LEGISLATIVE COUNCIL

Tuesday 25 November 2008

The PRESIDENT (Hon. R.K. Sneath) took the chair at 14:19 and read prayers.

PARTNERSHIPS (VENTURE CAPITAL) AMENDMENT BILL

His Excellency the Governor assented to the bill.

PLASTIC SHOPPING BAGS (WASTE AVOIDANCE) BILL

His Excellency the Governor assented to the bill.

GENE TECHNOLOGY (MISCELLANEOUS) AMENDMENT BILL

His Excellency the Governor assented to the bill.

ANSWERS TO QUESTIONS

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

MINISTERIAL STAFF

131 The Hon. R.I. LUCAS (12 February 2008) (Second Session).

1. Can the minister advise the names of all officers working in the minister's office as at 1 December 2006?

2. What positions were vacant as at 1 December 2006?

3. For each position, was the person employed under ministerial contract, or appointed under the Public Sector Management Act?

4. What was the salary for each position and any other financial benefit included in the remuneration package?

5. (a) What was the total approved budget for the minister's office in 2006-07; and

   (b) Can the minister detail any of the salaries paid by a department or agency rather than the minister's office budget?

6. Can the minister detail any expenditure incurred since 2 December 2005 and up to 1 December 2006 on renovations to the minister's office and the purchase of any new items of furniture with a value greater than $500?

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): I am advised:

1,3 & 4. Details of ministerial contract staff were printed in the *Government Gazette* dated 5 July 2007.

In addition:

Details of public servant staff located in the minister's office as at 1 December 2006 were as follows:

1. Position Title	3. Ministerial Contract/PSM Act	4. Salary & Other Benefits
Administrative Assistant	PSM Act	$24,481
Receptionist	PSM Act	$38,787
Correspondence Officer	PSM Act	$37,253
Senior Administration Officer	PSM Act	$49,584
PA to Chief of Staff	PSM Act	$49,584
PA to Minister	PSM Act	$51,874
Parliamentary Officer	PSM Act	$50,729
Senior Project Officer	PSM Act	$51,874
Ministerial Liaison Officer	PSM Act	$55,298
Executive Officer	PSM Act	$61,944

1. Position Title	3. Ministerial Contract/PSM Act	4. Salary & Other Benefits
Cabinet Liaison Officer	PSM Act	$64,060
Ministerial Liaison Officer	PSM Act	$66,024
Ministerial Liaison Officer	PSM Act	$66,024
Ministerial Liaison Officer	PSM Act	$67,989
Ministerial Liaison Officer	PSM Act	$70,714
Office Manager	PSM Act	$70,714

2. The assistant to advisers position was vacant as at 1 December 2006.

5. (a) The total approved budget for the Minister's office for 2006-07 was $1,767,000.

(b) Salaries paid by Departments or Agencies were:

Position	Department/Agency	Salary
Ministerial Liaison Officer	Department of Health	$55,298
Cabinet Liaison Officer	Department for Environment and Heritage	$64,060
Ministerial Liaison Officer	Department of Health	$66,024
Ministerial Liaison Officer	Department for Environment and Heritage	$66,024
Ministerial Liaison Officer	Department of Health	$67,989
Ministerial Liaison Officer	Department of Water, Land & Biodiversity Conservation	$70,714

6 In the period 2 December 2005 up to 1 December 2006 a total cost of $9,193 was spent on renovations in the minister's office and no furniture was purchased where the items were of greater value than $500.

MINISTERIAL STAFF

146 The Hon. R.I. LUCAS (12 February 2008) (Second Session).

1. Can the minister advise the names of all officers working in the minister's office as at 1 December 2007?

2. What positions were vacant as at 1 December 2007?

3. For each position, was the person employed under ministerial contract, or appointed under the Public Sector Management Act?

4. What was the salary for each position and any other financial benefit included in the remuneration package?

5. (a) What was the total approved budget for the Minister's office in 2007-08; and

(b) Can the minister detail any of the salaries paid by a department or agency rather than the minister's office budget?

6. Can the minister detail any expenditure incurred since 2 December 2006 and up to 1 December 2007 on renovations to the minister's office and the purchase of any new items of furniture with a value greater than $500?

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): I am advised:

1,3 & 4. Details of ministerial contract staff were printed in the *Government Gazette* dated 3 July 2008.

In addition:

Details of public servant staff located in the minister's office as at 1 December 2007 were as follows:

1. Position Title	3. Ministerial Contract/PSM Act	4. Salary & Other Benefits
Trainee	PSM Act	$18,258
Correspondence Officer	PSM Act	$41,550
Correspondence Officer	PSM Act	$43,193
Parliamentary Officer	PSM Act	$46,475

1. Position Title	3. Ministerial Contract/PSM Act	4. Salary & Other Benefits
Assistant to Advisers	PSM Act	$46,475
Senior Project Officer	PSM Act	$53,115
PA to Chief of Staff	PSM Act	$53,115
Senior Administration Officer	PSM Act	$54,343
PA to Minister	PSM Act	$55,569 plus allowance of $3,665
Ministerial Liaison Officer	PSM Act	$66,356 plus allowance of $2,267
Cabinet Liaison Officer	PSM Act	$72,832
Ministerial Liaison Officer	PSM Act	$72,832
Ministerial Liaison Officer	PSM Act	$72,832
Ministerial Liaison Officer	PSM Act	$75,751
Ministerial Liaison Officer	PSM Act	$75,751
Office Manager	PSM Act	$75,751

2. The following positions were vacant as at 1 December 2007:

- Administrative Assistant
- Receptionist
- Executive Officer

5. (a) The total approved budget for the Minister's office for 2007-08 was $1,815,000

(b) Salaries paid by Departments or Agencies were:

Position	Department/Agency	Salary
Ministerial Liaison Officer	Department of Health	$66,356 plus allowance of $2,267
Cabinet Liaison Officer	Department for Environment and Heritage	$72,832
Ministerial Liaison Officer	Department of Health	$72,832
Ministerial Liaison Officer	Department of Health	$72,832
Ministerial Liaison Officer	Department for Environment and Heritage	$75,751
Ministerial Liaison Officer	Department of Water, Land and Biodiversity Conservation	$75,751

6. In the period 2 December 2006 up to 1 December 2007 a total cost of $3,134 was spent on renovations in the minister's office and $810 was expended to purchase new furniture where the items were of a greater value than $500.

TONSLEY AND BELAIR RAILWAY LINES

163 The Hon. D.G.E. HOOD (24 September 2008). Will the Minister for Transport commit to continuation of rail services to stations on the existing Tonsley rail line and Belair rail line?

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 Transport has provided the following information:

The government does not have any current plans to discontinue rail services to stations on the existing Tonsley and Belair rail lines.

TONSLEY AND BELAIR RAILWAY LINES

284 The Hon. D.G.E. HOOD (3 July 2008). (Second Session). Will the Minister for Transport commit to continuation of rail services to stations on the existing Tonsley rail line and Belair rail line?

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 Transport has provided the following information:

The government does not have any current plans to discontinue rail services to stations on the existing Tonsley and Belair rail lines.

MINISTERIAL STAFF

191 The Hon. R.I. LUCAS (12 February 2008) (Second Session). Can the minister state:

1. What was the total cost of any overseas trip undertaken by the minister and staff since 2 December 2006 up to 1 December 2007?

2. What are the names of the officers who accompanied the minister on each trip?

3. Was any officer given permission to take private leave as part of the overseas trip?

4. Was the cost of each trip met by the minister's office budget, or by the minister's department or agency?

5. (a) What cities and locations were visited on each trip; and

(b) What was the purpose of each visit?

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): For the period 2 December 2006 and up to 1 December 2007:

1. Cost of Trip	2. Accompanying Officers	3. Private Leave Taken	4. Cost met by Minister's Office or Dept/Agency	5. (a) Cities & Locations Visited	5. (b) Purpose of Trip
$46,144.54	Chief of Staff Ministerial Adviser	No	Minister's office budget	Frankfurt Stockholm Edinburgh Dublin Novara	Waste Management and Recycling Swedish Government—Mental Health and Substance Abuse Alcohol Focus Scotland NHS for Health Scotland Scottish Parliament National Parks Plastic Single Use Shopping Bags Wicklow Mountains National Park 'Mater-Bi'—90% starch based product which is fully biodegradable

PAPERS

The following papers were laid on the table:

By the President—

Auditor-General—Supplementary Report 2007-08
Reports 2007-08—
Corporation—City of West Torrens
District Councils—
Barunga West
Copper Coast
Mount Remarkable
Peterborough
Tatiara
Tumby Bay

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

Reports 2007-08—
Claims Against the Legal Practitioners Guarantee Fund
Legal Practitioners Disciplinary Tribunal
Section 71 of the Evidence Act 1929—Suppression Orders
South Australian Multicultural and Ethnic Affairs Commission
State of the Service
Premier's Climate Change Council—Report from 1 February to 30 June 2008
Section 83B of the Summary Offences Act 1953—Dangerous Area Declarations—for the period 1 July 2008 to 30 September 2008
Section 74B of the Summary Offences Act 1953—Road Block Establishment Authorisations—for the period 1 July 2008 to 30 September 2008

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

Bio Innovation SA—Report 2007-08
Regulation under the following Act—
Aquaculture Act 2001—Environmental Monitoring and Reporting

By the Minister for State/Local Government Relations (Hon. G.E. Gago)—
Reports 2007-08—
Adelaide Dolphin Sanctuary Act 2005
Adelaide Festival Centre
Animal Welfare Advisory Committee
Children's Services
Dental Board of South Australia
Freedom of Information Act 1991
Native Vegetation Council
Non-Government Schools Registration Board
Podiatry Board of South Australia
South Australian Dog Fence Board
South Australian Psychological Board
South Australian Youth Arts Board—Carclew Youth Arts
State Theatre Company of South Australia
Zero Waste SA
A Review of Innamincka Regional Reserve—Report 1998-08
A Review of Simpson Desert Regional Reserve—Report 1998-08
Future Use of the Royal Adelaide Hospital Site, pursuant to Section 23 of the Adelaide Park Lands Act 2005—Report
Land Identified as the Site for the Marjorie Jackson-Nelson Hospital, pursuant to Section 23 of the Adelaide Park Lands Act 2005—Report
Regulation under the following Act—
Environment Protection Act 1993—Site Contamination

SELECT COMMITTEE ON IMPACT OF PEAK OIL ON SOUTH AUSTRALIA

The Hon. SANDRA KANCK (14:22): I lay on the table the report of the select committee, together with minutes of proceedings and evidence.

Report received and ordered to be published.

QUESTION TIME

OUTBACK COMMUNITIES

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:31): I seek leave to make a brief explanation before asking the minister responsible for urban development and planning and also for mineral resources development a question about the mining boom and its impact on outback communities.

Leave granted.

The Hon. D.W. RIDGWAY: Last week I had the very great pleasure of travelling north to the township of Andamooka. I always enjoy getting out of the city and getting back to—

The Hon. B.V. Finnigan interjecting:

The Hon. D.W. RIDGWAY: I beg your pardon?

The Hon. B.V. Finnigan interjecting:

The Hon. D.W. RIDGWAY: Chuck him out!

The Hon. I.K. Hunter: Don't listen to him. Get on with your question, mate.

The Hon. D.W. RIDGWAY: Thank you for your good advice. I was in Andamooka at the request of the Andamooka Progress and Opal Miners Association. For the benefit of members, I first went to Andamooka as a member of parliament in my first term. It was then a township of roughly 200 people and a very unique and interesting part of South Australia's heritage—well preserved as an opal mining town. It now has a population in excess of 900 and is without any real planning controls at all. We know there are significant developments at the Roxby Downs mine and, in fact, the construction camp that will be built north-east of Roxby Downs will be within 12 kilometres of Andamooka.

The minister changed the Andamooka development plan so that the minimum allotment size must now be 1,200 square metres, but that does not account for the 200 allotments of about 600 square metres that have not been built upon. It is interesting to note that development goes on in that community without any real structured plan for the town.

I noted there was a new school, because the old one had been burnt down. It is a lovely new school, with some great teachers and wonderful kids; and, in fact, the childcare centre is being used by people from Roxby Downs. However, with no planning control, approval has been granted for a 300 person, single men's quarters at the back fence of the primary school. Just down the road from the new school is the hotel, which I am told is applying to have 40 poker machines installed.

I have advice from the locals that there is now an element of bikies in the town and, unfortunately, there are now suggestions that there is some prostitution activity happening in the town; in fact, some of the locals suggested that development approval had been granted for a building they expect will be used for that particular activity (although, of course, the owner would not be claiming that proposed use).

Of course, there is no common effluent drainage; water is supplied. After the many attempts of my colleague the Hon. Terry Stephens to get the minister and the government to address it, we finally have some water, but it is only delivered to a standpipe.

With respect to police, I inform the Leader of the Government (the former minister for police) that there is one officer there working on a four-day on, four-day off basis. So, out of every eight days, for four days there is no police officer on duty. The list goes on, if you like, of problems that are likely to arise as a result of the mining boom, and I suspect that the town population could well grow to in excess of 2,000. Given the obvious benefits of the mining boom that we hear the minister and the Premier often talking about and spruiking, why has the government turned its back on Andamooka?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:35): Indeed, the government has far from turned its back on Andamooka, and it is nice to know that the Leader of the Opposition has finally discovered it, because the issues that he raised in his question refer to matters some of which were one or two years ago.

The leader said that there are no planning controls. That is exactly the reason why this government, almost 12 months ago, introduced some controls over subdivision within the town. A development plan for the out-of- council districts, which included Andamooka, was introduced then, with a minimum size, to ensure that the sorts of developments the honourable member was talking about would not be permitted in the future. There certainly was a time several years ago when the local progress association was assessing a handful of applications every year. It went up to about 30 or so in one quarter and, as a result, I and my colleague the Minister for State/Local Government Relations responded to that.

What the honourable member failed to point out is that, under the term of this government, in fact, water has been provided to the outskirts of the town. What the honourable member also

needs to reflect on is that Andamooka is one of those towns where its character has been its principal drawcard for many individuals there.

While there are some within that community who wish for a greater level of intervention, there is also a strong view amongst some other residents of the town (if the honourable member had stayed long enough he would probably have met some of them) that they do not want to see their town turned into just another town within this state. They like the fact that there are more limited controls within their town. Of course, that also includes the fact that they do not pay any council rates. I think it should be pointed out that—

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: That town was set up for opal mining. It has been there for many years—in fact, did the honourable member have a look at those huts along the main street, which have been there since the 1920s or 1930s, or whatever? That town well predates Roxby Downs, and it is only because of the development of Roxby Downs that it has been able to get sealed roads and, indeed, the water. The water that is provided to the town comes from the desalination plant at Roxby Downs. So, in fact, those are the benefits that have been derived.

It also should be pointed out that, in August 2006, the state government provided an additional $150,000 in funding to the Outback Areas Community Development Trust to appoint a municipal development officer in 2008 to support the community and provide a central contact point for state agencies.

I am sure that, if the honourable member talks to my colleague the Minister for State/Local Government Relations, she will be able to inform him how she and her predecessor have been working hard in relation to providing greater resources to the community. As I pointed out before, it should be remembered that members of that community do not pay any rates, and there is some significant opposition to it.

What the honourable member also failed to mention is that a subsidy is paid in relation to the generation of electricity in towns such as Coober Pedy and Andamooka. Indeed, that subsidy has been growing, particularly while the fuel was going—

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

The Hon. P. HOLLOWAY: Yes—and, indeed, this has the Outback areas trust, which has been given support by this government. It was not given by the previous Liberal government. Andamooka did not suddenly invent itself in 2008: it has been there for 60 or 70 years. However, under this government it has been discovered and has received—and it will continue to do so—facilities that were not given to it by the previous government.

However, I am one of those people who believes that the people of that community should be able to have a view about the future of their town. As I said, it is by no means unanimous that the town would necessarily want to have its own local government. Some people in the town would like greater controls and there are those who would bitterly resist it, but they are matters for my colleague the Minister for State/Local Government Relations I am sure she would be pleased to provide more information to the honourable member.

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

The Hon. P. HOLLOWAY: Well, she has not been sitting on her hands because, under this government, money has been provided to assist the council. The feedback I have received suggests that the planning controls imposed by this government have slowed down to a significant extent the ad hoc development that was taking place within Andamooka. Further, it is clear that, as a result of the pressure this government has put on BHP Billiton in relation to indenture negotiations, BHP is well aware of its responsibilities.

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: Well, let that go on the record, Mr President, because it really reflects on the total unsuitability of the Leader of the Opposition. He says that it has nothing to do with BHP. Why does a population go from 400 to 900—or whatever it is—in a short time? Does it have nothing to do with Olympic Dam or BHP? Clearly, BHP's policies will impact significantly on what happens in Andamooka. If there is insufficient housing within Roxby Downs, people will seek to move.

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: Well, I was explaining to the honourable member that, as a result of the pressure this government has put on BHP, we are getting BHP to accept more of its responsibilities in relation to releasing land in the township of Roxby Downs and reducing the cost of accommodation so there will be less pressure on Andamooka. That is probably as significant as anything else in terms of its impact. Andamooka has been under pressure. The reason it is under pressure is that it has provided a cheap alternative to Roxby Downs. The reason it has provided a cheap alternative is that that is the way people like it. Clearly, the pressures of development are causing problems in the town and this government has addressed those problems—and will continue to address them in significant ways.

OUTBACK COMMUNITIES

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:42): I have a supplementary question. Given that the minister claims that the government has introduced planning controls, will he explain how approval can be granted for a 300-person single men's quarters behind the primary school?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:43): My understanding is that that particular application took place some time ago. There was concern about that and, when it was drawn to the government's attention, we introduced the new development plan in order to seek to put constraints on exactly that type of development.

DEBT COLLECTORS

The Hon. J.M.A. LENSINK (14:43): I seek leave to make a brief explanation before asking the Minister for Consumer Affairs a question about debt collectors.

Leave granted.

The Hon. J.M.A. LENSINK: It has come to my attention that Accounts Control Management Services, a Sydney-based debt collection agency, has undertaken activities against South Australian consumers which one could only describe as questionable, including trying to recover Telstra account funds from the mother of a deceased person and, also, taking over a National Australia Bank account which had been paid out four years earlier. My questions are:

1. How many complaints does the Office of Consumer and Business Affairs receive every year in relation to all debt collectors?

2. Is the minister aware of the company Accounts Control Management Services?

3. What actions does the office take to ensure that consumers are aware of their rights and that they are not being illegally pursued and harassed by these companies?

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) (14:44): I am not aware of this particular example. It is not been brought to my attention, but I am happy to follow up the matter in order to determine the issues involved in it. In terms of the specific data on debt collections, I do not have the figures broken down for that, either, so I am happy to take those questions on notice and bring back a response.

APY LANDS

The Hon. S.G. WADE (14:45): I seek leave to make a brief explanation before asking the Minister for Road Safety a question about roads on the APY lands.

Leave granted.

The Hon. S.G. WADE: The opposition has recently been highlighting the neglect of road maintenance under this government and the impact on road safety. My question today relates to the road safety of one of the most vulnerable communities in this state. The road accident fatality rate amongst people living in the Anangu Pitjantjatjara Yankunytjatjara lands is three times that of other South Australians. The road network within the APY lands is around 4,000 kilometres, of which less than 20 per cent is sealed, formed or sheeted.

In June 2007, the Department for Transport, Energy and Infrastructure took over the management of the upgrade and maintenance of roads in the APY lands. The total funding for

routine and periodic maintenance, together with upgrading work for the current financial year, amounts to $639,609. The current funding represents:

- a 57 per cent decrease in the funding compared to the 2005-06 financial year;
- the current funding represents merely a tenth of the level of funding estimated by a 2006 consultant's report; and
- merely a third of the level of funding sought from the Aboriginal unit within the Premier's department in the 2008-09 budget process.

The opposition has been advised that the condition of the roads in the APY lands has become so bad that routine patrol grading is now taking up to 13 passes on some sections of the roads compared with seven to nine passes expected on a formed and sheeted unsealed road. My questions to the minister are:

1. What is the level of road death and injury amongst Aboriginal South Australians?

2. What is the government doing to bring down this rate?

3. In particular, when will the government address the backlog in road maintenance on the APY lands?

The Hon. CARMEL ZOLLO (Minister for Correctional Services, Minister for Road Safety, Minister for Gambling, Minister Assisting the Minister for Multicultural Affairs) (14:47): I thank the honourable member for his question in relation to road safety. In relation to road safety on the APY lands in particular, and the issues in relation to the APY lands, I think it is very much hypocritical of those opposite even to suggest that this government has taken no action. Clearly, this government has addressed so many issues on the APY lands.

The Hon. P. Holloway interjecting:

The Hon. CARMEL ZOLLO: As my colleague the Hon. Paul Holloway said, those opposite did not even have any police officers there. Yes, clearly a body of work is to be undertaken; and this government has shown the way and undertaken that body of work. It is very easy for the honourable member to throw around statistics such as that—'cheap shots', I think is probably a good way of describing it. I am advised that in this financial—

The Hon. S.G. Wade interjecting:

The Hon. CARMEL ZOLLO: What?

The Hon. P. Holloway: He asks the question and answers it himself!

The Hon. CARMEL ZOLLO: He answered it himself; precisely.

Members interjecting:

The PRESIDENT: Order!

The Hon. CARMEL ZOLLO: The state government will spend $267.8 million this financial year alone on road maintenance, road rehabilitation, resurfacing and other road investment—nearly double, I am advised, what the Liberal government's road transport investment was in 2001-02. In relation to our Aboriginal community—

Members interjecting:

The PRESIDENT: Order!

The Hon. CARMEL ZOLLO: —clearly there are some special needs in relation to licensing, in particular. It is something on which I know the Road Safety Advisory Council has been working, and—

Members interjecting:

The PRESIDENT: Order! The minister will resume her seat.

An honourable member interjecting:

The PRESIDENT: No. I told the minister to sit down until you came to order, and still you have not come to order.

The Hon. CARMEL ZOLLO: As I was saying, with respect to this government's commitment to road maintenance and road safety, clearly, the figures I have just put on the record speak for themselves. As I said, the hypocrisy of those opposite to suggest that this government does not care about the wellbeing of those on the APY lands really is astounding.

The Hon. D.W. Ridgway: When were you up there last?

The Hon. CARMEL ZOLLO: Well, I was up there, actually, about a year or so ago.

The Hon. D.W. Ridgway interjecting:

The Hon. CARMEL ZOLLO: Yes, I have. Why would I not go up there?

Members interjecting:

The PRESIDENT: Order!

The Hon. CARMEL ZOLLO: I place on record that I have been to the APY lands and, like everyone else, I appreciate the many challenges that face those who live on the lands. Clearly, there are different challenges facing the Aboriginal community, particularly in relation to youth in terms of licensing. The government will always work with those government officials already on the lands to ensure that those young people on the lands have just as much of an opportunity to obtain their licence as anyone else. Obviously, there are reasons for the statistics quoted by the honourable member in relation to the behaviour of some of the people who live on the lands. Again, in relation to how much we spend, I have already placed that information on the record. We will continue to work with the communities to ensure that we do see road safety improvements on the APY lands.

APY LANDS

The Hon. T.J. STEPHENS (14:52): I have a supplementary question. Minister, when you were on the APY lands 12 months ago, did you see then that the roads were appalling?

The Hon. CARMEL ZOLLO (Minister for Correctional Services, Minister for Road Safety, Minister for Gambling, Minister Assisting the Minister for Multicultural Affairs) (14:52): I suspect they were less appalling than they were under the Liberal government.

APY LANDS

The Hon. T.J. STEPHENS (14:52): Given that I was driving around on the lands for a few days, has the minister received any reports or complaints indicating that the roads on the lands are appalling and detract from our being able to get people to work on the lands?

The Hon. CARMEL ZOLLO (Minister for Correctional Services, Minister for Road Safety, Minister for Gambling, Minister Assisting the Minister for Multicultural Affairs) (14:52): I reiterate my response in relation to how much money this government has already spent. This financial year, the government has spent at least double what was spent in 2001-02 by members opposite. We all know that there are many challenges on the APY lands, and it is this government that has shown a commitment to improve all the conditions on those lands.

PETROLEUM EXPLORATION

The Hon. R.P. WORTLEY (14:53): My question is to the Minister for Mineral Resources Development. The Cooper Basin is widely recognised for its excellent exploration potential for petroleum explorers. Will the minister please provide information on the significance of the recent gas discovery by Beach Petroleum in the Cooper Basin and its impact on stimulating additional petroleum exploration investment in South Australia?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:54): Gas has been produced from the Cooper Basin since 1969 and oil has been produced since 1982, after billions of dollars of investment by the Santos joint venture.

This decade, the Cooper Basin has attracted record numbers of explorers new to the basin who have solely or in joint venture participated in 'company-making' oil discoveries, after committing to very high exploration tenement work programs.

Adelaide-based Beach Petroleum's high level of recent exploration success in the Cooper Basin, particularly along its western flank, has made yet another significant discovery, this time

intersecting high quality gas-filled sandstones in the Brownlow exploration well, with Sydney-based joint venture partner Great Artesian Oil and Gas.

The significance of this discovery is that the exploration success achieved by Beach Petroleum confirms that advanced 3D seismic imaging and interpretation technologies are predictive and can enable deliberate exploration strategies for gas in stratigraphic traps, in addition to providing valuable information for the development of gas held in conventional structural traps. To briefly explain, a stratigraphic trap differs from a conventional trap in that it is created through the ceiling of a reservoir bed due to lithology changes rather than by geological structure.

Conventionally, oil and gas companies targeted these structural traps that were associated with faults or bends or other geological features but, with this new three-dimensional information, the explorers can target what are called stratigraphic traps. Stratigraphic traps are, by their nature, elusive and difficult to identify, but they represent an important new breed of targets for oil and gas discoveries in the Cooper Basin.

The Brownlow discovery is now one of a number of gas fields of various sizes found by Beach and Great Artesian in their licence, and the Beach-Great Artesian joint ventures are planning further gas exploration drilling and, in particular, they plan to chase what are now better understood stratigraphic gas play targets.

So, once again, we can see that the Cooper Basin remains a wonderful incubator for what were initially relatively small upstream petroleum companies that can follow Santos' path, that is, to leverage success in exploration into significant and profitable Cooper Basin petroleum production which, in turn, underpins the financial capacity to undertake more exploration and results in significant growth in South Australia, interstate and, ultimately, on the international stage.

Hence, it is heartening to see that Beach Petroleum has, as of 30 June 2008, oil and gas reserves of 145 million barrels of oil equivalent and is expanding its position as an international oil and gas company with its recent announcement of acquiring interests in two highly promising Egyptian oil concessions. I understand that Beach will take a 20 per cent share in one area containing three existing undeveloped oil discoveries in the Gulf of Suez, with oil production planned for late 2009, and a second southern concession is operated by Santos Ltd with Beach Petroleum holding a 20 per cent share.

Moving back to the exciting news that 3D seismic imaging can now be used to improve the chances of finding gas in stratigraphic traps in the Cooper Basin, I am delighted to observe that this technological advance adds incentives for gas exploration investment in the Cooper Basin. Along with this technology breakthrough, petroleum exploration development will continue to be stimulated by the South Australian government through its one-stop shop for investment attraction and regulation and also with proposed amendments to the South Australian Petroleum Act 2000 under the planned Petroleum (Miscellaneous) Amendment Bill.

Amendments will introduce new categories of licences, including special facilities licences and gas storage licences. Both these kinds of licence will allow third-party owned facilities to be licensed and operated under the Petroleum Act. Under existing provisions of the Petroleum Act 2000, in the case of gas facilities, only petroleum production licence holders can be licensed to construct and operate such facilities.

These proposed enhancements to our legislation for the upstream petroleum sector provide greater flexibility to licensees for developing and commercialising gas projects, including the storage of gas for sale and the storage of greenhouse gas to reduce greenhouse gas emissions into the atmosphere.

Summing up, I think members will agree that Beach Petroleum's success in using advanced geophysical technologies to discover otherwise elusive gas in stratigraphic traps is a significant outcome worthy of emulation by all Cooper Basin explorers, and it is great news for the state. I also believe that members will be pleased to note that the industry continues to be vocal in its view that the longstanding bipartisan support of South Australian governments to sustain an efficient and effective one-stop shop for the upstream petroleum industry remains a significant comparative advantage for our state.

PETROLEUM EXPLORATION

The Hon. M. PARNELL (14:58): I have a supplementary question. Given the success of the gas discoveries that the minister has outlined, why is the government supporting coal to liquids projects which are known to be far dirtier in greenhouse terms than regular oil and gas?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:59): I think it is stretching the point to say that that is a supplementary question but, nevertheless, I am happy to answer. In relation to the announcement that was made last week in relation to Linc Energy, that company, at this stage, has exploration licences in the Arckaringa Basin. It is investigating various options but, until that company completes its exploration, I think it is premature to provide too much detail as to exactly what that company will advance. This government certainly permits and encourages exploration in the state so that the state's resources can be identified, but any exploitation of those resources will be subject to appropriate and stringent environmental controls.

I think it is much too early at this stage to draw conclusions in relation to any of those proposals of exploitation of this state's not inconsiderable coal resources. However, it is pleasing that this state has a number of resources, other than conventional hydrocarbons. In particular, we have hot rocks in abundance, and a significant proportion of this state's renewable energies is, in particular, wind and solar.

PARENTAL RIGHTS AND CHILD PROTECTION

The Hon. A. BRESSINGTON (15:00): I seek leave to make a brief explanation before asking the minister representing the Minister for Education a question about parental rights and child protection.

Leave granted.

The Hon. A. BRESSINGTON: Some time ago I raised the issue of a father who was deeply distressed over his two sons, who attend Northfield Primary School, and who are in the care of their mother. The father expressed concerns that his children were not receiving proper nourishment and care. He produced medical documents stating that both boys were in the low 5 percentile range for their age. He also produced documents which showed that the mother had failed to comply with a court order to undergo psychiatric evaluations.

I rang the school counsellor and he told me over the telephone that he was pleased that someone of some influence had become involved in the matter because he also had grave concerns for the wellbeing of these children. I attended a meeting at the school with a clinical psychologist, and the principal was less than forthcoming. In fact, she made excuses for the fact that the boys often did not take lunch to school. On one occasion the lunches, which the father had packed for the children one week prior, were still in their school bags, mouldy and rotten, when he picked them up for his visit. The father made a point of showing this to the school counsellor.

After no further action had been taken by the school, the father prepared a public interest disclosure statement which was sent to the ministers responsible for education and Families SA, the CEO of the Department of Education, the CEO of Families SA, and also to the school. He was requesting that this matter be looked into by someone in authority. Under the Whistleblowers Protection Act, once a person has filed a public interest disclosure statement he or she is protected by law against further reprisals. Approximately two weeks after the school received the PID, the father received a letter from a lawyer stating that the mother was returning to the Family Court to pursue sole custody of the children. In her affidavit she stated that she had been informed that the father was taking legal action against her. I have also received reassurance from the CEO of Families SA that no such information was passed on to the mother.

I have made a request to the school for documents to show that the father consistently pays the school canteen so that his children are guaranteed a decent lunch, and also to show the number of times that the children have remained in after-school care for extended periods. This is a matter of significant interest, because the mother does not work. I received correspondence from DECS stating that the cost of pulling these documents would be over $700 when, in actual fact, these documents would be in the school files, or at least should be.

Since PID, the school principal has refused to speak with the father or provide him with the documents needed to prove that his children regularly access the canteen at school because they are hungry. Based on information that I have, the school principal has also refused to meet with the father at all and has restricted his access to the school counsellor. Until this goes to court, the parents have a shared-care arrangement and the father pays for all the expenses of his children attending that school. Under the care and custody agreement, he has equal rights with the mother. My questions are:

1. Will the minister investigate this as a matter of urgency and take whatever action is needed to ensure that the father is provided with the documents to which he is legally entitled?

2. What is the education department's policy where a school counsellor has concerns over child abuse and neglect issues, and what support do counsellors receive to ensure that their reporting is acknowledged and acted on?

3. Under what policy and by what authority is the principal of the school acting when refusing to meet with or even speak with the father, and restricting his access to the school counsellor once the public interest disclosure statement had been received by the school?

4. Given that the guidelines for disclosure and follow-up are very clear, under the Whistleblowers Protection Act, will the minister instruct the principal to comply with the law as it is written?

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) (15:04): I thank the member for her questions and will refer them to the Minister for Education in another place and bring back a response.

LOCAL GOVERNMENT CONTRACTS

The Hon. R.I. LUCAS (15:05): I seek leave to make a brief explanation prior to asking the Minister for Local Government Relations a question about local government contracts.

Leave granted.

The Hon. R.I. LUCAS: In the last sitting week I asked a series of questions of the Leader of the Government on probity guidelines the government had applied during major contract negotiations, such as the now $1.4 billion desalination project. To summarise the leader's responses, he made clear that in his view he believed that strict probity guidelines applied to all cabinet ministers of the Rann government and to other officers as well. In part, he described the protocols outlined by the Crown Solicitor to him and to all cabinet ministers, which requires, in part:

> Protocols are that no minister or ministerial staff should meet with any potential bidder or adviser to a bidder in connection with any PPP-related issue, nor discuss a PPP project directly or indirectly with any bidder or adviser to a bidder.

He then went on to outline some exceptions in relation to fact finding processes if a minister was going on a fact finding mission or, if a minister was approached in a public place, how that minister should handle that situation. The leader also indicated that the guidelines he was referring to in the PPP projects also related to major government contracts such as the desalination project.

On 22 September this year, Premier Rann himself announced that cabinet had approved three successful short listed bidders for the desalination project. One of those companies was named Addwater, and it comprises two companies—Veolia Water and John Holland. I am advised that on 29 August this year—about one month prior to cabinet's decision—minister Gago attended, as the featured guest, a major fundraising lunch organised by Labor's fundraising arm, South Australian Progressive Business, which charged attendees $1,500 per person and raised a significant amount of money for the Labor Party for the next election. The host of that particular function was a company associated with Veolia Water, one of the successful short listed bidders for the desalination project. My questions are as follows:

1. Does the minister accept that it raises the perception of unfairness to other bidding companies for her to be using a company associated with a bidding company to raise large sums of money for the Labor Party during a bidding process for a $1.4 billion contract?

2. Does the minister accept that her actions constitute a breach of the probity guidelines required of her as a Labor minister, and as outlined by the Leader of the Government two weeks ago and, if not, why not?

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) (15:08): I would not even recall who attended that function and, certainly in terms of the probity guidelines, I have not discussed with any partner, potential partner or bidder, either directly or indirectly, matters relating to that development. The answer to the question is that I am not in breach of those guidelines; I adhere to them most strictly, and clearly there has not been any breach.

LOCAL GOVERNMENT CONTRACTS

The Hon. R.I. LUCAS (15:09): By way of supplementary question, is it true that the minister concealed her actions from the Crown Solicitor and the probity auditor for this contract and, if so, why?

The PRESIDENT: That has nothing to do with the original answer—there was nothing mentioned about the auditor.

CHILD RESTRAINT LAWS

The Hon. B.V. FINNIGAN (15:09): I seek leave to make a brief explanation before asking the Minister for Road Safety a question regarding the recently announced child restraint laws.

Leave granted.

The Hon. B.V. FINNIGAN: I understand that nearly 60 children under 12 years of age are either killed or seriously injured in crashes on South Australian roads every year, and more than a third of those casualties are just seven years old or younger. Will the Minister for Road Safety explain how the state government is strengthening its commitment to ensure that our children are properly restrained while travelling on the state's roads?

The Hon. CARMEL ZOLLO (Minister for Correctional Services, Minister for Road Safety, Minister for Gambling, Minister Assisting the Minister for Multicultural Affairs) (15:10): I thank the honourable member for his important question. The statistics the honourable member has just mentioned are really a stark reminder of just how vulnerable children are, and it is extremely alarming that around a quarter of the number of children seriously injured in South Australia are not wearing a child restraint at the time of the crash. The honourable member mentioned that 60 children under 12 years of age in South Australia are either killed or seriously injured in crashes: I think, if my memory serves me correctly, Australia-wide it is 500 children.

The Rann government has acted on its promise to further strengthen its commitment to road safety by adopting new nationally approved changes for the use of child restraints in motor vehicles. The new laws will reduce the risk of injury caused by the use of unsuitable restraints for a child's size. I think it is worth placing on record how the new laws will require children to be restrained, as follows:

- up to the age of six months to be restrained in a rear-facing child restraint (for example, an infant capsule, as we would all know it);
- from six months until the age of four years to be restrained in either a rear or forward-facing child restraint;
- from four years until the age of seven years to be restrained in either a forward-facing child restraint or booster seat restrained by a correctly adjusted and fastened seatbelt or child safety harness.

As well—and I think this is important—children aged between four and seven years will not be permitted to sit in the front seat unless all other seat positions are already occupied by children under seven years. Children up to four years must be restrained in the rear of the vehicle where the vehicle has two or more rows of seats.

Importantly, because not all babies and children are the same, provision will be included in the new laws to ensure that a child is not required to use a restraint unsuitable for their size and weight. For example, a child who is too tall or too heavy for the restraint must use a restraint for the next age category. The laws will also provide parents and carers with the advice and clarification they need about what type of restraint provides the best safety benefit for their children.

I take this opportunity to remind parents that purchasing the correct restraint for their child really is an investment in their child's safety, because nothing else offers the same level of crash protection for babies and young children as a properly fitted child restraint.

The new laws will come into effect in the second half of next year to allow parents and carers sufficient time to purchase the restraints and to make the necessary modifications to their vehicles. This is an issue on which a lot of work has been undertaken. South Australia is taking the lead, and I acknowledge the support of the RAA in particular. It worked with the government to ensure that all the necessary information is available. In particular, a good question and answer site is available on both the RAA and government websites.

The government has deliberately allowed a long period between announcing the changes and introducing this very important law, and I urge all parents and guardians to heed this early warning and make the necessary purchases and adjustments to ensure their cars and restraints are suitable. I know that hire schemes are available for those parents who would find it financially difficult and, again, a good lead time has been allowed to ensure that parents can explore what option is best for them. Complacency and ignorance will not be an excuse for not complying. Children are very vulnerable, and it is important that we are responsible.

CHILD RESTRAINT LAWS

The Hon. D.G.E. HOOD (15:14): I have a supplementary question, Mr President. In the case where a vehicle has no back seat—that is, a two-seater car, for example, such as a sports car—will a motorist be committing an offence by having—

An honourable member interjecting:

The Hon. D.G.E. HOOD: Or a ute, for example, is the interjection. Will the motorist be committing an offence in that case if the child is in the left-hand seat?

The Hon. CARMEL ZOLLO (Minister for Correctional Services, Minister for Road Safety, Minister for Gambling, Minister Assisting the Minister for Multicultural Affairs) (15:14): I can advise the honourable member that that will not be the case if the family only has a ute, as is the case with some farming families. I understand that it will be okay for the seat to be anchored in the front seat.

CHILD RESTRAINT LAWS

The Hon. M. PARNELL (15:15): I also have a supplementary question. Has the government considered the implications of these measures for parents who try to reduce their motor vehicle use by sharing kindergarten and school drop-off duties, and is there any scope for flexibility to be shown where children are travelling in cars other than those of their regular parent or guardian?

The Hon. CARMEL ZOLLO (Minister for Correctional Services, Minister for Road Safety, Minister for Gambling, Minister Assisting the Minister for Multicultural Affairs) (15:15): I always acknowledge the Hon. Mark Parnell's, I guess, passion to see environmental improvements in our society. However, I would have to say that, when it comes to children, who are a vulnerable group of road users or passengers, their safety overrides the fact that we cannot provide exemptions for vehicles not to have the correct capsule, booster or safety harness.

I appreciate that this is an issue that can affect parents and, hence, the lead-up time, as I have mentioned, and the fact that one can hire a particular booster or capsule that might be available for the size of one's child. I appreciate what the honourable member has said, but I can inform him that, as a grandparent, we now have a seat anchored in the back of our car. Prior to that we were not able to transport our granddaughter, because we appreciated that her safety was more important than our really wanting her to travel in our car without a proper restraint.

CHILD RESTRAINT LAWS

The Hon. M. PARNELL (15:16): I have a further supplementary question. I note that taxis are exempt. Cannot the same latitude be provided to car sharing arrangements as is currently provided to taxis?

The Hon. CARMEL ZOLLO (Minister for Correctional Services, Minister for Road Safety, Minister for Gambling, Minister Assisting the Minister for Multicultural Affairs) (15:17): In all these things, of course, enforcement is also very important—not that we have in any way put up the expiation fines or the demerit points for the changes that were announced earlier this year in relation to passenger responsibility. Bus drivers will continue to be exempt from ensuring that passengers under 16 years of age are restrained (under the national road rules). Taxi drivers also will be exempt. The driver of a taxi will be exempt from the new provisions if no suitable approved child restraint is available and, if the vehicle has two or more rows of seats, the passenger is not in the front row seat. Taxi drivers will continue to be responsible for passengers between the ages of seven and 16.

CHILD RESTRAINT LAWS

The Hon. SANDRA KANCK (15:18): What public consultation did the minister undertake in preparing these regulations?

The Hon. CARMEL ZOLLO (Minister for Correctional Services, Minister for Road Safety, Minister for Gambling, Minister Assisting the Minister for Multicultural Affairs) (15:18): These regulations fall under the Australian Road Rules. There has been a very long period of consultation amongst all states. As I said, South Australia has taken the lead, with the RAA, in particular (and, again, I acknowledge its support). The Australian Road Rules Maintenance Group is representative of all states, and feedback is provided to those people who are making decisions for them to pass on to the Australian Transport Council, and then there is a vote by the Australian Transport Council ministerial council. The minister representing our state is the Hon. Patrick Conlon. So, the changes to our Australian Road Rules are agreed at national level and South Australia, as I said, provided some consultation.

COPPER COAST DISTRICT COUNCIL

The Hon. SANDRA KANCK (15:19): I seek leave to make an explanation before asking the Minister for State/Local Government Relations questions about the District Council of the Copper Coast.

Leave granted.

The Hon. SANDRA KANCK: The minister has required that the Office for State/Local Government Relations conduct a preliminary inquiry into the process used by the District Council of the Copper Coast in regard to the sale of council land at Wallaroo. This includes an independent due diligence and governance audit of council processes. However, I have heard suggestions that this inquiry is not being prosecuted with any vigour by her department, and I am certainly aware that it is not being taken seriously by the council. For example, the council has been denying residents access to meeting agendas and, instead, using workshops as de facto council meetings. These workshops are not required to be open to the public under the Local Government Act, even though the agenda items are identical to those that would occur normally in a council meeting. My questions are:

1. Is the minister aware that the firm Wallmans, which was appointed to conduct an independent audit of council, has also provided training to councillors on their obligations under the council's code of conduct?

2. Does the minister consider that Wallmans will not be seen by the community to be independent because it will be able to audit payments to its firm from council for other services?

3. Is the minister aware that the council continues to breach the Local Government Act, despite the fact that it is the subject of an inquiry?

4. Is the minister aware that some bureaucrats are under the impression that her inquiry is adopting a go-slow approach on the basis that 'Sandra Kanck won't be there much longer to push this issue'?

5. Will the minister confirm that her department is not adopting a go-slow approach to this inquiry?

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) (15:21): I certainly will not thank the honourable member for that question. The question is outrageous.

The Hon. P. Holloway interjecting:

The Hon. G.E. GAGO: Yes; the Sandra Kanck promotional question. It is outrageous and I take exception to it. The Office for State/Local Government Relations has put an enormous amount of work into this matter. It has taken the complaints very seriously. We have put considerable resources into the inquiry into these matters and we are progressing them. I take exception to the accusation of a go-slow approach. The council has used Wallmans lawyers. They are to conduct an independent audit. They are independent in terms of the job they have done there. They have considerable credentials. They are well qualified to provide the service. I can assure all members that they have completed their audit, using all appropriate standards under no undue influence, other than their own legal obligations. I understand that they have completed the audit and I am awaiting the report. I will consider that report and take further advice in relation to the report and then take appropriate action—as any responsible minister would do.

In terms of the actions my office has taken in relation to the complaints we have received, I have had officers visit there on occasion to meet with the mayor and various officers. We are about

to conduct a workshop—I do not have the exact date—to help to improve community consultation awareness and what is considered reasonable practice in terms of comprehensive community consultation. We have already completed the audit. The workshop is on the eve of being conducted. In terms of our office, due process has to be done. I have put on record in this council on a number of occasions that, before I would proceed to use my powers to formally investigate a complaint, I would make some preliminary inquiries to ascertain whether or not a full investigation is required.

That is a responsible use of taxpayers' money. Lots of complaints are made but not all of them require a full-blown investigation. So, I have done that. The office has required certain information from the council. The council has been very cooperative and taken the matter very seriously; so, certainly, I challenge the honourable member in terms of the council not being serious in its response. It has been. It responded to my office in a very timely and respectful way. It has been very obliging in terms of the depth and breadth of information it has provided to us.

As I put on record before, we then considered that information and I have received advice in relation to that information. We have since determined that further information is required. I therefore had a crown solicitor's investigator go there to obtain the rest of that information. I will double check but, to the best of my knowledge, I believe that that second round has occurred. That information is now back in my office and being looked at by crown solicitors. I have not yet received any further advice as to whether the information received to date would constitute a good reason to proceed with the formal investigation.

The Hon. Sandra Kanck has always prided herself on due process and looking after people's rights. I find it astounding, because I have reported in this parliament regularly on this matter in terms of ministerial statements, as well as answering questions. We have briefed the Hon. Sandra Kanck and made officers available to her to answer any questions she has in relation to this, and we have given her progress reports. I am simply outraged that she would expect me not to follow due process before making a decision to go to a full-blown investigation.

COPPER COAST DISTRICT COUNCIL

The Hon. SANDRA KANCK (15:27): As a supplementary question, has the inquiry conducted by the minister's office involved consultations with residents of the Copper Coast or only with council members and staff?

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) (15:28): My understanding is that the powers of my office relate only to local government, and that is where we extend our authority to. There is a paper and an electronic trail for all communications and transactions that transpire. These are very experienced officers. Our crown solicitors are also very experienced, and they know the sort of information they need to demonstrate that due process is adhered to in terms of the land sale and the expressions of interest that went out in respect of this land sale.

They would require the local council to demonstrate that it has adhered to all the proper processes undertaken. As I said, we are able to use only the powers that we have before us. The honourable member and citizens are able to request that, for instance, the Ombudsman investigate this matter. That process is available to ordinary citizens. I am not too sure whether the Hon. Sandra Kanck has written to the Ombudsman and requested this. So, those processes are also available to the general public. If any members of the public believe that the matter is not being dealt with appropriately, I invite them to avail themselves of those sorts of avenues.

The Hon. P. Holloway interjecting:

The Hon. G.E. GAGO: That is exactly right. For goodness sake, the last time I looked, in this country we are considered innocent until proven guilty. Clearly, we need to protect the public, but not at the expense of not allowing local councillors due process. After all, local councillors are mostly members of the local community; most of them undertake the vast majority of their work on a volunteer basis; they contribute an enormous amount to the community; and they undertake significant responsibilities in relation to the carriage of those responsibilities.

So, those councillors are entitled to due process, and they are entitled to have matters investigated thoroughly before the state government expends enormous resources and taxpayers' money on undertaking formal and extensive investigations. We are not afraid of doing that if it is

necessary, but I believe that a proper and responsible minister would make sure that they had the appropriate level of concern and evidence before them before they launch into these expensive investigations.

STATUTES AMENDMENT (BETTING OPERATIONS) BILL

Adjourned debate on second reading.

(Continued from 13 November 2008. Page 742.)

The Hon. T.J. STEPHENS (15:33): I rise to indicate, not without some concern, Liberal Party support for this bill. At the outset, I indicate that, whilst the Liberal Party has been kept in the loop with regard to what has been happening with this legislation, we are particularly disappointed that state Labor Party racing ministers did not get together to sort out some of these issues before the New South Wales state parliament introduced legislation that has thrown the industry in Australia into turmoil.

All of a sudden, we are being asked to support legislation that will, in fact, be retrospective, and that is hardly a position the Liberal Party would want to support under almost any circumstances. Having said that, we understand the parlous situation of the industry in this state. I indicate that we are very well aware of how far behind the eight ball we are in this state compared with the rest of Australia with regard to prize money, certainly in relation to horse-racing.

In relation to a recent Saturday race meeting, South Australia's total prize money was $213,000. In Victoria, given that it was the spring carnival and they had two group 2 races, their total prize money was $1.32 million; New South Wales, $560,000; Queensland, $405,000; and in Western Australia, they raced for $900,000 on the Saturday. So, we are hardly in a position to disadvantage the industry in this state at all.

From the outset, I must say how grateful we are to minister Zollo for organising some crown law advice for us which we had some interest in. We were pleased to have that cooperation. We have raised concerns and, while we could hardly say that we look into a crystal ball on this side, I want it on the record that we can see serious challenges coming to this legislation, from, in particular, the Northern Territory corporate bookmakers who really have been the target of this legislation from New South Wales. It annoys me that a lot more consultation and consideration could not have been given to the other states and the effects on the other states.

I have had circulated to me an amendment that has been proposed by the Hon. Robert Brokenshire and, whilst from the outset it looks as if that amendment down the track could have some merit, it is a fair concern to us on this side that the industry in particular is desperately keen to have this legislation passed. Without the opposition consulting all stakeholders with regard to the amendment that the Hon. Robert Brokenshire proposes, it is very difficult for us on this side at this point to be able to support it. That is not to say that we could not perhaps revisit it possibly next year, given proper procedures and a reasonable amount of time.

I suspect that we are going to have to revisit this legislation down the track in any case. We will watch with great interest to see some of the challenges that we think will probably come. We on this side of the council will do everything we can to support the racing industry and, because of that, we obviously support a reasonably speedy passage of the bill.

The Hon. R.L. BROKENSHIRE (15:37): I rise to support the second reading of this bill. I say from the outset that I will have some more to say at the committee stage, but my general comment is that Family First supports the bill and, furthermore, wants to assist the government in taking a tough stand against potential corruption in the betting industry. That is the point of our amendment, which I will discuss during the committee stage.

The government was placed in a difficult position by the High Court decision outlawing the Western Australian effort to ban the operations of Betfair in its jurisdiction. Most members would be familiar with Betfair thanks, in part, to the advocacy of a former member of the council, Nick Xenophon, now Senator Xenophon, with his bill on betting on losing.

Before I was sworn in to this chamber, Family First had been concerned about the time it was taking for the government to respond to this issue. It is good to see a response now and I, for one, will not be critical of the government because this bill and the briefing we have received make it apparent that some of the best constitutional legal minds were required to think up a strategy to deal with the problem that the High Court has come up with.

The government might still need those best constitutional legal minds if, when it is passed, the legislation is criticised. Any move that seeks to tighten regulation and reduce the betting opportunities in South Australia is welcomed by Family First. This bill will have the effect, compared to the practical situation—or should I call it the regulatory vacuum created by the High Court—that we have now in particular in relation to internet and mobile betting.

Betting on losing and other contingencies that open racing and other sports to corruption is a huge concern to Family First, not only because these are new betting opportunities but also because they create a very real risk of corruption within sports. I will say more on that during committee but, for this move, the government is to be congratulated.

Before concluding my contribution to the debate for the moment, I refer to clause 7 of the bill. Codes of practice may include, we are told, measures on problem gambling that require accounts to be kept and managed by punters in a way that limits the amount they can spend in a given time period—self barring, if you like—and also requiring account statements to be provided at regular intervals. Of course, this is a code of practice and, therefore, not mandatory. Furthermore, the wording is 'may' not 'must'—so, there are some weaknesses there.

However, we want to encourage the government by saying that Family First welcomes these moves on problem gambling and looks forward to the government implementing these measures as a bare minimum standard in the field of other gambling—in particular, poker machines. These sorts of initiatives have been resisted by the government for some time, and I hope that this bill represents a watershed moment whereby the government accepts the effectiveness of these methods to reduce the incidence of problem gambling and will put them forward in all other spheres of gaming; in particular, as I say, in relation to the plague of poker machines. With those comments, and a vote of support, I can conclude Family First's second reading contribution to the debate.

The Hon. R.I. LUCAS (15:40): I rise to speak to the second reading. At the outset, having listened to the contribution from the Hon. Mr Brokenshire, I think it is the perfect example of why we should not be rushing legislation through the parliament. If the Hon. Mr Brokenshire's understanding of this bill and the reasons why he is supporting it are accurate, then my understanding of the bill (and other people's understanding of the bill) is inaccurate. I will explain that later on in my contribution.

As I said, I am surprised that the Hon. Mr Brokenshire and his party are supporting this legislation on the grounds that they see it as a further restriction and prohibition when tackling the issue of problem gambling. Let us explore with the minister in committee what this bill actually does—and I must say that the time to go through this measure has been relatively limited. This is the state government throwing its hands in the air at its previous policy position (which was similar to the Hon. Mr Brokenshire's) and basically saying, 'We can't do much about it because of the Western Australian High Court decision, and the best thing we can do now is to try to regulate the industry and make sure that there is an even flow of money between jurisdictions.'

That is the reason why my colleague, arguing fervently on behalf of the racing industry, is strongly supporting this particular legislation on behalf of the Liberal party—that is, it sees that, potentially, the racing industry in South Australia is losing out on some of these gambling dollars and it wants some of the gambling dollars to come back to South Australia. As I said, I stand to be corrected on this matter, and that is why we need to explore it in greater detail with the minister and her advisers in the committee stage.

I do not see anything here that is consistent with a view about cracking down on problem gambling; I certainly do not see anything in here about cracking down on Betfair. The Hon. Mr Brokenshire was speaking eloquently about the evils of Betfair and betting exchanges, but my understanding is that this actually regulates and allows Betfair and betting exchanges to operate; all they are worried about is how much money they get out of it coming back into the industry. As I said, I will return to that in a moment when I talk about this government's position on these issues.

I come to this debate from a different perspective to that of the Hon. Mr Brokenshire, obviously, and the Hon. Mr Xenophon and others previously. In relation to Betfair, whilst we have not had to vote on it, frankly, I have been sympathetic to the notion of another gambling option being available for those people who want to take a punt. That was not a position being adopted by the Hon. Mr Xenophon, Family First and, indeed, the state Labor government—and, also, I might say, the racing industry in recent years.

One of the reasons for this particular legislation is the popularity, as my colleague the Hon. Mr Stephens referred to, of the views of the Northern Territory bookmakers. The reality is that there is an increasing number of people—not all outside this chamber, I might say; there are some in the parliament and there are members of staff—who have accounts with the Northern Territory corporate bookmakers.

The reason is, first, convenience, and also the fact that, in their view, they get better odds on a variety of bets they can get. One of the reasons for that is—and other gambling operators will confirm this—that they do not pay the same level of fees, taxes and charges. There is an increasing group in the community and in this Parliament House as well (we are not atypical) who have been attracted to the notion of the betting options being provided by providers interstate, to the degree that a number of people that I know both in Parliament House—staff and members—and outside the parliament maintain betting accounts which even five or 10 years ago they would not have contemplated.

We ought not underestimate the increasing popularity of some of the betting options being provided by betting providers outside the state. It is not just the odds, because other things include the intriguing nature or attractiveness of some of the bets that are allowed by interstate gambling promoters. It is not just a straight bet on winning a horse race or a straight bet on who might win a particular Grand Prix car race; it is a whole variety of betting options in relation to who will kick the most goals in football, who will win the toss, who will score the first goal, who will hit a run off the next ball, how many runs will be scored in an over or—

The Hon. J.M. Gazzola: Who wins an election.

The Hon. R.I. LUCAS: Yes—who wins an election. In recent times there would be prohibitive odds on your party, Mr Gazzola, as opposed to ours—I am talking historically. There are a variety of options that attract those people who want to gamble. Whilst the racing industry is important, we should not underestimate the fact that there is a variety of other interests in all of this that have an interest in betting regulation and the sorts of odds one might be able to get.

I come back to my first point: the problem with rushing legislation through the council. I assume notice was given of this matter in the last sitting week, but the first I registered that there was something on was some time around the middle of last week when my colleague, the Hon. Mr Stephens, indicated that the legislation was in the chamber and, further, that the government wanted to jam it through this week, supported by the racing industry and others.

One of the dilemmas is that the first debate we are having is today. The House of Assembly is claiming that it wants it passed today for tomorrow: whether that is possible or not I am not sure. My party has indicated its willingness to try to ensure the passage of the legislation through both houses by the end of the week, which formally takes us to Thursday. However, one of the dilemmas with that sort of shortened time frame is that you have no opportunity, particularly when you do not have carriage of a bill, to look at the consultation and take advice on the implications of the legislation. The Hon. Mr Brokenshire has questions—maybe even more after I have spoken—and has an amendment. I flag that there are a number of issues, and the only way we will be able to explore them now is in committee.

I return to some of the comments of the Hon. Mr Brokenshire on whether this legislation does what he says it does or whether it is something different. I return to the position of the state government, and I want to refer to a press release issued by the Hon. Michael Wright, the Minister for Recreation, Sport and Racing, on 22 November 2005. The Hon. Mr Brokenshire and the Hon. Mr Xenophon before him, and others, would have been delighted at this particular press release, because it says:

'Betfair not fair at all'—South Australia's Minister for Racing, Michael Wright, has supplied the Australian Racing Board with a copy of his draft legislative amendments aimed at blocking the controversial Betfair exchange's ability to take wagers from South Australian punters.

So, the Hon. Mr Wright was heading straight down the path of the Hon. Mr Brokenshire—at least back in 2005, anyway. He had legislation under his arms and was going to block Betfair. In the press release he states:

British-based Betfair allows punters to back horses to both win and lose...'Letting punters back a horse to lose is un-Australian and it will only bring the horse-racing industry into disrepute', says minister Wright.

I am sure the Hon. Mr Brokenshire will be delighted at that previous statement by minister Wright in 2005.

The Hon. R.L. Brokenshire: I could have written the press release for him.

The Hon. R.I. LUCAS: You could have written it for him; I am sure you could have. I will not read all the press release, but it states further:

> Betfair, and any other betting exchange, has the potential to cause irreparable damage to the racing industry. Our concerns range from probity issues to the potential for criminal activity—

The Hon. R.L. Brokenshire: Yes.

The Hon. R.I. LUCAS: The Hon. Mr Brokenshire is still nodding, so he is still with the Hon. Mr Wright (at least, three years ago). The press release continues:

> Potential problem gambling issues and diminished financial returns to both the racing industry and to government are also, in my view, unwanted by-products of betting exchange activity. We will take every possible step to severely curtail the operation and impact of exchanges on the South Australian racing industry.

As I said, the press release says 'Betfair not fair at all'. There are many other statements from minister Wright and representatives of the government in and around that time indicating that they were not going to have a bar of Betfair, and the racing industry I think at that particular time probably had the same view. So, in summary, the government was saying it is un-Australian; it would bring the racing industry into disrepute; it would cause irreparable damage; there are probity problems; and there is the potential for criminal activity. It does not sound very nice.

Subsequent to that, the Western Australian court case decision was handed down. Again, to summarise a very long story, a Western Australian government sought to do much the same things as the South Australian government was talking about but it was ruled unsuccessful by the High Court under section 92 on the ground of freedom of trade between the states.

That was some time ago now: I think that court decision was at least a couple of years ago. We now have this government legislation. One of the questions that I put to the minister is: given that there has been this court case, I assume that the South Australian government's views and the minister's views remain the same—that is, Betfair and betting exchanges are un-Australian, there is the potential for criminal activity and probity issues, and they have the potential to cause irreparable damage to the racing industry. Clearly, what we will be seeking from the minister is information about what the government is doing to ensure that none of these things that minister Wright was publicly warning of back in 2005 will occur as a result of this legislation, in essence, legislatively sanctioning the operation of betting exchanges in South Australia.

I hasten to say that I was sympathetic to Betfair right from the word 'go'. I did not have a problem, Mr President. Minister Wright, and many on your side of politics, thought it was un-Australian and all those sorts of things but, as long as there was transparency and an ability to ensure that if there was corruption it was identified, rooted out and action taken, I did not have a problem with the notion of Betfair. So, it is important that my bias, or perspective on this, is placed on the public record at this stage.

On my understanding, therefore, what we now have is the government reacting to the High Court decision, doing a 180-degree backflip on all these things in relation to Betfair and, in essence, saying, 'Okay, we can't do anything about it. We will now regulate and make sure that we get our fair share of the dollars in South Australia.'

I do not disagree with the notion of getting our fair share of the dollars in South Australia from gambling activity. However, the point I come back to is aptly highlighted by the Hon. Mr Brokenshire's contribution. He has read this bill and has done a lot of work on it and is moving an amendment, and he has a completely different understanding about what the government is doing with respect to this legislation. I think that under clause 1 during the committee stage of the debate we need to hear from the minister (she can briefly respond, obviously, at the end of the second reading) as to exactly who is right in relation to what this legislation is seeking to do.

The other point I should make is that I had the unfortunate—I should not say that, because all service on Legislative Council select committees is a privilege and a benefit. However, I spent many years with the Hon. Mr Redford and the Hon. Mr Xenophon on a select committee trying to ban internet gambling. Whilst I am sure they have some wonderful attributes, which I am sure they are prepared to share with their colleagues and others who are prepared to listen, in my humble view their attitude to the potential to ban internet gambling was, if I can understate my response, naive.

They established a select committee, which sat for a number of years, and its purpose was to ban internet gambling. Their view was that we could put up the barriers in South Australia and stop those members and other staff members around here (or anyone else) who might like to have a punt from getting on their telephone and taking a shade of odds with a Northern Territory bookmaker and having a bet. They also believed that we could stop people in South Australia from having a bet on overseas gambling providers.

Some of us at that time were struggling to mount an argument (which is now, as I understand it, this government's position) that, in essence, we ain't King Canute in relation to internet gambling. Whatever you think you can do, the reality is that, in the privacy of your own home, your own car or your own office, you can do what you like in relation to taking a punt on any number of gambling sites or gambling providers. This now, as I understand it, is the government's endeavour to, in part, accept that reality but also to try to ensure that we in South Australia receive a fair share of the gambling dollars for our racing industry.

One of the questions that springs from that (and I put the question to the minister) is that my colleague the Hon. Mr Stephens gave me a copy of a letter from the Director-General of the Department of Racing, Gaming and Liquor in Western Australia in relation to the Western Australian legislation (I think that is a fair description). The letter states:

> Betting operators located overseas will be required to apply to the Gaming and Wagering Commission for approval.

How I read that sentence in the letter is that the Western Australian legislation is seeking to regulate and provide approvals for betting operators located overseas; not only interstate in the Northern Territory but also overseas.

As I said, I have not had time to go through the government legislation in inordinate detail. There is certainly nothing in relation to overseas gambling providers in the second reading explanation that I could see or on my quick reading of the legislation, which seems to mirror the Western Australian legislation.

My question to the minister is: is that correct and is our legislation therefore different from legislation that exists in other states? I understood from my briefings on this bill that one of the arguments is that similar legislation has been passed in New South Wales, Queensland and Western Australia, and a number of other states and jurisdictions, and South Australia is really just following similar legislation that has been passed elsewhere. Is our legislation today different in significant aspects from the legislation that applies in other jurisdictions? I instanced the overseas gambling provider as one example, but are there other areas where there are significant differences in terms of our legislation compared with others?

If the Western Australia legislation is seeking to outlaw or regulate overseas betting providers, how do we actually achieve that? How do we achieve regulation of gambling providers in Vanuatu who provide betting options on Australian racing or sporting products? If there are people in South Australia or Australia who punt on those particular sites, how do we propose to prevent that? Again, I put that question to the minister. It is an issue we will explore in the committee stage of the legislation, as well.

There are a number of other issues that, as a result of a quick reading of the bill, are probably better pursued in detail during the committee stage, but I want to highlight one or two matters. It comes back to the issue which I have just highlighted. What degree of control will we have in South Australia in relation to the information supplied by Northern Territory providers, for example? I guess, preceding that question, do we know how many South Australians are currently registered with interstate betting providers? Do we have estimates of how much money is involved? In the Western Australia information that my colleague has given me there are estimates of the amount of dollars that Western Australians punt on interstate racing products, and vice versa, in terms of the flow of money with the legislation. I am seeking from the minister some detail about what the government's knowledge is, and will be, of the use of these particular interstate betting providers.

I think the other questions I have are probably better pursued in committee. I am not sure what the government's intention is in relation to this bill. Certainly, I know my party has given a commitment to pass the legislation through both houses of parliament by the end of this week. If the bill is to proceed through the council today, then I seek responses to the questions I have already put to the minister. If we do not get those responses by the end of the second reading—

which I imagine would be difficult if the minister is going to respond now—we will need some time in the committee stage to pursue those issues.

The Hon. CARMEL ZOLLO (Minister for Correctional Services, Minister for Road Safety, Minister for Gambling, Minister Assisting the Minister for Multicultural Affairs) (16:04): I thank members for their contributions and expressions of support. I place on record the government's appreciation of the willingness of all members to debate the legislation in an expeditious manner. I want to make a few closing remarks about the bill.

This bill gives strong tools to the South Australian racing industry to secure its future in an increasingly competitive and rapidly changing wagering market. This bill also establishes a consistent consumer protection framework that applies to both South Australian betting operators and interstate betting operators, thereby addressing the issues arising from the recent High Court decision. I hope that even those comments allay the fears of the Hon. Rob Lucas that this legislation is only about protecting earnings. It is not. It is also about consistent consumer protection, but I appreciate that I will need to provide some responses during committee.

I thank the members of the council, as I said, for their willingness to progress this bill as a priority. This is in recognition of the need of the South Australian racing industry for the tools that are offered in this bill. I note that this bill is supported by the three racing codes—Thoroughbred Racing SA, Harness Racing SA and Greyhound Racing SA—as well as the South Australian Bookmakers League and the SA TAB. I thank the industry for its willingness to work through the issues with such short notice for the benefit of the South Australian industry as a whole.

As noted in my second reading explanation, I would like to report back to the council on the work with SA TAB regarding its consent under the Approved Licensing Agreement. Consent would eliminate the possibility of SA TAB seeking compensation from the government for a diminution of the value of the SA TAB licensed business. Since I introduced the bill to the council, I have written to and met with representatives of SA TAB with a view to procuring their consent for this bill. Despite supporting this bill, SA TAB is not willing to provide consent.

Understandably, SA TAB wants to protect the rights it received under the Approved Licensing Agreement as part of its purchase. It is the government's view that the lack of consent represents a low risk. The reason for this assessment is that compensation is payable to SA TAB only if SA TAB could prove a causal connection between the event which triggers the claim and a diminution in value of SA TAB's business and licence. It is the government's view that, if SA TAB suffers any diminution in value of its business and licence, it is the result of the Betfair High Court decision.

If anything, the proposed amendments will even the playing field and lessen the impact on the High Court decision on the value of the SA TAB business and licence. The government does not support the payment of any compensation to SA TAB arising from this important legislation. While the government will continue to work cooperatively with SA TAB to arrive at an outcome that will not expose South Australian taxpayers to the risk of litigation, any claim for compensation made by SA TAB arising from this legislation will be vigorously defended by the government. As I mentioned, we will respond to any issues raised in committee.

In particular, I note that the Hon. Robert Brokenshire has tabled an amendment, which seeks to extend the concept of both contribution agreements and integrity agreements across to sports betting. These agreements need to be between an authority responsible for the conduct of sporting events and the betting operator. The purchase of integrity agreements is to ensure that there is a flow of information between the betting operator and the controlling authority to ensure that the event is conducted with integrity. The purpose of contribution agreements is to require betting operators to make a financial contribution to the running of the sport on which bets are taken or facilitated.

The amendment of the Hon. Robert Brokenshire as drafted requires the betting operator to enter into an integrity agreement with the Independent Gambling Authority. The problem with this concept is that the Independent Gambling Authority is not the body responsible for the conduct of sport in South Australia: it has no legislative mandate to control or regulate the conduct of sport in South Australia.

While the racing controlling authorities are clearly identified in legislation, the same is not true for sports-controlling authorities: a legislative scheme for the identification of sports-controlling authorities and dispute resolution is required. I understand that a similar model is in place in Victoria.

The proposed amendment could be changed so that the integrity agreement was with the relevant sports-controlling authority rather than with the Independent Gambling Authority. Without a contribution agreement in place, this would cause a sports-controlling authority to incur the cost of handling inquiries from betting operators around Australia and perhaps beyond, without any source of revenue to cover the costs. Including contribution agreements has the potential to cause an event with the SA TAB under its approved licensing agreement.

Given these issues, it is the government's view that extending contribution and integrity agreements to sporting events conducted in South Australia would require wider consultation with sporting bodies to ensure that provisions presented to this parliament are appropriate. Given the urgent needs of the racing industry, the government has decided at this time not to include sporting events in the new contribution and integrity agreement provisions in this bill. However, I am happy to commit the government to further development of these ideas in 2009 and to subject that work to wider consultation with the South Australian sporting community. I clearly understand why the Hon. Robert Brokenshire has placed this amendment on file, but I also hope he appreciates that, given the urgency of this legislation, we are happy to commit to further developing his ideas in 2009.

In the meantime, the Independent Gambling Authority, through its power to approve contingencies, will have regard to the standards of probity applying in relation to those particular contingencies. For the reasons I have just outlined, the government cannot at this time support the filed amendment.

Again, I thank the Hon. Terry Stephens, the Hon. Robert Brokenshire and the Hon. Robert Lucas for their contribution, and I also appreciate the indication of support by other members. I look forward to the committee stage of this bill.

Bill read a second time.

In committee.

Clause 1.

The Hon. R.I. LUCAS: Given that the minister was unable to respond to the many questions I put in the second reading stage, I take the opportunity in clause 1 to pursue some of those questions. At the outset, I ask the minister what information the government has available to it in relation to the flow of revenue between the states. To that end, I quote from a press release of 5 November this year from the Western Australian racing and gaming minister, Terry Waldron. It states:

> Without this legislation, the Western Australian racing industry faces a product fee bill of at least $17 million per year for bets made by Western Australian punters on interstate races. Once this legislation is in place, Western Australia's three racing codes will be able to recoup around $14 million to $15 million from interstate wagering operators betting on Western Australian races.

Can the minister provide the equivalent figures for the South Australian industry?

The Hon. CARMEL ZOLLO: I advise that we do not currently have accurate information about the use by South Australians. The figures that were quoted by my colleague the then acting premier, Patrick Conlon, were in relation to Racing NSW, and I am happy to place them on the record. Racing NSW has already sent the first monthly account to SA TAB for $123,000 based on last year's thoroughbred racing turnover and future estimates.

That amount will increase to around $180,000 when the fees applied to wagers are placed on New South Wales harness and greyhound racing events. This means that South Australia's three racing codes face a combined bill of over $2 million per annum, and it was calculated that, if other jurisdictions adopt the New South Wales measure, this figure could exceed $9 million per annum.

The Hon. R.I. LUCAS: How is it that it is possible for the Western Australian racing minister, in pursuing similar legislation in the Western Australian parliament, to provide members and observers with information on the flow of revenue between Western Australia and the other states while it is not possible for the South Australian government to share that same information with this parliament and the community?

The Hon. CARMEL ZOLLO: I advise that the information from betting operators is, I understand, commercial-in-confidence, and we do not have ready access to it. What we do have is the expectation of the industry. The industry expects that this will result in a marginally revenue-

positive outcome for South Australia: that is, the racing industry will receive more from wagering operators who wager on SA events than they will have to pay other jurisdictions for wagering on their product. We simply do not have that detailed information.

The Hon. R.I. LUCAS: It is a pretty critical issue. The parliament is being asked to support the legislation quickly, and we are told that there is an expectation that there will be a net advantage to South Australia and the South Australian industry. As I said, in Western Australia they were able to provide definitive estimates. We are not being provided with that information here and, clearly, the minister does not have that information. There is no purpose to be served in trying to delay the committee stage on that issue any longer, but it is disappointing that we do not have that information.

If there are no figures, who is actually providing this estimate and who will take responsibility for this estimate? We are hearing broad terms used such as 'the industry'. Who is 'the industry'; who has actually provided the estimate upon which we are being asked to rely that there will be a net positive?

The Hon. CARMEL ZOLLO: We are seeking some further advice, but I place on the record that, of course, the reason we are asking this parliament to deal with this legislation quickly is that we are certain that we will face losses if we do not legislate in this area.

The Hon. R.I. LUCAS: I repeat my question to the minister: who is actually responsible for the advice to the government that there will be a net benefit, which is the phrase the minister just used in response to my earlier question?

The Hon. CARMEL ZOLLO: First, I am advised that the Western Australian estimate is a guesstimate. As I have said, the net benefit is not relevant in this case. If the legislation does not pass, as I mentioned earlier, South Australia would be $9 million worse off. I am advised that no jurisdiction is aware of what turnover the other TABs actually generate from other jurisdictions. Private companies do not divulge the information, nor do the bookmakers.

The Hon. T.J. STEPHENS: Would it be fair to say that, because this legislation has been put together reasonably quickly, there would be a fair expectation that we will probably have to revisit this matter next year when we get actual figures and results from other jurisdictions? This has not been generated by South Australians but it is something that we have to work within to try to make sure that we get a reasonable result at the end. Would that be a fair assumption?

The Hon. CARMEL ZOLLO: My advice (which, I guess, is logical) is that it is fair to say that it is a rapidly changing environment and, should South Australia need to revisit this legislation, similarly other jurisdictions would have to do the same. Certainly, Treasury and Finance and the Office for Racing will continually monitor the outcome in the coming years.

The Hon. R.I. LUCAS: I would like to ask the minister to return to a phrase she was given to answer my question, two questions ago, which I think was that there was a marginal benefit or a slight positive. Will the minister repeat the advice she had in relation to my first question about the net flows between the states. The minister came back with an answer which was something like there was a 'marginal benefit' or there was 'a positive'.

The Hon. CARMEL ZOLLO: The advice we had from the industry was that it expects that this will result in a marginally revenue positive outcome for South Australia—that is, the racing industry will receive more from wagering operators who wager on SA events than they will have to pay other jurisdictions for wagering on their product.

The Hon. R.I. LUCAS: Yes, that was the phrase: marginally positive revenue situation. That information was provided: who was responsible for that advice to the government? When you say 'the racing industry' who does that mean? Who are we talking about?

The Hon. CARMEL ZOLLO: I am advised that the information came from the controlling authorities: Thoroughbred Racing South Australia believes that it will be better off; the Harness Racing Authority is not certain at this stage; the Greyhound Racing Authority believes that it will be better off.

The Hon. R.I. LUCAS: I take it then, on the basis of that verbal advice, the government's advisers have put that together and used the phrase 'a marginal positive revenue impact'—if that was the phrase that the minister quoted. Is that a phrase provided by the authorities or is that a phrase provided by recreation, sport and racing officers in the government or treasury officers in the government?

The Hon. CARMEL ZOLLO: My advice is that it came from the controlling authorities themselves and not from other government agencies.

The Hon. R.I. LUCAS: The reason I have pursued this issue is that, in my long experience sitting on both sides of this chamber (in terms of the taxing and regulation of the racing industry), the one thing you can guarantee is that the various assurances that you are given will be wrong—and wrong by a considerable amount—within a relatively short period, almost without exception. I make that observation regardless of whether I am sitting on this side of the chamber, as I do now, or whether I sat on the other side of the chamber.

Various assurances or guesstimates are made by those involved with the racing industry in relation to the impact of various changes. This comes to the point the Hon. Mr Stephens raised before—although I think he raises the issue also in terms, potentially, of the drafting of the legislation—that, inevitably, the assurances or the best estimates of people are wrong for a whole variety of reasons. They always come up with good reasons as to why they were wrong. Some of them, I am sure, are good reasons but others come back to the nature of the industry involved.

However, that is the reason I am pursuing finding out who made the estimates. Next year, or in two years or three years, if we come back to revisit this on the basis that it was a good idea at the time in 2008 but the actual impacts have been widely different to what was being predicted, we have—and I assume you will have—the names of those people who urged the support of the legislation and provided those particular indications of the impact on the industry.

Another general issue I had was related to whether our legislation is different to the other jurisdictions regarding what it is seeking to do with overseas gambling providers. The Western Australian government was claiming that it was going to register and approve overseas gambling providers, according to the press release I quoted. Is our legislation different, in that particular respect, to the legislation in other states?

The Hon. CARMEL ZOLLO: I am advised that overseas providers offering services to South Australians cannot be authorised. Therefore, for them to offer services and for people to use those services it is unlawful under the Lottery and Gaming Act 1936.

The Hon. R.I. LUCAS: Is the minister saying that our legislation is different from the Western Australian legislation?

The Hon. CARMEL ZOLLO: My advice is that we have not seen the Western Australian legislation but, if it is proposing authorisation for overseas betting providers, yes, we are different because clearly our section 3(1) only authorises interstate betting operators.

The Hon. R.I. LUCAS: The minister might not recall, but in the second reading debate I quoted from a letter from Mr Barry Sargeant, Director-General of the Department of Racing, Gaming and Liquor in Western Australia dated 18 November, wherein he says:

> Betting operators located overseas will be required to apply to the Gaming and Wage Hearing Commission for approval.

If the minister has not seen the Western Australian legislation, and if Mr Sargeant is a reliable informant on the Western Australian legislation, I assume that its legislation is providing a mechanism for overseas operators to be approved and to pay their fair share of revenue to the Western Australian industry.

The Hon. CARMEL ZOLLO: I am advised that there are two aspects to our legislation: first, authorising to offer services to people in South Australia (only interstate operators can do that); and, secondly, in relation to making a contribution, proposed new section 62E requires any person conducting betting operations in relation to South Australian races to have in place both an integrity agreement and a contribution agreement with the relevant racing controlling authority. Proposed new section 62E is not limited to authorised interstate betting operators or even Australian operators but applies to any betting operator that offers services in relation to South Australian races.

The Hon. R.I. LUCAS: Is the minister now saying, contrary to what she said earlier, that overseas betting operators can bet on South Australian races and enter into these sorts of agreements under this legislation, contrary to the previous situation? That is what I understand the minister has just said to the chamber, which is different from what she was saying earlier.

The Hon. CARMEL ZOLLO: My first answer was in relation to offering services to people located in South Australia, and my subsequent answer was in relation to receiving funds into South Australia.

The Hon. R.I. LUCAS: The minister may be able to help us through this situation. Is she saying that no South Australian is allowed to bet with an overseas gambling provider under the provisions of the Lottery and Gaming Act she was talking about, but that the same gambling provider can take bets on South Australian events from anybody else and from any South Australian who is prepared to breach that provision of the act and enter into agreements and provide funds back here to the racing industry?

The Hon. CARMEL ZOLLO: My advice is that the response to that is yes, it is possible for an overseas betting operator to enter into an agreement with a racing controlling authority to provide a contribution, but overseas providers cannot lawfully offer services to South Australians.

The Hon. R.I. LUCAS: I thank the minister for that. I think it just highlights the bizarre situation we are getting ourselves into. For those interested in a punt, in essence, what we are saying is that these overseas gambling providers who can go there can lawfully operate by running events and taking bets from anyone other than South Australians but, of course, as the minister highlighted in answer to an earlier question, the gambling providers do not indicate from whom they are taking bets. So, unless the government is going to have authorised officers invading your office, Mr Acting Chairman, your home or car, there appears to be no way of enforcing that particular provision. Anyway, I do not intend to delay this particular bill any further on that aspect of the legislation.

I ask the minister as a matter of policy, now that she is aware of what she is doing and what we are being asked to do in relation to this issue: what is the policy logic in this legislation of authorising all sorts of betting operators interstate (including these terrible agencies, according to minister Wright, called Betfair and others) to operate in South Australia, and also authorising overseas gambling providers to enter into agreements with South Australian racing authorities, but not to allow South Australians to have a punt on the overseas provider? They can have a punt with the Northern Territory or interstate provider, but they cannot have a punt with the overseas provider.

The Hon. CARMEL ZOLLO: My advice is that essentially this legislation offers the broadest possible scope to the racing controlling authorities to get funding from betting operators who benefit from their product.

The Hon. T.J. STEPHENS: I do not want to delay this bill, but the enforceability of this is something that we have had an issue with from the start. We wish the racing industry—all codes—every possible success, but we are ultimately very concerned about where this will finish, and it is a pity that this was not done by consultation within all states.

The Hon. R.I. LUCAS: Can I clarify that it is the government's policy position that South Australians should be allowed to bet on the internet with interstate gambling operators but should not be allowed to bet on the internet with an overseas operator?

The Hon. CARMEL ZOLLO: It is the South Australian government's policy position that South Australians should be allowed to bet with interstate betting operators who comply with South Australian consumer protection requirements.

The Hon. R.I. LUCAS: But not overseas providers?

The Hon. CARMEL ZOLLO: That is correct.

The Hon. R.I. LUCAS: The last general issue on clause 1 that I want to raise is the fundamental issue I raised in relation to Mr Brokenshire's question. Can the minister clarify whether or not it is correct that this legislation is, in essence, providing a regulatory framework for the operation of Betfair and other betting exchanges in South Australia?

The Hon. CARMEL ZOLLO: The answer to that is yes.

The Hon. R.I. LUCAS: I am not sure whether Mr Brokenshire was following that, but this legislation is providing, as the minister has indicated, a regulatory framework to allow Betfair to operate in South Australia. It is not cracking down on Betfair or preventing it or restricting it: it is providing a regulatory framework for it to operate here in South Australia.

Clause passed.

Clauses 2 to 4 passed.

Clause 5.

The Hon. R.I. LUCAS: My question relates to subclause (6), which is the definition of 'prescribed interstate licence'. That definition says:

> but does not include a licence of a class excluded by regulation from the ambit of this definition;

I ask the minister what her advice is as to why that particular exclusion is there; and what sort of licence are we talking about?

The Hon. CARMEL ZOLLO: My advice is that the South Australian parliament retains the responsibility of establishing a legislative framework that provides for the proper conduct of betting services offered to persons located in South Australia. The bill proposes to recognise all licences or other authorities issued under the law of another state or territory of the commonwealth authorising the holder to conduct betting operations. If, however, it is determined that a particular class of licence or authority does not meet regulatory standards acceptable to South Australia, it is possible by way of regulation to exclude that class of licence or authority from offering services to persons located in South Australia. This is achieved through the definition of 'prescribed interstate licence', which allows from the exclusion of that definition a class of licence excluded by regulation. My advice is that it is certainly not our anticipation that any class of licence will be excluded, but we reserve the right to do so.

Clause passed.

Clause 6.

The Hon. R.I. LUCAS: I ask the minister to clarify the intent of the government's changes in relation to notification in the *Gazette.* Clause 6(3)(b) provides:

> (3) Before approving contingencies or varying an approval, the authority must—
>
> ...
>
> (b) give prior written notice of the proposal to the minister.

When the government refers to 'proposal' here, are we talking about the original idea that is considered by the authority or is it the final decision of the authority in relation to the proposal? To me, 'proposal' means a proposition that is put to the authority. However, on reading it, I thought that it was meant to be read perhaps the other way, that is, the proposal that came out of the authority, in whatever shape or form it might be.

The Hon. CARMEL ZOLLO: It is the proposal of the authority to approve before it is formally approved. I understand that, under new subsection (3a), it remains unchanged. It provides:

> The authority must, within 14 days after approving contingencies or varying or revoking an approval, publish a notice in the *Gazette* setting out the terms of the approval, variation or revocation.

So, that remains unchanged. My apologies. Apparently, that is a change. Subclause (3)(b) has been changed to give prior written notice of the proposal to the minister.

The Hon. R.I. LUCAS: I obviously did not make my question clear. At what stage is that written notice of the proposal meant to be given to the minister? Is it prior to consideration by the authority? Someone comes up with the idea for this bet or contingency, and the authority has to consider it. So, does the 14 days' prior written notice of the proposal occur at that stage, before the authority considers it, or after the authority has considered it and is in a position of recommending something?

The Hon. CARMEL ZOLLO: My advice is that it is before the authority makes a decision. I understand that the reasoning behind that is that new section 4 provides that the minister may give the authority binding directions preventing or restricting the approval of contingencies.

The Hon. R.I. LUCAS: That leads to a further question that I was going to ask in relation to new section 4. I think new section 4 is generally interpreted as being the minister either saying yea or nay to a particular bet or contingency that might be considered, but is it possible for new section 4 to be interpreted that the minister could give the authority a binding direction to say, 'You are not to approve any further contingencies in a blanket fashion'?

The Hon. CARMEL ZOLLO: My advice is that if a blanket direction was to be applied by a minister he or she would run into administrative law difficulties. For example, all bets offered by the betting exchange—for example, betting on losing—obviously would be an administrative law issue.

The Hon. R.I. LUCAS: New subsection (3a) provides:

> The authority must, within 14 days after approving contingencies…publish a notice in the *Gazette*...

Assuming the authority makes a decision and the minister has not overturned it, then 14 days later it publishes the notice in the *Gazette*, is it possible under the government's framework for the event to which the contingency relates to have already transpired within the 14-day period? What prevents that?

The Hon. CARMEL ZOLLO: My advice is that it is theoretically possible.

The Hon. R.I. LUCAS: From a policy viewpoint, why is that reasonable? Let us say that something controversial is allowed—some peculiar bet in terms of a football or cricket game—and the minister has approved it or not approved it. The first notification that that sort of betting is being allowed is the notification in the *Gazette*, which I assume will be after the betting operator has already advertised the particular bet to which the contingency relates. It seems entirely unreasonable in terms of transparency to have this provision where the first public notification is 14 days after the approval and after the event might have occurred.

The Hon. CARMEL ZOLLO: My advice is that the proposed amendments give greater flexibility to the Independent Gambling Authority in relation to the approval of contingencies. This ensures that South Australian licensees are not unduly restricted in their ability to offer events and bet types when competing in the national market. Currently, I am advised that the approval of a contingency comes into effect the day it is published in the *Government Gazette*. In order to reflect the sometimes fast-changing nature of the business, it is proposed to make the approval effective on the day it is approved by the Independent Gambling Authority. I understand that this change was requested by the Independent Gambling Authority to ease the administrative burden on licensees and the authority.

The Hon. R.I. LUCAS: I do not mind a range of bets and gambling options to which a lot of other people might object but, basically, the parliament is authorising the authority to approve what some people might see as a bizarre betting option—which is approved straight away. The first thing that the Hon. Mr Xenophon or the Hon. Mr Brokenshire might know about it will be up to 14 days later when it is gazetted. Why is that a reasonable proposition? Why could the government not have a situation where, when it is approved, it needs to be gazetted and advised, or there needs to be an approval prior to the particular contingency?

If there is to be a funny sort of bet on the Clipsal race next year, why should that not be approved and advised prior to the Clipsal race? In essence, what is being said here is that it could be done prior to the Clipsal race and the actual notification of whatever that bet option might be will not be formally gazetted until 14 days later. Of course, the betting provider would have to provide advice to their customers during that 14-day period.

The Hon. CARMEL ZOLLO: My advice is that the point of the *Gazette* is just evidentiary. The authority cannot approve without having given notice to the minister.

The Hon. R.I. LUCAS: I understand the minister knows, but the minister—with the greatest respect to the current minister—is not necessarily the reflective wisdom of the whole parliament or, indeed, your side of parliament or the whole community. I was the gambling minister for a while. The Hon. Mr Xenophon would have died with his legs in the air if the situation was allowed where as the gambling minister I was the only person to be advised of a particular contingency. I probably would have allowed most or all of them—

The Hon. Carmel Zollo interjecting:

The Hon. R.I. LUCAS: As minister you would be advised but no-one else would know for 14 days. I would think that, if the Hon. Mr Xenophon was here, he would die with his legs in the air at the prospect that a future gambling minister like me, or anyone with views similar to mine, would have a position where they are the only person who is advised—the rest of parliament is not advised and the Hon. Mr Brokenshire knows nothing about it, heaven forbid! Some 14 days later the authority would gazette it and, potentially, all hell would break loose when they say, 'Why on earth have we allowed this sort of betting in South Australia?'

Not that long ago, there were arguments in this place as to whether or not you should be allowed to bet on the Bay Sheffield. Special legislation had to go through the parliament to allow betting on a specific event at the Bay Sheffield. That is how things have moved in 15 years, or so. I understand that this is the government's position. As I said, given the inability to consider this in any detail, I have not flagged with my party any changes in this area, and I am therefore not in a position to delay the legislation. I would flag my objection, I guess, to the government's position on this, and I am surprised that other members—in particular those on the crossbenches—are also supporting it.

Clause passed.

Clause 7.

The Hon. R.I. LUCAS: The 'codes of practice' under new section 6A(3)(c), as I understand it, are the sorts of requirements we will be requiring of the interstate gambling providers. New paragraph (c) will require account statements to be filed at regular intervals. Will we, as a result of these requirements, be in a position to indicate what we cannot indicate at the moment, that is, how many people are betting from South Australia on various events in other states in terms of the jurisdictional breakdowns, and can we require and will we be requiring of the interstate gambling providers some indication of the amount of betting with particular providers from our jurisdiction?

The Hon. CARMEL ZOLLO: I refer the honourable member to new section 40B, 'Annual fees and returns'. This proposed new section provides for data collection from authorised interstate betting operators. It is important to ensure that regulators, the government and parliament have access to accurate information about betting operations in South Australia. The reporting time frame is such that it allows the information to be included in the Independent Gambling Authority's annual report.

The Hon. R.I. LUCAS: Is the minister therefore saying that we will be requiring and therefore reporting as we approve these interstate gambling operators on how many of them there are and how much betting is coming from South Australia?

The Hon. CARMEL ZOLLO: That is correct.

The Hon. R.I. LUCAS: New section 6A(3)(c)(ii) provides:

> Require the accounts to be managed in a way that allows the amount available for betting at any given time to be limited;

What exactly is the government intending in relation to that provision?

The Hon. CARMEL ZOLLO: It allows customers to set pre-commitments. Betting operators offer customers the ability to set their gambling limits on their accounts to see more responsible gambling.

The Hon. R.I. LUCAS: On behalf of my colleagues and staff members who might have accounts with these operators, is the minister saying that this would be only a voluntary commitment by an individual punter who has an account with one of these operators? Is it something that would be imposed by the gambling authority here or some other authority in relation to the level of betting by an individual?

The Hon. CARMEL ZOLLO: My advice is that the policy intention is that it is voluntary.

The Hon. R.I. LUCAS: I accept that the policy intention is that it is voluntary but, when one looks at it, new paragraph (c)(ii) provides:

> Require the accounts to be managed in a way that allows the amount available for betting at any given time to be limited.

The minister is obviously saying that the policy intention is that it is voluntary, but does not the drafting of this particular provision allow for mandatory restrictions to be imposed if a different policy provision is adopted?

The Hon. CARMEL ZOLLO: My advice is (and it would be my interpretation also) that we are using the word 'allow'. It does not say that it is mandatory. We are saying that it allows it to be kept in such a way so that, if a customer does want to set pre-commitments, it allows the person to do so. They are then able to obtain the data.

The Hon. R.I. LUCAS: Is the minister confirming that, if the policy position of the government was to change to support compulsory restrictions on the amount of betting by an individual, this particular new subparagraph could not be used to implement a changed government policy position?

The Hon. CARMEL ZOLLO: I refer the honourable member to sections 10 and 10A of the Subordinate Legislation Act 1978 which allow a notice to be published in the *Gazette* under these sections as if it were a regulation within the meaning of the act. Obviously, it is something that can be changed under regulation and, of course, as a regulation it can be disallowed by the parliament.

Clause passed.

Clauses 8 to 22 passed.

Clause 23.

The Hon. R.L. BROKENSHIRE: I move:

Page 17, after line 21—Insert:

Division 5—Betting operations relating to other contingencies.

62J—Integrity agreements.

(1) A person (the operator) must not conduct betting operations in relation to contingencies that relate to events held in this state other than races held by a racing club (SA non-racing betting operations) unless the operator has entered into an integrity agreement with the Authority conforming with the requirements of this section and the agreement is in force.

Maximum penalty: $25,000 or imprisonment for one year.

(2) Subsection (1) applies whether the SA non-racing betting operations are conducted wholly within or outside the state or partly in the state and partly outside the state.

(3) Without limiting the matters that may be included in an integrity agreement, the agreement must include—

(a) provisions requiring the operator to provide to the authority on request information about the operator's SA non-racing betting operations (which may include information relating to trade secrets or business processes, financial information and information identifying or relating to persons making bets), verified, if the authority so requires, by statutory declaration; and

(b) provisions requiring the operator to implement specified measures to identify potential issues of probity in relation to the operator's SA non-racing betting operations and report identified issues to the authority; and

(c) provisions requiring the operator to inform the authority of any criminal or disciplinary proceedings commenced against the operator, or a close associate of the operator, in connection with any betting operations; and

(d) provisions requiring the operator to facilitate investigations or inquiries into the conduct of the operator's SA non-racing betting operations; and

(e) provisions establishing a dispute resolution procedure; and

(f) other provisions prescribed by regulation.

(4) If a person seeks to negotiate an agreement with the Authority under this section, the Authority must negotiate with the person in good faith subject to and in accordance with legal requirements (including, without limitation, the requirements relating to authority to conduct betting operations in this state under the Lottery and Gaming Act 1936 and this act and requirements of section 92 of the Constitution of the Commonwealth).

(5) An integrity agreement may be varied by a later agreement between the parties.

(6) If the operator holds a licence under this act, it is a condition of the licence that the operator must perform its obligations under an integrity agreement.

This amendment is specifically about the integrity issue and nothing more. The simple premise of this amendment is that, if it is good enough to have integrity measures (which some of us would call anti-corruption measures) for racing, it is good enough to have anti-corruption measures for all other events upon which people can bet in South Australia.

Even though racing comprises a large slice of the pie insofar as gambling activity goes, if the anticorruption measures of the current bill as they apply to racing are passed, it is foreseeable that corruption will shift to what I will call sports betting, although in my amendment I use the term

'non-racing betting' because there could be events some would not call sport but where there could be an opportunity for a betting exchange.

Let us remember that the government is not alleging or adducing evidence that corruption exists in racing: it is simply implementing anticorruption measures as a safeguard. Therefore, the logic of this argument must extend to other codes, whether or not the government has its regulatory activity up to standard in that area; otherwise, we will see a shift in gambling activity into sports betting. Remember, too, this bill imposes a contribution arrangement on racing that it does not impose on sports betting. The least we can do is introduce integrity anticorruption measures to protect the integrity and the existing balance between racing and sports betting.

Technically speaking, this amendment, which would become section 62J of the Authorised Betting Operations Act, simply mirrors clause 23 of the minister's bill insofar as it relates to proposed section 62E, subsections (1) to (6) inclusive, that is, taking the integrity agreement requirements for racing, leaving out the contributions requirement, and imposing them on sports betting. There will be virtually no impact upon sporting event operators, or other events for that matter, as a consequence of this clause. The onus would fall on the betting exchange and the regulator (in the amendment, initially the Independent Gambling Authority) to inquire about and receive data on betting patterns on the new contingencies allowed for sporting events.

In conclusion, I want to put a couple of practical examples that might help members in their consideration. In giving these examples, I make no allegations about or slurs on the racing industry, nor is the government making allegations. I suspect this is about safeguards to protect the industry, not about bashing the sports industry. Let us say that an AFL team is five goals up going into the last quarter, and let us say that a betting event is on a particular player kicking seven goals. Let us say that that player and his team mates each put $10,000 on that particular player's kicking seven goals. Then let us say that news about that got about in privileged circles and a plunge on that event occurred. When someone had an open shot on goal, a couple of strange handballs to that particular player sets up the situation, and he actually kicks seven goals, and the team mates and those in the know cash in. I do not believe that to be appropriate.

Another more concerning scenario would be when, say, the team players are down on their luck and a bunch of them secretly agree to tank for a particular game, not for draft picks but for a loss; one contingency on the table by Betfair is betting on losing. They agree to kick a clanger or shoot wide of the mark to ensure that the team loses. It is a horrific thing for a footy supporter to think, but money talks, as we have seen in the subcontinent. Again, let us say that word gets out amongst a select few, and there is a plunge on that team losing the match. If the price is right and the salary is too low, corruption can sneak in. Integrity measures will prevent that scenario, and that is what I am on about with this amendment.

Finally, betting on losing is particularly concerning. As my colleague the Hon. Dennis Hood said on 14 March 2007, when supporting the now Senator Xenophon's bill on this issue, one can much more easily ensure that a loss occurs than a draw or a win. A goalkeeper might be all you need, for instance, in a soccer match to ensure a loss. Just one missed save, and it is a sure assault.

So, members should inform themselves about the history of match fixing in order to understand how this kind of scenario can play out. We need to think seriously about the goose and the gander argument, that is, if integrity is good for the goose, it is clearly also good for the gander. In other words, if it is good for racing, it is good for all sports betting.

My final point is that the intention of this amendment is that this should be funded by government, not the industry. I support the amendment.

The Hon. CARMEL ZOLLO: As previously indicated, the government does not support the amendment. However, I think it is worth while reiterating just a few of the comments I made at the conclusion of the second reading debate. In principle, the government is supportive of the concept of extending both contribution agreements and integrity agreements across to sports betting. The amendment as drafted requires the betting operator to enter into an integrity agreement with the Independent Gambling Authority. Of course, the problem with this concept is that the Independent Gambling Authority is not the body responsible for the conduct of sport in South Australia: it does not have any legislative mandate to control or regulate the conduct of sport in this state. While the racing controlling authorities are clearly identified in legislation, the same is not true for sports-controlling authorities. A legislative scheme for the identification of sports-controlling authorities and dispute resolution will be required.

I need to stress that, without a contribution agreement in place, this amendment would cause a sports-controlling authority to incur the costs of handling inquiries from betting operators around Australia and perhaps beyond, without any source of revenue to cover the costs.

Again, I am happy to commit the government to further development of these ideas in 2009. Clearly, we understand the good intent of the Hon. Robert Brokenshire's amendment, and we commit ourselves to wider consultation with the South Australian community when we revisit this idea in 2009. I again stress that, in the meantime, the Independent Gambling Authority, through its power to approve contingencies, will have regard to the standards of probity applying in relation to those contingencies. For the reasons I have just outlined, the government cannot support the amendment at this time.

The Hon. T.J. STEPHENS: The opposition does not support the amendment at this time. We understand the intent, and I do believe that the Hon. Robert Brokenshire's proposal is well intentioned. We certainly would not entertain anything without consulting widely within the community. One of the Hon. Robert Brokenshire's examples related to AFL football.

The AFL football code of conduct means that not only are players not allowed to bet on their own games but also they are not allowed to bet on other games and, sadly, one of my heroes was recently widely criticised for indulging in betting on football games that he was not involved in.

The Hon. R.I. Lucas: Kieran Jack.

The Hon. T.J. STEPHENS: I won't mention any names because I do not think it needs to be revisited, but sporting groups generally already have a code of conduct that provides some integrity. That is not to say that we would not be prepared to look at it, investigate it, consider it and form a balanced opinion at the time.

Sadly, today, we do not have the ability to do all of those things and, given that I have been contacted by every racing code again today stressing the urgency and their concern with this legislation, we cannot support the Hon. Rob Brokenshire's amendment at this time. However, we give the honourable member a commitment that we are quite prepared to look at the intention of his amendment with a reasonable amount of time to consult widely.

Amendment negatived; clause passed.

Remaining clauses (24 to 35), schedule and title passed.

Bill reported without amendment.

Bill read a third time and passed.

MURRAY-DARLING BASIN

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (17:17): I table a copy of a ministerial statement relating to the release of the CSIRO report titled Water Availability in the Murray-Darling Basin made earlier today in another place by my colleague the Minister for Water Security.

WOMEN'S AND CHILDREN'S 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) (17:18): I table a copy of a ministerial statement relating to the Roder report on breast cancer at the WCH made earlier today in another place by my colleague the Minister for Health.

STATUTORY OFFICERS COMMITTEE

The House of Assembly appointed Mrs Redmond to fill the vacancy on the committee caused by the resignation of the Hon. R.G. Kerin.

SOUTH AUSTRALIAN COUNTRY ARTS TRUST (CONSTITUTION OF TRUST) AMENDMENT BILL

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

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (17:19): 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 Government recognises that South Australia's regions play a vital role in the economy and social fabric of our State. With more than a quarter of our population living in regional areas, and the regions making a major contribution to our exports and to our economy, the prosperity and well-being of regional communities is critical to the sustainability of the entire State.

Country Arts SA plays a major role in ensuring that regionally-based South Australians have access to arts and cultural development opportunities that enrich their lives and contribute to their well-being. This organisation works with and for regional South Australians towards building a culture of creativity. It delivers a range of arts programs and services including:

- managing and operating the State's 4 regional theatres in Whyalla, Port Pirie, Renmark and Mount Gambier
- touring performing arts performances and visual arts exhibitions to regional communities across the State
- managing arts development and community artist funding programs
- developing sustainable arts and well-being programs, in collaboration with other agencies, to meet developing health challenges, particularly for young people in regional areas
- providing an arts information and advisory service to regional South Australia.

The *South Australian Country Arts Trust Act 1992* established a two-tiered system for the governance of country arts within the State, being the central South Australian Country Arts Trust and 4 regional Country Arts Boards (Central, Riverland/Mallee, South East and Western). The *South Australian Country Arts Trust Regulations 2004* sets out how nominations for membership of the regional Boards are to be made. The Act stipulates that 4 of the 9 trustees are the presiding members of the regional Boards. This results in a double set of meetings and responsibilities for these office-bearers.

New regional boundaries for the delivery of services in regional South Australia were determined by State Cabinet in December 2006, and government entities, including Country Arts SA, as a statutory authority, were required to operate in accordance with these new boundaries by the end of 2008. The regions for the existing Country Arts boards do not match with these boundaries.

At its meeting on 22 February 2008, the South Australian Country Arts Trust gave its unanimous approval for Country Arts SA's governance arrangements to be restructured. It is proposed to restructure the governance model for the Trust into a single tiered structure with 5 of its 9 members representing areas incorporating the revised South Australian Government regional boundaries. The proposed new structure would:

- maintain a board of trustees comprising 9 members appointed by the Minister
- reconstitute the Trust's membership to comprise 1 presiding trustee, 5 regionally-based trustees, 1 Local Government Association nominee, and 2 other trustees with management, entrepreneurial, legal or arts expertise, with the 5 regionally-based trustees representing areas incorporating the revised SA Government regional boundaries
- abolish the 4 regional Country Arts Boards
- allow for the establishment of advisory committees comprised of trustees.

It is proposed that 1 trustee be appointed to represent each of the following groupings of new State Government regions:

- Barossa, Yorke/Mid North
- Eyre and Western/Far North
- Fleurieu and Kangaroo Island/Adelaide Hills
- Murray and Mallee
- Limestone Coast

Under the proposed amendments, a person will not be eligible to be appointed to represent a proclaimed region unless that person resides in the region.

In addition, under section 11 of the Act, the Trust proposes to establish a Grants Assessment Committee comprising 10 regionally-based people (with 2 to be selected from each of the 5 new regional groupings listed above). Through the establishment of a register of interested peers, Country Arts SA will identify and nominate suitable candidates to serve on this committee. This will ensure that decisions on arts grant applications are made by regionally-based people with knowledge and experience in the arts.

Country Arts SA has asked for these changes. The changes are unanimously supported by the Trust since they will provide for both a higher level of, and more equitable, regional representation on the board of trustees and also provide trustees with an opportunity to be more involved across all aspects of Country Arts SA's activities.

The Government therefore proposes to amend the *South Australian Country Arts Trust Act 1992* to remove references to the regional Country Arts Boards and to allow the Trust to be reconstituted, with its membership being drawn directly from regional South Australia, and reflecting the new groupings of regional boundaries, as previously outlined.

The Government also proposes to revoke the *South Australian Country Arts Trust Regulations 2004* and proclaim new regional boundaries for the delivery of services by Country Arts SA.

This Bill removes references in the Act to Country Arts Boards and provides for more trustees to represent the new regional areas of the State that are to be proclaimed.

I commend the Bill to Honourable Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *South Australian Country Arts Trust Act 1992*

4—Amendment of long title

This clause amends the long title to remove the reference to Country Arts Boards. This amendment is consequential on the amendments to section 5.

5—Amendment of section 3—Interpretation

This clause amends section 3 to remove definitions that will become unnecessary when Country Arts Boards cease to exist. It also provides for the creation of regions by proclamation. These amendments are consequential on the amendments to section 5.

6—Amendment of section 5—Membership of Trust

This clause amends section 5 so that the South Australian Country Arts Trust consists of a presiding member, 5 persons appointed to represent proclaimed regions, 1 person chosen from a panel of persons nominated by the Local Government Association and 2 persons with legal, managerial, entrepreneurial or arts skills. To be eligible to be appointed to represent a proclaimed region, a person must reside in the region.

7—Amendment of section 6—Terms and conditions of office

The amendments to section 6 are consequential on the amendments to section 5.

8—Amendment of section 7—Procedures of Trust

The amendment to section 7 is consequential on the repeal of section 8.

9—Repeal of section 8

This clause repeals section 8 which is no longer necessary because members of the Trust are members of a public sector agency and hence subject to the conflict of interest provisions in the *Public Sector Management Act 1995* (the *PSM Act*).

10—Amendment of section 9—Functions and powers of Trust

11—Amendment of section 12—Delegation

The amendments made by these clauses to sections 9 and 12 are consequential on the amendments to section 5.

12—Amendment of section 17—Budget

This clause amends section 17 by replacing subsection (1) with a new provision that omits the transitional portion of that subsection which became spent once the Trust had submitted its first budget after the Act came into operation in 1992.

13—Repeal of Part 3

This clause repeals Part 3 which established the Country Arts Boards and defines their functions and powers.

14—Substitution of sections 29 and 30

29—Immunity from liability

Under the PSM Act members and employees of the Trust, being respectively members and employees of a public sector agency, enjoy protection from civil liability for acts and omissions in good faith in the exercise or purported exercise of official functions or powers. This protection does not, however, extend to delegates of the Trust.

Hence, section 29 has been redrafted so that no civil liability attaches to persons to whom the Trust delegates functions or powers for acts or omissions in good faith in the exercise or purported exercise of those delegated functions or powers. An action lies instead against the Crown.

30—Regulations

Section 30 which empowers the Governor to make regulations has been redrafted so as to omit those provisions which will no longer be necessary when Country Arts Boards cease to exist.

15—Repeal of Schedule

This clause repeals the Schedule which contains spent transitional provisions.

Schedule 1—Transitional provisions

1—Interpretation

This clause contains a definition.

2—Transfer of assets, etc of Country Arts Boards to Trust

This clause transfers all assets, rights and liabilities of Country Arts Boards to the Trust.

3—Transitional provision relating to Trust

This clause provides for existing members of the Trust to vacate their offices so that fresh appointments can be made.

PLANT HEALTH 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) (17:20): I move:

That this bill be now read a second time.

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

Leave granted.

The Plant Health Bill will help to protect South Australia's $1.5 billion fresh fruit, vegetable, grape and field crop industries from the introduction of pests and diseases of quarantine concern. Pests and disease risks are increasing due to increasing international and domestic trade, the movement of people and climate variability.

Securing the favourable plant health status of primary industries and the natural environment is of prime importance to South Australia. It is vital for the maintenance of the State's market access advantage for our plant produce and in the preservation of our unique natural environment and plant biodiversity for future generations. Mitigating the risks of introduction or establishment of pests and diseases is the most effective form of Biosecurity.

The Bill provides for an upgraded level of protection of plants from pests within South Australia, the regulation of the movement of plants into, within and out of the State, and the control, destruction and suppression of pests. Further, it provides for the repeal of the *Fruit and Plant Protection Act 1992* and the *Noxious Insects Act 1934*.

The Bill updates existing legislation to:

- allow for the establishment of an import verification compliance system,
- ensure compliance with national emergency plant pest response requirements,
- recognise national arrangements for interstate plant produce exports, and
- ensure that South Australia is well positioned to respond to future incursions of both pests and diseases of quarantine concern, and noxious insects (locusts and plague grasshoppers).

The Bill will strengthen the processes for clearance of commercial imported plant produce to minimise the potential for introduction of pests and diseases of quarantine concern. This will involve the registration of commercial importers, the notification of imports to Primary Industries and Resources South Australia (PIRSA) via the provision of manifests by transport companies, and an improved system of produce clearance through an import verification system. The latter will require importers either to be accredited under an import verification compliance arrangement (IVCA) or to present consignments to a government inspector for clearance. The IVCA is designed to allow accredited businesses to undertake verification checks of imported produce and to provide for a flexible and cost effective alternative to government inspection.

Although the *Fruit and Plant Protection Act 1992* has served this State well since its introduction, there have been a series of developments at the national level that require modification of the legislation.

South Australia is a member of Plant Health Australia Limited and a signatory to the national Emergency Plant Pest Response Deed. There are obligations in relation to the Deed that require legislative changes to ensure that the State can respond appropriately to future incursions of emergency plant pests (and diseases). These include a rapid reporting mechanism in the event of a suspect emergency plant pest, an ability to respond efficiently and

effectively to such detections, and an ability to pay agreed owner reimbursement costs to an affected business in the event of an agreed national response plan.

Nationally there has also been the development of an Interstate Certification Assurance (ICA) system that allows accredited businesses to undertake a flexible and cost effective certification process for the export of plant produce to interstate markets. This system has been working well in South Australia over a number of years and PIRSA staff accredit businesses under the scheme and undertake the required audit function. This Bill will provide the legislative underpinning of the ICA in South Australia.

In comparison to the current legislation, the proposed Bill will:

- Enable the Chief Inspector to specify a broader range of actions for orders to prevent the potential outbreak or spread of a declared pest.
- Expand the current reporting requirement for pests to include any experienced observer who knows or suspects that a pest or disease of quarantine concern is affecting fruit or plants, recognising that more trained observers are regularly visiting crops during their growth. There is an existing requirement for growers to report if they know or suspect the presence of a pest or disease of quarantine concern in their orchard or nursery. This measure will utilise the existing skills and knowledge of trained crop consultants and pest monitors to foster earlier reporting of new pest incursions so essential for successful pest eradication.
- Regulate wholesale labelling requirements for packaging containing both imported and local horticultural produce or prescribed plants for sale within the State. This will provide traceability in the event of an outbreak of a declared pest and provide consistency with the State's trade measurement legislation.
- Require transport manifests for consignments of horticultural produce or plants for sale to be provided to the Chief Inspector prior to entry into South Australia. A similar requirement will exist for produce to be transported or transhipped through the State.
- Require importers of commercial produce to be registered.
- Allow businesses to become accredited to issue assurance certificates for the movement of plant and plant produce to interstate markets and/or to verify that imports meet South Australia's import requirements.
- Permit an import verification system to provide regular importers of plants and plant produce with a more flexible and cost-effective system for clearance of their imports under a compliance arrangement with PIRSA.
- Clarify the general powers of inspectors concerning entry, and to provide greater protection for the occupier of premises through requirements for notification.
- Allow an inspector to undertake emergency actions to control, to prevent spread or to eradicate a declared pest. (Stringent guidelines will apply for assessment and approval eg clearance by the Chief Inspector.)
- Establish a legislative basis for the issuing of Plant Health Certificates by inspectors.
- In accordance with Emergency Plant Pest Response Deed, enable nationally agreed owner reimbursement costs to be paid to businesses or persons directly impacted by a national response against an emergency plant pest.
- Increase maximum penalties for high and medium risk offences, and expand the number of expiable offences to deter plant biosecurity breaches.
- Allow the Minister to establish fees for services provided by PIRSA to produce importers and exporters. (A Horticulture Industry Charges Panel is being established to provide recommendations to the Minister on the future level of fees).
- Repeal the *Noxious Insects Act 1934* and allow future responses to be covered by a Code under the Bill. The Code will establish operational procedures for future responses.

Extensive stakeholder consultation was undertaken in late 2007, including the widespread distribution of a consultation package comprising the draft Bill, an Explanation of Clauses document and a discussion paper. Eleven individually tailored information leaflets were written to explain the proposed changes likely to affect specific stakeholders groups, including growers, produce importers, transporters, the nursery industry, home gardeners and local government. A series of stakeholder meetings was organised for both special interest groups and the general public.

Submissions were received from 26 stakeholders representing individuals, various industry groups, other State government departments, interstate jurisdictions, the Commonwealth, and Plant Health Australia Ltd.

Analysis of the submissions revealed a high level of support from stakeholders for the proposed improvements to the existing legislation. This included support for proposed arrangements for noxious insect response from the Locust Community Reference Group representing landholders, the community and local government in the northern areas of the State.

Stakeholders also forwarded their own proposals, including the establishment of a register of importers, which has been strongly supported by the Horticulture Plant Health Consultative Committee, representing key South

Australian horticulture industry groups and the Adelaide Produce Market Ltd. This proposal and a number of other minor proposed changes have been incorporated into the Bill.

The Plant Health Bill represents a significant step forward in improving the State's ability to prevent, detect and respond swiftly and effectively to incursions of pests and disease of quarantine concern.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

3—Interpretation

This clause sets out the meaning of terms included in the measure. Some of the important definitions include *disease*, *pest*, *plant*, *assurance certificate*, *plant health certificate* and *plant related product*. It also provides that soil or potting mix will be taken to be affected by a pest if a plant affected by a pest has been growing in the soil or potting mix. A plant related product will be taken to be affected by a pest if the product has been used to contain or cover or has been in contact with a plant, soil or potting mix affected by a pest.

4—Pests and plant related products

The Minister may declare, by notice in the *Gazette*, a disease, insect, mite, arthropod, snail, slug, nematode or other organism that affects a plant or a plant related product to be a pest for the purposes of this measure. In this way, the measure will only apply to those pests that are so declared. The Minister may also declare, by notice in the *Gazette*, additional materials or items to be a plant related product for the purposes of this measure.

5—Quarantine stations

The Minister may declare, by notice in the *Gazette*, a place to be a quarantine station in which a plant or plant related product may be held, examined, disinfected, treated, destroyed or disposed of.

Part 2—Protection of plant health

Division 1—Reporting of pest affected plants and plant related products and noxious insects

6—Reporting of pest affected plants and plant related products and noxious insects

A person who knows or suspects that a plant or plant related product is affected by a pest must immediately report it to an inspector and provide the inspector with such information that he or she reasonably requires. The person must also take all reasonable measures to prevent the spread of the pest. Failure to do so may result in a penalty of $100,000 for a body corporate or $20,000 for a natural person. If a person fails to immediately report the appearance of noxious insects on premises to an inspector, the penalty is $1,250. The offence may be expiated on payment of $160. Failure to report the presence of locusts and small plague grasshoppers (both native species) presents a very small risk compared to what might ensue from the failure to report a quarantinable pest.

Division 2—Control and prevention

7—Prohibition on introducing pest affected plants or plant related products

A person must not introduce or import into the State a pest or a plant or plant related product affected by a pest. The Minister has the power to prohibit by notice in the *Gazette*, either absolutely or subject to conditions, the introduction or importation into the State of a specified class of plant or plant related products. The Minister may exempt a person from complying with these obligations for the purposes of furthering agricultural interests, scientific research or the biological control of a pest. Before granting such an exemption, the Minister must consult widely with members of the agricultural and scientific communities. Contravening this clause or a Ministerial notice, or taking delivery of a thing brought into the State in contravention of this clause or a notice, is an offence with a penalty of $5,000, or expiation fee of $315 for a minor offence (defined to be where something is introduced or imported or taken delivery of for domestic use, consumption or enjoyment and not for sale or commercial purposes), and in all other cases, $100,000 for a body corporate or $20,000 for a natural person.

8—Quarantine areas

The Minister may, by notice in the *Gazette*, declare the whole or part of the State to be a quarantine area in relation to all or specified pests. The notice may impose conditions or require specified action in relation to the quarantine area, including prohibiting the removal of particular plant species or plant related products that may transmit a pest; requiring the owners or occupiers of premises within the quarantine area to take particular measures for the control or eradication of a pest including the destruction of plants; prohibiting or restricting persons, vehicles, machinery or equipment from entering or leaving a quarantine area; prohibiting the importation of certain plants or plant related products into a quarantine area or prohibiting the planting, propagation or harvesting of certain plants within the area during a specified period. Failing to comply with a notice under this clause is an offence with a penalty of $5,000 or expiation fee of $315 for a minor offence (defined as relating to domestic use, consumption or enjoyment and not for sale or commercial purposes) and in all other cases—$100,000 for a body corporate and $20,000 for a natural person.

9—Orders relating to pest affected plants or plant related products

This clause gives the Chief Inspector the power (to be exercised with the approval of the Minister) to issue orders if he or she knows or suspects that a plant or plant related product is or might become affected by a pest. The purpose of the orders is to prevent the outbreak or spread of the pest and may be issued in writing to a person who owns or has possession or control of the affected plant or plant related product, a person who sold or supplied the plant or plant related product, or an owner or occupier of premises in the area specified in the order. What may be included in an order are set out in the proposed section, including that the order may be subject to such conditions as the Chief Inspector may impose.

Contravening or failing to comply with an order is an offence with a penalty of $100,000 for a body corporate and $20,000 for a natural person.

10—Action in emergency situations

If an inspector reasonably considers that urgent action is required for the purpose of the control, prevention, or eradication of a pest, under this clause, the inspector may, after giving such notice as is reasonable in the circumstances (if any), take any action that could be required to be taken by a ministerial notice or order of the Chief Inspector issued under Part 2 of the measure.

11—Prohibition on sale of pest affected plants or plant related products

The sale or supply of a plant or plant related product affected by a pest or subject to an order under Part 2 of the measure is prohibited without the approval of the Chief Inspector. There is a penalty of $100,000 for a body corporate and $20,000 for a natural person. The owner of a premises in respect of which an order is in force is required to notify the Chief Inspector of any intended sale of the premises at least 28 days before the date of settlement. Failing to do so is an offence with a penalty of $5,000 that may be expiable on payment of an expiation fee of $315. In addition to any penalty imposed, a person found guilty of an offence under this clause may be ordered by the court to pay compensation to the person to whom the plant or plant related product was sold or supplied.

Part 3—Packaging, identifying and transporting plants and plant related products

Division 1—Packaging and labelling of fruits, vegetables and nuts

12—Packaging and labelling of fruit, vegetables and nuts for sale

This clause makes it an offence for a person to sell or pack for sale, any fruit, nuts or vegetables if the packaging is not clean and in good repair, and labelled in accordance with the requirements of the regulations. A person must also comply with any requirements or prohibitions prescribed by the regulations in relation to the use of used packaging. There is a penalty of $5,000 or an expiation fee of $315 for contravening this clause.

13—Identification of plants sold for propagation

This clause prohibits a person from selling any prescribed plant for propagation unless it is accompanied by a label or other written notice containing the information required by the regulations. There is a penalty of $5,000 or expiation fee of $315 for contravening this clause.

Division 2—Manifests

14—Manifests

A person is required under this clause to lodge a manifest with the Chief Inspector that complies with the requirements of the Minister before bringing plants or plant related products into South Australia for sale. A person must not tranship, or transport through South Australia, a plant or plant related product for sale in another State unless, before doing so, the person has lodged a manifest with the Chief Inspector. The person must produce a copy of the manifest at a quarantine station or on the request of an inspector. There is a penalty of $5,000 or an expiation fee of $315 for contravening any of these requirements.

Part 4—Accreditation and registration schemes

Division 1—Accreditation of production areas

15—Accreditation of production areas

The Minister may declare, by notice in the *Gazette*, that an area specified in the notice is free of specified pests and that specified statements may be used in advertising, packaging or selling plants or plant related products produced or processed in that area. It is an offence to use any such statement in relation to plants or plant related products not produced or processed in the specified area, the penalty for which is $20,000 (which may be expiated on payment of $500 expiation fee).

Division 2—Accreditation of persons

16—Application for accreditation

Applications for accreditation under this proposed Division must be made to the Minister in the manner and form required by the Minister and be accompanied by the prescribed fee. The Minister may require further information and the application process may require an inspection of premises, facilities and plant and equipment.

17—Grant of accreditation

The Minister must grant an accreditation on application if satisfied that the person is a suitable person to hold accreditation, taking into account such things as whether the person has committed any offence against this measure or the repealed Act or any offences of dishonesty. The Minister must also be satisfied that the person meets any requirements for accreditation relating to protocols, operational procedures or other prescribed matters.

18—Authority conferred by accreditation

This clause provides that a person named in the accreditation is authorised to issue assurance certificates, and/or to verify assurance certificates or other documents, or the packaging or labelling of plants and plant related products, in accordance with the terms and conditions of the accreditation.

19—Assurance certificates and evidence of verification

Assurance certificates may be issued in relation to the movement of a plant or plant related product within the State, into or out of the State, or for another purpose and may certify that specified plants or plant related products comply with this measure (or a corresponding law) in relation to the control or prevention of the spread of pests. Examples of matters about which certification may be given are included in the clause. Some of these include that a plant or plant related product is free of a specified pest, or has been subjected to a particular treatment or meets certain requirements.

This clause also provides that the verification of assurance certificates and other documents, or the packaging or labelling of plants and plant related products may be evidenced in a manner or form approved by the Minister.

20—Conditions of accreditation

This clause gives the Minister the power to place conditions on a person's accreditation. Examples of what these conditions may contain are set out in the provision and include restrictions on the class or type of assurance certificate that can be issued under the accreditation; restrictions on the activities in relation to which the certificate can be issued; restrictions on the class or type of documents that may be verified; conditions regarding the records to be kept by the accredited person; conditions requiring compliance with prescribed protocols or operational procedures; conditions relating to the audit of the person's operations under the accreditation, and conditions regarding the provision of information required by the Minister. It is an offence for an accredited person to contravene a condition of the person's accreditation. In relation to contravening a prescribed condition, there is a penalty of $5,000 or an expiation fee of $315. In relation to any other conditions, the penalty is $100,000 for a body corporate or $20,000 for a natural person.

21—Periodic fees and returns

An accredited person must lodge a return with the Minister for the period and at a time set out in the regulations. The return must also be accompanied by a fee fixed by the regulations. If a person fails to lodge the return or pay the annual fee, the Minister may require the person to make good the default and pay an amount set by the regulations as a penalty by notice in writing. The person has 14 days in which to comply with the notice or the person's accreditation will be suspended. If the person is still in default 3 months after the Minister's notice, the accreditation will be cancelled. Written notice of a suspension or cancellation will be given to the person.

22—Variation of accreditation

This clause provides that the Minister may vary the terms or conditions of an accreditation by written notice to the accredited person. The variation may be on the initiative of the Minister, or at the request of the accredited person and payment of the prescribed fee.

23—Surrender of accreditation

Under this clause, an accredited person may surrender his or her accreditation to the Minister and in relation to an accreditation to issue assurance certificates, must also surrender any unissued assurance certificates. Failing to do so may result in a penalty of $1,250 or expiation fee of $160.

24—Suspension or cancellation of accreditation

This clause sets out the grounds on which an accreditation may be suspended or cancelled by the Minister. These include where a person obtained the accreditation improperly, or the accredited person has ceased to carry on the activity authorised by the accreditation or has failed to pay fees or charges relating to the accreditation within the required time. An accreditation may also be suspended or cancelled if the accredited person breaches an accreditation condition or commits an offence against this measure or has been convicted of an indictable offence. Suspension of an accreditation may be for a specified period or until certain conditions are fulfilled or until the Minister orders otherwise. A suspension may be effective immediately or from a specified time. Written notice must be given to the person of the action or proposed action and the reasons for it and allow the person 14 days in which to make submissions to the Minister in relation to the action or proposed action. A person is required to return the accreditation and any unissued assurance certificates within 14 days of the suspension or cancellation of the accreditation. Failing to do so may result in a penalty of $1,250 or an expiation fee of $160.

25—Offences

This clause provides that a person must not verify that assurance certificates or other documents issued under this measure or a corresponding law, or the packaging or labelling of plants or plant related products comply with the requirements of this measure or a corresponding law except as authorised by accreditation granted under Division 2. The penalty for a contravention of this provision is $100,000 for a body corporate or $20,000 for a natural person.

This clause also sets out certain offences relating to accreditation and assurance certificates. These include that it is an offence for a person to issue an assurance certificate other than as authorised by accreditation granted under this Division. The penalty for a contravention of this provision is $100,000 for a body corporate or $20,000 for a natural person. Nor must a person issue anything that purports to be an assurance certificate unless the person is accredited to do so. The penalty for doing so is $100,000 for a body corporate and $20,000 for a natural person. It is also an offence to alter information in an assurance certificate without the written authority of the person issuing the certificate, or in the case of an alteration that relates to the splitting of a consignment, the alteration is made by an inspector or a person authorised to split consignments under an accreditation. The penalty for doing so is $100,000 for a body corporate and $20,000 for a natural person.

Division 3—Registration of importers

26—Application for registration

This clause provides that an application for registration as an importer under this Division is to be made in the manner and form and contain the information required by the Minister and is to be accompanied by the prescribed fee.

27—Grant of registration

The Minister must grant an application for registration as an importer if satisfied that the person is a suitable person to be registered and the applicant satisfies any requirements relating to protocols, operational procedures or other prescribed matters.

28—Conditions of registration

This clause gives the Minister the power to place conditions on a person's registration as an importer. Examples of what these conditions may contain are set out in the provision and include restrictions on the type of plant or plant related product that the person may import; conditions regarding the records to be kept by the importer; conditions requiring compliance with prescribed protocols or operational procedures; conditions requiring compliance with applicable codes or rules made under this measure, and conditions regarding the provision of information required by the Minister. It is an offence for a registered importer to contravene a condition of his or her registration with a penalty of $20,000 for a body corporate or $5,000 for a natural person and an expiation fee of $500 or $315, respectively.

29—Periodic fees and returns

A registered importer must lodge a return with the Minister for the period and at a time set out in the regulations. The return must also be accompanied by a fee fixed by the regulations. If a registered importer fails to lodge the return or pay the registration fee, the Minister may require the importer to make good the default and pay an amount set by the regulations as a penalty by notice in writing. The importer has 14 days in which to comply with the notice or the importer's registration will be suspended. If the importer is still in default 3 months after the Minister's notice, the registration will be cancelled. Written notice of a suspension or cancellation will be given to the importer.

30—Variation of registration

This clause provides that the Minister may vary the terms or conditions of an importer's registration by written notice to the importer. The variation may be on the initiative of the Minister, or at the request of the registered importer and payment of the prescribed fee.

31—Surrender of registration

A registered importer may surrender the registration to the Minister.

32—Suspension or cancellation of registration

This clause sets out the grounds on which an importer's registration may be suspended or cancelled by the Minister. These include where a person obtained the registration improperly, or the registered importer has ceased to carry on the activity authorised by the registration or has failed to pay fees or charges relating to the registration within the required time. Registration may also be suspended or cancelled if the registered importer breaches a condition of registration or commits an offence against this measure or has been convicted of an indictable offence. Suspension of a registration may be for a specified period or until certain conditions are fulfilled or until further order of the Minister. A suspension may be effective immediately or from a specified time. Written notice must be given to the importer of the action or proposed action and the reasons for it and allow the importer 14 days in which to make submissions to the Minister in relation to the action or proposed action. A person is required to return the registration within 14 days of the suspension or cancellation of the registration. Failing to do so may result in a penalty of $1,250 or an expiation fee of $160.

33—Offence

It is an offence for a person to import into the State, plants or plant related products for sale or other commercial purpose, unless they are registered to do so under Division 3. There is a maximum penalty of $20,000 for a body corporate or $5,000 for a natural person or an expiation fee of $500 or $315, respectively.

Division 4—Register

34—Register

This clause requires that the Minister keeps a register of accredited persons and registered importers in the form and containing the information considered appropriate by the Minister.

Division 5—Reviews and appeals

35—Review by Minister

This clause provides that a person may apply to the Minister for a review of a decision to refuse an application for the grant of accreditation under Division 2 or registration as an importer under Division 3; or the imposition or variation of the terms or conditions of accreditation or registration, or the suspension or cancellation of an accreditation or registration. An application for a review made under this clause must be made within 28 days from when the person was given written notice of the decision. The Minister has the discretion to determine the application for review as he or she sees fit. The determination must be made within 28 days of the application being lodged, or the decision will be taken to have been confirmed by the Minister.

36—Appeal to District Court

A decision of the Minister on review may be appealed by the applicant to the Administrative and Disciplinary Division of the District Court within 28 days. The Minister must give written reasons for the decision if required by the applicant for the review, and the time for instituting an appeal will run from the time the applicant receives the written statement of those reasons.

Part 5—Enforcement

Division 1—Approved auditors

37—Approved auditors

This clause provides that the Minister may approve a person as an auditor for the purposes of this measure if satisfied that the person can provide satisfactory and efficient audit services and the person is suitably qualified. The Minister may impose conditions on the approval including that the person enter into an audit agreement with the Minister, conditions limiting the functions or powers of the person or limiting the area of the State in which those powers may be exercised, or conditions fixing fees that are to be paid to the Minister. An audit agreement entered into by the person and the Minister must regulate the provision of audit services under this measure and set out the requirements relating to audit reports, and also provide that the agreement will terminate if approval is withdrawn by the Minister. The agreement may also regulate the charges that may be made by the auditor for audit services and the withdrawal of audit services for the non-payment of such charges. The Minister and approved auditor may by agreement, vary or terminate an audit agreement. The Minister may impose further conditions of approval or vary or revoke a condition by written notice to the approved auditor. The Minister may also cancel an approval if satisfied the auditor is in breach of a condition of the approval or a term of the audit agreement. The rights of an inspector to exercise a power under this measure is not limited by an approval or audit agreement.

38—Duty of auditor to report certain matters

This clause provides that if on conducting an audit, an approved auditor forms a reasonable belief that an accredited person is or has breached a prescribed accreditation condition or is or has engaged in conduct of a prescribed kind, the auditor must inform the Minister of the name and address of the accredited person and the details of the facts and circumstances giving rise to the belief. There is a penalty of $5,000 for failing to do so.

39—Offence to hinder or obstruct auditor

Under this clause, it is an offence to hinder or obstruct an auditor performing an audit under this Division of the measure with a penalty of $5,000.

Division 2—Inspectors

Subdivision 1—Appointment and identification

40—Appointment of Chief Inspector and deputy

This clause provides that the Minister may appoint a person to be the Chief Inspector and the deputy of the Chief Inspector. While acting in his or her absence, the deputy has all the powers and functions of the Chief Inspector under this measure or any other Act.

41—Appointment of inspectors

Under this clause, the Minister may appoint inspectors for the purposes of this measure by instrument in writing. Such an appointment may be conditional.

42—Identification of inspectors

This clause provides that an inspector must be issued with an identity card that contains a photograph and the name of the person or a unique identification code. An inspector must produce this card for inspection at the request of a person in relation to whom the inspector intends to exercise any powers under this measure or any other Act. If a person ceases to be an inspector, the person must immediately return the identity card to the Minister. There is a penalty of $1,250 for failing to do so.

Subdivision 2—Powers

43—General powers

This clause provides inspectors with powers to enter, search, give directions, require production of documents, verify assurance certificates, packaging and labelling, seize and retain plants or plant related products, among other things, as may be reasonably required for the administration and enforcement of this measure. Certain powers may only be exercised on the authority of a warrant or with the consent of the occupier of the premises. The clause also sets out what an inspector may do with a plant or plant related product seized under this clause.

44—Power to investigate

This clause provides inspectors with power to carry out investigations as reasonably necessary for the purposes of determining whether a plant or plant related product is affected by a pest or identifying or tracing pests.

45—Power to issue plant health certificates

This clause provides that inspectors may issue plant health certificates in respect of plants or plant related products—

- grown, produced, packed, used, treated or tested in the State; or
- to be imported, introduced or brought into the State.

The plant health certificate may certify as to things such as the condition of a plant or plant related product, or that the plant or plant related product is free of a particular pest, or has been treated in a certain way. The clause sets out the powers that may be exercised by the inspector in relation to the issue of the certificate. It is an offence for someone other than an inspector to issue a plant health certificate, with a penalty of $100,000 for a body corporate and $20,000 for a natural person. It is also an offence to alter a plant health certificate unless authorised to do so in writing by an inspector or the alteration relates to the splitting of a consignment by an accredited person authorised to do so by an accreditation granted under Part 4 of this measure.

Subdivision 3—Miscellaneous

46—Immunity from liability

This clause provides for immunity from civil liability for inspectors and persons assisting inspectors in carrying out their duties under this measure. Any action that would, in the absence of this clause, lie against an inspector or assisting person lies instead against the Crown.

47—Warrant procedures

This clause provides for the procedures for obtaining warrants for the purposes of this measure in accordance with current practice.

48—Offence to hinder etc inspectors

This clause sets out offences in relation to inspectors including of hindering or obstructing an inspector or a person or animal assisting an inspector in the exercise of powers under this measure. A person also must not fail to comply with a requirement or direction of an inspector the penalty for which is a fine of $5,000.

Part 6—Miscellaneous

49—Delegation

This clause provides the Minister and the Chief Inspector with power to delegate a function or power under this measure by instrument in writing.

50—Compensation

Under this clause, the Minister is given a discretion to pay compensation to any person who has suffered damage or loss as a direct consequence of a notice or an order made under proposed Part 2 of the measure.

51—False or misleading statements

This clause creates an offence if a person makes a statement that is false or misleading in a material particular in an application made, information provided or a certificate issued under this measure. The penalty, in the case where the person knowingly made a false or misleading statement is $10,000 and, in any other case, $5,000.

52—Self-incrimination

This clause makes provision against self-incrimination.

53—Service of notices and orders

This clause makes provision for the service of notices and order under this measure in the usual terms.

54—Vicarious liability

This clause provides that an act or omission of an employee or agent will be taken to be the act or omission of the employer or principal unless it is proved that the act or omission did not occur in the course of the employment or agency.

This clause further provides that if a body corporate commits an offence against this measure, each member of the governing body of the body corporate is guilty of an offence and liable to the penalty applicable to the principal offence unless it is proved that the member could not by the exercise of reasonable diligence have prevented the commission of that offence.

55—Evidence

This clause makes provision for evidentiary procedures for the purposes of the measure.

56—Commencement of prosecution of offences

Proceedings for an offence under this measure may be commenced at any time within 3 years of the day on which the offence is alleged to have been committed.

57—Continuing offences

Under this clause, if an offence against the measure is committed by reason of a continuing act or omission, the person liable for the offence is liable, in addition to the penalty for the offence, to a daily penalty for each day on which the act or omission continues.

58—General defence

It is a defence to a charge of an offence against the measure if the defendant provides that the offence did not result from any failure on his or her part to take reasonable care to avoid the commission of the offence.

59—Incorporation of codes and standards

Notices given or regulations made under the measure may be of general or limited application and may apply, adopt or incorporate (with or without modification) any code, standard or other document prepared or approved by a body or authority referred to in the notice or regulation as in force from time to time, or as in force at a specified time.

60—Regulations

The Governor may make such regulations as may be necessary or expedient for the purposes of the measure.

Schedule 1—Related amendments, repeal and transitional provisions

Part 1—Related amendments

Part 1 of Schedule 1 provides for amendments consequential on the passage of this measure to the *Citrus Industry Act 2005* and the *Phylloxera and Grape Industry Act 1995*.

Part 2—Repeal

Part 2 of Schedule 1 provides for the repeal of the *Fruit and Plant Protection Act 1992* and the *Noxious Insects Act 1934*.

Part 3—Transitional provisions

Part 3 of Schedule 1 makes provision for transitional arrangements.

CRIMINAL INVESTIGATION (COVERT OPERATIONS) BILL

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (17:22): 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.

As part of the attack on the activities of 'outlaw motor cycle gangs', the Premier has called for a national approach to the problems posed by bikies. Co-operative criminal investigation powers are a very good example of a national approach. This Bill will enable co-operative arrangements to be made with other Australian jurisdictions in the areas of criminal investigation dealt with.

This Bill deals with three of those areas. Reform of the law dealing with electronic surveillance is a more difficult and controversial subject and will be addressed in due course.

A task force known as the national Joint Working Group (JWG) established by the Standing Committee of Attorneys-General and the Australian Police Ministers Council published a Discussion Paper in February 2003 that discussed and presented draft legislation on four topics—controlled operations, assumed identities, electronic surveillance and witness anonymity—and received 19 submissions nationally. This report arose from developments in the Council of Australian Governments meetings in the previous year. A Final Report was published in November 2003.

The Report of the JWG dealt with four areas of criminal investigation law. They were (a) assumed identities of informers and undercover operatives; (b) the protection of the identity of some witnesses in court; (c) undercover operations; and (d) electronic surveillance.

Assumed Identities

An assumed identity is a false identity used by a law enforcement authority for a limited period for the purpose of criminal investigation or the gathering of criminal intelligence. An assumed identity provides cover for an undercover operative engaging in a controlled operation to uncover criminal activity or to infiltrate organised criminal

groups. It is important that the undercover operative be able to verify the false identity with such common identity documents as a driver's licence, birth certificate, passport and credit card. South Australia has no legislation that deals with this area of law. As the Wood Royal Commission into the NSW Police Service found in 1997, that lack means that the assumption of false identities for law enforcement purposes may be *ad hoc*, uncertain in legality and lacking in accountability. Therefore, the principal purpose of this legislation is to regularise the creation of false identities by government agencies and to legalise expressly the use of authorised false identity documents by officers of law enforcement agencies.

The lack of an explicit legislative regime means that law enforcement officers are exposed to the risk that they commit criminal offences in acquiring and using an assumed identity, such as the general offences of making and using false documents and specific offences aimed squarely at identity theft. In addition, the lack of a legislative base means that there may be inadequate provision for internal and external accountability mechanisms. The Wood Royal Commission into the NSW Police Service recommended that there be a legislative regime for assumed identities in NSW (see the *Law Enforcement and National Security (Assumed Identities) Act 1998* of NSW). The Commonwealth Government enacted legislation in 2001, now provided for in sections 15XA-15XW of Part 1AC of the *Crimes Act 1914*. Those provisions were to be supplemented by the provisions of the *Crimes Legislation Amendment (National Investigative Powers and Witness Protection) Bill 2006*. That Bill, however, lapsed with the last General Election. Victoria has enacted the model in the *Crimes (Assumed Identities) Act 2004*; the Queensland version is to be found in the *Police Powers and Responsibilities Act 2000*; and the Western Australian version in the *Royal Commission (Police) Act 2002*.

The cross border element of the proposed legislation is particularly significant. It is notorious that criminal behaviour, particularly serious and organised criminal behaviour, does not respect State borders—indeed, may seek to profit from them. Jurisdictional differences and policing areas within Australia create opportunities for crime to flourish. Differing legislative requirements in each Australian jurisdiction about assumed identities create operational uncertainty and delay for law enforcement in cross border criminal investigations. It is proposed that the mutual recognition provisions in the Bill will provide for a scheme that will allow law enforcement authorities using a false identity validly obtained in South Australia under the South Australian Act to use that identity elsewhere in Australia. In addition, the mutual recognition provisions contemplate that law enforcement authorities using a false identity validly obtained in South Australia under the South Australian Act can lawfully acquire evidence of that false identity from an identity issuing authority in another jurisdiction.

The Bill deals with these general issues that comprise the structure of the legislative scheme:

- the procedure for applying for an assumed identity authority;
- the grounds for issuing an authority for an assumed identity;
- the contents of the authority;
- the period for which the authority remains in force;
- the agencies or bodies from which false identity documents can be obtained and whether the issuing of these documents is mandatory or voluntary;
- the scope of the protection from criminal liability and the provision of civil indemnity for people using the authorised false identities and the people who have issued them;
- sanctions for the misuse of false identities;
- cross border recognition of authorities;
- the participation of people who are not law enforcement officers; and
- record-keeping, auditing and reporting requirements.

Witness Protection

Occasionally it is necessary to allow a witness in court proceedings to give evidence without disclosing his or her true identity, to protect the personal safety of the witness or his or her family. Several Australian jurisdictions provide specific measures to protect the true identity of covert operatives who give evidence in court. These measures include, holding the part of the court proceedings relating to the person's identity in private; suppressing the publication of evidence relating to the person's identity; excusing the witness from disclosing identifying details; and enabling the person to use a false name or code name during court proceedings.

The law on protecting the identity of undercover police witnesses varies between jurisdictions. In some jurisdictions, legislation has been enacted, while other jurisdictions leave the issue to the common law. South Australia has no such legislation. It should. Further, in line with the aim of the cross border investigation package, it is desirable to put in place a consistent system in each Australian jurisdiction for cross border investigations. For example, if a South Australia police officer participates in a controlled operation that extends into the Northern Territory, the officer needs to be assured that his or her identity can, if necessary, be protected in any proceedings in the Northern Territory (conforming to proceedings in South Australia). Such consistent protection is necessary to facilitate and encourage cross border investigation and to protect the safety of covert operatives.

Concealing the true identity of undercover operatives in this situation can achieve two purposes that are in the public interest. The first is protecting the personal safety of the witness (or other persons connected to the witness, such as his or her family). The second is enhancing the efficacy of undercover operations. By protecting the true identity of the witness, he or she is preserved as a useful undercover officer, an important tool in fighting

organised crime. Concealing an undercover operative's true identity may also be necessary to encourage police officers and non-police informers to participate in undercover operations, confident that, if necessary, their identity and safety will be protected.

But these factors do not always prevail. There is also a strong and contrary public interest in the right of an accused to be tried fairly. Measures that conceal the true identity of a witness may detract from the right of an accused to be tried fairly, to the extent that they may impinge on the defendant's ability to test the credibility of the witness properly, or at all, in a crucial matter. The kinds of issues that are important are: the witness's general honesty, expertise or standing; the witness's motive to lie; the consistency, or inconsistency, of the witness's evidence with previous statements made by the witness; and the witness's capacity for accurate observation and recollection.

The true identity of the witness will not always be required for credibility to be tested. Issues such as the witness's motive to lie or capacity for accurate recollection will not usually hinge on the actual name or address of the witness. But concealing the true identity of a witness's identity should only be available in exceptional circumstances and subject to strict criteria. A model legislative system for protection of witness identity for covert operatives has the advantage of providing transparency and certainty as to when identity will be concealed. It will also provide consistency for law enforcement agencies and operatives who operate in cross border investigations.

It is not true that a statutory regime to this effect will destroy an inalienable common law right for there is good authority that the identity of a witness can be concealed at common law. Although there is an early case denying the judicial authority to suppress the identity of a witness (*R v Stipendiary Magistrate at Southport ex parte Gibson* [1993] 2 QdR 687), the major effect of that decision was to lead the Parliament of Queensland to enact a statutory scheme that, in effect, overruled that decision. The leading authority now is the later decision in *Jarvie v The Magistrates' Court of Victoria* [1995] 1 VR 84. That decision said that there was a judicial discretion to allow undercover operatives to give evidence without revealing their true identity. Leave to appeal to the High Court was refused. The judicial discretion was based on the doctrine of public interest immunity. That doctrine, sometimes known as the 'informer's immunity', has a long lineage. The most common use of the doctrine is to prevent disclosure of documents or to prevent cross-examination of an identified witness if either course would result in the identification of a police informer. There is no doubt that public interest immunity and the informer's privilege is accepted in South Australia (*R v Mason* (2000) 74 SASR 105; *R v McKelliff* (2004) 87 SASR 476; *Haydon v Magistrates Court and Rofe* (2001) 87 SASR 448; *R v Haydon (No 2)* [2005] SASC 16). In *Mason* and *McKelliff*, the Full Court quoted with approval from *Jarvie*. On the other hand, it did not specifically apply the informers' immunity to a witness giving evidence in court because that was not the situation before it in either case—nor in the *Haydon* decisions.

Legislation allowing the use of a witness in court under conditions of anonymity exists in the Commonwealth (*Crimes Act 1914*, section 15XT), New South Wales (*Law Enforcement and National Security (Assumed Identities) Act 1998),* Queensland (*Evidence (Witness Anonymity) Amendment Act 2000*), Western Australia (*Royal Commission (Police) Act 2002*, section 25), New Zealand (*Evidence Act 1908* sections 13A-13J). Tasmania has enacted the *Witness (Identity Protection) Act 2006* but it is not yet in force.

The Government proposes to put the ability to present a witness in court with a false identity on a firm statutory footing. The proposed scheme will differ from the position at common law. The reasons for putting forward the legislation are clarity, transparency and improvement.

In outline, the proposed scheme is that the chief officer of a law enforcement or intelligence agency is able to give a witness an identity protection certificate that enables a witness to give evidence under a pseudonym without disclosing his or her true identity, to protect the personal safety of the witness or his or her family. The chief officer may delegate the decision making authority to a Deputy Commissioner. The decision-maker must be satisfied that disclosing the person's true identity would endanger them, or somebody else, or would prejudice current or future investigation of a criminal offence. The decision-maker must complete a formal certificate containing the following information:

- the assumed name for the purposes of the proceeding;
- the period during which the operative was involved in the operation to which the proceeding relates;
- the name of the agency;
- the date of the certificate;
- the grounds for giving the certificate;
- whether the operative has been found guilty of an offence, and if so, particulars of each instance;
- whether charges are pending or outstanding, and if so, particulars of each instance;
- where the operative is a law enforcement officer, whether he has been found guilty, or been accused of, misconduct, or there are charges outstanding or pending and the particulars of each instance;
- whether a court has made adverse findings about the credibility of the operative, and the particulars of each instance;
- whether the operative has made a false representation where the truth was required, and particulars of each instance; and
- anything else known relevant to the credibility of the operative

The witness will appear in person to give evidence, be cross-examined and have his demeanour assessed by the court. However, the real name and address will be withheld from the court as well as the defence. Details relating to the credibility of the witness will appear on a certificate of protection issued by the decision-maker, and made available to the court and defence. This will mean that the defence is restricted in its ability to question the credibility of the witness, as only those details revealed on the certificate will be available.

The decision to protect the identity of a witness is final, and cannot be appealed against or otherwise challenged in any court. However, the court at which the protected witness appears will have the authority to give leave or make an order that may lead to the disclosure of the operative's true identity or address. An application for leave must be made in closed court. However, the court may only make such an order or give leave if it is satisfied that:

- there is evidence that, if accepted, would substantially call into question the operative's credibility;
- it would be impractical to properly test the credibility of the operative without allowing for possible disclosure of their identity or address; and
- it is in the interests of justice for the operative's credibility to be tested

If the order to disclose is made, the court must adjourn proceedings for sufficient time so that the prosecution can decide whether to proceed with the witness or not. If the prosecution decides not to call the witness, the order for disclosure must lapse. The provisions for granting leave do not require the court to 'balance' the competing public interests in a fair and open trial (which may require disclosure) against the protection of the identity of a witness. Rather, the competing interests are taken into account by being considered separately by the law enforcement agency (which would consider the need for protection) and the court (which would consider the necessity for disclosure of identity to ensure a fair trial). The application of these provisions will mean a departure from the common law approach, where courts 'balance' these competing interests.

There are offences of disclosure of information dealing with a protected operative. Where a protection certificate is current, and a person engages in conduct that results in a real identity being revealed, a maximum penalty of two years' imprisonment is applicable. Where a person is also reckless about whether his conduct will endanger the health and safety of a person, or will prejudice the effective conduct of an investigation, the maximum penalty is 10 years imprisonment.

The Commissioner of Police is required to provide annual reports to the Minister, which must be tabled in Parliament, containing details of the issuing and use of witness protection certificates.

Undercover or Controlled Operations

The substantive South Australian provisions were enacted in 1995 and have worked well. They are more than adequate by themselves for intrastate operations. I do not intend to open up the substantive provisions of the current law. There has been no objection to the way the current law works from the judiciary, the prosecution, the police or the defence bar. Things are best left alone in such circumstances.

The JWG recommended a model Bill covering the whole of the substantive law on what it called controlled operations for interstate operations. The general purpose of the model was to be that there would be one system for intrastate investigations and another for interstate investigations. It is not conducive to good and efficient criminal investigation for there to be parallel systems regulating undercover operations. It is possible that any one given investigation will require two sets of authorities and two sets of procedures. This can lead only to confusion. It is therefore proposed to enact cross-border provisions within the substantive provisions that South Australia has now. Once the cross border provision is enacted, South Australia can apply for the corresponding recognition of its process in other enacting jurisdictions.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

3—Interpretation

The parameters of this measure are established in the Long Title. The Long Title provides that this measure is enacted to authorise the use of undercover operations and assumed identities for the purposes of criminal investigation and the gathering of criminal intelligence within and outside of South Australia; to establish a certification scheme for the protection of the identity of certain witnesses; to provide for multi jurisdictional recognition of undercover operations, assumed identities and the certification scheme; and for other purposes. Clause 3 contains definitions of words and phrases used in the measure, including definitions of an *approved undercover operation*, an *assumed identity*, *assumed name* and *witness identity protection certificate*.

Part 2—Undercover operations

4—Approval of undercover operations

This clause provides that a police officer of or above the rank of Superintendent may, if satisfied as to various criteria, approve undercover operations for the purpose of gathering evidence of serious criminal behaviour. Such approval must be in writing and must specify (among other matters) who is authorised to participate in the operations, the nature of the operations and the period for which the approval is given. A copy of the instrument of approval must be provided to the Attorney-General.

5—Legal immunity of persons taking part in approved undercover operations

This clause (which operates both prospectively and retrospectively) provides that, despite any other law, an authorised participant in approved undercover operations incurs no criminal liability by taking part in undercover operations in accordance with the terms of the approval.

Part 3—Assumed identities

Division 1—Authority to acquire or use assumed identity

6—Application for authority

This clause makes provision for the making of an application by a law enforcement officer to the chief officer of the law enforcement agency for an authority to—

- acquire an assumed identity; and/or
- use an assumed identity.

Such an application must be in writing and must contain certain information, including the name of the person authorised to acquire or use an assumed identity and the reasons for the need of the assumed identity.

7—Determination of applications

This clause provides that the chief officer may grant an authority applied for under clause 6 subject to such conditions as the chief officer thinks fit if the chief officer is satisfied as to the criteria set out in the clause. If the authority is granted in respect of a person who is not a law enforcement officer (that is, an *authorised civilian*), the chief officer must also appoint a law enforcement officer to supervise the acquisition and/or use of the assumed identity by the authorised civilian.

8—Form of authority

This clause sets out the requirements for the form of the authority.

9—Period of authority

This clause provides that an authority granted to a law enforcement officer (an *authorised officer*) remains in force until cancelled, while an authority for an authorised civilian remains in force until the end of the period specified in the authority (which may not exceed 3 months) unless cancelled sooner.

10—Variation or cancellation of authority

This clause provides that the chief officer who grants an authority may vary or cancel the authority at any time and must cancel the authority if satisfied that any of the grounds for the granting of the authority no longer exist.

11—Yearly review of authority

Each authority granted by a chief officer of a law enforcement agency must, at least once a year, be reviewed by the chief officer (or his or her delegate) to determine whether the grounds for the granting of the authority still exist.

12—Making entries in register of births, deaths and marriages

The Supreme Court may, on application by the relevant chief officer, order the Registrar of Births, Deaths and Marriages to make an entry in the Register under the *Births, Deaths and Marriages Registration Act 1996* in relation to the acquisition of an assumed identity under an authority or corresponding authority.

Such an application must be heard in closed court.

13—Cancellation of authority affecting entry in register of births, deaths and marriages

If a chief officer cancels an authority for an assumed identity for which there is an entry in the Births, Deaths and Marriages Register, the chief officer must apply to the Supreme Court for an order cancelling the entry and the Registrar of Births, Deaths and Marriages must give effect to any such order of the Court.

Division 2—Evidence of assumed identity

14—Request for evidence of assumed identity

The chief officer of a law enforcement agency who grants an authority under proposed Division 1 may also request the chief officer of an issuing agency to produce evidence of an assumed identity and provide the relevant authorised person with that evidence.

15—Cancellation of evidence of assumed identity

The chief officer of an issuing agency must cancel evidence of an assumed identity if directed to do so by the chief officer of the law enforcement agency who requested the production of the evidence.

16—Legal immunity of officers of issuing agencies

This clause provides that the officer of an issuing agency who does something that, apart from this proposed clause, would constitute an offence, is not criminally responsible for the action if the action is done to comply with a request under this Division.

17—Indemnity for issuing agencies and officers

This clause provides that the relevant law enforcement agency must indemnify an issuing agency or agency officer for any liability incurred by the agency or officer if the liability is incurred because of something done by the agency or officer in complying with a request or direction in the course of duty and the agency or officer have met any prescribed requirements.

Division 3—Effect of authority

18—Assumed identity may be acquired and used

Assumed authorities may be acquired and used by an authorised person in accordance with the authority and—

- in the case of an authorised officer—in the course of his or her duty;
- in the case of an authorised civilian—in accordance with any direction by the person's supervisor under the authority.

19—Legal immunity of authorised persons acting under authority

This clause provides for immunity under the law for an authorised person acting properly under an assumed identity in accordance with the authority and if doing the act would not be an offence if the assumed identity were the person's real identity.

20—Indemnity for authorised persons

Where the chief officer of a law enforcement agency grants an authority, the law enforcement agency must indemnify the authorised person under the authority for any liability incurred by the person if—

- the act is done in the course of acquiring or using an assumed identity in accordance with the authority; and
- the act is done—
  - in the case of an authorised officer—in the course of his or her duty; or
  - in the case of an authorised civilian—in accordance with any direction by his or her supervisor under the authority; and
- the requirements (if any) prescribed by the regulations have been met.

21—Particular qualifications

Proposed clauses 19 and 20 do not apply to anything done by an authorised person if a particular qualification is required to do something and the authorised person does not have that qualification (even if the person purports to have the qualification under the assumed identity).

22—Effect of being unaware of variation or cancellation of authority

This proposed Division continues to apply to an authorised person whose authority has been varied or cancelled for so long as the person is unaware of the variation or cancellation and is not reckless about the variation or cancellation.

Division 4—Mutual recognition

23—Requests to participating jurisdiction for evidence of assumed identity

If an authority authorises a request under this clause, the chief officer of a law enforcement agency granting the authority may request the chief officer of an issuing agency of a participating jurisdiction stated in the authority—

- to produce evidence of the assumed identity in accordance with the authority; and
- to give evidence of the assumed identity to the authorised person named in the authority.

24—Requests from participating jurisdiction for evidence of assumed identity

This clause authorises the chief officer of an issuing agency in SA to produce and give evidence of an assumed identity in SA under a request under a corresponding law.

Division 5—Compliance and monitoring

25—Misuse of assumed identity

This clause makes it an offence for an authorised person to acquire evidence of an assumed identity not in accordance with the authority or to misuse an assumed identity. The penalty for such an offence is imprisonment for 2 years.

26—Disclosing information about assumed identity

This clause provides that it is an offence for a person to intentionally, knowingly or recklessly disclose information that reveals that an assumed identity acquired or used by a person is not the person's real identity in circumstances where the disclosure is not made in connection with the administration or execution of this measure or a corresponding law, for the purpose of legal proceedings or in accordance with a requirement imposed by law. The penalty for such an offence is imprisonment for 2 years.

The penalty for a wrongful disclosure is imprisonment for 10 years in circumstances in which the person—

- intends to endanger the health or safety of any person or prejudice the effective conduct of an investigation or intelligence-gathering in relation to criminal activity; or
- knows that, or is reckless as to whether, the disclosure of the information—
  - endangers or will endanger the health or safety of any person; or
  - prejudices or will prejudice the effective conduct of an investigation or intelligence gathering in relation to criminal activity.

27—Record keeping

This clause requires the chief officer of a law enforcement agency to keep appropriate records containing the information set out in the provision about the operation of this proposed Part.

28—Audit of records

This clause requires that the records referred to above kept in relation to an authority be audited at least once every 6 months while the authority is in force and at least once in the 6 months following the cancellation or expiry of an authority.

Division 6—Delegation

29—Delegation

This clause makes provision for the chief officer to delegate his or her functions under proposed Part 3.

Part 4—Witness identity protection

Division 1—Interpretation

30—Interpretation

This clause assists in the interpretation of this proposed Part.

Division 2—Witness identity protection certificates for local operatives

31—Chief officer may give witness identity protection certificate to local operative

This clause provides that the chief officer of a law enforcement agency may give a witness identity protection certificate in respect of a local operative of the agency in relation to proceedings if—

- the operative is or may be required to give evidence in the proceedings; and
- the chief officer is satisfied on reasonable grounds that the disclosure in the proceedings of the operative's identity or where the local operative lives is likely—
  - to endanger the safety of the operative or someone else; or
  - to prejudice any investigation.

The chief officer must be satisfied as to certain information (to be verified by statutory declaration) before giving any such certificate.

32—Protection of decision to give witness identity protection certificate

A decision to give a witness identity protection certificate is final and cannot be appealed against, reviewed, called into question, quashed or invalidated in any court.

However, that does not prevent a decision to give a witness identity protection certificate from being called into question in the course of any proceedings of a disciplinary nature against the person who made the decision.

33—Form of witness identity protection certificate

This clause sets out the requirements for a witness identity protection certificate.

34—Cancellation of witness identity protection certificate

This clause provides that a witness identity protection certificate must be cancelled if the chief officer of a law enforcement agency considers that it is no longer necessary or appropriate to be in place.

35—Permission to give information disclosing operative's identity etc

If the chief officer of a law enforcement agency gives a witness identity protection certificate in respect of a local operative of the agency in relation to proceedings, the chief officer may, if he or she considers it necessary or

appropriate for information that discloses, or may lead to the disclosure of, the local operative's identity or where the local operative lives to be given (otherwise than in the proceedings), give written permission to a person to give the information.

Division 3—Use of witness identity protection certificate in proceedings

36—Application and interpretation of Division

This clause provides that this proposed Division applies to proceedings in SA in which an operative is, or may be, required to give evidence obtained as an operative.

For the purposes of this Division, a *witness identity protection certificate* is—

- a witness identity protection certificate given in respect of a local operative; or
- an interstate witness identity protection certificate,

as the case requires.

37—Filing and effect of filing of witness identity protection certificate in court

A witness identity protection certificate for an operative in relation to proceedings in SA must be filed in the court before the operative gives evidence in the proceedings and a copy must be given to each party to the proceedings before the operative is to give evidence.

If these procedures are followed, the operative in respect of whom the certificate has been filed may give evidence under the assumed name or court name stated in the certificate and his or her identity or residence cannot be revealed in the proceedings.

The presiding officer in proceedings in a court in which a witness identity protection certificate is filed may require the operative—

- to disclose his or her true identity to the presiding officer; and
- to provide the presiding officer with photographic evidence of that identity.

38—Orders to protect operative's identity etc

The court in which a witness identity protection certificate is filed may give such orders as it considers necessary or desirable to protect the identity of the operative and prevent disclosure of where the operative lives. The penalty for contravening any such order is imprisonment for 2 years.

39—Directions to jury

If an operative in respect of whom a witness identity protection certificate is filed in a court in relation to proceedings gives evidence in the proceedings, the court must (unless it considers it inappropriate) direct the jury not to give the operative's evidence any more or less weight, or draw any adverse inferences against the defendant or another party to the proceedings because the certificate has been filed or the court has made an order. This clause is subject to proposed clause 40.

40—Application for disclosure of operative's identity etc in proceedings

Under this clause, a party to proceedings may apply to the court for permission to ask a question of a witness or for a witness to make a statement that may lead to the disclosure of an operative's identity or where the operative lives if (and only if) the court is satisfied as to each of the following:

- there is evidence that, if accepted, would substantially call into question the operative's credibility;
- it would be impractical to test properly the credibility of the operative without allowing the risk of disclosure of, or disclosing, the operative's identity or where the operative lives;
- it is in the interests of justice for the operative's credibility to be able to be tested.

Unless the court considers that the interests of justice require otherwise, the court must be closed when an application under this clause is made or when any question is asked, evidence given, information provided or statement made.

The court must make an order suppressing the publication of anything said when an application under this clause is made and when any question is asked, evidence given, information provided or statement made. The penalty for breaching such an order is imprisonment for 2 years.

41—Offences

A person commits an offence (the penalty for which is imprisonment for 2 years) if—

- a witness identity protection certificate in respect of an operative has been given; and
- the person knows that, or is reckless as to whether, the certificate has been given; and
- he person intentionally, knowingly or recklessly does something (the *disclosure action*) that discloses, or is likely to lead to the disclosure of, the operative's identity or where the operative lives; and

- the person knows that, or is reckless as to whether, the certificate had not been cancelled (whether under this measure or a corresponding law) before the person does the disclosure action; and
- the person knows that, or is reckless as to whether the disclosure action is not permitted under this measure or authorised under a corresponding law.

If a person commits any such offence in circumstances in which the person—

- intends to endanger the health or safety of any person or prejudice the effective conduct of an investigation; or
- knows that, or is reckless as to whether, the disclosure action endangers or will endanger the health or safety of any person or prejudices or will prejudice the effective conduct of an investigation,

the person will be liable to imprisonment for 10 years.

Division 4—Delegation

42—Delegation

This clause makes provision for the chief officer to delegate any of his or her functions under this proposed Part.

Part 5—Application of Act to approvals, authorities or certificates under corresponding laws

43—Application of Act to approvals under corresponding laws

This clause applies specified provisions of this measure to anything done in SA in relation to a corresponding approval granted under a corresponding law as if it were an approval granted under proposed Part 2 of this measure.

44—Application of Act to authorities under corresponding laws

This clause applies specified provisions of this measure to anything done in SA in relation to a corresponding authority granted under a corresponding law as if it were an authority granted under proposed Part 3 of this measure.

45—Application of Act to witness identity protection certificates under corresponding laws

This clause applies specified provisions of this measure to anything done in SA in relation to a corresponding witness identity protection certificate granted under a corresponding law as if it were a witness identity protection certificate granted under Part 4 of this measure.

Part 6—Miscellaneous

46—*State Records Act 1997* and *Freedom of Information Act 1991* not to apply

This clause provides that neither the *State Records Act 1997* nor the *Freedom of Information Act 1991* apply to information obtained under this Act.

47—Annual report

This clause makes provision for an annual report to be submitted to the Minister that includes information relating to Part 2, Part 3 and Part 4 of the measure, for the exclusion of certain information to be excluded from the report and for the tabling of the report in Parliament.

48—Regulations

This clause provides that the Governor may make such regulations as are necessary or expedient for the purposes of this measure.

Schedule 1—Repeal and transitional provisions

The Schedule makes provision for the repeal of the *Criminal Law (Undercover Operations) Act 1995* and for transitional arrangements consequent on the repeal of that Act and the enactment of this measure.

STATUTES AMENDMENT (BULK GOODS) BILL

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

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (17:23): I move:

That this bill be now read a second time.

I seek leave to have the second reading speech and explanation of clauses inserted in *Hansard* without my reading them.

Leave granted.

This Bill is designed to overcome a difficulty in the law about the sale of goods. It is concerned with goods that are stored in a bulk store before being either on-sold or retrieved. It addresses two problems.

First, there is the risk for the owner who deposits the goods, if the operator of the bulk store becomes insolvent before the goods are on-sold. The High Court in the 1933 case of *Chapman Bros v Verco Bros and Company Ltd* ((1933) 49 CLR. 306) held that the deposit of goods in the bulk store in these circumstances could not be regarded as a bailment because it was impossible to return the exact goods deposited. It therefore reasoned that the arrangement under which the goods were deposited with the bulk store could only be a contract of sale. Property had therefore passed to the bulk-store operator at the time of deposit.

The result is that the seller who has deposited grain but has not been paid for it is at risk if the operator of the bulk store becomes insolvent before the goods are on-sold. The seller cannot retrieve the goods, but has not been paid the price, so he or she becomes merely an unsecured creditor in the liquidation.

This problem was highlighted when difficulty arose in New South Wales in 2005 when a silo operator became insolvent and the liquidator initially claimed that the grain deposited by various unpaid growers was his to sell. The case eventually settled and the growers were paid, but the New South Wales Government proceeded to amend the *Warehouseman's Liens Act* to ensure that the problem would not arise in future.

Second, a similar problem can arise for the buyer if the goods in the bulk store have been on-sold to him but not collected. The buyer has paid the price for the goods but has not yet taken delivery of the quantity he has paid for. Because of section 16, as these goods have not been ascertained, should the seller become insolvent, once again, the buyer, despite having paid the price for the goods, becomes an unsecured creditor in the insolvency.

The latter problem received the attention of the English and Scottish Law Commissions in 1993, resulting in an amendment to the United Kingdom *Sale of Goods Act* by the U.K. Parliament in 1995. That amendment gives the buyer of unascertained goods forming part of an identified bulk an interest in the bulk, in common with the other buyers, from the time the goods are paid for and the bulk identified. The buyers are treated as owners in common of the bulk. Property thus passes even though the goods have not been separated. This ownership in common is an interim provision to give the buyer some protection until the goods are ascertained and he becomes their sole owner. At the same time, some modifications are made to the rules of common ownership to permit dealings with the bulk.

The New South Wales amendment that I mentioned dealt with both problems at once by adopting the model of the English law, as it protects buyers, and adopting a mirror-image provision to protect sellers. The Bill now before us does the same as the New South Wales law.

Members should understand that the Bill does not seek to restrict the parties' freedom to make whatever agreement they wish. As with both the UK provisions and the New South Wales provisions, these are default rules, subject to any agreement between the parties to the contrary. They are meant to deal with the case where the contracting parties have made no provision for these matters but are not meant to stop the contracting parties deciding on some other arrangement that suits them better.

The purpose of this Bill, then, is to protect both producers, who deposit interchangeable goods in a bulk store, and the buyers of those goods, against the risk that the operator of the warehouse becomes insolvent before the seller has been paid for the goods.

The Bill is not retrospective. It will apply to contracts of sale or deposits in a bulk store that are made after the new law starts. In the meantime, it is, however, entirely open to producers and buyers who are worried about the present state of the law to protect themselves by the terms of their contracts.

I commend the Bill to the House.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Sale of Goods Act 1895*

4—Amendment of section A2—Interpretation

This clause defines *bulk* for the purposes of new section 20A.

5—Amendment of section 16—Goods must be ascertained

This amendment is consequential upon new section 20A.

6—Insertion of section 20A

This clause inserts new section 20A as follows:

20A—Contracts of sale for goods forming part of bulk

The proposed section applies to a contract of sale for a specified quantity of unascertained goods if—

- the goods, or some of them, form part of a bulk that is identified either in the contract or by subsequent agreement between the parties; and

- the buyer has paid for some or all of the goods that form part of the bulk.

The proposed section provides that, unless the parties otherwise agree—

- property in an undivided share in the bulk is transferred to the buyer; and
- the buyer becomes an owner in common of the bulk,

as soon as both of the conditions referred to in subsection (1) have been met.

Under the proposed section, unless the parties otherwise agree, the buyer's undivided share in the bulk at any time is the share that, at that time, is equivalent to the quantity of goods paid for and due to the buyer out of the bulk divided by the quantity of goods in the bulk.

If at any time the aggregate of all buyers' undivided shares in the bulk exceeds the whole of the bulk, those shares are to be reduced proportionately so that the aggregate is equal to the bulk.

If a buyer has paid for only some of the goods due to the buyer out of the bulk, any delivery to the buyer out of the bulk is to be attributed to the goods for which payment has been made.

Part payment for any goods is to be taken to be payment for a corresponding part of the goods.

The proposed section provides that a person who has become an owner in common of the bulk will be taken to have consented to—

- delivery of goods out of the bulk to another owner in common of the bulk, being goods that are due under a contract to that other owner; and
- any dealing with, or removal, delivery or disposal of, goods in the bulk by another owner in common of the bulk (but only to the extent of that other owner's undivided share in the bulk).

No cause of action lies against a person by reason of that person's having acted in accordance with subsection (7)(a) or (b) in reliance on the consent that exists by virtue of that subsection.

The proposed section provides that nothing in the section—

- imposes an obligation on a buyer of goods out of the bulk to compensate any other buyer of goods out of the bulk for any shortfall in the quantity of goods received by that other buyer; or
- affects a contract or other arrangement between buyers of goods out of the bulk for adjustments between themselves; or
- affects the rights of a buyer under a contract to which this section applies.

This section does not apply to a contract of sale entered into before the commencement of the *Statutes Amendment (Bulk Goods) Act 2008*.

Part 3—Amendment of *Warehouse Liens Act 1990*

7—Amendment of long title

8—Amendment of section 1—Short title

These clauses are consequential upon new section 14A.

9—Amendment of section 4—Interpretation

This clause defines *bulk* for the purposes of new section 14A.

This clause amends the definition of *operator of a warehouse* as a consequence of new section 14A. The amended definition reflects the fact that an operator of a warehouse is not a bailee for the purposes of new section 14A.

10—Insertion of section 14A

This clause inserts new section 14A as follows:

14A—Intermingled goods

The proposed section applies to goods that have been deposited with an operator of a warehouse by their owner (the *depositor*), or by his or her authority, and that have become intermingled with other goods of the same kind owned by, or deposited with, the operator of a warehouse so as to form a bulk.

The proposed section provides that, as from the time the goods become part of the bulk, unless the parties otherwise agree—

- the depositor's property in the goods becomes property in an undivided share in the bulk; and
- the depositor becomes an owner in common of the bulk; and
- subject to paragraph (d) the depositor and the operator of the warehouse each have, in relation to the depositor's undivided share in the bulk, the same obligations as they would have had in relation to the goods had they not become part of the bulk; and

- the obligation of the operator of the warehouse to deliver the goods to, or to the order of, the depositor becomes an obligation to deliver an equivalent quantity of goods out of the bulk to, or to the order of, the depositor.

Under the proposed section, unless the parties otherwise agree, the depositor's undivided share in the bulk at any time is the share that, at that time, is equivalent to the quantity of goods that have been deposited by the depositor less the quantity of goods that have been delivered out of the bulk to, or to the order of, the depositor.

If at any time the aggregate of all depositors' undivided shares in the bulk exceeds the whole of the bulk, those shares are to be reduced proportionately so that the aggregate is equal to the bulk.

The proposed section provides that a person who has become an owner in common of the bulk will be taken to have consented to—

- any delivery of goods out of the bulk to another owner in common of the bulk, being goods to which this section applies; and
- any dealing with, or removal, delivery or disposal of, goods in the bulk by another owner in common of the bulk (but only to the extent of that other owner's undivided share in the bulk).

No cause of action lies against a person by reason of that person's having acted in accordance with subsection (5)(a) or (b) of the proposed section in reliance on the consent that exists by virtue of that subsection.

The proposed section does not apply to goods deposited with the operator of a warehouse before the commencement of the *Statutes Amendment (Bulk Goods) Act 2008*.

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

NURSING AND MIDWIFERY PRACTICE BILL

The House of Assembly agreed to the amendment made by the Legislative Council without any amendment.

LIQUOR LICENSING (POWER TO BAR) AMENDMENT BILL

Adjourned debate on second reading.

The Hon. J.M.A. LENSINK (17:24): I rise to indicate Liberal Party support for this bill. By way of explanation, my speech follows a number of those made by Independent speakers. The reason for that is that we have a particular process whereby we obtain a briefing, as would all honourable members, but we are required to conform with our own guidelines in terms of submitting joint party papers for approval on the Thursday prior to our joint party meeting on the Tuesday morning of a sitting week. While I had a fair indication of what our position would be, it was not formally determined until this morning. That explanation is for members in case they were wondering what was the reason for the delay. There has been a bit of a timing issue because we have had reshuffles as well, and I was not able to obtain a briefing that would enable me to put a position to my party in the previous sitting week.

This particular measure arises, we are told, following the recent incidents in Gouger Street, involving shootings about which all South Australians deserve to be concerned. It is surprising, in some ways, that this proposal has not come before the parliament in the past. We have already provided licensees with the opportunity to seek to bar particular patrons based on threats to family welfare or relating to particular incidents of unruly behaviour and so forth, or on any other reasonable grounds. This bill will extend to certain prescribed officers within the police force the ability to bar patrons, as a result of which licensees will not have to suffer the harassment or intimidation they might otherwise experience if they were to take up the already legal grounds themselves. A person who is to be barred will not be aware of whether it is, in fact, the licensee who has sought the barring or whether it has been on police advice.

I have read contributions from the crossbenches, and I think all members support that principle. As I have said, it is surprising that parliament has not sought to introduce this measure previously, because I am sure that many incidents have occurred, not just those relating to Gouger Street. This bill will enable police to bar patrons on welfare grounds indefinitely, and in relation to incidents also for a period of three months, then six months, and then indefinitely; and on other reasonable grounds for those three different time periods. An officer of sergeant's rank or higher can ban for a period of less than 72 hours, and an inspector or above can ban for a period of greater than 72 hours. The 72-hour period, I am advised, has been determined because it coincides with the period of a long weekend—that is, three times 24 hours, equalling the three days

of a long weekend—and it also covers limited licensed parties such as twenty-first birthday celebrations, and so forth.

It is understandable that the police have been frustrated if they have had good grounds to believe that patrons may have been present on licensed premises for questionable motivation, such as drug dealing. These barring measures are being extended so that, while no offence may have been detected, police officers may nevertheless hold concerns as to the safety and welfare of persons who are on those premises.

The amendments in the bill provide for reliance by the Commissioner of Police on criminal intelligence, where necessary, in order to bar particular persons. The Commissioner's order need only state—and I put this as a question to the minister whether, among the various amendments that have been circulating, this is still the case—that, unless the person was so barred, it would be contrary to the public interest.

I do note the concerns expressed by some members that using criminal intelligence to bar patrons by its very nature violates certain rights, that being the right to know what one is being charged with and the right to test that evidence alleged against the person concerned.

I understand that this evidence can be tested by appeal before a court, and I note that there is a case before the courts at the moment in which a potential licensee has challenged his right to hold a licence, which is under different parts of the legislation but is the same principle, so it will be interesting to see how that plays out in the courts.

The Liberal Party supports these principles, given the practical difficulties that exist and the attraction that people who might have very ill motives would have in attending licensed premises for their own ends, which may be quite illegal. A number of amendments to the bill have been proposed by the government and I will have questions on them in due course. There also will be some amendments from the Hon. Mark Parnell and some in particular from the Hon. Sandra Kanck which the Liberal Party will be quite attracted to. A number of these issues have been debated previously in relation to barring, so I do not wish to make a long-winded speech but will have some questions in committee.

The Hon. R.D. LAWSON (17:32): I indicate general support for the amendments proposed in the bill. However, I have reservations about one aspect of it, namely, the use of criminal intelligence for the purpose of issuing barring orders. This is a matter which the Hon. Mark Parnell canvassed in his contribution, and I share his concerns in relation to it. Before coming to that matter, I indicate that the current structure of the Liquor Licensing Act is such that there is a power to bar in section 125. It is a power granted to the licensee or the responsible person for licensed premises. The licensee or responsible person, in order to invoke those powers, must serve on the person a notice barring them. A person who remains on or enters licensed premises or remains there when so barred is guilty of an offence, for which the maximum penalty is $1,250. There is provision for a review of that barring order contained in section 128 of the existing legislation.

Licensees have complained for some time—and well before the most recent events at licensed premises where there were shootings—about the fact that that power contained in section 125 is difficult to exercise. If there is a highly desirable and possibly criminal person with associates who is the subject of a barring order from the licensee, there is a fair presumption on the part of the licensee that to issue a barring order in those circumstances may place the licensee or the licensee's responsible person in some danger to their own safety. The person banned or his associates might well retaliate, and a number of licensees have been complaining about that fact and requesting that the legislation be changed to give the police power to undertake that action, on the basis that there is less likely to be personal retribution to the licensee or the staff.

A lawyer, Mr Tony Tropeano, has been prominent in making that submission publicly, and I certainly share his concerns and those of others, and for that reason I support the principle, namely, that barring orders should be issued by police rather than by the licensee in certain circumstances.

There is already in the Liquor Licensing Act provisions dealing with criminal intelligence. Basically, the description of criminal intelligence is in section 28A of the existing law and, as other members have indicated, this is intelligence that enables the Commissioner of Police or a police officer to have regard to what is in effect secret information which is not required to be divulged to other parties other than a court, or a person to whom the Commissioner of Police authorises disclosure, or to the minister.

I am somewhat bemused by the inclusion of the fact that a minister can be made aware of criminal intelligence, but that is the existing provision. That is an important provision in the current scheme of the act. If a licence is to be granted to someone and that person has, for example, undesirable or criminal antecedence, it may well be appropriate that criminal intelligence be part of the information laid before the licensing authority responsible for granting a licence. We supported that initially and I continue to support it. However, in relation to this bill we are being asked to extend the use of criminal intelligence from what is an important general issue—namely, who should be licensed—to the relatively insignificant issue of who should be barred. I believe that using criminal intelligence in the latter circumstance is actually using a sledge-hammer to crack a nut.

The Law Society of South Australia has provided comment on this bill in response to a request made initially by the Hon. Iain Evans in another place. In a letter dated 28 March 2008, the Law Society president wrote:

> The society has considered the bill and second reading speech and while we consider some matters raised to be worthy of support there are other matters which cause some concern for a variety of reasons. The society comments as follows:
>
> 1. Power to bar. Traditionally this has been a power exercised by licensees or responsible persons for licensed premises. In our experience the current system has been reasonably efficient and effective in dealing with situations where patrons have behaved in an inappropriate manner on licensed premises and where the licensee or responsible person seeks to bar that individual from their licensed premises. In our experience such barring orders are generally respected by recipients and it is not common for matters to be taken on review to the Liquor and Gambling Commissioner.

I interpose that I do not share the comfort that the Law Society has about the operations of the existing system. I believe that it has not given sufficient heed to the concerns expressed by Mr Tropeano and others. I continue with the Law Society letter, as follows:

> The proposal to give the Commissioner of Police the power to issue such barring notices is a significant departure from the current system. We are generally supportive of the proposal that police be given the opportunity to become involved in the barring process. However, it may be appropriate for the Commissioner of Police to be required to satisfy the same test as a licensee is required to satisfy in issuing a barring order.
>
> Further, we consider that the 'criminal intelligence' provision in the bill is excessive. If a member of the public is to be barred from licensed premises, then we are of the view that they should be entitled to be advised of the reasons for such barring and be given the opportunity to respond to same before the licensing authority. It is one thing for such 'criminal intelligence' provisions to be raised against an applicant for a liquor licence whom the Commissioner of Police might consider to be undesirable for reasons which cannot be disclosed for public interest grounds. We consider the non-disclosure of the grounds for barring such reasons of 'criminal intelligence' to be unnecessary, excessive and undesirable.

I interpose my own expression 'using a sledge-hammer to crack a nut'. The Law Society continues:

> One other odd outcome should the bill proceed in its present form is that police may bar a person from licensed premises where the licensee takes no issue with the recipient of the barring order. That would appear to be an undesirable outcome. We wonder whether a licensee should be given the right to participate in any such applications by the Commissioner of Police to issue a barring notice and be given the right to oppose such a barring order. Alternatively, the licensee's consent could be required where police seek to bar a person from particular licensed premises.
>
> We note that penalties apply where a licensee or responsible person for licensed premises allows a barred person to be on their licensed premises.
>
> We are also concerned by the very wide scope for such barring orders to be issued by the Commissioner of Police so that, for example, a barring order may bar a person from all licensed premises within the state. Again, we consider that to be excessive. It would, for example, prevent such a recipient of a barring order from attending public places which are licensed such as AAMI Stadium, Adelaide Oval, licensed restaurants, cafes or other venues where there may well be no good reason to prevent the entry of persons to such premises.
>
> As an alternative, it may be appropriate for the Commissioner of Police to be required to satisfy the current test in section 125(1) which must be met by a licensee in issuing a barring notice to a patron—that is for reasons of welfare, offensive or disorderly behaviour, or any other reasonable ground.

I interpose that I do not agree that, for the reasons just stated by the Law Society, this regime should be dismantled. I do not dismiss its concerns but I think it is somewhat far-fetched to imagine that there will be state-wide barring orders in circumstances where there is no necessity for them—although I can imagine circumstances where it is entirely appropriate for someone, let us say, an alcoholic, who might be the subject of a general barring order on the existing grounds, namely, for the welfare of that person or a member of that person's family. The Law Society continues:

As an aside we note that the current section 125(4) of the act makes it an offence for a licensee or responsible person for licensed premises, or even an employee of a licensee, to allow a person to enter or remain in a place from which the person is barred. It is a licensee or responsible person who issues the barring order. A licensee or responsible person has power to revoke an order. It appears odd that such a licensee or responsible person should be liable to a fine where they allow a barred person to enter or remain on the licensed premises. It is quite feasible that should these amendments proceed then the Commissioner may well issue tens, hundreds or even thousands of such barring notices. Enforcement and compliance by licensees and responsible persons would become very difficult if not impossible, even with the provision of photographs to licensees. Similar problems have been experienced in relation to persons barred from gaming rooms.

I interpose here that I think that, once again, the Law Society is stretching the point a little in suggesting that there will be thousands of these orders issued and that it will be impossible for licensees and responsible persons to comply with their obligations. However, I will be asking the minister in her second reading response to indicate the government's stance on that proposition advanced by the society. The society continues with its final point (point 2) on the length of barrings. Its letter states:

The current situation is that a Licensee may not bar a person for greater than three months for a 'first offence'. The second barring can be for up to six months and the third barring can be for an indefinite period. The proposal to allow a period of greater than three months barring for a 'first offence' where approved by the Commissioner we think has merit.

One drawback is that the current system is simple and efficient and barring notices for up to three months can be issued without any involvement of the Liquor and Gambling Commissioner. It would be undesirable to see Licensees issue indefinite barrings for a 'first offence' which may well result in increasing numbers of Applications for Review by barred persons to the Commissioner. In our experience the three month barring period for a first offence is generally effective and efficient and deals with the problem patron without great drama.

Once again I express my gratitude to the Law Society and its committee for expressing those views. As I indicated, I share their concerns about the use of criminal intelligence. I note that there are amendments on file, I think, from the Hon. Mark Parnell, and I will be listening keenly to the arguments that he advances. Personally, I have a good deal of sympathy for those amendments.

I also note that just today the government has placed on file an extensive series of amendments, which appear to deal with the casino. I have not had an opportunity to study them, although my colleague the shadow minister, who has the conduct of the legislation, has done so. I indicate that I may not necessarily agree with all of the position adopted by my party in relation to this measure.

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) (17:47): I thank honourable members for their indications of support for this bill. The Hon. Mark Parnell, the Hon. Sandra Kanck, the Hon. Michelle Lensink and the Hon. Rob Lawson have raised some concerns about the provision of the bill that protects from disclosure information classified by the Commissioner of Police as criminal intelligence. Honourable members objected to the fact that this material may not be disclosed to a person or persons about whom it relates—in this context, a person who is the subject of the barring order.

These provisions are contained in clause 5 of the bill. They prohibit disclosure of criminal intelligence to any person other than the Liquor and Gaming Commissioner, the minister, a court or a person to whom the Commissioner of Police authorises disclosure. The provisions also establish a procedure under which information identified by the Commissioner of Police as criminal intelligence may be protected from disclosure in court proceedings, but only where the court determines that the information meets the definition of criminal intelligence in the legislation.

This definition, which is amended by clause 4 of the bill, is very narrow. The only information that will qualify for protection is that relating to actual or suspected criminal activity, the disclosure of which could reasonably be expected to prejudice criminal investigations, enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement or endanger a person's life or physical safety. It is the government's position that information that meets these criteria should not be disclosed to the criminals about whom it relates.

These types of provisions are by no means unique. Criminal intelligence, as defined in this bill, relevant to administrative decisions and determinations or tendered as evidence in court proceedings, is protected from disclosure under several South Australian acts, including the Serious and Organised Crime (Control) Act, the Security and Investigation Agents Act and the anti-fortification provisions of the Summary Offences Act. Similar provisions can be found in the laws of

other jurisdictions; for example, the Western Australian Crime and Corruption Commission Act 2003 protects from disclosure criminal intelligence tendered in review proceedings under the state's anti-fortification provision. That provision was upheld as constitutionally valid by the High Court in Gypsy Joker Motorcycle Club Inc v Commissioner of Police.

The Hon. Sandra Kanck indicated that she would move amendments to the bill to require barring orders to be reported to parliament. The government will be opposing these amendments and, obviously, I look forward to debating them during the committee stage.

The Hon. Robert Brokenshire raised concerns about illegal firearms and police resources, particularly those necessary to support Operation Avatar. Regarding firearms, the Hon. Robert Brokenshire will be pleased to learn that the government's Firearms (Firearms Prohibition Orders) Amendment Act 2008 will commence shortly. This legislation directly targets the possession of firearms by criminals. The new provisions will authorise the registrar of firearms, or the police in urgent cases, to make firearm prohibition orders against a person on the grounds that possession of a firearm by that person would likely result in due danger to life or property; or that the person is not a fit and proper person to possess a firearm and it is in the public interest to prohibit the person from possessing and using a firearm.

Regarding police resources, the Hon. Mr Brokenshire may not have realised, but the highly successful Operation Avatar was replaced last November by a new Crimes Gang Task Force. This task force more than doubles the number of officers dedicated to investigating the activities of criminal gangs in South Australia, with staffing boosted from 20 to 44 members.

SAPOL advises that this new task force has a multidisciplinary capacity, including investigators, general duties officers, Star operations members, motorcycle officers, forensic accountants, criminal intelligence experts and high-level analysis staff. Over the next five years, SAPOL will invest more than $5 million in IT to support the work of the task force. In closing, I thank all honourable members for their contribution during the second reading debate, and I look forward to the committee stage.

Bill read a second time.

IRIS SYSTEMS

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) (17:53): I table a copy of a ministerial statement relating to an update on IMVS issues made earlier today in another place by my colleague the Minister for Health.

[Sitting suspended from 17:54 to 19:48]

LIQUOR LICENSING (POWER TO BAR) AMENDMENT BILL

In committee.

Clause 1.

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

Page 2, line 3—

Delete 'Liquor Licensing (Power to Bar) Amendment' and substitute: Statutes Amendment (Power to Bar)

This is an amendment to the short title of the bill. I understand that it is consequential upon the government's amendment No. 5.

Amendment carried; clause as amended passed.

Clauses 2 to 4 passed.

Clause 5.

The Hon. M. PARNELL: I move:

Page 3, lines 17 to 21 (inclusive)—

Delete subsection (5)

Page 5, lines 24 to 37 (inclusive) and page 6, lines 1 to 9 (inclusive)

Delete section 125A

My two amendments relate to the same issue, that is, the issue of criminal intelligence being used by the police to bar persons from licensed premises. In my second reading contribution I explained that this was the only part of the bill I was objecting to. I objected to it on the same grounds that I objected to previous incarnations of criminal intelligence, most recently in the serious and organised crime bill; that is, when the state, through its various organs, is proposing to interfere with a person's rights, natural justice should step in and should enable a person to know the claims, allegations or charges against them and give them the ability to challenge those.

The bill proposes to give the police for the first time the power to bar, and I support that. The only part I do not support is the use of criminal intelligence. The Hon. Robert Lawson in his contribution said that he will be listening very carefully to my argument in favour of this amendment, but he knows full well, having read the Law Society's submission (and he read large chunks of that into *Hansard*), that very important legal principles are at stake here. My question would be: where does this use of criminal intelligence on the South Australian statute books stop? We have it in relation to serious and organised crime, and the bulk of members in this house thought that was appropriate because we were dealing with very serious criminal charges.

I understand that the concept is already in this legislation in relation to who is a fit and proper person to be able to hold a licence under this legislation, but we are now talking about something much lower down the scale, that is, the power to say to someone, 'You can't enter or remain in a licensed premises.' It is the right to have a drink in a pub, if you like; and, for criminal intelligence to be used in that situation, I think, is taking it too far. The question would be: where does it go next? Can we use criminal intelligence to prevent people from getting drivers' licences? Can we use criminal intelligence to prevent people getting some other benefit, reward, certificate or some other favour that the state can bestow on people? Where does it stop?

I say that it should stop with this legislation and that we do not need the power to use criminal intelligence. People might say, 'Well, there is the ability for someone to go to court and to challenge it', but the point still remains that while a judge might look at the information and say, 'Yes, I agree it's criminal intelligence', there is no way for anyone to rigorously look at that evidence in terms of its veracity.

Members will recall when we debated the serious and organised crime bill that it came hot on the tail of a government announcement that it was going to use non-police officers for surveillance. We were talking about Dad's Army with binoculars through venetian blinds at the Flinders Medical Centre, for example, looking at whether people were breaking into cars. If you put the combination of inexperienced, non-official informers together with the concept of criminal intelligence, what you will find is that suboptimal evidence—evidence that could be challenged, if there were an opportunity to do so—will become influential and bear much more weight than it possibly deserves. Both my amendments—one is a test for the other—relate to the same issue and that is to say, yes, let's give the police the power to bar people from hotels, but let's not include the right to do so based on criminal intelligence.

The Hon. G.E. GAGO: This amendment deletes proposed subsection (5) of section 28A of the Liquor Licensing Act. Proposed subsection (5) provides that, where the Commissioner of Police issues a barring order against a person because of information classified by the Commissioner to be criminal intelligence, the order need only state that it would be contrary to the public interest if the person were not so barred. This protects information certified as criminal intelligence from disclosure to the barred person. The government understands that this amendment and Mr Parnell's second amendment are both intended to prevent the Commissioner of Police issuing a barring order that can be based on information classified as criminal intelligence. The government opposes most strongly both these amendments.

Criminal intelligence may take the form of information from police informants or undercover officers, from covert surveillance, including electronic surveillance, or from victims of crime and other witnesses. The government believes that it is appropriate that a barring order be based on this type of information in appropriate cases. As honourable members would be aware, securing convictions against members of criminal gangs—in particular, criminal motorcycle gangs—has proved extremely difficult owing to the propensity of gang members and their associates to use violence and threats of violence to prevent witnesses testifying against them.

For safety reasons or to protect the interests of people, we have defined criminal intelligence in a very narrow way. The only information that can be classified as criminal intelligence is information relating to actual or suspected criminal activity, the disclosure of which could reasonably be expected to prejudice criminal investigations, enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement, or endanger the personal life or physical safety of someone.

As I advised members in my summary of the second reading debate on this bill, the use of information in the nature of criminal intelligence by decision makers is already provided in a number of South Australian and interstate acts. Statutory provisions protecting criminal intelligence from disclosure have been upheld as valid by the High Court and claims for public interest immunity against disclosure of information of the kind that would meet the definition of criminal intelligence have been a feature of our legal system for some time.

The government's position is that the use of criminal intelligence to support barring orders is appropriate and that such material (narrowly defined as it is) should not be disclosed to people to whom it relates. I reiterate: in terms of the sorts of protections to ensure that this is appropriately applied, there is a narrow definition of criminal intelligence. We have required the highest level of authority to deem these particular cases—it has to be deputy commissioner or above—and there is a right of appeal. We believe that we have enshrined in the legislation adequate protections to uphold individuals' rights, at the same time, balancing our need to be able to protect citizens from organised criminal activity.

The Hon. M. PARNELL: I want to test this with the minister. Let us say a person says to the police, 'I suspect that Mr X is a drug dealer. I saw him selling drugs in the hotel.' Let us say that is sensational evidence, but it is plain wrong. Let us say it is just wrong: the person has made it up but they are convincing. They are saying, 'I reckon they are a drug dealer. I saw them selling drugs and I'm scared if they find out that I know.' What redress does a person who has been barred from licensed premises have against those accusations? Under what circumstances could they even find out the allegations made against them?

The Hon. G.E. GAGO: Criminal intelligence is something that is defined and considered very carefully by the Commissioner of Police and Deputy Commissioner of Police. For material to be considered criminal intelligence, for instance, it would need to come from a credible source. Obviously it would need to be of significant severity. It may also include things such as information held by other jurisdictions, including the Australian Crime Commission. This is information that is not just hearsay that has been passed on by some Joe Blow off the street. Criminal intelligence is very carefully considered material.

It is material which is deemed to be incredibly sensitive. I have already put on record the sorts of things that it would be reasonably expected to do if divulged: prejudice criminal investigations; enable discovery of the existing identity of a confidential source of information relevant to law enforcement; or endanger the person's life or physical safety. Obviously it is material of a particularly sensitive nature. If other material is involved in that information that is not deemed to be of criminal intelligence—that is, open source information—then the person who is barred would have access to that. They would not have access to the information deemed to be criminal intelligence, which comes under that, because it would be considered to be unsafe and inappropriate. As I said, it is not some hearsay off the street from some Joe Blow—that is most unlikely to make it into the categorisation of criminal intelligence.

The Hon. R.D. LAWSON: I am glad to hear what the minister is saying; unfortunately, that is not what the legislation says. Criminal intelligence is defined as:

> ...information—

it does not say it has to be credible or verified or anything else about it—

> relating to...suspected criminal activity...the disclosure of which could reasonably be expected to prejudice criminal investigations, or to enable the...existence or identity of a confidential source...

In the example given by the honourable member—namely, a false or malicious report—clearly, if that information were false or malicious, it would very much be to the detriment of the person who made the false complaint. He would be at risk, and I think it is one of the weaknesses of this and other measures that the standard is not as high as the minister is suggesting. It does not have to be credible information; it can be information of any kind about actual or suspected criminal activity. Frankly, I am not comforted by the minister's assurances.

However, in relation to this matter, I ought to go back to basic principles. In the past the Liberal Party and I have supported criminal intelligence provisions. We supported them in relation to security agents on the basis that that legislation contained a mechanism for judicial determination. Clearly, if a person's licence is taken away or refused (a licence to conduct a livelihood) they have an incentive to make an application to the court and have the issue determined before a court. We believe these things ought to be determined by a court. But, in the case of a barring order, which does not have serious economic consequences for any individual, it is rather a social inconvenience to be barred from particular licensed premises.

It would be a very rare occurrence where anyone would take an application or appeal against a barring order of that kind. You would have to be a particular sort of individual and not particularly concerned by it. So, what is important to us, namely judicial protection, is illusory in relation to barring orders because nobody is actually going to make an application to the court to have the barring order removed because of the cost, the inconvenience, the prospect of success and the value of the fruits of success. People would simply not do it.

So, whilst we have said in relation to security agents, organised crime and terrorists, there is judicial protection, the individual has a substantial interest and has an opportunity to have the criminal intelligence tested before an independent judicial authority and, notwithstanding the fact that the individual does not have access to the criminal intelligence, the court will. We take the view that, if an independently appointed court has that information, that is sufficient protection in ordinary circumstances. However, where you take it down to the level of barring orders in licensed premises, as I said, the protection is illusory and that is why I, personally, have severe reservations about this measure.

The Hon. Mr Parnell mentioned that this is the thin end of the wedge. I am not usually convinced by arguments of that kind, but he is absolutely right here because we see introduced into this legislation by way of an amendment from the government earlier this month—notwithstanding the fact that the bill was first introduced in March of this year—a new amendment to introduce these barring orders into the casino as well. So, here it is; it is, in fact, the thin edge of the wedge. We get the licensed premises; now we get the casino. What next will it be? I think the honourable member is quite right to point to the fact that what we see here is the government finding this notion of imposing civil penalties or impositions on people on the basis of criminal intelligence being extended.

There might be someone, for example, in relation to the casino (an amendment that is yet to be debated) who might regard their attendance at the casino as something that is in their own economic interests. They might actually pursue some sort of a claim if they are a professional gambler, for instance. However, in relation to the ordinary case of a barring order of licensed premises, I do not believe there is really sufficient protection. I am ambivalent about it. As the shadow minister has indicated, I know the Liberal Party will be supporting the government's proposal; I personally do not support it.

The Hon. SANDRA KANCK: I will be supporting the amendments. When I gave my second reading speech, I said that the issue of criminal intelligence was for me the point on which I would decide whether I would support the legislation at the third reading. Similar to the Hon. Mr Lawson, I do not believe it is appropriate. Unlike the Hon. Mr Lawson, I did not think it was appropriate in the Serious and Organised Crime (Control) Bill, and in other legislation this government has introduced. But in this case it really is going over the top. You cannot equate people who have been a problem (and I do not deny that their are problems) to a terrorist, and it would be foolish for us to do so. I feel very strongly about supporting these amendments, or certainly this first one as a test amendment.

The Hon. G.E. GAGO: I can only reiterate that I believe we have put in a range of protections, which include the narrow definition of 'criminal intelligence'. The fact is that only the executive of South Australia Police is able to make a decision in relation to criminal intelligence. So, I am not too sure what the Hon. Robert Lawson and the Hon. Sandra Kanck and, for that matter, the Hon. Mark Parnell are saying. If they are saying that they do not trust the Assistant Commissioner, the Deputy Commissioner or the Commissioner of Police to make appropriate decisions about what is and what is not criminal intelligence, I found that astounding.

We have ensured that only the executive of our police force, our most senior police officers, officers holding the highest authority, are able to make that decision, and I think that is a pretty solid safeguard. It is certainly solid enough for me. There are also, of course, appeal rights. I

think it is outrageous to suggest that adding in the casino is the thin edge of the wedge. The casino is just like any other licensed venue, and it should be included.

The Hon. SANDRA KANCK: I do not consider that to be any sort of insult to those people in our police force. I just give the member the example of Dr Mohammad Haneef. It went all the way up to the head of the Australian Federal Police, Mick Keelty, and he got it wrong. Simply having seniority does not mean that you will get these things right.

The Hon. M. PARNELL: I was not going to engage again, but I will in response to what the minister said. The issue for me is that the easiest call of all for these executive members of the police force to make is that something is criminal intelligence. Someone just has to say that it is a serious allegation, and I am fearful that, if they found out that it was me who dobbed them in, I would be in big trouble. That is a very easy call for the police to make.

The problem I have is that, if they are wrong, there is no way that we will ever find out that they were wrong, and an injustice will have been committed. It is not about a blatant lack of trust in the police officers. It is about the legal process being able to test the veracity of evidence and, in this bill, we are saying that there is some evidence that we are just going to accept and we are not going to let its veracity be tested. That is why I am proposing this amendment.

The Hon. G.E. GAGO: Veracity can be tested through an appeal process which is a part of due process. They can appeal.

The Hon. M. PARNELL: With respect, the veracity cannot be tested because you will not find out what the evidence was because it was criminal intelligence. That is the whole point. You will never find out what it was that was said against you.

The Hon. G.E. Gago: The judge will know.

The Hon. M. PARNELL: The judge will know, but the judge is not going to cross-examine the same way that you would cross-examine because the judge was not there: you were—or not.

The Hon. R.D. LAWSON: I think it is mischievous at best for the minister to suggest that those who support the honourable member's amendment do not trust the senior members of our police force. It is not a question of trusting or not trusting members of the police force. I happen to trust and respect members of the police force. They make mistakes. We have to lay down laws.

For a member of the Labor Party, especially a member of the left wing of the Labor Party, to suggest that, if we do not support this, we do not trust senior members of the police force is absolute nonsense. It is not a question of trust. It is a question of whether or not the legislative framework within which the police have to work is one that adequately protects the public, and I say that this one does not.

Amendments negatived.

The Hon. J.M.A. LENSINK: There have been three sets of amendments tabled by the minister in relation to this bill, and I understand that sets Nos 1 and 2 are redundant. I am advised that it is only the third set that we ought to pay heed to. I did cross-reference all these. I did my homework to no avail, but, for the sake of just trying to clarify this issue, in relation to the second set, the minister's amendment No. 3 of the second set substantially changed the language of clause 5(2) in relation to barring.

The original wording, which I understand is not to be altered now by the minister's amendment, read thus: 'If the Commissioner of Police bars a person from entering or remaining on licensed premises', etc., and that was then changed to 'If a person is barred from entering or remaining on licensed premises'. I seek clarification as to why the government decided not to proceed with that particular amendment.

The Hon. G.E. GAGO: We took parliamentary counsel advice on this, which was that what is before you, what we are proposing, actually makes clearer that it involves only the Commissioner of Police or a senior police officer. So, it was on the advice of parliamentary counsel that this provided a greater level of clarity.

Clause passed.

Clauses 6 and 7 passed.

Clause 8.

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

Page 5, lines 32 to 34 [new section 125A(1)]—

Delete 'if the Commissioner of Police is satisfied, based on criminal intelligence, that it is in the public interest to do so' and substitute:

on any reasonable ground

Clause 8 inserts new sections 125A and 125B into the act. Section 125A provides the Commissioner of Police with the power to bar while section 125B provides a police officer with the power to bar on the authorisation of a senior police officer. Whereas the power to bar under section 125B may be exercised on welfare grounds where the barred person commits an offence or behaves in an offensive or disorderly manner, or on any other reasonable ground—grounds that mirror the licensee's power to bar under section 125—section 125A restricts the Commissioner of Police's power to bar to where he is satisfied, based on criminal intelligence, that it is in the public's interest to do so. I repeat what I have said before that criminal intelligence is narrowly defined; I believe I have already dealt with the rest of it.

The Hon. J.M.A. LENSINK: Again, this is similar to the previous questions in that there were other versions of this proposed by the government which were, I think, quite different. My first question is: does this amendment to the bill broaden the grounds on which the Commissioner of Police can bar an individual?

The Hon. G.E. GAGO: I am advised that the answer to that is no.

The Hon. J.M.A. LENSINK: There was a previous version where the original wording referred to criminal intelligence. The minister's first set of amendments also retained the language of 'criminal intelligence', whereas this amendment will, in effect, delete that and replace it with 'on any reasonable ground'. Will the minister provide an explanation as to why the government has sought to amend the clause in this way?

The Hon. G.E. GAGO: I have been advised that, again, it was on the advice of parliamentary counsel that the broader grounds (in terms of 'reasonable ground') was inserted into 125A, whereas the specific reference to 'criminal intelligence' is still maintained in section 28A(5).

Amendment carried.

The Hon. SANDRA KANCK: I move:

Page 9, after line 20 [inserted section 125E(5)]—

After paragraph (d) insert:

and

(e) the person's gender and race.

In my second reading speech I raised a concern about the possibility that we could find people being targeted particularly on the basis of race—not so much gender but particularly race. What this amendment does, as far as gathering information, is to ensure that we have effectively, I suppose, a database that shows the practices of those administering the barring orders. So that, if there is a preponderance of people of a particular racial background, it will show up and we will eventually become aware of it. That will then put pressure back on the police, for instance, to look to themselves as to what they are doing and why they are targeting a particular group. That is the purpose of this amendment.

The Hon. G.E. GAGO: We oppose the amendment proposed by the Hon. Sandra Kanck. The power for licensees to bar on welfare grounds came into operation on 1 September 2000. The Liquor and Gambling Commissioner has advised that in the past five years to date he has received around 20 advices of barring under section 125(6) of the act. The Commissioner has also advised that he has never received an application for review of a welfare barring.

I turn to new section 128A(1)(a)(ii). The power for licensees to bar a person under section 125(1)(a) and (b) has been in the act since it was introduced in 1997. A barred person has the right to apply to the Commissioner for a review of such a barring, and I am satisfied that this protects the rights of the barred person. To require the Commissioner to analyse the grounds for all such barrings would impose a significant resource burden on his office, when resources could be more appropriately directed to areas such as compliance with legislation.

I do not believe that the reporting process, as proposed by the Hon. Sandra Kanck, would add to the integrity of the barring regime. Proposed new section 128A(b) would require the Liquor and Gambling Commissioner to report on matters in which he is not involved. The Commissioner of

Police is not required to provide the Liquor and Gambling Commissioner with a copy of police barrings. Therefore, the Liquor and Gambling Commissioner will not know the location, period, age, gender, race, or residential postcode, etc., as required.

I believe that it is unreasonable and impractical to require the Liquor and Gambling Commissioner to report on such matters. As I said, it is data over which he has very little control, particularly in terms of the way it is collected, collated and broken down. I believe that it places a significant impost both on the Liquor and Gambling Commissioner and on the police, who, after all, have to collect, collate and provide this data. For these reasons we oppose the amendment.

The Hon. SANDRA KANCK: In terms of the appeal provision that she mentioned, could the minister advise how this operates? When someone is barred is something given to the person in writing that sets out their rights?

The Hon. G.E. GAGO: I have been advised that, yes, there is.

The Hon. J.M.A. LENSINK: I have been attempting to consult with my colleagues on these issues so that we get a most thoroughly examined piece of legislation. I rise to express opposition to this amendment not because of its intent, which I think is to gain as much information about trends as possible, which I think is very worth while, but in relation to not so much gender, because that is fairly unambiguous most of the time, but in terms of race.

I think if you ask somebody what race they are, you might get a few raised eyebrows from a lot of people; if you ask what nationality they are, then you will get a fairly straight answer. I understand that the honourable member is trying to get some understanding of what trends might be occurring in the community and, therefore, how we might address them, but I think that trying to ascertain somebody's race is a very difficult thing, indeed. In fact, in media reports we often hear about a particular offender of Caucasian or Aboriginal appearance. Some people might think that that language is politically correct, but I think it is used because one cannot always tell. If I use myself as an example, my heritage is northern European, but nobody ever guesses that; they think I am southern European.

Race is very difficult for anyone to ascertain, and if one were to ask a policeman or policewoman, in particular, in a position of authority, to ask somebody to identify their race, I think it might be a cause of some conflict purely because it is not something that is clear or anything I think most people in our community necessarily identify with. Indeed, if one is to be a genetic purist, some geneticists say that we are all one race and that there is no such thing. I think it is difficult to support this for reasons of practicality.

The Hon. R.D. LAWSON: In relation to the matter just raised by my colleague, I point out that the corrections department, for example, is quite able to say what number of indigenous prisoners there are. The Office of Crime Statistics is able to publish very detailed statistics about the elements of Aboriginal offending in our community, so I am not entirely sure that the comment she makes is necessarily decisive against the honourable member's proposal. If the minister is saying that it is beyond the wit of government to provide statistics of this kind, I suppose that is a different issue.

The Hon. G.E. GAGO: In an effort to produce the best legislation possible, I propose that we postpone the consideration of this clause until we have considered all other clauses.

Consideration of clause 8 deferred.

Clauses 9 and 10 passed.

New clause 11.

The Hon. SANDRA KANCK: I move:

New clause, page 10, after line 22—

After clause 10 insert:

11—Insertion of section 128A

After section 128 insert:

128A—Report to Minister on barring orders

(1) The Commissioner must, on or before 30 September in each year (other than the calendar year in which this section comes into operation), provide a report to the

Minister specifying the following information in relation to the financial year ending on the preceding 30 June:

(a) in relation to an order made under Subdivision 2 barring a person from licensed premises for an indefinite period or a period exceeding 6 months—

(i) in the case of orders made under section 125(1)(aa) (a *welfare order*)—

(A) the number of welfare orders made; and

(B) the location of the licensed premises from which the persons were barred;

(ii) in any other case—

(A) the number of orders made; and

(B) statistical information about the type of conduct giving rise to the orders; and

(C) the location of the licensed premises from which the persons were barred;

(b) in relation to an order made under Subdivision 3—

(i) in the case of orders made because of information classified by the Commissioner of Police as criminal intelligence—

(A) the number of orders made; and

(B) the location of the licensed premises from which the persons were barred; and

(C) statistical information about—

- the period for which the orders have effect; and
- the age, gender, race and residential postcode of the persons barred;

(ii) in the case of orders made under section 125B(1)(e) (a *welfare order*)—

(A) the number of welfare orders made; and

(B) the location of the licensed premises from which the persons were barred; and

(C) statistical information about—

- the period for which the orders have effect; and
- the age, gender, race and residential postcode of the persons barred;

(iii) in any other case—

(A) the number of orders made; and

(B) statistical information about the type of conduct giving rise to the orders; and

(C) the location of the licensed premises from which the persons were barred; and

(D) statistical information about—

- the period for which the orders have effect; and
- the age, gender, race and residential postcode of the persons barred;

(c) the number of reviews of orders conducted under section 128 and the outcome of any such review.

(2) The Minister must, within 12 sitting days after receipt of a report under this section, cause copies of the report to be laid before each House of Parliament.

I move the amendment standing in my name, particularly now as we know that we have the criminal intelligence provisions that will be operating in this bill when it becomes law. I think there is a need for a reporting mechanism, and that is what this effectively does. I might leave it at the moment until parliamentary counsel comes back, because I need to speak with them too.

The Hon. G.E. GAGO: Perhaps at this point I might place my intention on the record. As I have said, and for the reasons I have outlined, the government does not support the amendments that the Hon. Ms Kanck is putting forward relating to reporting. What we are looking at—and parliamentary counsel is providing us with some assistance on this—is to put forward an amendment where reporting is required but only on those orders that are deemed to involve criminal intelligence. All other orders, such as those under the 72-hour and less barrings—the three months, six months, indefinite—would not be required to be part of this reporting audit, but all barring orders that did fall under the provision of criminal intelligence would have reporting requirements.

The Hon. J.M.A. LENSINK: We will debate this in more detail later this evening, but I would just like to commend the honourable member for bringing forward a proposal such as this, because I think criminal intelligence is at the pointy end of the legislation that is exercising all of our concerns. Therefore, we will be supporting some version of reporting to parliament in order to ensure that there is as much transparency as possible in this provision.

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

Inserted section 128A(1)(b)

Delete paragraph (b) and substitute:

(b) In relation to an order made under Subdivision 3 because of information classified by the Commissioner of Police as criminal intelligence—

(i) the number of orders made; and

(ii) the location of the licensed premises from which the persons were barred; and

(iii) statistical information about—

(A) the period for which the orders have effect; and

(B) the age, gender, race and residential postcode of the persons barred;

The effect of this amendment on the Hon. Sandra Kanck's amendment is to delete paragraph (b) of her amendment, which has the effect of requiring the reporting on police barring orders and replaces it with a new paragraph (b), which requires the reporting on those barring orders that pertain to—

The ACTING CHAIRMAN (Hon. J.S.L. Dawkins): My advice is that we will proceed with the minister's amendment to the Hon. Sandra Kanck's amendment, but when we have dealt with that we need to go back to the amendment to clause 8.

The Hon. G.E. GAGO: We are deleting the Hon. Sandra Kanck's paragraph (b) and replacing it with a new paragraph (b), which will have the effect of requiring reporting, but only on those matters that are deemed to be matters pertaining to criminal intelligence. All the reporting requirements outlined in the Hon. Sandra Kanck's amendment will still exist but will only pertain to those criminal intelligence orders. Clear as?

The Hon. J.M.A. LENSINK: Not quite clear as. The preceding amendment from the Hon. Sandra Kanck was to include in clause 8 of the bill the personal details that could be collected. The substantive bill included full name, date of birth, residential address and business address. The Hon. Sandra Kanck sought to include gender and race, which I understand was not supported by the government or the Liberal opposition. However, the words 'race' and 'gender' appear in this amendment, and I thought we had not included that previously. For the reasons that I have expressed already, I do not have any problem with recording of gender but I think that race is problematic. I wonder whether that is a drafting issue that needs to be redressed.

The Hon. M. PARNELL: I also noticed that the reporting mechanism included age, gender, race and residential postcode. But I am happy for it to be in here because it is not the same as it was before, which was that you had to ask the person their gender and race. This is a report by government, effectively, as to the operation of a provision and, in the same way that the Hon. Robert Lawson said our law enforcement authorities are able to identify by race people involved in the criminal justice system, it should not be very difficult to incorporate information about race if it is available. If it is not available, so be it; but, if it is, it might provide useful information to assist in the administration of these laws. So I am happy for those provisions to remain and I do not think they need to be deleted.

The Hon. G.E. GAGO: I understand we will sort this out when the bill goes to the lower house, so I think we are going to proceed.

The Hon. SANDRA KANCK: I indicate support for the amendment in its amended form. My main aim was to get some sort of reporting procedure, which we now have, and my main concern was about criminal intelligence and this now addresses that, so I am happy to support the amendment to my amendment.

The Hon. J.M.A. LENSINK: I am quite satisfied after the contribution of the Hon. Mark Parnell that this is a mechanism by which to collect information. It will not be one by which police officers will be demanding it from individuals, so I do not really have any objection to that issue in principle. I am quite happy for that to go by the by, or for the government to address that matter between the houses if it sees fit.

Amendment carried; new clause as amended inserted.

Clause 8.

The ACTING CHAIRMAN: We now return to clause 8. Before the chair is the Hon. Sandra Kanck's amendment to page 9, after line 20.

The Hon. SANDRA KANCK: I think we have argued out this issue and probably all we need to do is vote on it now.

The ACTING CHAIRMAN: Does the minister wish to comment?

The Hon. G.E. GAGO: I have already spoken on this. We are not supporting it. It is not needed.

The Hon. S.M. Kanck's amendment negatived; clause as amended passed.

New clauses 12 to16.

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

New Part, page 10, after line 22—

After clause 10 insert:

Part 3—Amendment of *Casino Act 1997*

12—Amendment of section 3—Interpretation

Section 3(1)—after the definition of *compliance notice* insert:

criminal intelligence means information relating to actual or suspected criminal activity (whether in this State or elsewhere) the disclosure of which could reasonably be expected to prejudice criminal investigations, enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement or endanger a person's life or physical safety;

13—Insertion of section 45A

After section 45 insert:

45A—Commissioner of Police's power to bar

(1) The Commissioner of Police may, by written order, bar a person (the *excluded person*) from the casino for a period specified in the order or for an unlimited period on any reasonable ground.

(2) The order must—

(a) subject to subsection (3), state the grounds on which the order is made; and

(b) set out the rights of the excluded person to have the order reviewed by the Authority; and

(c) be given to the person against whom it is made personally or by sending it by post addressed to the person at the last known postal address.

(3) If a person is barred from the casino by order under this section because of information that is classified by the Commissioner of Police as criminal intelligence, the order need only state that it would be contrary to the public interest if the person were not so barred.

(4) If a person has been barred from the casino by order under this section, the licensee must, within 14 days of the service of the order, be provided with—

(a) a copy of the order; and

(b) information that identifies the person,

(but a failure to comply with this subsection does not affect the operation of the order).

(5) An excluded person who enters or remains in the casino while an order remains in force under this section is guilty of an offence.

Maximum penalty: $2,500.

(6) If an excluded person is allowed to enter or remain in the casino while an order remains in force under this section, the licensee is guilty of an offence.

Maximum penalty: $10,000.

(7) An agent or employee of the licensee or a police officer may exercise reasonable force—

(a) to prevent a person from entering the casino contrary to an order under this section; or

(b) to remove a person who is in the casino contrary to an order under this section.

(8) The Commissioner of Police may at any time revoke an order under this section.

(9) The Commissioner of Police may not delegate his or her power under this section except to a Deputy Commissioner or Assistant Commissioner of Police.

(10) A delegation under this section—

(a) must be by instrument in writing; and

(b) may be absolute or conditional; and

(c) does not derogate from the power of the Commissioner of Police to act in any matter; and

(d) is revocable at will by the Commissioner of Police.

14—Amendment of section 65—Review of decisions

(1) Section 65(2)—delete subsection (2) and substitute:

(2) A person aggrieved by a decision of the Commissioner of Police to bar the person from the casino by order under section 45A may, within 14 days after being given a copy of the order, apply to the Authority for a review of the decision.

(2) Section 65—after subsection (3) insert:

(4) In this section—

decision of the Commissioner includes, for example, the refusal of an application or the revocation of an approval.

15—Insertion of section 66A

After section 66 insert:

66A—Procedure in relation to criminal intelligence

(1) In any proceedings under this Part to be determined by the Authority, the Authority must maintain the confidentiality of information classified by the Commissioner of Police as criminal intelligence.

(2) In any proceedings under this Part to be determined by the Supreme Court, the Commissioner of Police may apply to the Court for a determination that information classified by the Commissioner of Police as criminal intelligence is criminal intelligence.

(3) The Supreme Court must maintain the confidentiality of information that is the subject of an application under subsection (2).

(4) If, on an application under subsection (2), the Supreme Court proposes to determine that the information is not criminal intelligence, the applicant must be informed of the proposed determination and given the opportunity to withdraw the information from the proceedings.

(5) If the Supreme Court determines that the information is criminal intelligence or the information is withdrawn, the Court must continue to maintain the confidentiality of the information.

(6) The confidentiality of information is maintained only if—

(a) the information is not used except for the purposes of the proceedings; and

(b) the information is not disclosed to any parties to the proceedings or their representatives (other than the Commissioner of Police and representatives of the Commissioner of Police) or to any member of the public; and

(c) evidence and submissions about the information are received and heard in private in the absence of any parties to the proceedings and their representatives (other than the Commissioner of Police and representatives of the Commissioner of Police) and are not disclosed to any member of the public; and

(d) the information is not disclosed in any reasons for decision.

(7) The Authority or the Supreme Court may take any steps it considers appropriate to maintain the confidentiality of the information.

(8) The duties imposed by this section on the Supreme Court apply to any court dealing with information that has been determined to be criminal intelligence or with the question of whether information classified by the Commissioner of Police as criminal intelligence is criminal intelligence.

16—Substitution of section 69

Section 69—delete the section and substitute:

69—Confidentiality of criminal intelligence and other information provided by Commissioner of Police

(1) Information provided by the Commissioner of Police under this Act to the Authority or the Commissioner may not be disclosed to any person other than the Minister, a court or a person to whom the Commissioner of Police authorises its disclosure, if the Commissioner of Police asks for the information to be kept confidential on the ground that its disclosure might create a risk of loss, harm or undue distress.

(2) Information that is classified by the Commissioner of Police as criminal intelligence for the purposes of this Act may not be disclosed to any person other than the Authority, the Commissioner, the Minister, a court or a person to whom the Commissioner of Police authorises its disclosure.

(3) The Commissioner of Police may not delegate the function of classifying information as criminal intelligence for the purposes of this Act except to a Deputy Commissioner or Assistant Commissioner of Police.

(4) A delegation under this section—

(a) must be by instrument in writing; and

(b) may be absolute or conditional; and

(c) does not derogate from the power of the Commissioner of Police to act in any matter; and

(d) is revocable at will by the Commissioner of Police.

Under section 44 of the Casino Act, the licensee can bar a person from the casino for a period specified in the order or on any reasonable ground. The barring order may be made for a period of up to three months unless made by agreement with the excluded person, in which case it can be for the agreed period or for an unlimited period.

Barring orders made by the licensee of the casino are subject to review by the Liquor and Gambling Commissioner, who may confirm, vary or revoke the barring order. The following barring mechanisms also exist in respect of the casino: voluntary barring by the Independent Gambling Authority under section 15B of the Independent Gambling Authority Act 1995; barring by the Liquor and Gambling Commissioner under section 45 of the Casino Act; and barring by the casino operator under section 125 of the Liquor Licensing Act 1997.

The Commissioner of Police casino barring orders were first discussed at the meeting of the Ministerial Council for Police and Emergency Management in late 2001, at which time a national system was proposed for sharing information with police in other jurisdictions to enable the Commissioner of Police to bar a person from the Adelaide Casino based on information provided by police from other jurisdictions.

In contrast to the position in other jurisdictions in Australia, the Commissioner of Police does not currently have the power under the Casino Act to initiate a person's exclusion from the casino. This is despite the fact that the Commissioner of Police is better placed than either the casino operator or the Industry Regulator to make an informed decision about barring orders that target criminal activities, particularly money laundering.

The existing casino barring provisions are focused on problem gamblers and not preventing criminal activity. Government amendment No. 5 inserts a new section 45A and part 4, division 7, of the Casino Act. New section 45A gives the Commissioner of Police the power to bar a person from the casino by written order for a period specified in the order on any reasonable ground. Subject to nondisclosure of criminal intelligence, a barring order must set out the grounds on which the order is made and the barred person's right to have the order reviewed. A copy of that order must be served on the barred person and on the licensee, along with information that identifies the barred person. A barred person who enters or remains in the casino while a barring order is in force is guilty of an offence. Reasonable force may be used to eject a barred person from the casino.

The Commissioner of Police may delegate his power under section 45, but only to a deputy commissioner or assistant commissioner of police. Amendments to section 65 of the Casino Act will ensure that a barred person has the right of appeal to the Independent Gambling Authority for the review of a barring order made by the Commissioner of Police. As with the power to bar under the Liquor Licensing Act, the Commissioner of Police will be able to rely upon criminal intelligence when determining whether to make a barring order in relation to these matters. Criminal intelligence will be protected from disclosure in the same way as it is protected under the Liquor Licensing Act provisions.

The Hon. J.M.A. LENSINK: Will the minister confirm the advice I have received from the government that South Australia is the only jurisdiction not to have these provisions? Will the minister confirm whether all other states and territories already have this in force under their casino legislation?

The Hon. G.E. GAGO: I am advised that we are the only jurisdiction without these provisions.

The Hon. J.M.A. LENSINK: Will the minister confirm that these provisions are identical to or a duplication of the Liquor Licensing Act as amended by us?

The Hon. G.E. GAGO: I am advised that substantially they are the same. Obviously, the appeal provision is slightly different because the appeal goes to the IGA, not the Liquor and Gambling Commissioner.

New clauses inserted.

Long title.

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

Long title—

After 'Liquor Licensing Act 1997' insert:

; and the Casino Act 1997.

I am on record about this matter. I do not think I need to repeat any of what I said earlier.

Amendment carried; long title as amended passed.

Bill reported with amendments.

Bill read a third time and passed.

DEVELOPMENT (PLANNING AND DEVELOPMENT REVIEW) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 12 November 2008. Page 693.)

The Hon. B.V. Finnigan interjecting:

The Hon. M. PARNELL (21:11): I have been invited by the Hon. Bernard Finnigan to support the bill unreservedly, and it will come as no surprise to him or anyone else that I do have some comments to make about this legislation. The planning review that gave rise to this bill is a very far cry from the planning review that was initiated by former premier John Bannon back in the early 1990s. That earlier planning review was absolutely chock-a-block with community consultation and engagement. There was well over a year of workshops, focus groups, stakeholder consultation and public meetings.

The people of South Australia were invited into a process and they were asked to present a vision of what they wanted for their cities, towns, suburbs, communities and regional areas. We were invited to tell the government what we wanted South Australia to be like in 30 years. Some of the vision that came out of that process has ever so slowly started to be adopted; for example, the vision in relation to public transport is now at least on the agenda, if not in fruition. The current planning review, on the other hand, was a very narrow and selective process that had its outcomes predetermined by the government's very clear agenda to make development in this state cheaper and faster.

The government got the outcomes it wanted and, with this bill, we are starting to see those outcomes implemented. If anyone doubts my analysis of the process, just have another look at the second reading explanation because it is dominated by the claims of the vast sums of money we will make or save by reforming the planning system and cutting what the government describes as 'red tape'. However, planning and development control is not just the domain of the development industry: it is the framework around which and within which our communities exist. Therefore I will always advocate that people should be engaged as much as possible, because it is us who must live, work and play in the environment that is shaped by planned use, planning and development.

Our children and our grandchildren will inherit that environment from us. In fact, empowering the community to engage in these debates is what I spent 10 years of my life doing before coming into parliament. I do not accept the adequacy of the process the government has gone through to get us to this point. It does distress me somewhat to see that the momentum in planning law reform is all in one direction, and that direction is to disempower the community and to disempower local democracy as expressed through our local councils. I am reminded that one of the first bills with which I had to deal when I came into this place was a bill to remove the bulk of elected members from development assessment panels.

That legislation, back in 2006, was promoted by the government largely on the basis that it would free up those elected members to be able to concentrate on writing planning policy. That was regarded as a more appropriate role for them rather than them all sitting on a development assessment panel to determine the fate of a rumpus room or a carport. In fact, in his second reading explanation on that development panel's bill, on 2 May 2006, the minister said:

> The suite of proposed bills increases the role of elected members in strategic planning, policy review and representing their constituents in their elected member capacity without a conflict of interest.

Now we find that the government is undermining even that role by providing that state government regulations should prevail over any inconsistent local planning rules set out in a council's development plan largely written by those elected members in conjunction with their staff. Apparently it is not enough for the state government that it has a right of veto over council development plans.

The government also wants to be able to veto those plans en masse by passing regulations that undermine the specific local council planning policies. My position in planning is always to prefer the specific over the general. In other words, if people have sat down and thought about appropriate planning rules for particular types of development in a particular location, then that level of specificity should prevail over a general principle written by a state government and incorporated into statewide regulations.

The other reason that I prefer council development plans to prevail over government regulation is that those plans, through the development plan amendment process, go through public consultation. People have the right to make submissions, a public meeting is mandated and, at the end of the day, they even go to a standing committee of parliament. Regulations, on the other hand, may or may not go through any process of public consultation and the only tool that we have available to us for reform is the very crude one of disallowing them at the end of the day. As members know, disallowance is not retrospective and bad regulations can cause harm and do damage until they are, in fact, disallowed. The process of writing planning policy through regulations is a crude one, it is a one-size-fits-all approach and it does not enable the nuanced response that you can have with a council development plan amendment process.

In relation to the package of measures that is before us, I support some aspects of it. I support the initiative of taking some very minor forms of development outside the planning system and freeing up town planners for more important work. I think that it makes sense that the solar panels on your roof, or the rainwater tank in your backyard, or the shadecloth over your barbecue area do not have to go through the full gamut of planning approvals; so that aspect of the reforms I

think is appropriate. People might argue whether too much is caught by this new category of exempt development, but nevertheless the process, I think, is a good one.

Most of the controversy around these reforms has been in relation to the so-called residential development code. The bill that is before us does not actually refer to the residential code, but it is, in effect, enabling legislation because it opens the door to allow for the code to be introduced through regulations. The bill itself does not prescribe the code, but allows for the code to be prescribed.

A version of the residential code was distributed for public consultation some months back and it received a great deal of criticism from many people in the community, from the planning profession and from local government. Another version was provided to us yesterday and that contained some improvements but in my view was still inadequate, and yet a further version was provided to us an hour or so ago. I have had a quick look at that, but again the improvements are very incremental and the objections that I have to the code remain.

The effect of this residential code is to provide that certain quantifiable requirements in relation to things such as open space and site coverage, setbacks and car parking are met, then approval is virtually automatic. It is what has been described as a tick-a-box approach, and once those boxes have been ticked, then whatever other requirements might exist in a local council's development plan are overridden. Why I find that situation unsatisfactory is that development plans increasingly are reflecting better environmental practices in terms of the orientation of buildings on their sites, water-sensitive urban design, solar access, minimum sunlight requirements for habitable rooms, amongst other things. That good work is being undermined when you have a residential code that simply requires a developer to tick a few boxes—and it is only a few—and then they do not need to go through the rest of the development plan in the design of their development.

Under the government's proposals, these important environmental matters are either ignored entirely or left to the Building Code of Australia to pick up, which it generally does not pick up not only because the Building Code of Australia is still overwhelmingly about building safety rather than about social or environmental performance but also it only comes into operation at building approval stage, which is generally after planning approval. It is a very crude method of ensuring the environmental quality of new buildings to rely on the Building Code of Australia.

I will refer briefly to some of the contributions that have been made in relation to the residential code. I have a very large folder full of submissions, but I will refer briefly to a few. One to which the government should have paid more attention than it did was the submission from the City of Onkaparinga. In their lengthy submission to government of 18 September 2008, they pointed out the following problems, as they saw it, with the residential code.

Under the heading of qualitative assessment, they pointed out that the code does not contain any qualitative assessment criteria and that the absence of such criteria has the potential for development to negatively affect the amenity of a locality. It is all about quantitative assessments. In other words, how many metres it is set back from the boundary, how high it is and how many car parking spots it has. None of the qualitative aspects are included. Under the heading of urban design and sustainability, Onkaparinga goes on to say:

> None of the Code's performance criteria seek good urban design by incorporating issues such as sustainability principles, building orientation or building materials. This also has the potential for development to negatively affect the amenity of a locality and consideration should be given to incorporating these matters in performance criteria.
>
> The reforms seek to move to quantitative assessment of residential development, rather than assessing against qualitative measures as currently exists. If the Code is to be implemented, additional work must be done to ensure that the Code provides clear guidance to applicants and the community.
>
> The Code does not contain any performance criteria that prescribe appropriate construction materials nor does it seek high standards of urban design incorporating sustainability principles such as appropriate solar orientation. Given the Government's position on climate change and the need for environmental sustainability, it is surprising that this issue is not addressed by the Code. Further, the ongoing affordability of maintaining a house should be a consideration of the government in its push for affordable housing—simple measures such as solar orientation greatly improve the ongoing costs of maintaining a home.

There you have the views of Onkaparinga, and those views are reflected in a large number of other submissions from individual town planners, other local councils, planning academics and community groups. The Planning Institute of Australia put out a media release on 12 September and it picked up the themes of Onkaparinga by saying, for example:

In its current form the Code fails to adequately deal with important issues of concern to the community including sustainability, climate change, character and overshadowing.

The Planning Institute's media release and submission to government points out the potential community backlash that will arise from implementation of an insufficiently prepared code. It points out that rallies on the steps of Parliament House complaining about the code will effectively see more disputation in the suburbs as people realise developments are going on around them that are inappropriate, of low quality and about which they have no say.

I took the unusual step myself of lodging a personal submission to the planning review on the residential code and, whilst I will not read out that submission, the conclusion that I came to—and this is the conclusion of many other people who made submissions—is that the government should go back to the drawing board and rewrite the residential code following further public consultation. I also suggested to government that this will necessitate putting back the proposed implementation dates to make sure the community does have a genuine opportunity to have a say.

Within the past few days I have also had a submission from the Local Government Association, and I will refer to that towards the end of my contribution because it has some specific points about specific clauses in the bill. One of the issues raised by the introduction of a residential code is that the amount of information required of developers before they get their approval will be fairly strictly limited by the regulations. Under the current regime, schedule 5 of the development regulations sets out the types of paperwork and information that you have to provide to your local council before you can get approval. It includes plans and specifications drawn to a certain scale.

Under the government's proposed regime, it will have a system where, once a person has provided that information, no further information is needed. In fact, the bill that is before us provides that councils are not allowed to ask for further information once the basic minimum has been provided under schedule 5 of the development regulations. There are some minor additions to that information that must be provided. One is in relation to significant trees. The developer has to identify up front whether there is a significant tree on the property. One that I have just seen in the past day is information about whether the site might be contaminated. There are still many important things that a council needs to know which should be provided but which will not be required to be provided under this regime.

One clear example would be that there is no obligation on a developer to disclose the existence of any native vegetation on a site. Many members might think we are primarily talking about the suburbs of Adelaide and that there is not much native vegetation left, so why would you encumber developers by having to disclose whether there is native vegetation? However, I point out to members that the whole of the City of Onkaparinga, including its suburban parts, is covered by the Native Vegetation Act.

There is currently a bill in another place which will get here very soon and which proposes that the whole of the Mitcham Hills will be covered by the Native Vegetation Act. The suburbs of Belair, Bellevue Heights, Blackwood, Coromandel Valley, Craigburn Farm, Eden Hills, Glenalta and Hawthorndene will all be covered by the Native Vegetation Act, yet the residential code is proposed to apply to those suburbs and developers will not need to disclose whether there is any native vegetation. As a resident of Mitcham Hills, I can tell members that there is some good vegetation left, much of it in backyards, and our development authorities need to know where it is if we are to have any chance of protecting it.

So, the failure of the proposed regime to ask questions, such as native vegetation, does remove opportunities to preserve those important remnants, and I say that is not good enough. Similarly, I think that trying through legislation to limit the number of questions a council is allowed to ask developers is putting an unfair restriction on a council's ability to do its job properly.

In relation to the legislation itself, I have a number of amendments on file, and I will very briefly outline the effect of those amendments. However, I will refer first to the submission that was made by the Local Government Association. The LGA has pointed out three clauses, I think, of what is a fairly short bill, it is unhappy with—clauses it says need amendment or further consultation.

For example, in relation to clause 5; the LGA summary is that it does not support the amendment in its current form and that it needs more work. Other sections the LGA does not support at all. For instance, the LGA does not support clause 9 (the amendment of section 41, I think). The LGA concludes its submission by making a plea for better consultation on the regulations because the regulations is where the residential code will eventually find its home.

I have five amendments on file. I will speak to them in detail when we get to the committee stage, but I will give members an idea of their subject matter. My first amendment is very straight forward. It provides that, if a matter goes on appeal to the Environment, Resources and Development Court because of some requirement that has been imposed by an outside body (for example, the EPA is one body that has a legal right to impose conditions or to direct refusal of certain types of development), that both that body and the local council need to be parties to the appeal. That is pretty much the current regime. My amendment is a very minor one. Basically, I have just tried to close a potential loophole that would have enabled the Environment, Resources and Development Court to exclude a local council from being a party to that appeal. I hope that amendment will not be controversial.

My second amendment basically provides that, where a local development plan is inconsistent with the government's regulations, that local specific plan should prevail. I know that is a clause the government will not like, because the purpose of this bill is to undermine that local planning regime. I am trying to preserve some balance and trying to keep those locally written, local planning rules at the forefront and have them prevail over state government regulations.

My third amendment is one that has attracted a bit of interest in the media in the last couple of days, and that is a provision in the government's bill that will make it illegal for a local council to consult its citizens over certain types of development. It is a remarkable provision in the legislation; it basically provides that the council shall not consult citizens (shall not consult neighbours, for example) in relation to what is described as a category 1 development.

Members who are not as steeped in planning law perhaps as I am might think that all sounds like gobbledegook. However, category 1 developments are the bulk of residential developments in the state, and generally there is no obligation on a local council to consult neighbours or anyone else about it. Nevertheless, some councils do decide to let their citizens know what is going on in their neighbourhood, and that is an appropriate thing for councils to do in some circumstances.

I know that some of the judges of the Environment, Resources and Development Court do not like that approach. They take a very pragmatic view and say that you should not consult anyone and raise their hopes unless they have some legal ability to do something about it if they are unhappy with the outcome. They say that you do not want to raise the expectations of people by consulting them if they do not have, for example, appeal rights.

I think that is a very weak excuse, and I think it is a poor reason not to consult local people in relation to development. My amendment does not force councils to consult anyone; but it seeks to remove what I think is a silly government provision which makes it illegal for a council to consult neighbours of certain types of development.

The fourth amendment is a fairly straightforward one. I am seeking to delete the provisions of the bill that stop councils asking questions of developers. If council members need more information to assess a development, I say they should be able to ask the questions, and if they need to ask twice, let them ask twice. If the answer that they are provided with in the first instance is inadequate, let them ask again. The way the government has drafted this bill, in relation to some types of development you are not allowed to ask any questions at all, in relation to other types of developments, you get one bite of the cherry and, regardless of the quality of the answers, you cannot ask a second round of questions.

The response is likely to be, 'Well, if a council is unhappy with the responses it gets, it will simply refuse the development. It will simply say no.' But councils will be loath to drag too many of these applications through the courts through an appeal process. Basically, these measures are designed to discourage councils from seeking too much information and to say yes to development instead.

My fifth and final amendment relates to the question of what the consequences should be where a council is tardy in approving a development. The government's bill provides that if the development is not approved within a 10-day time limit, then it will be regarded as a deemed refusal, and the council will have to refund all the development application fees.

I can probably live with the first part of that. If it is a fairly straightforward development and the council has not approved it within the time frame, then a deemed refusal makes sense, and the disgruntled developer can go to the court and get a second opinion. However, having to refund hundreds or thousands of dollars worth of fees is not an appropriate response because, at the end

of the day, that will lead to developers effectively getting their development approved, albeit through negotiations in the environment court, for free.

The final point that I would make in my second reading contribution is that we will be urged by the government not to be too worried that the residential code is not in final form before we pass this bill. What we will be told is what we are always told when regulations are involved, and that is that it is our job as a parliament is to pass the bill and we should leave it up to the executive to pass the regulations, that we should not hold up the act just because the regulations are not ready.

I am generally supportive of that type of view when you look at regulations or delegated legislation as the fine tuning of laws that we create. When you learn this at law school, they usually give you the example where the regulations set out the admission prices for the zoo, for example—a level of detail that the parliament does not need to get into. That is the role of delegated legislation.

However, this residential code and the delegated legislation that we are inviting the government to implement through this act is not just admission prices or fine detail. It goes to the heart of the system. These regulations determine what types of development have to be approved, what types of development have to go through a thorough process, and what types of development go through very little process.

If anyone is in any doubt as to how significant these changes are, we are talking about 70 per cent of development in the state effectively being rubber-stamped through a 'tick-a-box' process through the development code and that is what the regulations will do. So whereas I usually say I am happy to pass the bill and we will trust the government to write good regulations, I am far less inclined in this situation to allow that to happen.

I accept that the government is still fine tuning the residential code and I am happy for it to spend more time fine tuning it and spend more time consulting the community about what should be in the residential code. If that means that we do not deal with this legislation this week, if that means that we wait until we come back in February when there has been proper consultation, then so be it, because the consequences of leaving things out, the consequences of getting this wrong, are that we could end up with a far worse urban form. We could end up with boxes made of ticky-tacky that all look just the same because the residential code does not have the qualitative aspects that our current development plan has.

I support the second reading of the bill, but I do want to see the response to my amendments and I do want to see the government's proposed process of consultation over the code before we take it further.

The Hon. J.A. DARLEY (21:40): I rise to indicate my support for the bill, and commend the government for its planning reforms in seeking to streamline the planning process. For too long we have allowed councils to delay applications for even the simplest additions. This is not only frustrating for homeowners and builders: it takes up valuable council time and resources that could be better spent elsewhere.

I would have liked to see an amendment to clause 9, the new provisions to section 41, that applications will be taken to be approved rather than refused if the application is not determined in time. Under the government's bill, if an approval is not granted within time it is deemed to be refused and an applicant will be required to go to the ERD Court. It would be in the spirit of this whole push for planning reform in terms of approving new developments and additions to deem, as much as possible, applications not determined in time to be approved rather than refused. I acknowledge that there are problems with this; however, I understand that under the new provisions of section 41, if an application is deemed to be refused because it is not decided in time, the application fee is refunded and the applicant can apply afresh. I see this as a positive step that saves time and money if an appeal to the Environment, Resources and Development Court is not warranted.

My personal experience with councils, particularly regarding planning approvals, has made me quite cynical about their ability or even willingness to determine assessments within strict time limits. In a recent discussion I had with the Premier, I understand that he too has experienced the frustration of waiting for council approvals in the past. I am hopeful that this bill will enable government to cut through red tape and streamline and simplify the cumbersome planning process for all parties.

The Hon. SANDRA KANCK (21:42): Although I am speaking to this bill tonight, I will not agree to progressing it beyond the second reading this week because I, my party, and many community organisations need time to study, discuss and digest the implications of the draft regulations upon which the bill stands. We received the first copy of those regulations yesterday afternoon and we received a second, replacement copy just half an hour ago. It would be an extremely poor process for government to try to ram through this legislation this week, given that we have effectively had the bill in our hands for only three sitting days and the regulations for perhaps just one sitting day.

I would like to see this debate resumed in the new year. As members know, I will not be here at that time to debate it and I would therefore lose the opportunity—which I would like to take now—to berate the government for what I see as a very shortsighted, unsustainable and undemocratic approach to urban development and planning. This bill is part of an urban planning package which is, I believe, fundamentally flawed. First, it is designed to facilitate population growth at a time when we cannot provide even enough water for the existing population; secondly, it pushes the boundary of the city out onto productive farming land and native vegetation at a time when food and oil are becoming more expensive and biodiversity is under threat; thirdly, it is based on the delusion that there are simplistic, tick-a-box fixes for urban planning dilemmas; and, finally, it seeks to reduce the rights of residents and the autonomy of councils.

Urban development is not simple, even though the government seems to think that its proposals will make it so: it is complicated and it has long-term effects.

Apparently simple matters , such as how close a fence should be sited to a wall, can turn a much-loved room or verandah from a warm sun-drenched winter refuge into a cold and dark corner. Many people in our community cannot afford to move when insensitive development ruins their quality of life; they are just stuck with it.

Every development is different. Paradoxically, the tick-a-box system proposed by the minister is much better suited to the quarter-acre block. When almost every house was situated in the middle of a large yard and all the neighbours were single-storey, issues such as overshadowing and hammerhead developments were much less important. High-density housing means that every development decision made by the neighbours has more impact, and development choices for each site become more varied and more complex.

The quasi-jury system of development assessment panels, which brings a mixture of professionals and lay people together to consider development proposals, may not be perfect but it is possibly the best tool we have. It is cumbersome and slow sometimes, but I believe that local councils are best placed to streamline development applications in a way that suits their area rather than be dictated to by a one-size-fits-all system devised by distant bureaucrats.

The case of Unley city council, which is able to achieve higher population density than those envisaged by the state government, is a case in point. I understand, however, that the minister is causing a degree of frustration by refusing to approve the Unley council's DPA. I know that sometimes councils need a push, but that can be done by mandating a default system based on broad performance indicators and stepping in only when councils fail to meet those targets.

This brings me to the issue of residents' rights. People should have a right to be consulted about matters that affect them, but this legislation will remove any expectation of that. The regulations will almost certainly further diminish those rights simply because they reduce the possibility of representation and redress at the council level and reduce the greatest sensitivity that often results from local knowledge.

I note the comments of the Hon. Mark Parnell in relation to the requirements in this bill that state that councils must not consult. Only a fortnight ago the minister and I and the Hon. David Ridgway were at a Planning Institute breakfast where the annual report card on government was presented. The area in which this government almost failed and where it achieved the lowest rating was in respect of consultation. What this legislation does is to enshrine even less consultation. The mistakes are already there in the past in respect of failing to consult, and this legislation simply makes that worse.

I am also concerned about the selective use of evidence to justify this initiative. The report provided with this legislation put forward what I assume to be the strongest arguments for this bill and the regulations. There are two points to be made about this, and the first is that all the arguments are economic. Sustainability, a sense of community, safety for elderly people and all of

the other aspects of life that can be affected by development are not seen as relevant; something like sunshine is not really part of it.

Secondly, the figures that are given to back this position seem excessively positive. The changes are purported to produce a benefit of $75.6 million to applicants and local government—not $75.4 million but $75.6 million. The claimed financial benefits will include $16.6 million for private citizens and $49.6 million to industry. The figures are provided with such precision, such incredible precision, that I think it is almost impossible precision.

It is claimed by the government that the gross state product will rise by $3.4 billion to $4.9 billion over five years as a consequence of this legislation. That is an extraordinary claim. Of course, according to the government, there will be no downside, no amenity will be lost, no solar panels overshadowed, and there will be no increase in neighbourhood disputes. I suppose we should say that pigs might fly.

If one believes what the government has to say, we should be rejoicing but, unfortunately, these figures and claims represent an extravagant attempt to gild the lily. The powers in this bill rest on the regulation. As I said, we received our first copy yesterday afternoon and our updated copy just half an hour ago.

If the government intends to push this bill through by the end of the week, it means that, tomorrow morning, those of us who do believe in consultation will have to try to get copies of that bill, which we do not have in electronic form, and get them out to all voluntary community groups. It assumes, therefore, that all such groups will be able to get together tomorrow night in their respective suburbs and have meetings to discuss the regulations of this residential code. That is absolutely unfeasible. You cannot turn around and say to voluntary groups, 'You must do this under the conditions and timeline that this government sets.'

I believe that the model developed by the government, as shown in this bill, is both underdone and oversold. We should recognise that the piper calling the tune is the development industry, and we in this parliament ought not to be at its beck and call. The devil will be in the detail and the implementation of the regulations, and I think there will be a lot of devil here.

In attempting to solve problems such as a shortage of planners in local government, I fear that this new approach will create a new set of problems, and it is increasingly undemocratic. At this stage, I indicate guarded support for the second reading, provided the government does not push it beyond that. I know that the government has said from the outset, when the planning review reported, that it intended that all of this should be in place in March; that can still happen.

We can still have the opportunity, over the next two months, to consult with community groups and then, when parliament resumes in February, there is a month in which the bill can get through this place and the House of Assembly, and the government can still effectively have its own way in getting the new structures in place by March. I appeal to the government to see the sense in having that sort of consultation and not forcing this legislation through this week.

The Hon. D.W. RIDGWAY (Leader of the Opposition) (21:53): I rise on behalf of the opposition to speak to this bill, on which a number of comments have been made by previous speakers, and I hope I do not cover too much of the ground already covered.

The Hon. Sandra Kanck: If you repeat it we'll like it.

The Hon. D.W. RIDGWAY: I am sure; and I can identify whose comment it was, and you can clap and cheer. As members who spoke prior to me said, the actual amendment bill is a relatively small bill containing only a handful of amendments which, as the Hon. Mark Parnell said, are enabling provisions for the residential code, which has been the subject of much discussion.

It is interesting to look back at a little history of the planning review. I have to admit, as the shadow minister for urban development and planning, that it became apparent to me that the planning system was probably in need of a major review and overhaul. I have to say that I was hoping that the government would not do anything so that our policy going to the next election would be that we would undertake a significant review. I was, I guess, a little annoyed, but also pleased from the state's perspective that the government had announced its review.

On Tuesday 19 June 2007, in a ministerial statement, the minister announced that he was instigating his planning review. I certainly will not read all his ministerial statement, but at one point he stated:

> Parliamentary secretary to the Premier, Michael O'Brien...will chair the steering committee. The committee membership will include a number of people, including Michael Hickinbotham, Fiona Roche, Grant Belchamber...Tim Jackson, Stuart Mosely...and Jamie Botten.

He went on to say:

> The steering committee will report progressively to the government during the course of the review to ensure early adoption and implementation of recommendations for reform. It is expected that the steering committee will complete its work by the end of this year.

That was in 2007, so I think that all members of this chamber expected the committee to report by the end of that year. I have not been able to find it in hard copy (but I have a very good memory) and I think that on another occasion (it may well have been in response to a question or a Dorothy Dixer from one of his own team) the minister said that the steering committee would report by the end of 2007 and that legislation, if required, would be introduced early in 2008 and be through the parliament and in place by, roughly, 1 July 2008. Clearly, in this instance, the government has not kept to its time frame.

It is interesting to note that today the minister issued a press release in relation to this code, entitled 'Residential development code to slash red tape'. He stated that they released the draft code in June, which was when they had hoped initially to have all the recommendations from the steering committee in place. They released the draft code in June, and that is what the number of stakeholders, including the Local Government Association and the development industry, understood. Members may have just seen me on the phone; I was speaking to the member for Unley, who had just been to a focus group, the Save our Suburbs group. The government consulted with a whole range of stakeholders in the community on this draft residential code.

The minister's press release today states that the significant changes they have made as a result of this consultation should allay many of the legitimate concerns raised by local government, industry and community groups in the five months since the discussion draft of the code was first circulated for public consultation. He goes on to say that the final version of the residential code is to be established through new regulations that rely on amendments to the Development Act that are before parliament, which are the ones we are talking about today. He goes on to say:

> To ensure an informed debate on these much-needed reforms, the Government is also providing MPs with a draft of the regulations required to enforce the Residential Development Code.

Members have said this evening that they have received a copy of that release, which was produced at 4.51 today, and it is interesting that we get it in the last week of sitting. We have private members' business tomorrow, and we sit at 11 o'clock on Thursday morning. We have the initial draft, when the government was happy to consult for 5½ months, but we are now getting not much more than 5½ minutes to consult on this final code.

The Hon. P. Holloway interjecting:

The Hon. D.W. RIDGWAY: The minister asks, 'What other bill have we got the regulations on?' From discussions I have had with the minister, he was well aware that, from the opposition's perspective, he has its in-principle support; in fact, many of the planning review intentions are well supported by the Liberal Party. We released a policy principles document earlier this year, before the government announced a lot of its planning initiatives.

I have made the minister well aware from day one that the final draft of the code would need to be in our hands, and those of the industry players and the community groups, so that there was some comfort that we would actually have a workable document.

I think it is worth putting on the record that I spoke to the minister as late as last Wednesday, when he assured me that I would have something by Thursday; however, it did not turn up at that time. I was a bit caught up with other things on Friday, so I did not contact his office, but I did so yesterday and was advised, 'Yes, we had to do a bit of drafting. We actually had two versions on Friday, but the person who drafted them was not here and we were not sure which one to give you.' Yesterday, I was provided with a copy (version No. 7), on which was stamped 'Preliminary: subject to change'. This afternoon we get version No. 10, barely 24 hours after I received version No. 7. I guess, on the one hand, that demonstrates that the minister's staff and parliamentary counsel who are drafting this are working at fever pitch to try to come up with the final document.

What it indicates, however, is the uncertainty over the past 24 hours, even within the minister's staff and parliamentary counsel—about the exact wording and what this document

should look like. Even the minister's advisers who spoke to me at 5.30 yesterday afternoon were saying that some of the new drafting, some of the new clauses that have been included in relation to the previous consultation needed to be, if you like, workshopped or tested to make sure that they were actually going to deliver the outcome that the government intended.

The minister knows, and the opposition made a public statement a couple of weeks ago, that there were some key points that we would like to see in the code, which related to heritage, character, set-back and allotment size. I have only just received this document and, like the Hon. Mark Parnell, I have had a quick flick through it. It probably addresses a large number of the concerns that the opposition had, but I have no idea. I am not a planning expert and I do not have the benefit of years of planning and legal work that the Hon. Mark Parnell has had, so I need to make sure that this document goes out to all stakeholders so that we can get some comment as to whether it has covered the concerns that we have.

We have a number of members of the House of Assembly who live in and represent electorates that will be impacted, especially the electorates of Unley, Bragg and Burnside, and our candidates in some of the other seats are quite concerned that this new residential code could impact upon their particular patch, so they, in particular, want to circulate it to the stakeholders in their community.

It is interesting that yesterday afternoon I received a copy. The Hon. Mark Parnell, and I think the Hon. Sandra Kanck, stated that they received a copy—I think it was version No. 7—but I do not believe that industry or the Local Government Association received that copy. I know that—

The Hon. P. Holloway: They had the draft. We had been consulting on the draft. They had three months to comment on the initial draft. This is the outcome of it.

The Hon. D.W. RIDGWAY: The minister interjects that they had three months to comment on the initial draft. I have a copy of the next draft that the minister's staff provided to me and I rang some of those stakeholders—

The Hon. P. Holloway: Name another bill where you have been given regulations to look at in this detail. Name one!

The Hon. D.W. RIDGWAY: The minister interjects: name another bill.

The PRESIDENT: The minister is out of order. The Hon. Mr Ridgway will not respond to interjections.

The Hon. D.W. RIDGWAY: Exactly. However, I will refer to his interjection because he gave me an undertaking that we would receive what we would call the final workable document for the residential code. It is, if you like, the nuts and bolts of this planning reform. I know it is unusual, and in the past he has resisted, and I thank the minister and his staff for making it available. What I am disappointed with is that yesterday, when I had version No. 7, I thought I would ring some of the industry stakeholders. They had not seen it, and I could not tell whether any of the concerns that they had raised in their submissions to me, or copies of the submissions to the government that I had seen, had been dealt with.

The Hon. P. Holloway interjecting:

The Hon. D.W. RIDGWAY: The minister is interjecting again. The Hon. Sandra Kanck said at the Planning Institute report card meeting that the government was the worst on consultation in the nation, and clearly this demonstrates that it is. It is normally the other way around: that industry, the Local Government Association and other stakeholders receive it, and the opposition is the last to receive it. Often the Independents and minor parties will receive it so that the government can perhaps lobby them and get their position, and we are the last to get it.

Thankfully, yesterday we were probably the first to get it, and I do appreciate that; however, nobody else had it, and we were uncertain of what industry and stakeholders wanted. I warned the minister privately, and I do so now publicly, that we needed to have this in advance for the stakeholders to be comfortable, otherwise he would have little or no chance of getting it through in the timeframe that he would like.

I will put on the record that the Local Government Association has up on its website a report on the road test, because they road-tested a lot of this residential code, which I think was a sensible way to go—to get out among the councils and put it into practice to see how it would actually work. My understanding is that this is now a public document and is on the Local Government Association's website.

I refer members to page 15 under the heading 'Findings and industry comments' and, in particular, the concerns. I will just list a few of them, as follows:

- concerns that councils might change business practice to frustrate the objectives of the reforms and the provisions regarding delegations should be reviewed;
- concerns were expressed that the Victorian code (the VIC code, which is the one that this has been modelled on) became unmanageable because too many standards were introduced, and the South Australian system should not become so convoluted;
- concerns that, if the built form is approved under the code, an applicant would still have to run the gauntlet on land division applications and the link between a code approval and the eventual certificates of title should be created;
- a blanket approach to design standards might dismiss the context of locality, but applying character was not generally considered a solution to the failure to consider streetscapes.
- the code did not apply to enough zones;
- the code does not enforce quality of build outcomes and sets design benchmarks that are too low;
- sustainability is not addressed by the code—

That is something that the Hon. Mark Parnell raised. It also stated:

Limited assessment applications need to be very simple, otherwise builders will not know what to expect and confidence will be undermined.

It then goes on with some other comments and, in particular, a number of conclusions. I will read them out, because I think it is important that they are on the record so that people realise that there is some confusion—this is draft No. 10—and that is why we need to consult on it more widely. These are the conclusions from the Local Government Association report:

The following comments pertain to matters that should be considered further to ensure that the objectives associated with streamlining the development assessment system are achieved.

They are as follows:

A. A suitable replacement fee should be determined for BRCO and code assessments.

B. A specific proactive information program is required to ensure that information requirements for BRCO and code applications are understood by applicants and providers of advice to applicants.

C. Suggested amendments to the development regulations only enabling councils to request further information once should be reviewed in light of the road test findings.

D. The code should be redrafted to contain three sections tailored to (i) dwellings, (ii) dwelling additions, and (iii) outbuildings.

E. The redrafting of the code into three sections should also tailor the information requirements to the complexity of the applications addressed by each section.

F. The development application form should be amended to require applicants to nominate the type of assessment path they seek to be undertaken by the relevant authority (hence streamlining fee payment and information provision).

G. The code redraft should take into account the matters raised in Appendix 1 and more generally in section 4(c)...of this report and ensure the standards are unambiguous in their intent and use.

H. A centralised website should be established and maintained clearly outlining the new system, a flow chart of the assessment process, the information requirements, the time frames and the costs and benefits to ensure that applicants make best use of the system improvements.

I. Training and support programs should be provided in relation to the new assessment process and internal system and resource changes for councils and the building industry.

J. Funding programs for system improvement for regional groups of councils should be considered to develop best practice internal assessment processes and systems.

K. Significant consideration of the complexities of the limited assessment path is required and a trial of the system should be undertaken before formally introducing this element of the reform package...

L. Delaying the introduction of limited assessment for dwelling additions and alterations should be considered until (a) the demand for this assessment path is determined and/or (b) September 2009 to coincide with the...detached, semi-detached and row dwellings into the code.

M. Consistency between the code and the BRCO and the scope of BRCO developments should be increased where possible...

N. A review of discretionary state government agency referrals should occur to avoid uncertainty in the assessment of code-type applications.

O. Systems will need to be developed by Planning SA to ensure that the code adapts simultaneously to changes to the zones in development plans.

There are three more, and I will not take much more time. It continues:

P. A review of the development regulation system indicators should be undertaken to implement new indicators to measure the consequential changes brought about by the reform package.

Q. Consideration of how and when relevant planning matters should be assessed is required in relation to code-type applications as required (e.g. assessment of waste control systems, land management agreements, significant trees on adjoining land, heritage items adjoining land and linkage of subsequent land division applications).

R. Further road testing should occur during the introduction of the code of dwelling additions and alterations on outbuildings—

That will be on 1 March 2009, to make sure that there are no further problems with this code before its introduction.

A whole range of other queries are outlined in that report, but it is available on the Local Government Association's website. Clearly it indicates that there is significant concern in the community. There is broad support—and certainly the Liberal Party supports it—and most of the stakeholders I have spoken to support the concept of a residential code. Even the Hon. Mark Parnell—not in the broad sense as it appears—certainly has some support for a residential code. He spoke of the Planning Institute of Australia's press release. I attended, along with the Hon. Mark Parnell, the gathering on the steps of the Parliament and indicated to the assembled group that we supported a residential code, but not the one the government had released in draft form, and that we would be looking to make significant changes to it to protect what we see as important parts of what makes Adelaide special: our character suburbs, our heritage, our setback, and all the things that are important in those areas.

We think that it is important for local councils to determine the areas they see as important to preserve, because they are the local representatives that are elected to make that decision on the ground. On the other hand, I am sure there are areas in every council that are right for some sort of renewal, whether higher density or better more modern dwellings.

I live in Mitcham and there has been some changes in the short time I have be there, where we have seen urban infill and renewal and most of it has been quite sympathetic to the surrounding character of the suburbs. There are some buildings in that area that are the cream brick, two-storey block of flats—developments which are not in keeping with the general character of the suburb and, quite frankly, could be demolished and something with a similar population density built there that is more in keeping with the suburb.

There are a number of concerns and today at 1.59pm the Hon. Mark Parnell tabled some amendments to this bill. All members know that the opposition is not a one man band, and that is in fact a great asset; but the parties that have single representatives, like the Hons Mark Parnell, Ann Bressington, John Darley and Sandra Kanck, largely can make decisions in half a day on particular amendments. Everybody knows the opposition has a rigorous process of looking at these issues, whether it be amendments or further consultations, and a committee system whereby we evaluate things and make recommendations to our party room. Those party room meetings are always held on Tuesdays, and that is the problem with leaving legislation to this late stage.

Although this legislation is not complex in itself, with the code tacked on the end of it, and now with the amendments moved by the Hon. Mark Parnell, the opposition finds itself in the position where it does not have another meeting scheduled and does not have the capacity to internally evaluate the Hon. Mark Parnell's amendments nor get feedback from industry stakeholders to be able to debate it in the next day and a half.

I know that there will be this cry if we do not pass the bill this week that the opposition is taking control out of the government's hands, frustrating the parliamentary process. I can see the minister now in front of the TV cameras, blaming us and other members of the Legislative Council for frustrating the parliamentary process. Clearly, it is almost with contempt that the government holds this chamber, to give us this document just a day or so before we get up.

I will throw an opportunity to the minister opposite. We have an optional sitting week scheduled for next week and the opposition is more than happy to do that—you laugh, Mr President, but this is a serious piece of legislation—if the government is serious about getting it through. It has been interesting to hear some of the feedback from industry groups. I suspect little phone calls went out and panic buttons were pressed. I was contacted by industry groups saying, 'How dare you frustrate this. We want this through.' I said, 'Hang on, this is only going through the Legislative Council this week. It is not on the House of Assembly *Notice Paper*, so it is not going through parliament until 2009.'

But the message that was sent out—and I am not sure by whom—to some of the industry players was that the opposition is playing games and will not allow this to pass until next year—and then it will be 12 months from the election and we will be in election mode and the government will not have the courage to pursue it and it will all disappear and not happen. If that has come from the government, it is an outrageous way to try to influence the parliamentary process—by giving industry people the wrong information and getting them to ring us to put pressure on us.

I have given the facts to the industry people who have spoken to me. They did not have the document that I had, so they were quite surprised and quite supportive when I gave them the facts, and they believe we should not be processing this legislation this week. We will be happy to come back, probably for only one day next week, whether it is Tuesday, Wednesday or Thursday. That will give the opposition the opportunity and time to do what it needs to do in looking at the Hon. Mark Parnell's amendments and hopefully get some sensible feedback from the stakeholders, because we have to get it out. It is past 10 tonight, and we have to get it out tomorrow morning. They have to be in a position to evaluate it and check that it fits the requirements of the stakeholders. I am sure there will be areas that do not.

The Hon. P. Holloway: If it is amended we will have to do it all again, anyway.

The Hon. D.W. RIDGWAY: I have told the minister and his advisers we all understand there will be mild tweaking, but to go from version 7 one day to version 10 in about 24 hours—

The Hon. P. Holloway interjecting:

The Hon. D.W. RIDGWAY: The minister says that basically the parameters have not changed, but I have not had a chance to compare it. That is the hypocrisy of his comments. We received this document only at the last minute. As I said before, I warned the minister that we needed to have it in advance. I am sure there have been some difficulties in getting the information together and drafting it, but I did warn him that it would be a problem if we did not see it in advance. I know it is unusual to see regulations prior to passing a piece of legislation.

I have not spoken to the clauses, but I will do so at a later date. However, I indicate to the minister that we are prepared to sit one of the days next week or how ever many days it takes. I do not think that is an unreasonable demand to make—an offer, if you like—to facilitate the government's time frame. If the government is not prepared to sit next week, we will deal with this in the first week of February 2009. Given that I have not made any comments on the bill itself, I now seek leave to conclude my remarks later.

Leave granted; debate adjourned.

At 22:19 the council adjourned until Wednesday 26 November 2008 at 11:00.