals and has he met with university representatives?

2. Has the government's policy changed, given that last year the minister said that the government would continue to oppose any sale of land at this site?

**The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:47):** I thank the honourable member for her question. Yes, I am aware that Adelaide University has been having discussions with the local community in relation to the future of Glenthorne Farm. Originally, Glenthorne Farm was handed over to Adelaide University for a nominal sum with the intention, I believe, that the university was going to build some sort of centre to assist with the wine industry. For whatever reason, that did not prove possible, so the university has been looking at other arrangements as to what it might do with the land, and it has come up with this proposal about which it is currently consulting the local community. I understand that this week, for example—and perhaps it is this evening and later this week—some public meetings will be held in relation to that.

The government's view has been that the land was transferred to the university on the basis that there would be no housing on the site but, of course, the understanding was that it was to be a centre relating to the wine industry. We have not changed our view, but the university has been looking at what other options it can come up with in order to utilise the land. It has put this proposal forward.

As I said, I am aware that the university is going through those discussions and that the university, I presume once it has finished that, will put a further formal proposal to the government as to what it intends to do. I have been informed that the university is having discussions with the community at the moment—and I have been sent a copy of the brochure that has been circulated—but no further formal proposal has emerged, and I guess that the government will not receive any formal proposal until after the completion of consultations.

Incidentally, I believe that there are three options that are in that discussion document from the university. Certainly, the government's view, at this stage, remains consistent with what it was when the land was transferred. However, the university, given that it is the current occupier of that site, is entitled to look at whatever options it may put forward and, certainly, some aspects of the proposal it is putting forward to develop this farm to reafforest 150,000 hectares of woodlands, I think it is, through the hills face have merit. It is something that I guess is worth looking at. However, how that is paid for, of course, is something that will have to be worked out later. Certainly, from the government's point of view, we have not changed our position at this time, but we will wait until we get a formal proposal from the university, and presumably that will follow its consultation with the public.

## PRISONS, OVERCROWDING

**The Hon. S.G. WADE (14:50):** I seek leave to make a brief explanation before asking the Minister for Correctional Services a question about prison overcrowding.

Leave granted.

**The Hon. S.G. WADE:** In the minister's ministerial statement she stated:

> Having two prisoners to a cell is not a breach of human rights. It is not overcrowding.

The 2005 South Australian Labor state platform states that Labor 'will ensure that South Australian correctional facilities comply, as a minimum, with internationally agreed standards for the supervision and treatment of offenders'. The relevant key international standard is the UN Standard Minimum Rules for the Treatment of Prisoners 1955. Rule 9(1) of the Standard Minimum Rules states:

> Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. If for special reasons, such as temporary overcrowding, it became necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room.

I remind the council that this is not an opposition commitment: it is a commitment of the Labor government in its platform less than three years ago. My questions are:

1. Does the minister concede that the government is in breach of its own 2005 ALP platform?

2. If two prisoners to a cell is not overcrowding, how many people does the minister think it is acceptable to keep in a cell designed for one occupant before she does consider that it is overcrowding?

**The Hon. CARMEL ZOLLO (Minister for Correctional Services, Minister for Road Safety, Minister for Gambling, Minister Assisting the Minister for Multicultural Affairs) (14:51):** I thank the honourable member for his question. Perhaps he should ask the community out there when they go to public hospitals whether they think two prisoners to a cell is overcrowding. Doubling up has been used not just by this government; it was actually commenced by that lot, the Liberal opposition, which commenced doubling up as a means of maintaining safety in our prisons and maintaining those numbers. For the honourable member to stand up and talk that kind of tosh is really nonsense.

*Members interjecting:*

**The PRESIDENT:** Order!

**The Hon. CARMEL ZOLLO:** Indeed, as the Hon. Robert Lawson recently said to me, it is actually desirable for reasons of a buddy system to have two prisoners in a cell. In relation to anything else, I have been on the record on a number of occasions now saying that we have the old forensic science division in Yatala where we can put three prisoners to a cell. They are actually not cells: it is the old forensic science hospital; and, of course, always as an emergency we may have to do other things. Clearly, we will be using doubling up as a means of ensuring that we have a safe and secure system in this state, and I make no apologies for that.

*Members interjecting:*

**The PRESIDENT:** Order! Perhaps someone would like to visit the shearers' quarters out at the back of Bourke.

## MINERAL EXPLORATION

**The Hon. B.V. FINNIGAN (14:54):** My question is to the UN Secretary-General—sorry: to the Minister for Mineral Resources Development. Will the minister provide an update on the progress that is being made to encourage resource companies to consider South Australia as a low risk destination for their investment?

**The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:54):** I thank the honourable member for his question; it is certainly very important, given the current world financial situation that we face. The government has worked hard to create an atmosphere that instils investors with the confidence to invest millions of dollars into this state to support our economy and create new jobs. Of course, we have not seen those efforts made by the government being acknowledged by those opposite very often. They have chosen to fill the great void created by their lack of policies with a cacophony of knocking, as they have just done.

As we saw with the previous question, they will attack my colleague but they have no policies of their own—none whatsoever. They either want to deny the advances made in luring mineral companies to this state or hint that it is all just a mirage. Occasionally, independent observers come along to remind us that, despite the constant carping of those sitting opposite, this state is making considerable progress. That is why I am delighted that South Australia has ranked first nationally and second internationally in the *ResourceStocks* annual world risk survey published last week in which 74 jurisdictions worldwide were rated by the 2008 survey against 10 investment risk categories comprising sovereign risk, land access (green tape), land claims (red tape), social risk infrastructure, civil unrest, natural disasters and labour relations.

*ResourceStocks* magazine rates South Australia as the least risky jurisdiction in Australia for investing in mining and exploration and second to Finland internationally. These results recognise the confidence investors have to invest in this state, and South Australia's success was described by *ResourceStocks* magazine as a 'just reward for the investment the state has made in the resources sector'. To further quote the *ResourceStocks* analysis of the world risk survey:

> The one clear message that has come from this world resource risk survey is that South Australia is the best jurisdiction in this country by a significant margin.

I will also quote from another source speaking recently on ABC Radio, one that hardly has this government's interests at heart:

> I am sure South Australia is going to enjoy a resources boom. I have to say that, if you look at how South Australia has performed in exploration over the past five years, if you look at the survey that was released earlier this week saying that South Australia is the second best place in the world to do business in terms of setting up resource projects after I think it was Finland, and way ahead of Western Australia—and, I have to unfortunately admit, ahead of Queensland as well—South Australia is on the brink of a resources boom, and that will be across a whole range of sectors.

Whom is this person with the audacity to confirm South Australia's high international standing in terms of investment by the mining industry? It is none other than Ian Macfarlane, the former resources minister in the Howard government. So there you have it! Members opposite and their 'jeer' leader in another place might want to talk down South Australia's prospects, but here we have a former minister in the conservative Howard government reflecting positively on the investment climate for the mining industry generated here in South Australia. There was more. Mr Macfarlane went on to say:

> We hear a lot about uranium in South Australia, but there are a whole range of resources here that are being explored for and in time will provide an economic boost to this region.

At least Mr Macfarlane gets it! Despite the opposition's best attempts to spread this falsehood out there on the airwaves, South Australia is not betting on one project alone but, to quote Mr Macfarlane, on a whole range of resources that will provide an economic boost to this region.

I suggest that the impressive result reflected in the resource stock survey is in very large measure due to this government's confidence building policies led by the innovative plan for accelerating exploration. Our one-stop shop approach for prospective miners, combined with the

various programs supported by PACE, has generated record breaking growth in exploration spending and investment within the South Australian resources sector.

When this government introduced PACE it set out to lure $100 million a year in exploration expenditure, after years of flat lining below $40 million a year previously. In the June quarter of this year alone the state attracted a record $95.2 million in exploration expenditure, almost the full year's target under the State Strategic Plan spent in three months. That is success well beyond our expectations. In the 12 months to June this year exploration expenditure for mineral resources exceeded $355 million, keeping South Australia neck and neck with Queensland and behind the resource rich Western Australia.

Concerted efforts made by this government to reduce red tape, improve access to land and further develop the necessary infrastructure requirements of the resources sector have also been reflected in the outstanding result of this latest resource stock survey. This is an important message that needs to get out during these turbulent economic times, that a time when financial markets are being roiled daily by the global credit crisis, South Australia is a low-risk jurisdiction for investment. We can only hope that, as the financial markets settle, much of this investment and exploration is translated into new mines.

Already the number of mines in South Australia has grown under this government from the four existing when we came to office in 2002. I hope we can do better and that some of the millions of dollars in projects in the pipeline will come into operation in the next 12 to 18 months. That is because at a time of uncertainty there is nothing that provides security like a job, and these projects and the jobs they create are essential in providing an important underpinning of our state's economy so that we can better weather the storms circulating the globe.

## BRADKEN FOUNDRY

**The Hon. A. BRESSINGTON (15:00):** I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning a question about the Bradken Foundry expansion.

Leave granted.

**The Hon. A. BRESSINGTON:** The issue of the Bradken Foundry will not be unfamiliar to members in this place. For years, residents of Kilburn and the Port Adelaide Enfield council have raised concerns about the level of pollution emitted by the foundry and the health consequences. Despite intense lobbying, local residents were devastated last year to learn that the proposed expansion of the foundry had been given approval by the government. However, in an attempt to console residents, they were given a guarantee that the expansion would incorporate new technology that, in effect, would decrease pollution despite the increase in production at the facility. In other words, 'We validate your concerns about pollution, but things will be better following the expansion.' Following the announcement, a local resident, Mr Emmanuel Psaila, when speaking to the *Standard Messenger*, said:

> We have to believe the upgrade will improve the conditions around here. We're dead against the upgrade, but we have to believe. We've been given a guarantee by the government that the emissions from the foundry will be so low we'll be better off. We'll be monitoring and pressuring the government and EPA to know what is going on and to make sure that Bradken is adhering to the guidelines.

While many who were involved in the struggle against the expansion have now moved on, residents of Kilburn continue to cohabit with the foundry, some living literally just metres away and, for them, this issue is far from resolved. Adding to their angst is the rumour that Bradken is now considering no longer proceeding with the expansion or, at the least, extending the original expected completion date by several years. My questions are:

1. To the minister's knowledge, is Bradken planning to continue with the expansion of the Kilburn foundry?

2. What is the time frame that we are looking at?

3. Will the minister require the expansion to be completed by a fixed date and to adhere to certain guidelines to reduce the emissions levels?

4. Given that the government has all but admitted a problem does exist, what will be done to improve the lot of residents if the expansion does not proceed?

**The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:02):** I thank the

honourable member for her question. I do not have an update on what is happening at the Bradken Foundry. I am not aware of any rumours, but I will certainly take that part of the question on notice and make some inquiries and bring back a response.

My role in relation to the Bradken Foundry as Minister for Urban Development and Planning was to oversee the consideration of the development approval of this project, because it was a major project under the Development Act. Approval for that project was given some time back and, of course, significant and detailed conditions applied in relation to that approval. Whether the company is proceeding on the timetable is something that I will take on notice.

In relation to what happens under the existing arrangements, should they prevail, that is really a matter for the Environment Protection Authority, and I will refer that to my colleague in another place. Certainly, I am not aware of any recent information relating to this matter but, of course, there could be correspondence in the pipeline. I will check that and bring back a response for the honourable member.

## PORT AUGUSTA PRISON

**The Hon. R.D. LAWSON (15:04):** I seek leave to make a brief explanation before asking the Minister for Correctional Services a question about the Port Augusta Prison riot.

Leave granted.

**The Hon. R.D. LAWSON:** On 12 October Mr David Wright, a former chaplain at the Port Augusta Prison, he having held that office from 2001 to the beginning of 2008, called in relation to the riot and standoff which had begun on the preceding Thursday, and said:

> It's been known for a long time that this was going to be happening and the Department of Corrections has taken no action, positive action whatsoever. They've taken lots of negative action but they've never taken any positive action at all. The issues, the prison out there is a hell place to work, the administration do their best, the workers do their best..but the Department of Corrections is just letting them down time and time again.

He goes on to say:

> …there's institutionalised racism running rampant...70 per cent of the Aboriginal prisoners in there...haven't been at trial yet, they're on remand...then 70 per cent of those guys will get a sentence less than what they've already done.

He stated that prisoners are denied the opportunity to attend chapel services and that the Department of Correctional Services (in relation to this issue) 'tells lie after lie after lie'. The minister said today that the Chief Executive Officer of the department will be conducting an inquiry into this matter. She has already concluded, to use her own words, 'The prisons are well managed and well run' but she said that she cannot comment on the causes of this particular incident until she receives the report from the Chief Executive Officer.

Despite the fact that the minister cannot comment, the Deputy Premier has already said that the riot and stand-off was not caused by overcrowding. He has already reached a conclusion that the minister does not seem to be able to reach. My questions are:

1. Why will the minister not commission an independent inquiry into the causes of the events at Port Augusta?

2. Is it not inevitable that the Chief Executive Officer of the department will agree with the minister in saying that the prisons are well managed and well run and that the inquiry will be a whitewash?

3. What does this government have to hide?

4. Will the minister ensure that the issues raised by Chaplain Wright are investigated, including the claims that it was known for a long time that what happened was going to happen; that there is institutionalised racism at the Port Augusta Prison; and that the department denies prisoners the opportunity to attend chapel services?

**The Hon. CARMEL ZOLLO (Minister for Correctional Services, Minister for Road Safety, Minister for Gambling, Minister Assisting the Minister for Multicultural Affairs) (15:07):** I thank the honourable member for his questions which contain, of course, a lot of comment on his part—some of it I am sure he would like to withdraw.

I can advise the chamber that David Wright is a former chaplain at Port Augusta Prison. As the honourable member has said, he was a visiting chaplain at that prison. His involvement was

terminated earlier this year by the head of Christian churches following a number of issues about which it had concerns.

**The Hon. R.D. Lawson:** Shoot the messenger!

**The Hon. CARMEL ZOLLO:** I am just stating the facts. The honourable member commented and I am giving him some facts. If he does not like it, that is his problem.

In regard to Port Augusta Prison, in one instance Mr Wright refused to reveal the content of books that he was attempting to take into the prison, and the name of the prisoner to whom he gave a book. He was subsequently banned from Port Augusta Prison by the General Manager. This issue has also been to the Ombudsman who has investigated the matter. He did not find against the department's actions. I will repeat that: the Ombudsman did not find against the department's actions.

I took great offence at the comments made by the honourable member about an investigation run by the Department of Correctional Services. As I have already placed on notice, SAPOL will be doing its own investigation. In addition to SAPOL's inquiries and processes, I have asked the department to extensively investigate the incident to determine the events surrounding the disturbance.

I have also asked for a detailed report to be forwarded which will make recommendations to prevent further incidents of this nature occurring. As would always be the case, I am happy to bring back to this chamber the outcome of that investigation. The department's investigation processes are consistent with strict operating policies, and for those opposite to suggest otherwise really is an insult to those investigators. It is mischief-making. The investigation will be carried out by senior investigative and intelligence unit staff who have extensive experience in examining and reporting incidents. I am confident that the investigation will be thorough and comprehensive. I also fully expect that SAPOL will lay charges against those involved.

Again, I resent the inferences made by members opposite; they are very offensive. Clearly, we have some very professional and competent people in the investigation and intelligence unit of the department. Members opposite really should be ashamed of themselves. As I have said, I will be bringing back—

*Members interjecting:*

**The Hon. CARMEL ZOLLO:** How is the investigation and intelligence unit a party? Investigation and intelligence unit officers are not correctional services officers. I will be bringing back the investigation—

*Members interjecting:*

**The PRESIDENT:** Order!

**The Hon. CARMEL ZOLLO:** I think it is important to point out—and I will enjoy placing on record—that the last time we had a major incident in our gaols was in 1996. I think it is worth while reflecting on the comments of the former minister for correctional services, the Hon. Wayne Matthew MP, when after a serious riot in Yatala Labor Prison in 1996, he said:

> I say to all media and all members that when such incidents occur, as they are bound to occur in prisons, they are very difficult institutions to manage. They do not house the nicest people in our society...please be level-headed and report the facts.

Perhaps members opposite should listen to those words.

## PORT AUGUSTA PRISON

**The Hon. R.D. LAWSON (15:12):** I have a supplementary question arising from the answer. The minister referred to police involvement and investigation. Does the minister agree with the comment made by Superintendent James Blandford of the South Australia Police in *The Advertiser* on 11 October that, 'The prisoners clearly had a message and some grievances'?

**The Hon. CARMEL ZOLLO (Minister for Correctional Services, Minister for Road Safety, Minister for Gambling, Minister Assisting the Minister for Multicultural Affairs) (15:12):** I do not know how the police were able to arrive at that conclusion. What I have promised this council, and what I have asked for, is a full and proper investigation, and I will await that outcome.

*An honourable member interjecting:*

**The PRESIDENT:** Order!

## PORT AUGUSTA PRISON

**The Hon. S.G. WADE (15:12):** The minister referred to the 1996 riot. Considering that overcrowding was 6.9 in 1996, was it a factor then?

**The PRESIDENT:** That hardly arises out of the minister's answer.

## ROAD SAFETY

**The Hon. R.P. WORTLEY (15:13):** I seek leave to make a brief explanation before asking the Minister for Road Safety a question about television ads relating to creeping over the speed limit.

Leave granted.

*Members interjecting:*

**The Hon. R.P. WORTLEY:** That is about the most productive thing you have done in parliament since I have been here. South Australian television audiences are currently being warned not to become creepers.

*Members interjecting:*

**The Hon. R.P. WORTLEY:** If members opposite are not interested in road safety and saving lives, some people on this side are, so I would prefer if you could keep them quiet.

*Members interjecting:*

**The PRESIDENT:** Are we all ready again?

**The Hon. R.P. WORTLEY:** South Australian television audiences are currently being warned not to become creepers. This unusual message is being teamed with an image of a driver whose facial expression changes while he or she is driving. Will the Minister for Road Safety please explain the purpose of these ads and what role they will play in getting the road—

*Members interjecting:*

**The Hon. R.P. WORTLEY:** Can I finish my question? Will the Minister for Road Safety please explain the purpose of these ads and what role they will play in getting the road safety message across to South Australians?

**The Hon. CARMEL ZOLLO (Minister for Correctional Services, Minister for Road Safety, Minister for Gambling, Minister Assisting the Minister for Multicultural Affairs) (15:14):** Members opposite certainly are very unsettled and quite rude today.

**The Hon. G.E. Gago:** They're not interested.

**The Hon. CARMEL ZOLLO:** And not interested, either.

*Members interjecting:*

**The PRESIDENT:** Order! The minister has the call.

**The Hon. CARMEL ZOLLO:** Mr President, I just heard something quite derogatory said about my face by someone opposite. On Sunday 12 October 2008, I launched the state government's latest road safety campaign. The aim of this clever campaign is to warn drivers to stop creeping over the speed limit. Market research conducted by the Motor Accident Commission (MAC) identified a public perception that driving a bit over the speed limit is acceptable and has few consequences. However, this is a complete misconception. Creeping just a bit over the speed limit has enormous human and social costs.

Speeding is a major cause of death and injury in our state, and it is estimated to be a factor in up to 50 per cent of crashes. Using dollar figures, road crashes cost South Australians more than $3.2 million a day. However, the pain and suffering of road crash victims is, of course, immeasurable. The new Creepers campaign targets speeding amongst all drivers. The campaign is statewide and features locally filmed television ads, bus and radio advertising, bus shelters, regional banners and 30 second internet ads. Put simply, the Creepers concept highlights that creeping is potentially an accident waiting to happen.

Statistics from the Centre for Automotive Safety Research (CASR) have shown that speed reduction offers the greatest potential to reduce road trauma. In 2003, speed limits were reduced from 110 km/h to 100 km/h on 1,100 kilometres of rural arterial roads in South Australia. The speed reduction resulted in a 20 per cent reduction in casualty crashes. This reflected international research that small reductions in speed generate large reductions in road casualties.

While people accept that drinking and driving do not mix, that you should wear a seatbelt, and that you should not speed excessively, of course, there are some who do not believe that speeding is a contributor to road trauma and choose to drive several kilometres over the posted limit. Obviously, the benefits of reducing the speed limit are felt not only by those who travel on the roads but also by our emergency service workers and the police who are called out too often to scenes of personal tragedy.

This government is committed to reaching the road safety target in South Australia's Strategic Plan, and highlighting the dangers of speeding is just one of the many ways that the government is getting its road safety message across. I urge all South Australians to take note of the Creepers campaign and to take very careful note of their speedometers.

## ROAD SAFETY

**The Hon. A. BRESSINGTON (15:18):** Can the minister provide the council with information on how effective reducing the speed limit from 50 to 60 km/h has been? Is there any research or data which shows that it has contributed to a reduction in crashes or road accidents since the introduction of the 50 km/h speed limit?

**The Hon. CARMEL ZOLLO (Minister for Correctional Services, Minister for Road Safety, Minister for Gambling, Minister Assisting the Minister for Multicultural Affairs) (15:18):** Yes, I can do that. Research conducted by the Centre for Automotive Safety Research on the 50 km/h zone also shows that, on roads where the speed limit was reduced from 60 to 50, the number of casualty crashes fell by 20 per cent, so we had 330 fewer casualty crashes. The number of people injured in crashes fell by 24 per cent, which was 495 fewer casualties; and the number of people killed fell from 14 to eight. We know that speeding increases crash risk and impacts upon the severity of a crash. The risk of serious injury or death in a crash is twice as great at 65 km/h as it is at 60 km/h and four times as great at 70 km/h.

## ROAD SAFETY

**The Hon. A. BRESSINGTON (15:19):** Can the minister provide some explanation of how it is decided whether a street will be classified as 50 or 60 km/h, given that in Elizabeth there are two streets running adjacently, one of which is 60 km/h and the other 50 km/h, and there is no difference in those streets at all? How is it determined which street will have a 50 km/h speed limit and which will be 60 km/h?

**The Hon. CARMEL ZOLLO (Minister for Correctional Services, Minister for Road Safety, Minister for Gambling, Minister Assisting the Minister for Multicultural Affairs) (15:20):** As we have heard, the 50 km/h speed limit for urban and built-up areas was brought in in 2003. The difference in the speed limit may be determined by whether it is a council road or whether it is an arterial road and the amount of traffic on those roads. However, if the honourable member wants to give me the names of the roads, I will have the matter further investigated.

## RAU, MS C.

**The Hon. SANDRA KANCK (15:21):** I seek leave to make an explanation before asking the Minister for Correctional Services, representing the Minister for Police, questions about the treatment of Cornelia Rau by members of the South Australian police force.

Leave granted.

**The Hon. SANDRA KANCK:** Last month, ABC's *Four Corners* broadcast a program about the effect on detention centre staff of working in the Baxter and Woomera detention centres. However, in the process, one part of the program featured the removal, in February 2005, of Cornelia Rau from her cell by SAPOL officers, using powers under the Mental Health Act.

Ms Rau was having a shower when the police arrived. A female ambulance officer made the first request for Ms Rau to leave the shower. Ms Rau clearly indicated that she wanted to finish her shower, at first politely but she then became adamant. At this point, Ms Rau was physically hauled out of her shower by three male police officers. She spent some time naked in front of male police officers, appearing to cower on her bed in her room, from which she was then forcibly

removed, strapped onto a stretcher and taken from the centre. Ms Rau was obviously upset and scared by this treatment. She was heard to say things such as, 'Please don't hurt me; I'm just having a shower. I haven't done anything wrong,' and even plaintively calling to be given her teddy bear.

I understand that Ms Rau's compensation payout included consideration of this treatment. However, it does raise important questions about how SAPOL administers its responsibilities under the Mental Health Act 1993. Section 5 of that act specifically requires any person involved in its administration to consider the 'dignity and self-respect' of patients. The *Four Corners* footage did not show any physical violence from Ms Rau that would have occasioned the manhandling that she received from police officers. Section 23 of the act provides that police can use 'only such force as is reasonably necessary' for this purpose. My questions are:

1. Was any inquiry held into this matter and, if not, why not?

2. Have any protocols been developed to require police officers to respect the dignity of people taken into custody under the act? If so, do all officers receive training in those protocols?

3. Why was there no social worker present, nor any female police officer included in the party detaining Cornelia Rau, and why was her removal done at night?

4. What was the emergency that required Ms Rau not be allowed to either complete her shower or even put on clothing, and does this fit the description of treating a patient with 'dignity and self-respect'?

5. Are police required to explain why a person is being detained and what their rights are? If so, why was this not the case for Ms Rau?

6. What action, if any, has the Minister for Police taken in relation to this incident, including any disciplining of the officers involved?

**The Hon. CARMEL ZOLLO (Minister for Correctional Services, Minister for Road Safety, Minister for Gambling, Minister Assisting the Minister for Multicultural Affairs) (15:24):** I thank the honourable member for her question in relation to the alleged treatment of Ms Cornelia Rau. I will refer her questions to the Minister for Police in another place and ensure that she has responses.

## MARJORIE JACKSON-NELSON HOSPITAL

**The Hon. C.V. SCHAEFER (15:24):** My question is to the Minister for State/Local Government Relations, representing the Minister for Health. Is it true that senior staff at the Royal Adelaide Hospital were required to sign a binding document stating that they would not criticise any aspect of the building or location of the Marjorie Jackson-Nelson hospital?

**The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (15:25):** I thank the honourable member for her question. I am happy to refer that question to the appropriate minister in another place and bring back a response.

## CONSUMER RIGHTS

**The Hon. I.K. HUNTER (15:25):** I seek leave to make a brief explanation before asking the Minister for Consumer Affairs a question about consumer rights.

Leave granted.

**The Hon. I.K. HUNTER:** If a product or service develops a problem, consumers often rely on the warranty for a refund or repair. But what happens if consumers do not know exactly what their warranty covers? Will the minister advise the chamber what is being done to ensure that customers are being kept informed of their rights?

**The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (15:25):** I thank the honourable member for his interest in these matters. A phone-in, conducted by the Office of Consumer and Business Affairs in August, has highlighted some problems that consumers are experiencing with warranties. I am advised that the calls received by OCBA indicated that, in many cases, traders were not honouring their warranty obligations to customers, and some traders are

giving customers wrong information about warranties, either through their own misunderstanding of the law or their lack of concern for their customers.

The phone-in provided consumers with the opportunity to report cases where a product has not lasted for a reasonable period of time and the trader has been reluctant to address that problem. In determining what is a reasonable time, the price you paid, the type of product or service and its intended use all need to be considered, but consumers should be able to purchase goods knowing what their warranty entitles them to and for what period of time.

This phone-in emphasised that mobile phone warranties have topped the list of consumer complaints. I am advised that approximately 20 per cent of the calls related to mobile phones while other products that consumers reported having difficulties with warranties included motor vehicles, lounges, televisions, fridges and airconditioners. Specifically, in relation to mobile phone warranties, the issues raised during the phone-in included faulty screens and batteries, consumers being asked to pay for repairs, and signing up for a bundled two-year contract including a handset and phone service when the handset came with only a one-year manufacturer's warranty.

I am also advised that other concerns raised during the phone-in included the following:

- 41 per cent of callers had been fobbed off by the trader and referred to the manufacturer;
- 24 per cent had been told that the manufacturer's warranty had expired so the trader could not help them;
- 48 per cent felt that they had waited too long for an item to be repaired or replaced with waiting times ranging from nine days to two years; and
- only 20 per cent had been offered a loan item while waiting for repairs.

Many people assume that the manufacturer's warranty is the only warranty that applies but, by law, consumers are also entitled to a statutory warranty which basically means that products or services should last for a reasonable period of time. The survey confirmed what we expected: for some time, too many traders are often not honouring their warranty obligations. I am advised that OCBA has sought redress for consumers and has written to the traders involved, reminding them of their warranty obligations.

A series of education messages will also be conveyed to various retail sectors, including mobile phone traders, to promote fair trade practices, and traders will be reminded that the maximum penalty for misleading consumers about their warranty rights is $20,000 for an individual or up to $100,000 for a body corporate. To report any concerns about warranties, consumers can contact the Office of Consumer and Business Affairs.

## DEVELOPMENT APPLICATIONS

**The Hon. D.G.E. HOOD (15:29):** I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning questions about development applications.

Leave granted.

**The Hon. D.G.E. HOOD:** I have recently spoken with developers and home buyers, amongst others, who have expressed concern about delays and problems in the development application process. Whilst I acknowledge that the minister has announced several important reforms in respect of the development application process, it has been the case for a number of years now that any qualified building surveyor can certify that a particular building project complies with the relevant building code for that proposal.

It has been suggested that exactly the same thing could occur with planning applications, saving enormous amounts of time, money and frustration. Indeed, it has been suggested to me that any qualified town planner should be permitted to certify that a development application complies with a particular local government development plan.

In light of the very long, unnecessary and expensive delays that currently exist in the planning approval process at local government level and, given the fact that currently any properly qualified building surveyor can lawfully certify that the proposed development complies with the relevant building codes, why should any appropriately qualified town planner not be able to certify that a given development application complies with the relevant local government development plan?

**The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:30):** I thank the honourable member for his important question. I think the question highlights that really two approvals are necessary if one wishes to build a residential dwelling. First, there is the planning approval—and in this state in 2006 we had about 63,000 or so of those planning applications—and also building approval is necessary, and that is where private certifiers can play a role in certifying that such things as footings and the like are in compliance with the building code.

In Victoria in that same year (2006-07) there were, I believe, fewer than 50,000 planning applications, in other words, about 13,000 fewer planning applications in the whole of Victoria than in South Australia for those 12 months. However, there were over 100,000 applications for building approval in Victoria. What this indicates—and this is the direction in which the planning review has suggested that this state should move under the new residential development code—is that if we can codify our planning approval it will greatly simplify our system and, as is the case with Victoria, far fewer approvals would be necessary so one would not even need the services of a planner at all, just the building approval.

We are doing this under the proposals of the planning review in several ways. From 1 January it is proposed that certain developments be exempt altogether from planning approval, and that would include such things as sailcloths up to a certain size, garden sheds, decking up to a certain height above the ground and pergolas and the like, so they would be exempt altogether from planning approval.

Incidentally, among some council areas there is great variety in what is exempt and what is not. So, one of the benefits of the planning code is that there will be uniformity across the state as to where planning approval is required and where it is not. At the moment that can vary dramatically from council area to council area; there has been great inconsistency in it. That is the first stage of the planning reforms.

With the second stage, beginning on 1 March next year, we hope to have the code in place that would remove the need for planning approval for developments that complied with the code in greenfield areas or areas that were not heritage or character areas. Then, from September next year it is proposed that variations to this code to take character into account would be implemented for those character areas. The current system of approval on merit would apply in relation to heritage areas.

So, the reforms that the government is proposing under the planning reforms would in effect remove the need for planning approval in many cases, but of course you would still have to get building approval—and appropriately so—for such things as the footings and other important structural issues.

The honourable member also referred to the question of building surveyors, and that comes back to the first question that the Leader of the Opposition asked today. There can be a role played by private building certifiers but, obviously, in its report the planning review recognised that, whereas there could be a greater role for private building surveyors to streamline the process, before that occurs it is important that a proper process of auditing be put in place. So, before we could move to that, the government would need to address the issues such as those we referred to in the first question today and also make sure that we had a proper audit in relation to the work of the building surveyors.

To sum up, with the implementation of the code by 1 March next year, and with the exempt approvals from 1 January next year, we believe it will greatly simplify the process of achieving building approvals. There are also a number of other important reforms in the planning review but, as far as development applications are concerned, it should greatly reduce the amount of time spent in the system in achieving development approval.

The planning review estimated that those savings in time alone could lead to anything up to $4 billion or $5 billion over five years. There are enormous savings to be had if we can reduce the amount of time in the system. If a resident owns a block of land and they have to wait six to 12 months and they are renting a property, one can soon see how the cost of delays can add up for consumers and developers in relation to the cost of housing. It is important to keep housing affordable, to best use planners on issues that are most important to them. The code has a great deal to offer.

Some seek to oppose the code on the basis that they claim it will threaten the character of some of our suburbs. I reject that accusation. There are protections within the proposals for the

government to ensure that character areas will, if anything, achieve better protection under the code than they have at present. It is an important issue and I look forward to the application of this code from 1 March next year and seeing those benefits that will come from this flow through to home owners.

## ANSWERS TO QUESTIONS

### MOTOR VEHICLE SECURITY

In reply to the **Hon. J.A. DARLEY** (6 May 2008).

**The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business):** The Minister for Transport has provided the following information:

1. Both the vehicle identification number and licence plate number are displayed on registration labels to assist with law enforcement and aid in the prevention of crime, particularly where a vehicle has stolen number plates fitted.

The information displayed on registration labels allows enforcement officers to confirm that the registration label and number plates affixed to a vehicle are correct for that vehicle and the vehicle is in fact the vehicle it purports to be.

It also provides vehicle buyers with a simple consumer protection tool by allowing vehicle buyers to check that the vehicle is actually the vehicle it purports to be.

2. The coding of vehicle identification numbers is not considered necessary from a vehicle theft point of view. Vehicle identification numbers are not private information and can often easily be found displayed on a vehicle. In some instances the vehicle identification number is clearly displayed under the front windscreen of the vehicle often below where the label is affixed.

3. The Minister for Transport is not directly aware of other situations where vehicle identification numbers have been abused in order to aid the theft of motor vehicles.

However it should be noted that the abuse of vehicle identification numbers is a common practice used by vehicle thieves in an attempt to disguise a stolen vehicle by using the vehicle identification number from another similar legitimate vehicle.

### OPIE, MAJOR L.M.

**The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:37):** I lay on the table a copy of a ministerial statement in relation to the passing of Major Leonard Murray Opie made today by the Minister for Veterans Affairs.

### STATUTES AMENDMENT AND REPEAL (TAXATION ADMINISTRATION) BILL

Adjourned debate on second reading.

(Continued from 23 September 2008. Page 134.)

**The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:38):** I do not believe that any other members wish to speak on this bill, so I thank the Hon. Mr Lucas for his contribution to the debate and will use this opportunity to provide answers to a number of questions asked in relation to the proposed amendments. The Hon. Mr Lucas asked how the 25 per cent red tape reduction target will be measured by the government and how we as a parliament will be able to monitor the success or not in terms of meeting the target of 25 per cent.

In 2006 the government endorsed a savings target of $150 million per annum to be achieved by July 2008 to reflect a 25 per cent reduction. Independent consultancy firm Deloitte was engaged to verify the scope of the project and achievement of the outcomes. Deloitte confirmed the achievement of net savings of over $170 million from nearly 200 red tape reduction initiatives across government agencies. The government's target was therefore exceeded within the two-year time frame. These achievements are documented in the report Reducing Red Tape for Business in South Australia 2006 to 2008, which is available in hard copy from the Department of Trade and Economic Development or from the Competitiveness Council's website.

The honourable member also asked whether by consolidating and updating reciprocal powers provisions there has been any increase in any way in the powers of investigation and, if so,

in what areas. I am advised that the provisions have been rewritten for ease of understanding and operation. However, there has been no increase in the powers of taxation officers under the new provisions.

The honourable member asked: will the changes to the market rate of interest, which are set out in the Taxation Administration Act, in any way see an increase in revenue to the government and, also, as the market rate of interest outlined in the TAA (Taxation Administration Act) refers to a rate that has not been published since 1999, what has the government been doing in relation to the market rate of interest for the past nine years?

I am advised that these changes will have no revenue effect. The rate of interest over the last nine years has been set by the Treasurer by way of notice in the *Gazette*, and this rate has reflected the average rate at the 90-day bank accepted bill rate prescribed by the Reserve Bank of Australia for the month of May preceding each financial year.

The honourable member also asked: what has been the level of unpaid emergency services levies for each of the past three financial years, and how has the Commissioner approached that issue if there was no specific power within the current legislation to pursue those issues? I am advised that the emergency services levy outstanding for the last three financial years as at 3 October 2008 is as follows: for 2005-06, $200,409.63; for 2006-07, $429,745.56; and for 2007-08, $1,425,787.71.

The emergency services levy is a first charge on property and, as such, any outstanding liabilities currently can be protected by caveats or court proceedings, which have been utilised with good effect. Whilst the current provisions do not allow penalties to be charged, the act does allow for interest to be charged on unpaid levies. The ability to charge penalty is proposed to provide consistency with other revenue lines and provide further incentive for levy payers to meet their obligations in a timely fashion.

The honourable member further asked about what advice has been received, given that there will be the capacity to charge penalties on unpaid emergency services levies, and how much additional revenue from penalties the government will now collect from this new imposition of penalty on emergency service levies that have been unpaid, based on the level of unpaid levies in the past three years. I am advised that the revenue impact will be minimal. The Commissioner has advised he proposes to impose an initial level of penalty of 5 per cent on outstanding ESL amounts. However, the penalty could be increased to 25 per cent if there is a further default.

Based on the amount currently outstanding for the 2007-08 financial year, penalty would be 5 per cent of $1,425,787.71, which is approximately $71,300. However, if the amount of a penalty levy is less than $20, no penalty levy will be payable and, therefore, if a 5 per cent penalty rate is imposed no penalty would be payable on any account less than $400, which would reduce the potential amount of penalty levy collectable even further, as less than 5 per cent of emergency services levy accounts are more than $400.

As stated earlier, the imposition of penalty provides for consistency of administration with other revenue lines, and a further incentive for levy payers to meet their obligations in a timely fashion. I again thank the chamber for its contribution to the second reading debate.

Bill read a second time.

In committee.

Clause 1.

**The Hon. R.I. LUCAS:** I thank the minister for the replies to the questions asked in the last week of sitting. I think this particular aspect, whilst it was raised in the second reading (and I have now had an answer provided to my second reading speech), may well be not within the purview of the minister's adviser at the moment.

I am assuming (from what the minister has said in relation to the government's goal—of which this is a part, in terms of a 25 per cent red tape reduction) that the government in some way calculated that the total cost of red tape to businesses in South Australia was $600 million; that it has interpreted its 25 per cent reduction in red tape as being the equivalent of $150 million; and that the government now has this independent report which says it has already achieved that.

My question is: who calculated this magical sum of $600 million as being the total cost of red tape to business in South Australia? As I briefly discussed in the second reading, the whole notion of the cost of red tape to business in South Australia is complex and almost impossible to

summarise simply, I would have thought. It has been suggested to me that all the government has done is take the number that Victoria used and applied a pro-rata formula, which begs the question as to where Victoria got its number from in terms of the total cost of red tape.

I am not sure whether the minister will be able to usefully add to the debate today but, if he can, I will be delighted. However, if he is prepared to take it on notice then I am happy to receive a considered response from, I presume, the boffins in the Competitiveness Council or the Department of Trade and Economic Development who may be able to answer the question. Can they can confirm the information that was provided to me or, if not, clarify how the government calculated the total cost of red tape to business in South Australia is $600 million a year?

**The Hon. P. HOLLOWAY:** As I indicated in my answer, Deloittes (an independent consultancy firm) did verify the scope of the project, and the achievement and the outcome. It confirmed the achievement of net savings of over $170 million so, presumably, it would have verified the methodology that was used. One can only assume that it was the Department of Trade and Economic Development and, in particular, the Competitiveness Council that were responsible for these calculations. However, we may need to seek further information on that.

**The Hon. R.I. LUCAS:** I am happy with that. I do not intend to delay the committee stage of the bill any further and I accept that assurance. The other issue I wanted to canvass was a part of the minister's response which referred to unpaid bills under the ESL Act. I was very surprised to hear that the unpaid bills over the past three years have exploded in terms of their size—that is, the unpaid bills in 2005-06 were about $200,000; in 2006-07, $400,000; and I think in 2007-08, $1.4 million.

Did the level of unpaid bills for 2005-06 (which was $200,000 but is, as of October 2008, still unpaid for that year) start off at something like $1 million or $1.4 million soon after the end of that financial year but was then whittled down to $200,000? Similarly, with the $400,000 of unpaid bills in 2006-07, is that the case as well?

**The Hon. P. HOLLOWAY:** My advice is that, yes, these are the figures as at 3 October. Obviously, the further one is away from the event the longer one has had to collect that money, and that is why it appears to decline so sharply. The $1.4 million figure for 2007-08 was probably due in December last year so, clearly, some of that money will come in. Obviously, the further back you go and the more effort you put in, you would expect the outstanding balance to be less significant.

**The Hon. R.I. LUCAS:** I think in his response the minister said that the government did not believe that there would be any additional revenue from the extra penalties which will now be imposed. We are now in the 2008-09 financial year, almost three financial years after the 2005-06 financial year and people still have not paid $200,000 plus for the 2005-06 emergency services levy. One would assume that the Commissioner for Taxation has been doing a range of things over the past two or three years trying to get these people to pay their unpaid levies and they are refusing. I assume that he will impose these not insignificant penalties on the outstanding balances. One would assume, therefore, that there would be an additional revenue inflow for the government and the Commissioner as a result of these penalties, particularly on the oldest outstanding balances.

I have not asked about previous years—perhaps I should have—but I assume that there may well even be outstanding debts from 2004-05 and 2003-04 where people have refused to pay. I just did not ask the question in relation to those years. I assume that there are outstanding debts from previous financial years as well which the Commissioner has not been able to collect and will now impose the penalties. Surely, as a result of that, it would mean some modest additional revenue for the government.

**The Hon. P. HOLLOWAY:** The point I made earlier was that, if the amount of a penalty levy is less than $20, no penalty levy would be payable. Therefore, if a 5 per cent penalty rate is imposed, that means no penalty would be payable on any account less than $400. Given the value of most emergency services levy accounts, as I indicated earlier the potential amount of penalty levy collected as less than 5 per cent of emergency services levy accounts of more than $500 would be relatively small. As I said, if only 5 per cent of the accounts are more than $400, so you will only apply those to 5 per cent of those amounts, it is probably counter-productive to pursue them below that amount.

That is why the government says that the penalty would be very low. Even if the entire $1.4 million outstanding for 2007-08 had a 5 per cent levy, that would be approximately $71,300 but, given that only 5 per cent of those accounts that make up that sum of $1.4 million are above

$400, obviously it would be a much lower figure than that. Given what there might be in earlier years, there could be a whole lot of reasons why the ESL might be outstanding. It could be that deceased estates have not been finalised, and all sorts of reasons might come into it.

**The Hon. R.I. LUCAS:** I assume that at some stage the Commissioner writes off as uncollectible certain ESL debts. Can the minister take on notice and report back, going back six or seven years—not just three years, because I guess there is some sort of limit as to when the Commissioner decides to write off as uncollectible the ESL—the level of ESL write-offs as uncollectible? Also, what was the level of still uncollected ESL levies—if they have not been written off—going back to 2001-02 for each of the financial years? Obviously, I am happy for the minister to take that on notice, and I indicate that I have no further questions.

**The Hon. P. HOLLOWAY:** I will obviously have to take that question on notice.

Clause passed.

Remaining clauses (2 to 54) passed.

Bill reported without amendment.

Bill read a third time and passed.

## CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) (CLASSIFICATION PROCESS) AMENDMENT BILL

In committee.

Clauses 1 to 3 passed.

Clause 4.

**The Hon. P. HOLLOWAY:** I move:

Page 3—

After line 18 [clause 4]—

(1a) Section 4—after the definition of advertisement insert:

*advertising scheme* means the scheme determined from time to time under section 31 of the Commonwealth Act;

After line 21 [clause 4(2)]—

After the definition of *approved form* insert:

*authorised television series assessor* means a person authorised in accordance with the scheme determined under section 14B of the Commonwealth Act to prepare assessments of television series films;

After line 26 [clause 4]—

(5) Section 4(1)—after the definition of submittable publication insert:

*television series film* means a film that comprises—

(a) one or more episodes of a television series; or

(b) one or more episodes of a television series and series-related material if that material does not appear to be self-contained and produced for viewing as a discrete entity;

I did explain in the second reading, just to facilitate debate, that I would be moving amendments and that I would put in the explanation of those amendments. Clause 4 inserts a new definition into the bill to provide for the new commonwealth advertising scheme. The definition of 'advertising scheme' refers to the scheme determined under section 31 of the commonwealth amending act.

Section 31 of the amending act allows the minister, by legislative instrument, to determine a scheme for the advertising of unclassified films and unclassified computer games. It contains a non-exhaustive list of the things that the instrument may determine, such as specifying what messages must be displayed on or in relation to the advertising of an unclassified film or computer game and provides for the requirements relating to self-assessment by industry of the likely classification of unclassified films and unclassified computer games.

As I said, there are three amendments specifically related to clause 4 that recognise the new commonwealth scheme.

Amendments carried; clause as amended passed.

New clause 4A.

**The Hon. P. HOLLOWAY:** I move:

Page 3, after line 26—After clause 4 insert:

4A—Insertion of section 19AA

After section 19 insert:

19AA—Consideration of television series films

(1) The council or the minister may, for the purposes of the assessment of a television series film within the ambit of this section for the purposes of classifying the film, take into account an assessment of the film prepared by an authorised television assessor and furnished in the prescribed manner.

(2) A television series film is within the ambit of this section if—

(a) at least one of the episodes of the television series film has, before the making of the application, been broadcast in Australia on a national broadcasting service, a commercial broadcasting service, a subscription broadcasting service or a community broadcasting service; and

(b) the applicant for classification is of the opinion that the film would, if classified, be classified at a particular classification that is R18+ or a lower classification.

(3) An assessment prepared by an authorised television assessor must satisfy the requirements specified in the scheme established under section 14B of the commonwealth act.

This clause inserts a new section to allow the council or the minister, under the South Australian act, for the purposes of the assessment of the television series film, to take into account an assessment of the film prepared by an authorised television assessor. The assessment by the authorised television assessor must satisfy the requirements of the scheme established under section 14B of the commonwealth act.

New clause inserted.

Clause 5 passed.

New clause 5A.

**The Hon. P. HOLLOWAY:** I move:

Page 4, after line 19—After clause 5 insert:

5A—Substitution of section 22

Section 22—delete the section and substitute:

22—Classification of films or computer games containing advertisement

An unclassified film (the *first film*) or unclassified computer game (the *first game*) must not be classified if it contains an advertisement—

(a) for a film or computer game with a higher classification than the classification the first film or first game would be given if it did not contain the advertisement; or

(b) for an unclassified film or unclassified computer game—

(i) that has been assessed in accordance with this act or the commonwealth act as being likely to have a higher classification than the classification the first film or first game would be given if it did not contain the advertisement; or

(ii) the likely classification of which has not been assessed (either under this act or the commonwealth act); or

(c) that has been refused approval (either under this act or the commonwealth act).

This clause deletes section 22 from the South Australian act. Section 22 of the act currently prohibits the classification of a film or computer game if it contains an advertisement for a film or computer game that has not been classified, or an advertisement for a film or computer game that has a higher classification. The substituted section 22 makes provision for the new assessment scheme by allowing for classification of films and computer games that contain advertisements, in accordance with the commonwealth act advertising scheme.

New clause inserted.

Clauses 6 and 7 passed.

Clause 8.

**The Hon. P. HOLLOWAY:** I move:

Page 5, after line 4 [clause 8]—Before section 23B insert:

23AB—Revocation of classification of television series films

(1) If—

(a) The council or the minister has classified a film taking into account an assessment prepared by an authorised television series assessor under section 19AA; and

(b) the council or the minister (as the case may require) is satisfied that—

(i) the assessment was misleading, incorrect or grossly inadequate; and

(ii) if the council or the minister had been aware of the respects in which the assessment was misleading, incorrect or grossly inadequate before the classification was made, the council or the minister (as the case may be) would have given the film a different classification,

the council or the minister (as the case may require) must revoke the classification.

(2) The regulations may prescribe circumstances in which an assessment is misleading, incorrect or grossly inadequate for the purposes of subsection (1)(b).

(3) To avoid doubt, the regulations are not to be taken to limit the circumstances in which an assessment is misleading, incorrect or grossly inadequate.

The clause inserts a new section that mirrors section 21AB of the commonwealth act, and it will allow the council or the minister to revoke a classification that was made in reliance on an assessment made under the new scheme. The minister or the council may revoke such a classification if they are satisfied that the assessment was misleading, incorrect or grossly inadequate and, if the council or minister had been aware of the respects in which the assessment was misleading, incorrect or grossly inadequate, the council or minister would have given the film a different classification. Section 14B of the commonwealth act may prescribe the circumstances in which an assessment is taken to be misleading, incorrect or grossly inadequate.

Amendment carried; clause as amended passed.

Clause 9 passed.

New Clause 9A.

**The Hon. P. HOLLOWAY:** I move:

Page 5, after line 40—After clause 9 insert:

9A—Insertion of Part 3 Division 4

Part 3—After Division 3 insert:

Division 4—Assessments of likely classifications of unclassified films and unclassified computer games

27A—Person may apply for assessment of likely classification of unclassified film or unclassified computer game

(1) A person who is, or proposes to be, the distributor, exhibitor or publisher of an unclassified film or an unclassified computer game may apply to the council for an assessment of the likely classification of the film or computer game for the purpose of advertising the film or computer game.

(2) The application must—

(a) be in writing; and

(b) be in a form approved in writing by the council; and

(c) be signed by or on behalf of the applicant; and

(d) include any information, statements, explanations or other matters required by the form; and

(e) be accompanied by any other relevant material required by the form; and

(f) be accompanied by the prescribed fee.

27B—Council may assess likely classification of film or computer game

(1) This section applies if an application has been made under section 27A for the assessment of the likely classification of an unclassified film or an unclassified computer game.

(2) The council may assess the classification that, in the opinion of the council, the film or computer game would be likely to have if the film or computer game were classified, having regard to the material and information available to the council when making the assessment.

(3) The council may refuse to assess the likely classification of the film or computer game if the council considers that the material and information available to the council is insufficient (whether or not the council has made a request under subsection (4)).

(4) The council may request that applicant to give to the council, within the period specified in the request, further information for the purpose of enabling the council to deal with the application.

(5) The council may decline to deal with the application, or decline to further deal with the application, until the information is given to the council in accordance with the request.

(6) To avoid doubt, this section does not require the council to obtain further information under subsection (4) for the purposes of the council's assessment.

27C—Revocation of assessment

(1) If, after making an assessment under section 27B of the likely classification of an unclassified film or an unclassified computer game, but before the film or computer game is classified, the council is of the opinion that—

(a) the film or computer game contains, or will contain, material of which the council was unaware when the council made the assessment; and

(b) if the council had been aware of the material before making the assessment, it would have assessed the film or computer game as likely to have a higher classification,

the council must revoke the assessment, and must also revoke the approval of any approved advertisement for the film or game.

(2) The council must revoke an assessment under section 27B of the likely classification of a film or computer game, and must also revoke the approval of any approved advertisement for the film or game, if the applicant for the assessment makes a written request that the council do so.

(3) the revocation of an assessment or approved advertisement takes effect—

(a) when written notice of the decision to revoke is given to the applicant concerned; or

(b) if a later day is specified in the instrument of revocation—on that later day.

Section 27D—Notice of decisions

The council must give written notice of a decision under section 27B or 27C to the applicant for the assessment or advertisement concerned as soon as practicable but not later than 30 days after the making of the decision

This clause inserts a new division 4 into part 3 of the bill to allow for assessments of likely classifications of unclassified films and unclassified computer games. New sections 27A and 27B mirror the commonwealth provisions 32 and 33 and allow for persons to apply to the council for the assessment of the likely classification of an unclassified film or unclassified computer game and for the council to assess the likely classification of an unclassified film or computer game for the purpose of advertising the film or computer game.

New section 27C mirrors the commonwealth section 34 and allows for the council to revoke an assessment where it is of the opinion that the film or computer game contains, or will contain, material of which the council was unaware when the council made the assessment and, if the council had been aware of the material before making assessment, it would have assessed the film or computer game as likely to have a higher classification.

New clause inserted.

Clauses 10 and 11 passed.

New clauses 11A to 11D.

**The Hon. P. HOLLOWAY:** I move:

Page 6, after line 21—

After clause 11 insert:

11A—Amendment of section 67—Certain films, publications and computer games not to be advertised

(1) Section 67(1)(a)—delete paragraph (a)

(2) Section 67(1)(e)—delete paragraph (e)

(3) Section 67—after subsection (1) insert:

(1a) A person must not publish an advertisement for an unclassified film otherwise than in accordance with—

(a) the advertising scheme; or

(b) a transitional Commonwealth regulation.

Maximum penalty: $5,000.

Expiation fee: $315.

(1b) A person must not publish an advertisement for an unclassified computer game otherwise than in accordance with the advertising scheme.

(4) Section 67—after subsection (2) insert:

(3) In this section—

transitional Commonwealth regulation means a regulation under Schedule 1 Item 13 of the Classification (Publications, Films and Computer Games) Amendment (Assessments and Advertising) Act 2008 (Commonwealth).

11B—Amendment of section 68—Screening advertisements with feature films

Section 68—after its present contents (now to be designated as subsection (1)) insert:

(2) A person must not screen an advertisement for an unclassified film in a public place unless the advertisement complies with the advertising scheme.

Maximum penalty: $2,500.

Expiation fee: $210.

11C—Amendment of section 70—Sale of feature films with advertisements

Section 70—after its present contents (now to be designated as subsection (1)) insert:

(2) A person must not sell a classified film (the feature film) that is accompanied by an advertisement for an unclassified film unless the advertisement complies with the advertising scheme.

Maximum penalty: $2,500.

Expiation fee: $210.

11D—Amendment of section 71—Advertisements with computer games

Section 71—after its present contents (now to be designated as subsection (1)) insert:

(2) A person must not sell or demonstrate a classified computer game (the main game) in a public place that is accompanied by an advertisement for an unclassified computer game unless the advertisement complies with the advertising scheme.

Maximum penalty: $2,500.

Expiation fee: $210.

The proposed new clauses make amendments to sections 67, 68, 70 and 71 of the act to take into account the new advertising scheme. Section 67 of the act currently prohibits the publication of advertisements for unclassified films and unclassified computer games. The amendment removes the prohibition contained in sections 67(1)(a) and 67(1)(e) and inserts a new subsection (1)(a) and (1)(b) that prohibits the publication of an advertisement for an unclassified film or an unclassified computer game otherwise than in accordance with the advertising scheme.

Section 68 is amended to insert new subsection (2) prohibiting the screening of an advertisement for an unclassified film in a public place unless it complies with the advertising scheme. Section 70 is amended to insert new subsection (2) prohibiting the sale of a classified film that is accompanied by an advertisement for an unclassified film unless the advertisement complies with the advertising scheme. Section 71 is amended to insert new subsection (2) prohibiting the sale or demonstration of a classified computer game in a public place that is accompanied by an advertisement for an unclassified computer game unless the advertisement complies with the advertising scheme.

New clauses inserted.

Clauses 12 to 14 passed.

Clause 15.

**The Hon. S.G. WADE:** The bill provides some scope for organisations approved by the minister to make an application for an exemption from the act. Proposed section 79A proposes:

> The Minister...may... approve an organisation for the purposes of section 77(3)—

that is, for an exemption—

> if the organisation carries on activities of an educational, cultural or artistic nature.

In another place, the Attorney-General said:

> If the organisation screens a film or uses a computer game, then I can exempt it from the classification process, and I do so because I can trust that organisation to abide by the classification rules without forcing it to take all its films and computer games through the classification process. I would not be able to do that for most—indeed, any—commercial organisations, because so many organisations will flout the classification rules to make a quid.

Is there any provision in the bill which precludes a commercial organisation receiving an exemption? If there is no such provision, could a predetermined position by a minister that a commercial organisation is not entitled to an exemption raise issues in relation to the robustness of the decision at administrative law?

**The Hon. P. HOLLOWAY:** My advice is that, under the Classification (Publications, Films and Computer Games) Act, the exemptions are provided in part 8; in particular, the section relevant to the honourable member's question would be section 77 (Exemption of approved organisations). Section 77(1) provides that the minister may, on application under this subsection, direct in writing that this act does not apply (or any of the provisions of this act do not apply) to an organisation approved under this part in relation to the exhibition of a film at an event where the film and the event are specified in the direction.

Section 77(2) provides that an application for a direction under subsection (1) may be made by an approved organisation and must (a) be in writing and (b) specify the film the organisation intends to exhibit and the event at which the film is to be exhibited and (c) be accompanied by (i) a synopsis of the story or events depicted in the film and (ii) the prescribed fee. That is what the act covers. I am not quite sure whether that covers what the honourable member is suggesting. I think he was talking about the robustness of the provision in relation to administrative law.

**The Hon. S.G. WADE:** The minister is correct in putting the law in terms of the exemption, but section 79(2) of the act and new section 79A(2) in similar terms lay down the characteristics of an organisation which the minister may approve for an exemption. I cannot see anything in those clauses that suggests that the commercial nature of an organisation is at all relevant. The Attorney-General in another place has said that he would not give an exemption to any commercial organisation. I am not debating whether or not that is appropriate, but if that is the government's intention then it should be in the law.

My understanding is that, if the minister made a judgment in relation to whether an organisation should be approved on grounds that are not in the law, it would be contrary to administrative law. He cannot just think up some factor that is not identified by the law and decide that that will be the determining factor. In fact, the implication in the Attorney-General's statement is that he would not even consider an application from a commercial organisation. My reading of the act is that his ministerial discretion would be constrained to the elements in the act and would not extend into other factors. I would like clarification of that and whether the Attorney-General is correctly stating the law.

**The Hon. P. HOLLOWAY:** The relevant part of new section 79A(1) is that the minister may, by notice published in the South Australian *Gazette,* on application, approve an organisation for the purposes of section 77(3) if the organisation carries on activities of an educational, cultural or artistic nature. In subclause (2) that is further qualified. It provides that, in considering whether to approve an organisation under this section, the minister must have regard to the purpose for which the organisation was formed; the extent to which the organisation carries on activities of an educational, cultural or artistic nature; the reputation of the organisation in relation to the screening of films; the possession or demonstration of computer games, as the case may be; the conditions to the admission of persons, etc.

All I can say is that on my reading it is pretty clear that it is talking about an organisation that is carrying on activities of an educational, cultural or artistic nature. Nothing in there refers to an organisation set up purely for the making of profit.

**The Hon. S.G. WADE:** My view is that the fact that a commercial entity can be established for educational, cultural or artistic purposes means that that can come within the act. That is my interpretation of the act, and perhaps it is best left for appropriate legal interpretation at the appropriate time. Whilst there may not be a huge number of them, it is legally conceivable that there could be a commercial organisation that meets the criteria in 79A(1) and (2) and, for that matter, 79(1) and (2).

**The Hon. P. HOLLOWAY:** I can only assume that the point the Attorney was making was that he would not wish blatantly commercial organisations to fit through this section as a sort of loophole. I guess any case would be on its merits, but it would be a question of whether the organisation was principally there for educational, cultural or artistic reasons or principally there to make a profit. I guess that is really a discretion the Attorney would have to exercise, and ultimately the courts would determine that.

**The Hon. S.G. WADE:** Again, I think the minister needs to resist the temptation to put glosses on legislation. I cannot see any reference to a primary purpose. The fact of the matter is that whether or not it is a commercial organisation is not relevant: it is whether it meets all the criteria. I agree with the minister that it will be a matter for future interpretation, and I do not intend to take the matter any further

I reiterate that this clause, as I read it, does not preclude a commercial organisation. I accept the minister's point that you would expect a commercial organisation to have drivers in its operations, which might mean that the Attorney-General would look more closely to make sure it fitted those criteria. However, there is one set of standards, and for the Attorney-General to suggest that these exemptions are not available for commercial organisations is gloss on the legislation which is not in the bill.

Clause passed.

Remaining clauses (16 and 17), schedule and title passed.

Bill reported with amendments.

Bill read a third time and passed.

## SUMMARY OFFENCES (INDECENT FILMING) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 22 September 2008. Page 136.)

**The Hon. R.D. LAWSON (16:18):** This bill is designed to address the obnoxious but catchily named practices of upskirting and down-blousing. There is no doubt that the practice of sneakily photographing people's private parts is thoroughly offensive and is deserving of criminal sanction. The activities of voyeurs who derive pleasure from viewing others has been reviled for centuries. The eponymous Peeping Tom dates from the tenth century ride through Coventry of Lady Godiva. Legend tells us that Tom, the Coventry tailor, was struck blind when he peeped through the hole he had bored in his shutter to view the passing maiden. Surely one would have thought that the law of the land had addressed this issue before now.

Actually, there is an offence of offensive behaviour which possibly covers the activities that this bill seeks to punish. There is a lot to be said for general offences which are expressed very broadly and which can be applied to a wide variety of factual situations rather than narrowly defining an offence like the present. For example, the present offence is indecent filming, but simply putting a mirror on the toe of one's shoes and looking up the skirts of women is not actually covered by this bill, and that raises an interesting issue. However, what we have sought to do here is narrowly describe a particular activity and make it punishable.

I notice, for example, that an offence was reported in January 2007, where a student in Melbourne was caught filming women showering in a back packers' hostel and was charged with offensive behaviour, although perhaps the extent of that law was not fully explored in the courts because the person concerned pleaded guilty and was sentenced to a term of imprisonment.

There was a similar incident at Lincoln College, North Adelaide, in November 2004. At that time the Attorney-General was quoted as saying that the incident was 'sickening and perverted'

and he claimed that South Australia did not then have laws in place to prosecute such actions. Notwithstanding the fact that the Attorney-General in 2004 found the practice sickening and perverting, it is now 2008 and we are finally dealing with this matter. As I understand it, the incident at Lincoln College did not result in the apprehension of any offender.

We are all aware of the technical capacity of mobile phones to take photographs. Small cameras, mini or micro cameras, have been around for a long time and there has been a capacity for people to surreptitiously photograph others, no doubt in compromising circumstances. We all know stories of private investigators and the like. The change that has occurred is that through the use of mobile phones these devices have become more readily available, more easily carried and, because they have another legitimate use, it is difficult to apprehend potential offenders. One excuse the Attorney might have for not proceeding with the introduction of this bill as hastily as his outrage in 2004 might have warranted was the fact that the Standing Committee of Attorneys-General produced in August 2005 a discussion paper entitled 'Unauthorised photographs on the internet and ancillary privacy issues'.

That discussion paper canvassed not only the existence of cameras in mobile phones but also the widespread use of the internet where what once might have been regarded as an offence which had a fairly narrow focus—namely, the peeping Tom type of offence—became an offence where, via the internet, the peeping Tom might be able to distribute across the world, and in rapid time, images illicitly obtained.

Of course, we have to understand also that there are now closed circuit television cameras which are used very widely in public spaces and places—on roads, for security, and for other purposes—and people are being photographed in public places now all the time and in circumstances where they do not know that they are being photographed. So the use of technology is now widespread, and it does have the capacity to make what was once a serious offence, but not a gravely serious offence, an offence that does have other ramifications so that it becomes more serious.

Not surprisingly, in response to the discussion paper issued by the Standing Committee of Attorneys-General, the media interests were opposed to widespread extension of the criminal law in this area. Clearly, it is in the interests of the media to photograph people in all sorts of situations, many of which will be compromising, especially if the person involved happens to be a celebrity. The whole paparazzi industry depends upon the capacity of photographers with telescopic lenses to photograph film stars and princesses in various states of undress on Mediterranean yachts and the like. Needless to say, those people in the media (proprietors and publishers) were keen not to unduly restrict the capacity of those publications to publish and profit from photographs of that kind.

The bill we have before us is very narrowly drawn because it does not actually address the issue of the person who drills a hole in the back wall of a women's shower block and looks through it. It is only if he takes a photograph that he commits an offence against this particular provision. In both Queensland and Victoria similar legislation has been introduced, but it has a wider application, which can best be illustrated if I read section 227A of the Queensland Criminal Code, which was inserted in December 2005. It provides:

> (1) A person who observes or visually records another person, in circumstances where a reasonable adult would expect to be afforded privacy—
>
> (a) without the other person's consent; and
>
> (b) when the other person—
>
> (i) is in a private place; or
>
> (ii) is engaging in a private act—

commits an offence. In other words, they have not only included recording by photographing or other means but, also, observing.

Likewise, in the Victorian legislation, which is called the Summary Offences Amendment (Upskirting) Bill 2007, what is rendered criminal is in new section 41A (that is, the observation of the genital or anal region of a person with the aid of a device) and new section 41B (visually capturing those regions). The method by which these activities might be conducted is defined to include the use of, for example, a mirror or a tool to make an aperture, a ladder or the like. One can readily appreciate circumstances in which some pervert might put a mirror under a staircase for the purpose of looking up a woman's skirt or down their blouse but, curiously enough, our legislation is so refined that it covers only the particular situation of filming.

It reminds me a little of the time when there were a number of instances, and a great deal of public outrage, when rocks were thrown at passing vehicles, especially on the Southern Expressway, and there is one very tragic case where someone was very severely injured by that occurrence. So the government introduced a bill designed to prevent that. In fact, it was designed to criminalise, with a very tough penalty, and to make no apology for the tough penalty. But the bill came in on the basis that it was an offence to throw a projectile at a moving vehicle. It was pointed out: but what happens if the vehicle happens to be stationary at the time because of a traffic jam, or the like? The response was, 'That's a good idea. We had better include that.' So we made it not only a moving vehicle but also a stationary vehicle. I envisage entirely the same sort of situation here where we have so finely defined this particular offence that we will be coming back and revisiting the circumstances for its application in the future.

I believe that one area in which we ought to have addressed the ill that is aimed at by this bill is that of observing by some artificial means—be it by a mirror, boring a hole in a wall, or the like.

The first question to which I seek a response from the minister is: why did the government not adopt the same framework (which is a rather more extended framework) that has been adopted in both Queensland and Victoria?

I move now to briefly comment upon the terms of this bill. The first principal clause will insert a new section 23AA(1) which will make it an offence to engage in indecent filming—that is, the offence of engaging in the filming itself. There is a severe penalty of $10,000 or imprisonment for two years, which is the same penalty that appears in the legislation of other states. The second offence is contained in subsection (3) of the same section—a person must not distribute a moving or still picture obtained by indecent filming—and the penalty is the same. Indecent filming is defined as:

> Filming another person in a state of undress in circumstances where a reasonable person would expect to be accorded privacy.

It means filming another person engaged in a private act in circumstances in which a reasonable person would expect to be afforded privacy. The third offence is filming another person's private region in circumstances in which a reasonable person would not expect that the person's private region might be filmed. As I said, these are serious offences carrying a maximum penalty of $10,000 or imprisonment for two years.

I am a little concerned (and seek the minister's comment) about the proposition that a person standing on a jetty and sweeping a movie camera along the beach (where there may be, for example, small children who have no clothes on at all who are paddling in the shallows with their parents) could film a person in a state of undress in circumstances where the persons filmed cannot give consent, because subsection (5) provides that an apparent consent, namely the consent apparent from being on the beach, is not effective if it is given by a person under the age of 16 years. So, an infant, or anybody under the age of 16, cannot give consent.

Clearly, if a person is swimming at Maslin's Beach (or some other spot where people swim without their clothes on in a state of undress) such a person could have no reasonable expectation of being afforded privacy in those circumstances—although even that might be entirely debatable. If you are a nude swimmer and you go to Maslin's Beach, I do not imagine you really expect that your body parts might be displayed over the Internet and across the world in five minutes.

However, I am rather more concerned about the case of a person who might, quite innocently, be filming young children on the beach or even taking a snapshot of children in the bath, which has, until now, been regarded as an innocent enough occurrence—although, increasingly, even that practice is being questioned. I do not think we have yet reached the stage where, if somebody takes a snapshot of their own child in the bath, they will actually be committing an offence. It is no excuse to say, 'Well, who would ever be prosecuted in those circumstances?' If we pass a law which says that certain conduct is illegal then people will be committing illegal acts. We make their innocent acts illegal, even though one would hope that reasonable policing would never result in a charge. I do seek some elucidation from the government about how it expects that issues about photographing children in a state of undress will be addressed under this legislation.

The legislation contains a series of exemptions which are appropriate. For example, licensed investigation agents who are taking films in connection with obtaining evidence in connection with compensation claims and the like, and law enforcement personnel acting in the course of law enforcement or legal proceedings do not commit an offence. I am a little surprised

that the exemption includes that legal practitioners or their agents acting in the course of law enforcement or legal proceedings cannot commit an offence under this section.

Of course, in the old days, private investigators, acting on the instructions of lawyers, would film people engaged in matrimonial proceedings. Many of those films were taken of people in wholly compromising circumstances committing acts that they would regard as being committed in private. It is a long time past since that type of activity was widespread although, no doubt, it might still occur in some cases.

Concerns might legitimately be raised about films or photographs taken by medical practitioners in the course of medical examinations for legitimate medical purposes. As I read the bill, they are not specifically mentioned. The protection in that particular case is that the consent of the person must have been obtained. So, if a person consents to being photographed, and is aware that they are being photographed—and the photograph might actually include part of their genital or anal regions—no offence is committed by the doctor.

I do not actually know the extent of the consent sought from patients in these circumstances. Ordinarily, the head or the face of the person is not actually depicted in medical photographs that I, and I imagine most other members, have seen. However, I inquire whether it is common for doctors to actually seek permission for the distribution of material of this kind. I imagine that, if a medical practitioner said to me that he wished to take a photograph of a skin blemish on my inner thigh, I would readily consent. Whether I would readily consent to it being distributed throughout the world on the Internet is another matter. I suspect that I would not even be asked.

With those comments, I indicate that the opposition will be supporting the passage of the bill. It goes some way, but it does not go far enough. We do not, however, propose to delay the passage of the bill—it is already long overdue—by seeking to have amendments included, extending its operation in the way that it has been extended in some other jurisdictions.

Debate adjourned on motion of Hon. J. Gazzola.

## GENE TECHNOLOGY (MISCELLANEOUS) AMENDMENT BILL

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

**The Hon. CARMEL ZOLLO (Minister for Correctional Services, Minister for Road Safety, Minister for Gambling, Minister Assisting the Minister for Multicultural Affairs) (16:41):** 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 amends the *Gene Technology Act 2001* (the *South Australian Act*) in a manner consistent with amendments made to the *Gene Technology Act 2000* of the Commonwealth (the *Commonwealth Act*), in order to preserve consistency with the national regulatory scheme for gene technology. The purpose of the amendments is to improve the operation of the Act without changing the underlying policy intent or overall legislative framework of the regulatory scheme.

The South Australian Act is the State Government's component of the nationally consistent regulatory scheme for gene technology. Under the *Gene Technology Agreement 2001* (the *intergovernmental Agreement*), all States and Territories are committed to maintaining corresponding legislation. The object of the Act is to protect the health and safety of people, and to protect the environment, by identifying risks posed by or as a result of gene technology, and by managing those risks through regulating certain dealings with genetically modified organisms (*GMOs*).

In 2005-06, an independent review of the Commonwealth Act and the intergovernmental Agreement was conducted. This review found that the national regulatory scheme had worked well in the 5 years following introduction, and that no major changes were required. However, it suggested a number of minor changes, aimed at improving the operation of the legislation.

On 27 October 2006, the Gene Technology Ministerial Council, an intergovernmental body comprised of State, Territory and Australian Government Ministers, agreed to proposals to implement the recommendations of the Review which included amendments to the Commonwealth Act which took effect on 1 July 2007.

This Bill proposes to implement the corresponding amendments in the South Australian Act. These changes include introducing emergency powers that give the Federal Minister, in consultation with the Gene Technology Ministerial Council, the ability to expedite the approval of a dealing with a GMO in an emergency. Such an emergency could be, for example, the need to allow a genetically modified vaccine to enable a timely response to a disease outbreak or use of a genetically modified organism to aid in degrading an environmental toxin. Other

changes proposed in the Bill include improving the mechanisms for providing advice to the Gene Technology Regulator (the *Regulator*); streamlining the processes for the initial consideration of licences; reducing the compliance burden for low risk dealings; providing clarification on the circumstances in which licence variations can be made and the circumstances under which the Regulator can direct a person to comply with the South Australian Act; providing the Regulator with the power to issue a licence to persons who find themselves inadvertently dealing with an unlicensed GMO, for the purpose of disposing of that organism; and technical amendments to improve the operation of the South Australian Act.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Gene Technology Act 2001*

4—Amendment of section 8B—Notes

This proposed amendment would provide that notes form part of the South Australian Act.

5—Amendment of section 10—Definitions

This proposed amendment would insert a number of new definitions for the purposes of the South Australian Act and make related changes to current definitions. In particular, an *emergency dealing determination* is defined as a determination in force under section 72B and an *inadvertent dealings application* is defined as an application for a GMO licence to which Division 3 or 4 of Part 5 does not apply because of the application of section 46A or 49. A note is also to be inserted that points out that section 10 of the South Australian Act is different from section 10 of the Commonwealth Act.

6—Amendment of section 31—Simplified outline

This proposed amendment adds another paragraph to make it clear that a dealing specified in an emergency dealing determination is not prohibited under the Part.

7—Amendment of section 32—Person not to deal with a GMO without a licence

Current section 32(1) provides that a person commits an offence if he or she deals with a GMO in the circumstances set out in that subsection. The subsection is to be clarified and an additional circumstance added; that is, that the dealing with the GMO is not specified in an emergency dealing determination, and the person knows or is reckless as to that fact.

8—Amendment of section 33—Person not to deal with a GMO without a licence—strict liability offence

This clause provides for the insertion of new paragraph (ba) into subsection (1) and a reference to that new paragraph in subsection(2). The effect of these amendments is to provide that it will be a strict liability offence for a person to deal with a GMO, knowing that it is a GMO, if the dealing is not specified in an emergency dealing determination.

9—Amendment of section 34—Person must not breach conditions of a GMO licence

It is proposed to amend section 34 by substituting a new subsection (1). That new subsection will provide that the holder of a GMO licence is guilty of an offence if the holder intentionally takes an action or omits to take an action and the action or omission contravenes the licence and the holder knows or is reckless as to that fact.

10—Insertion of sections 35A and 35B

35A—Person must not breach conditions of emergency dealing determination

Proposed section 35A is similar to current section 34. Proposed subsection (1) creates an offence for intentionally breaching the conditions of an emergency dealing determination. Proposed subsection (2)(a) provides that the penalty for an aggravated offence is imprisonment for 5 years or a fine of $220,000, while in any other case, the penalty will be imprisonment for 2 years or a fine of $55,000.

35B—Person must not breach conditions of emergency dealing determination—strict liability offence

Proposed section 35B creates a strict liability offence for breaching the conditions of an emergency dealing determination and is similar to current section 35. In order to have committed an offence under proposed subsection (1), the person must have knowledge of the conditions to which the emergency dealing determination is subject, but need not know that he or she is breaching that condition. Proposed subsection (2) provides that strict liability applies to proposed subsection (1)(a) and (c). The penalty for an offence under this proposed section is $22,000 for an aggravated offence or, in any other case, $5,500.

11—Insertion of section 40A

40A—Licences relating to inadvertent dealings

New section 40A provides that if the Regulator is satisfied that a person has come into possession of a GMO inadvertently, the Regulator may, with the agreement of the person, treat the person as having made an inadvertent dealings application.

12—Amendment of section 42—Regulator may require applicant to give further information

The proposed amendment provides that the Regulator may require information to be given under this section at any time before the Regulator decides the application, whether before or after the Regulator has begun to consider the application.

13—Amendment of section 43—Regulator must consider applications except in certain circumstances

The proposed amendment to current section 43(2) adds a paragraph that provides that the Regulator is not required to consider an application under Part 5 Division 2 for a licence if the Regulator is satisfied (having regard to the matters specified in section 58) that the applicant is not a suitable person to hold a licence.

14—Insertion of section 46A

46A—Division does not apply to an application relating to inadvertent dealings

New section 46A provides that Division 3 of Part 5 does not apply to an application for a GMO licence if the Regulator is satisfied that—

the dealings proposed to be authorised by the licence are limited to dealings to be undertaken for the purposes of, or for purposes relating to, disposing of a GMO; and

the applicant for the licence came into possession of the GMO inadvertently.

15—Substitution of section 49

49—Division does not apply to an application relating to inadvertent dealings

Current section 48 makes provision for applications to which Division 4 of Part 5 apply. Substituted section 49 clarifies the position to provide that, despite section 48, Division 4 does not apply to an application for a GMO licence if the Regulator is satisfied that—

- the dealings proposed to be authorised by the licence are limited to dealings to be undertaken for the purposes of, or for purposes relating to, disposing of a GMO; and
- the applicant for the licence came into possession of the GMO inadvertently.

16—Amendment of section 50—Regulator must prepare risk assessment and risk management plan

These proposed amendments are consequential on the insertion of proposed section 50A and allow the Regulator to prepare a risk assessment and risk management plan without consulting with the various bodies set out in current section 50(3) if new section 50A applies in relation to the application for the licence.

17—Insertion of section 50A

50A—Limited and controlled release applications

Proposed section 50A(1) provides that this section applies to an application for a licence if the Regulator is satisfied that—

- the principal purpose of the application is to enable the licence holder, and persons covered by the licence, to conduct experiments; and
- the application proposes, in relation to any GMO in respect of which dealings are proposed to be authorised—
  - controls to restrict the dissemination or persistence of the GMO and its genetic material in the environment; and
  - limits on the proposed release of the GMO; and
- the Regulator is satisfied that the controls and limits are of such a kind that it is appropriate for the Regulator not to seek the advice referred to in section 50(3).

18—Amendment of section 51—Matters Regulator must take into account in preparing risk assessment and risk management plan

The first amendment proposed to this section will remove the unnecessary reference to the matters set out in current section 49(2)(a) to (f) and insert, instead, a reference to matters prescribed by regulation. The other proposed amendments tidy up subsection (2) and are related to the amendments proposed by clauses 16 and 17.

19—Amendment of section 52—Public notification of risk assessment and risk management plan

These proposed amendments set out some additional requirements relating to public notification by the Regulator of the risk assessment and risk management plan.

20—Amendment of section 56—Regulator must not issue the licence unless satisfied as to risk management

These proposed amendments insert a reference to a risk assessment and risk management plan being prepared under section 47 in current subsection (1) and a note that provides that subsections (2)(a), (b) and (c) do not apply to an inadvertent dealings application.

21—Amendment of section 57—Other circumstances in which Regulator must not issue the licence

This clause provides for a new subsection to be inserted in current section 57 which provides that subsection (2) does not apply to an inadvertent dealings application.

22—Amendment of section 60—Period of licence

This clause provides for an additional subsection that provides that a licence issued as a result of an inadvertent dealings application must not be expressed to be in force for a period of longer than 12 months.

23—Amendment of section 67—Protection of persons who give information

This amendment is consequential.

24—Amendment of section 71—Variation of licence

The proposed amendments to this clause will allow for the Regulator to vary a licence (by notice in writing) at any time on the Regulator's own initiative, or on application by the licence holder. This power of the Regulator is subject to a number of exceptions or conditions inserted under the proposed amendments.

25—Amendment of section 72—Regulator to notify of proposed suspension, cancellation or variation

The proposed amendment provides that the Regulator is not required to give written notice of a proposed variation of a licence to the licence holder if the variation is of minor significance or complexity.

26—Redesignation of section 72A

It is proposed to redesignate current section 72A as section 72AA to allow for new Part 5A to be inserted into the South Australian Act (see clause following).

27—Insertion of Part 5A

Part 5A—Emergency dealing determinations

Division 1—Simplified outline

72A—Simplified outline

New section 72A provides that new Part 5A creates a system under which the Minister can make a determination relating to dealings with GMOs in an emergency.

Division 2—Making of emergency dealing determination

72B—Minister may make emergency dealing determination

New section 72B(1) gives the Minister power to make an emergency dealing determination by order published in the Gazette. The emergency dealing determination effectively authorises the specified dealings with a GMO so that the penalty provisions in Part 4 of the Act will not apply.

In accordance with the nationally consistent scheme, new section 72B(2) provides that the Minister may make an emergency dealing determination only if the relevant Commonwealth Minister has already made, or is proposing to make, such a determination, known as 'a corresponding Commonwealth emergency dealing determination'.

Section 72B(2) of the Commonwealth Act sets out the conditions under which the Commonwealth Minister is permitted to make an emergency dealing determination. It provides that, before making an emergency dealing determination, the Commonwealth Minister must—

- have received advice from the Commonwealth Chief Medical Officer, the Commonwealth Chief Veterinary Officer, the Commonwealth Chief Plant Protection Officer or a person specified in the regulations, that there is an actual or imminent threat to the health and safety of people or the environment and that the dealings proposed to be specified in the emergency dealing determination would, or would be likely to, adequately address the threat; and
- be satisfied that there is an actual or imminent threat to the health and safety of people or the environment and that the dealings proposed to be covered by the emergency dealing determination would, or would be likely to, adequately address the threat; and
- be satisfied that the risks posed by the proposed dealings can be managed safely, and have received advice from the Regulator to that effect.

States and Territories must also have been consulted about the proposed emergency dealing determination. This means that before making a determination under new section 72B(1) of the Act, the Minister will have had input into the decision-making process leading to the 'corresponding Commonwealth emergency dealing determination'.

It is noted that examples given in section 72B(3) of the Commonwealth Act of situations in which it may be appropriate to make an emergency dealing determination include—

- where there is a threat of disease; or
- where there is a threat from an animal or plant (such as a pest or alien invasive species); or
- where there is a threat from industrial spillage.

The new section makes it clear that the threat must be actual and imminent for the emergency provisions to apply. It is expected that the provisions will only be utilised if a threat is serious and immediate.

New section 72B(1) restricts the Minister's power to make an emergency dealing determination to making a determination the same as any made or proposed by the Commonwealth Minister, to ensure that the exemption from all the offences in Part 4 in relation to that dealing will apply consistently to all those dealing with GMOs throughout the State.

New section 72B(4) sets out the types of dealings for which the Minister will be able to make an emergency dealing determination. It makes clear that the determination may be in respect of all dealings with a GMO, a specified class of dealings, or 1 or more specified dealings and may relate to a specific GMO or a class of GMOs. This provision is drafted in similar terms to existing section 32(4) of the Act dealing with exempt GMOs.

72C—Period of effect of emergency dealing determination

New section 72C(1) sets out that a determination can take effect on the day it is made or at a specified later date. In other words, the determinations cannot apply retrospectively. Subsection (2) provides that a determination ceases to have effect on a date specified in the determination, or the date on which the determination is revoked, or after 6 months, whichever occurs first; and subsection (3) provides that the Minister may extend an emergency dealing determination by order published in the Gazette.

New subsection (4) provides that the Minister may extend the emergency dealing determination more than once, but only for up to 6 months at a time. New subsection (5) provides that the Minister may extend the period of effect of an emergency dealing determination if the Commonwealth Minister has extended the period of effect, or is proposing to extend the period of effect, of the corresponding Commonwealth emergency dealing determination. New subsection (6) provides that an order extending the period of effect of an emergency dealing determination takes effect at the time the original determination would have ended if not extended.

Division 3—Effect and conditions of emergency dealing determination

72D—Emergency dealing determination authorises dealings, subject to conditions

New section 72D(1) allows conditions to be imposed on an emergency dealing determination. Paragraphs (a) to (v) of subsection (2) give examples of the conditions that may be imposed. These include conditions relating to the quantity of GMO, the scope of dealings, the source of GMO, the person who may deal with the GMO, information required to be given to persons permitted to deal with a GMO, additional information that must be provided to the Regulator and the storage and security of the GMO amongst other things. Subsection (2)(w) clarifies that the conditions the Minister may impose are not limited to the matters listed in paragraphs (a) to (v) but that the Minister may impose conditions over any other matter he or she considers appropriate.

Paragraphs (a) to (v) of subsection (2) correspond to the current sections 62, 63 and 64, which relate to the conditions that may be imposed on licences.

Subsection (2)(f) provides that a condition may specify the person who may deal with the GMO and subsection (3) makes it clear that it is not necessary to specify a single person, that a condition can specify persons or a class of persons who may deal with the GMO. There are no restrictions on who may be included in the class of persons who may deal with the GMO, or how large the class may be.

Subsection (4) is drafted in similar terms to current section 64. It provides that it is a condition of an emergency dealing determination that a person permitted to deal with a GMO under an emergency dealing determination must allow the Regulator (or delegate) to enter premises where the dealing is being undertaken, in order to conduct audits, or monitor the dealings covered by the emergency dealing determination. This allows the Regulator to undertake routine or 'on-the-spot' auditing or monitoring of dealings covered by an emergency dealing determination. Subsection (5) makes it clear that subsection (4) does not limit the conditions that may be placed on an emergency dealing determination.

Division 4—Variation, suspension and revocation of emergency dealing determination

72E—Variation, suspension and revocation of emergency dealing determination

New section 72E(1) provides that the Minister may, by order in the Gazette, vary the conditions of an emergency dealing determination if the relevant Commonwealth Minister has made, or is proposing to make, the same variation to the corresponding Commonwealth emergency dealing determination. This power to vary includes the power to impose new conditions.

New section 72E(2) provides that the Minister may, by order in the Gazette, suspend or revoke an emergency dealing determination if the relevant Commonwealth Minister has suspended or revoked, or is proposing to suspend or revoke, the corresponding Commonwealth emergency dealing determination.

The corresponding provisions of the Commonwealth Act set out the relevant circumstances for the Commonwealth Minister.

Paragraph (a) of subsection (4) provides that a variation, suspension or revocation of an emergency dealing determination may take effect immediately only if the Minister states that this is necessary to prevent imminent risk of death, serious illness or serious injury or serious damage to the environment and paragraph (b) provides that, in any other case, the variation, suspension or revocation will take effect on the day specified by the Minister in the order making the variation, suspension or revocation.

Subsection (5) provides that the date specified in the order under subsection (4)(b) must be 30 days or more after it is made.

28—Amendment of section 78—Regulator may include dealings with GMOs on GMO register

This clause proposes to amend section 78(3) of the Act to remove the requirement that a registration of a dealing, made on the application of a licence holder, can only take effect if the licence authorising the dealing ceases to be in force.

29—Amendment of section 82—Simplified outline

This clause will amend the simplified outline to Part 7 of the South Australian Act to include conditions of an emergency dealing determination, along with licence conditions, as conditions that could require a facility to be certified under Division 2 of the Part, or an organisation to be accredited under Division 3 of the Part.

30—Amendment of section 83—Application for certification

This clause inserts words into the note at the foot of section 83(2) to make clear that the conditions of an emergency dealing determination could require a facility to be certified under Division 2 of Part 7.

31—Amendment of section 89—Regulator to notify of proposed suspension, cancellation or variation

This clause inserts a new subsection (7), which provides that section 89, which includes, among other things, requirements of notice of proposed variations of certification, does not apply where the proposed variation is of minor significance or complexity.

32—Insertion of section 89A

89A—Transfer of certification

New section 89A(1) provides for transfers of certification by way of a joint application between the holder of the certification and the transferee; subsection (2) requires the application to be in writing and contain information prescribed by the Regulations or specified in writing by the Regulator; subsection (3) prohibits the Regulator from transferring certification unless satisfied that the conditions to which the certification is subject will continue to be met; subsection (4) requires the Regulator to give written notice of his or her decision to the applicants; and subsection (5) provides for the transfer, if approved, to take effect on the date specified in the notice, for the certification to continue in force and for the certification to be subject to the same conditions which applied before the transfer.

33—Amendment of section 91—Application for accreditation

This clause replaces the note at the foot of section 91(1) with notes that make it clear that the conditions of an emergency dealing determination could require supervision by an Institutional Biosafety Committee (*IBC*).

34—Amendment of section 92—Regulator may accredit organisations

This clause amends section 92(2)(a) to remove the obligation for the Regulator to have regard to whether or not an organisation proposes to establish an IBC for the purposes of deciding whether to accredit an organisation. The other proposed amendment substitutes paragraphs (b) and (c) of subsection (2) and inserts a new paragraph (ca). The new provisions require the Regulator, for purposes of accrediting organisations, to have regard to—

- whether an organisation will be able to maintain an IBC already established;
- whether an organisation has appropriate indemnity arrangements if the organisation has established an IBC;
- whether or not the organisation will be in a position to use an IBC established by another accredited organisation.

35—Amendment of section 97—Regulator to notify of proposed suspension, cancellation or variation

This clause inserts a new subsection (7) which provides that section 97, which includes, among other things, requirements of notice of proposed variations of accreditation, does not apply where the proposed variation is of minor significance or complexity.

36—Substitution of heading to Part 8

It is proposed to amend the heading to Part 8 to the Gene Technology Technical Advisory Committee and the Gene Technology Ethics and Community Consultative Committee as a result of combining the Gene Technology Ethics Committee (the *Ethics Committee*) and the Gene Technology Community Consultative Committee (the *Consultative Committee*) into 1 advisory committee. The combined committee will be known as the Gene Technology Ethics and Community Consultative Committee (the *Ethics and Community Committee*) and will carry

out the combined functions of both committees as well as providing advice on risk communication and community consultation in relation to intentional release licence applications.

The object of the amendments proposed to Part 8 is to increase efficiency by addressing the overlap between the roles of the Ethics Committee and the Consultative Committee. The new committee will also allow relevant skills to be distributed across its membership so that the committee is able to provide clear, balanced, appropriate and more coordinated advice.

37—Amendment of section 99—Simplified outline

This clause amends the simplified outline of Part 8 in section 99 to replace the names of the previously existing committees with that of the new combined committee.

38—Amendment of heading to Part 8 Division 3

39—Amendment of section 106—The Gene Technology Ethics and Community Consultative Committee

These proposed amendments are consequential.

40—Substitution of section 107

107—Function of Ethics and Community Committee

New section 107 provides that the function of the Ethics and Community Committee will be to provide advice, at the request of the Regulator or the Ministerial Council, on—

- matters on which the Ethics Committee currently advises;
- matters on which the Consultative Committee currently advises;
- community consultation matters relating to intentional release licence applications; and
- risk communication matters relating to dealings that involve the intentional release of a GMO into the environment.

Risk communication involves an interactive dialogue between risk assessors, risk managers and stakeholders. It underpins the processes of risk assessment and risk management.

The new section 107 is not intended to mandate the examination of every intentional release application; instead it is intended to permit the Regulator to seek advice in relation to certain types of releases that might be precipitated by such an application.

The matters on which the Ethics Committee currently advises are set out in section 112 of the current Act. These are—ethical issues relating to gene technology; the need for, and content of, codes of practice in relation to ethics in respect of conducting dealings with GMOs; and the need for, and content of, policy principles in relation to dealings with GMOs that should not be conducted for ethical reasons. These matters have been incorporated into new section 107(a), (b) and (c).

The matters on which the Consultative Committee currently advises are set out in current section 107. These are—matters of general concern identified by the Regulator in relation to applications, matters of general concern in relation to GMOs, and the need for policy principles, policy guidelines, codes of practice and technical and procedural guidelines in relation to GMOs and GM products and the conduct of such principles, guidelines and codes. These matters have been incorporated into new section 107(d), (g), and (h).

41—Amendment of section 108—Membership

42—Amendment of section 109—Remuneration

43—Amendment of section 110—Regulations

44—Repeal of section 110A

45—Repeal of heading

46—Substitution of sections 111 to 116

The amendments to clauses 41 to 46 are consequential on the proposed changes to the Gene Technology Ethics and Community Consultative Committee in Part 8.

47—Amendment of section 136A—Quarterly reports

This clause inserts 2 new paragraphs into section 136A(2) to provide that quarterly reports prepared by the Regulator and given to the Minister must include information about any emergency dealing determination made by the Minister and any breaches of conditions of an emergency dealing determination that have come to the Regulator's attention during the quarter.

48—Amendment of section 138—Record of GMO and GM Product Dealings

This clause inserts a new subsection (1A) into the South Australian Act providing that the Record of GMO and GM Product dealings required under Division 6 of Part 9 must include comprehensive information, except confidential commercial information, about the content of emergency dealing determinations. The clause also makes

a consequential amendment to subsection (5) to ensure that this information is entered on the Record as soon as reasonably practicable.

49—Amendment of section 145—Simplified outline

This clause inserts a new paragraph into the simplified outline of Part 10 of the South Australian Act. This makes it clear that Part 10 enables the Regulator to give directions to a person permitted to deal with a GMO under an emergency dealing determination.

50—Amendment of section 146—Regulator may give directions

This clause amends section 146(2) to provide that the Regulator may give directions to a person dealing with, or who has dealt with, a GMO specified in an emergency dealing determination in the circumstances set out in that subsection. The other amendments proposed to the section are consequential with new subsection (2A) setting out the matters to which regard must be had when deciding whether it is desirable to exercise the powers under the section.

51—Amendment of section 149—Simplified outline

This clause inserts a reference to an emergency dealing determination into the simplified outline in section 149. This makes it clear that Part 11 does not limit the conditions to which an emergency dealing determination can be subject.

52—Amendment of section 152—Powers available to inspectors for monitoring compliance

This clause inserts a new paragraph (d) in current subsection (2) to make it clear that an inspector may enter premises and exercise monitoring powers set out in section 153 for the purpose of finding out whether the Act or regulations have been complied with, if the occupier of the premises is a person dealing with, or who has dealt with, a GMO specified in an emergency dealing determination and entry is at a reasonable time.

53—Amendment of section 177—Part does not limit power to impose conditions

This clause amends section 177 to make it clear that Part 11 is not to be taken to limit either the Regulator's power to impose licence conditions, or the Minister's power to impose conditions on an emergency dealing determination.

54—Amendment of section 179—Meaning of terms

This clause inserts various new items into the table in section 179 of the South Australian Act. These make it clear that the Regulator's decision to refuse—

(a) to consider an application on the basis that the applicant is not a suitable person to hold a licence; or

(b) to transfer a licence; or

(c) to vary a licence; or

(d) to transfer a certification,

is a reviewable decision, and that the eligible person can apply to the Administrative Appeals Tribunal under section 183 of the Act for review of the decision.

55—Amendment of section 182—Deadlines for making reviewable decisions

This clause amends the wording of section 182(a) so as to extend the application of section 182 to all applications to the Regulator, not just applications to the Regulator to make a reviewable decision. The wording 'reviewable decision to reject the application' is to be inserted in the section, thereby removing any doubt that a deemed rejection of an application on account of elapse of time is reviewable under the Act.

56—Amendment of section 185—Regulator may declare that information is confidential commercial information

This clause adds a new subsection (3B) into the section which would provide that information specified for the purposes of an application for a declaration that information is confidential commercial information (*CCI*), is treated as CCI until the Regulator has made a decision on the application.

57—Amendment of section 192A—Interference with dealings with GMOs

This clause amends the definition of authorised GMO dealings in section 192A(2) to include a reference to dealings specified in an emergency dealing determination that are not prohibited by the determination from being undertaken.

Debate adjourned on motion of Hon. D.W. Ridgway.

At 16:42 the council adjourned until Wednesday 15 October 2008 at 14:15.