LEGISLATIVE COUNCIL

Thursday 19 November 2009

The PRESIDENT (Hon. R.K. Sneath) took the chair at 11:02 and read prayers.

STANDING ORDERS SUSPENSION

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (11:05): I move:

That standing orders be so far suspended as to enable petitions, the tabling of papers and question time to be taken into consideration at 2.15pm.

Motion carried.

INTERVENTION ORDERS (PREVENTION OF ABUSE) BILL

Adjourned debate on second reading.

(Continued from 28 October 2009. Page 3806.)

The Hon. D.G.E. HOOD (11:11): This bill makes significant changes to our laws regarding domestic and personal violence restraining orders, and, in general, it receives Family First's support. However, there are a few items in the bill we believe will require clarification. Generally speaking, Family First has been a strong supporter of this type of legislation, and I expect this bill will be no exception. However, we are looking for some clarification regarding some specific measures, perhaps during the minister's summing up or in the committee stage if that is more appropriate. This bill repeals the Domestic Violence Act 1994 and the parts of the Summary Procedure Act 1921 that govern personal restraining orders, and it makes consequential changes to other acts.

It is fair to say that I have always been a strong supporter of any laws that work towards the prevention of domestic violence. This bill has several positive elements. The police are given additional powers to act swiftly to prevent abuse, and I strongly support those provisions. Indeed, I believe our police have a very difficult job. They have to make on-the-ground decisions, often in a split second, and this legislative measure will give them the powers necessary for them to act appropriately, and Family First strongly supports that aspect of the bill.

However, in my view, there are provisions that intrude very deeply into personal lives and family dynamics. I think it is fair to say that this bill fundamentally rewrites our rules relating to restraining orders and puts not necessarily this government but a government in every living room; it makes a government a participant in almost every possible family argument, as I see it. Every family argument and every act of parental discipline potentially will be targeted under this bill, which is the aspect I highlighted in the first few sentences of my contribution, and that does concern Family First.

I have a number of concerns regarding the wide scope of the definition of 'abuse' in clause 8. It will be possible to issue a restraining order (to be called intervention orders under this measure) on someone, and I will list a few examples, as follows:

- Someone who criticises another person on the internet in a way that might cause harm to the person. It is deemed emotional or psychological harm.
- Someone who denies a person so-called financial autonomy. I think that term could be misunderstood.
- Someone who prevents a family member from having access to joint financial assets, in some circumstances. I am not sure how one does that legally if the joint asset is in joint names.
- Exercises a 'quite unreasonable level of control and domination over somebody' (and 'quite unreasonable level' is not defined). I am not sure what that means. I understand what it is supposed to mean. In layman's terms, it probably makes some level of sense, but my concern is how the courts will interpret that term.
- Someone who simply follows another person may be subject to one of these intervention orders.

- Someone who threatens to institutionalise someone. Maybe that is a more appropriate use of the order, in most circumstances anyway.

To be clear, I do not like people doing these things; I do not think anyone does. I do not agree with one member of a family exercising unreasonable control over another or interfering with another member's so-called financial autonomy. It is wrong to threaten to institutionalise people, which may perhaps occur during an argument, although I must say never in an argument I have been involved in.

I would generally consider such infractions, especially when they occur at the lower end of the scale, as family issues and not police issues and not issues in which the state has a role to play. Indeed, the minister has said that this bill will impact 'private familial relationships'.

Clause 8(5)(h) of the bill also allows intervention orders to be made against one family member for preventing another family member from keeping certain friendships.

Again, in most circumstances, I think people would regard that as a sensible measure. My view is that in some circumstances it may be completely appropriate, for example, to say to a 12 year old child, 'You can't be friends with person X any more; we won't let you associate with person X any more', if, for example, person X is involved with illicit drugs or has a criminal history or is involved in antisocial behaviour in one form or another. I think most parents would consider it to be good parenting to tell their 12 or 13 year old daughter or son that they should not be involved with that person. Yet, potentially—although I am sure it is not the intention of the bill—under the clause 8(5)(h) provision we could see parents subject to intervention orders if they do so. Again, I am sure that is not the intention of the bill but I wonder whether it is a potential unintended consequence.

If a father had a concern about the clothes his daughter was wearing out, for example—as I am sure most dads have at some stage or another—he may very well tell her that she cannot leave the house until she has changed into something more appropriate. I would consider that, in some cases at least, to be good parenting. One can imagine a case where quite a young 11 or 12 year old dresses well beyond her years, and I think most people would deem that that is not necessarily in her best interests at that age.

These things are very contentious, indeed. In these circumstances a parent could be barred from the family house and be forced to stay a certain distance from the child simply for doing things like this. I am not trying to be sensationalist here because I am sure that is not the intention of the bill, but the reality is that, on my reading of the bill, it would be possible under this proposed legislation.

As is currently the case, the private restraining orders will be possible; that is, any person requiring protection will be able to apply for these orders, not only the police. That is the important thing here: it is not only the police who can apply for these orders. The new vast scope for applying for these orders will result in large numbers of these orders being requested, I presume, for any reason across the spectrum, from ordinary neighbourhood disputes to family arguments, to criticising someone else on the internet.

Given that they can be made privately, the police will not have to be convinced that there is merit in the application. Again, that is a very key point. In my view, intervention orders are most appropriately used against violent people who pose a physical risk to another person or their property. If the government wants to get involved in ordinary family disputes—I am not saying this government but I mean the state when I use that word—where no-one is at immediate risk or property is not at immediate risk, we are playing what I consider a dangerous game of potential social engineering and we are diverting necessary police resources from real threats to people and property.

I take this opportunity to thank the Attorney-General's office for the briefing received on this bill. As usual, it was thorough and very helpful. I understand, from the briefing, that the bill has been based largely on Victorian legislation. I must say there was a concern which occurred to me during that early consideration phase, in that basically this legislation is relatively untested. It was passed only a few months ago in Victoria and it is the only state that has legislation to that effect, as I understand it. This is such new legislation that I wonder whether we might be jumping the gun a little early on this. Having said that, I think the intention of the bill is very good, but I wonder about some of these specific measures being potentially misused.

Clause 37 allows police to access information from any state public sector agency to assist in locating defendants so that legal personal service can be effected. This is a very good measure and one which Family First would wholeheartedly support. The one thing I would say, though, is that in practice I understand that most defendants in these circumstances are not good at updating their records with state agencies. However, they are very good at updating their records with Centrelink because, at the end of the day, Centrelink pays them the money that they need to survive.

Many recipients of genuine restraining orders do happen to be unemployed, according to reliable data, and they are required to update their address with Centrelink. They do not get paid if they do not do so. I understand from our briefing, when we raised this issue, that there will be links forged with commonwealth agencies with a view to working more closely with Centrelink to obtain location orders. I advise the council now that, should that measure require legislative change, it will have Family First support whenever it comes before this place.

As I have made clear, I have some concerns about the way the bill will be applied, not with the intention of it, and particularly about the vast scope of clause 8 to catch many ordinary family arguments within this bill's very wide net. Any bill that affects family life so much demands a high level of scrutiny.

I also have a more procedural concern with clause 15, which deals with inconsistent family law or Youth Court orders. The current laws in the Family Law Act provide that, in the event of an inconsistent Family Court child protection order, the child protection order will take precedence. The hierarchy under the current scheme gives precedence to the Youth Court, which makes these protection orders.

However, this bill, at clause 15, provides that the Family Court has powers to override intervention orders, while the Youth Court does not. This may result in unusual situations and inconsistencies in the rare but actual cases in which a child is the beneficiary of a restraining order but also the subject of both Family Court and Youth Court orders. That is, the law will be that the Youth Court order trumps the Family Court which trumps an intervention order which is trumped by the Youth Court. Potentially, this is obviously a jurisdictional mess.

Cases involving severe abuse and violence sometimes may have the three jurisdictions operating at the same time. A bill that took that into account may have provided more direction to the courts. I do appreciate and applaud the government's intention here for the positive aspects of this bill, such as the power for police to make interim snap orders against defendants. This is a very good step in the right direction.

The police are on the ground and they can deal with these issues which require a fast response, far more quickly than the traditional process of applying to the court for an interim order. Again, just to be fair, I see that that is the way this bill will work in 90-plus per cent of cases. It is the exceptions that I have a concern about. With those words of concern, I look forward to the minister addressing them in the summing-up stage or perhaps in committee, if that is more appropriate. This bill has our general support; we are just looking for some reassurance around those matters, and I look forward to hearing them.

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

MOTOR VEHICLES (MISCELLANEOUS NO. 2) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 17 November 2009. Page 3929.)

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) (11:22): By way of concluding remarks, I thank members who have spoken on this bill for their valuable contributions. The bill builds on previous novice driver initiatives introduced by the Rann government and will ensure that young novice drivers are better prepared when they graduate to a full licence. The bill also contains a number of technical amendments designed to improve the operation of the act.

To respond to the Hon. David Ridgway's query about enforcement of exemptions to the provisional driver high-powered vehicle restrictions, it is proposed that, upon application demonstrating the necessity for the exemption, the Registrar of Motor Vehicles will issue the provisional driver with an exemption certificate. The exemption sticker on the P-plate or on the

windscreen is not proposed because such identification mechanisms do not confirm the identity of the licence holder and because the exemption will be specific to the individual.

South Australia is following the example of the Victoria, New South Wales and Queensland high-powered vehicle restriction schemes which all issue an exemption certificate and require the exemption certificate to be carried on the person at all times whilst driving a high-powered vehicle and, further, that the certificate must be presented to a police officer upon request. As the driver must also carry their provisional licence with them at all times when driving, it is suggested that both documents be kept together.

The role of SAPOL is to enforce the law, and it would be appropriate for a SAPOL officer who sights P-plates on a high-powered vehicle to stop the vehicle to check whether the driver is committing an offence by driving the high-powered vehicle. It is at this time that the driver would show the officer the exemption certificate if they had one. If they were over the age of 25 and not subject to the restrictions, the birth date on the driver's licence would be sufficient evidence of the driver's age.

It is reasonable for a driver who successfully applied for an exemption to expect SAPOL to enforce the restrictions and, provided that the driver continues to have the certificate on their person at all times whilst driving the high-powered vehicle as required by the legislation, being requested to stop the vehicle at the request of a police officer should not be a traumatic exercise for them.

I foreshadow that I will be moving an in-house amendment about the way the list of high-powered vehicles is published, in response to feedback received from the opposition in the other place. Road safety is a priority for this government, and therefore I encourage the committee to expeditiously consider this important bill before the end of this year so that the implementation of these initiatives can occur as soon as possible.

Bill read a second time.

In committee.

Clause 1.

The Hon. D.G.E. HOOD: I have a very brief comment and a question. Family First supports this measure; it is a sensible measure and we are not critical of it. Compiling this legislation is very difficult because obviously it is hard to draw the line in relation to what cars are in and what cars are out.

One measure that has been touted quite extensively within motoring journalist networks, motoring magazines, enthusiasts and the like—and being one myself I have personal knowledge, having shelled out for *Wheels* magazines over the years—is a power to weight ratio for cars. In my personal view that is a better measure because V8 cars, for example, are seen as too powerful but of course an older V8 car is less powerful than the V6 Commodore that I drive today—substantially less, in fact. A Holden Kingswood, for example, has nowhere near the power that my 215 kilowatt Commodore has.

These are some of the issues, and I understand that it is difficult for the government to frame legislation in that regard, but I just ask the minister: what work was done in considering those issues and how did the government come to this point?

The Hon. G.E. GAGO: South Australia is following the schemes that have been successfully implemented interstate. A power to weight ratio is defined as the power of the vehicle in kilowatts measured at the engine flywheel divided by the weight of the vehicle in tonnes.

Approximately 10 years ago, Victoria introduced power to weight ratio restrictions which defined a high-powered vehicle as a power to mass ratio that exceeds 125 kilowatts per tonne or an engine capacity that exceeds 3.5 litres per tonne of the unladen mass or tare of the vehicle. I will bet you did not know I knew that.

The Hon. D.W. Ridgway: You learn something every day.

The Hon. G.E. GAGO: The honourable member opposite me is enthralled by the depth of my knowledge.

The Hon. I.K. Hunter: As are we all.

The Hon. G.E. GAGO: And I have even impressed the Hon. Ian Hunter. However, it was not easy for provisional drivers to calculate this ratio or understand whether their vehicle complied or contravened it; nor was it easy to apply the ratio calculations from an enforcement perspective.

Therefore, as of 1 July 2007, Victoria amended its definition of a high-powered vehicle to what we are proposing: an engine of eight or more cylinders, a turbocharged or supercharged engine (except diesel-powered vehicles), an engine that has been modified to increase its performance and/or any of the following high-performance vehicles as published in the *Government Gazette*. Using the power to weight ratio approach adopted by Victoria could lead to the use of some high powered vehicles such as Subaru WRXs being permitted, and this is not desirable.

Clause passed.

Clauses 2 and 3 passed.

Clause 4.

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

Page 3, lines 13 to 15 [clause 4(1), inserted definition of high powered vehicle]—Delete the inserted definition of high powered vehicle and substitute:

high powered vehicle means a motor vehicle—

(a) belonging to a class of vehicles prescribed by the regulations as high powered vehicles for the purposes of this act; or

(b) of a kind included in this definition by the Registrar by notice in the *Gazette*,

but does not include a motor vehicle of a kind excluded from this definition by the Registrar by notice in the *Gazette*;

In the other place it was suggested that high powered vehicles should be defined in the regulations rather than the *Government Gazette*. In response, the Minister for Road Safety advised that the government was prepared to consider an amendment to that effect so that there would be no confusion about the government's intention regarding these vehicles. He also stated that classes of high powered vehicles and specific vehicles would be included and excluded. I am therefore proposing an amendment that provides a new definition of a high powered vehicle as a class of vehicle as described in the regulations to give the necessary flexibility. The amendment also provides that the Registrar of Motor Vehicles can include or exclude a kind of vehicle from the vehicle classes provided in the regulations by notice in the *Government Gazette*.

The Hon. D.W. RIDGWAY: I indicate that the opposition supports the amendment.

The Hon. D.G.E. HOOD: As will Family First. I think it is a very sensible amendment and we support it.

Amendment carried; clause as amended passed.

Clauses 5 to 8 passed.

Clause 9.

The Hon. D.W. RIDGWAY: I move:

Page 8, line 40 [clause 9, inserted section 75A(16)]—Delete all words in this line and substitute:

(aa) where the vehicle is being driven on a road outside of metropolitan Adelaide—100 kilometres an hour;

(a) where the vehicle is being driven on a road within metropolitan Adelaide and—

This will allow learner drivers to drive at 100 km/h outside the metropolitan area, with the appropriate qualified licensed driver sitting next to them. This amendment comes from a number of representations I have had from country people. Of course, having two daughters—one being 19 and the other 16½, and who has only just got her licence—I have been on the open road with them. However, as members would know, I lived at a property on the Victorian border and I still have a number of friends who live in South Australia but whose kids learn to drive in Victoria because they can drive at 100 km/h. My daughter, who has just completed her learners, did some driving with a qualified instructor in a dual-controlled vehicle with extra brakes on the passenger side on the freeway travelling at 100 km/h.

However, what concerns the opposition and a number of people who have contacted us from areas outside the metropolitan area—in rural and regional South Australia—is that you have learner drivers driving, in most cases, with mum and dad, or a qualified licensed driver, on the open road on which everyone else is travelling at 100 km/h or, in some cases, 110 km/h, and the learner is allowed to do only 80 km/h. I have been in a vehicle with one of my children on a single carriage highway with no overtaking lanes when, suddenly, a 40 tonne B-double comes up behind the car. The driver of the B-double has to brake and then, suddenly, you see another vehicle coming from the other direction, and so the B-double has to stay right behind the learner driver. It is quite intimidating for the learner driver to have this great big vehicle behind them. You also notice that people take unnecessary risks on the open road to pass these leaner drivers.

The same problem arises when you are trying to merge into the traffic, say, on a freeway where you do not have to stop to wait for a break in the traffic, but you merge in. If the traffic on the freeway is travelling at 100 km/h or 110 km/h, how do you merge safely into the traffic, especially when the qualified instructors say that the safest way to merge into the traffic is to speed up? That is why you have an on-ramp, so you can be up to the speed, merge into the traffic and carry on. If there is not much traffic around, sure, you can get onto the road at 80 km/h and not be an inconvenience.

Our roads are getting busier and it makes sense to the opposition that, outside the metropolitan area where there is limited access to driving instructors with dual-controlled vehicles, learner drivers should be allowed to drive at the speed limit at which everyone else drives. I think members would accept that the biggest risk with young drivers is not when they are with their mum, dad or a qualified licensed holder, but during that first period when they are on their P-plates and maybe they are by themselves or with a couple of mates and not concentrating as they should. Surely, it makes sense to train them to meet all conditions on the road, especially given that our speed limit is 100 km/h or, in some cases, 110 km/h. It makes sense to the opposition that learner drivers should be allowed to drive at 100 km/h so they can experience all conditions.

We do not say to them in the city, where the speed limit is 40, 50 or 60, 'You can only drive at 80 per cent of the speed limit because you are a learner driver.' We expect them to drive at all the other speed limits across the state, except in this particular case. I use the example of people living on the South Australian border. During the football, cricket or tennis season, all the kids want to drive in Victoria because they can do so at 100 km/h. Okay, for them it is a little more fun to drive at 100 km/h than 80 km/h, but you do find that they learn better and they can participate in the road traffic.

The other issue is that, if kids can drive at 100 km/h on the country roads, you will see them doing more training. I know of family and friends who have said, 'We need to go to Adelaide for the day, but, hell, we haven't got time for to you to drive today because you can only do 80 km/h and we need to be there in three hours; we haven't got four hours to get there.' I think you would find that, if learner drivers were able to drive with their parent or a qualified licensed driver at 100 km/h, there would be many examples of increased levels of training because the kids would be able to drive at the speed limit.

With those words, I hope that the government supports this; if it does not, I hope that the crossbenches and the minor parties see the common sense of allowing our young drivers to learn and train at the speed limit, given that when they are on their P's they are at greatest risk, yet we are saying that they cannot learn to drive at the speed limit unless they are with a driving instructor in a dual controlled vehicle. That is the advice the shadow minister, Mark Goldsworthy, gave me when the government rejected the suggestion in the other place.

I appeal to the crossbenches to support this amendment, if the government does not, purely because I think that it is a common-sense measure that will bring about a better quality of training for our young drivers in the country. We know from anecdotal evidence that many farm kids, and a lot of town kids in country areas, have been driving on farms for years before their city cousins.

Many of them are probably quite competent drivers, but they would never drive at 100 km/h around a paddock. On-farm driving is much slower, so that last little bit of training to get them up to travelling at 100 km/h—learning to exercise judgment in overtaking lanes and pass something safely before the overtaking lane ends—will contribute to a better road safety outcome. It is just a common-sense measure.

The Hon. G.E. GAGO: The government opposes this amendment. The maximum speed a learner's permit holder may currently drive in South Australia, New South Wales, Tasmania and the Northern Territory is 80 km/h, although it may be up to 100 km/h in South Australia if the learner driver is in a designated driving school car fitted with dual controls.

The top speed for a learner driver in Western Australia is 100 km/h, but there are no such restrictions in any other jurisdiction, other than the posted speed limit on each road. The opposition has moved to amend the legislation in South Australia to increase the speed limit for learner drivers to 100 km/h on rural roads.

We are talking not just about country kids here. The honourable member seems to suggest that country kids are all experienced in driving, but that is not the case. We are talking about any young person driving outside the metropolitan area, and that includes far more than those kids who may be well versed in driving. Of course, we need to make rules to protect the safety of everybody, and that is what we are doing here.

The government does not support the amendment. Speeding and inappropriate travel speeds directly contribute to at least 40 per cent of deaths on South Australian roads each year. Travel speed has a dual impact on road trauma because it influences the risk of having a crash as well as the severity of the crash. In rural areas, travelling at just 10 kilometres above the average speed doubles the risk of a casualty.

Young drivers are at greater risk than the rest of the driving population, and controlling their top speed is an effective way of reducing this risk. The number of crashes that occur reduces at lower speeds because road users have more time for decision-making, they are less likely to lose control and more able to take evasive action and stop a shorter distance. This is particularly important for learner drivers, who are still developing the necessary driving skills and experience to become safe drivers.

The Centre for Automotive Safety Research has reported that the most common type of crash for novice drivers generally is leaving the road and hitting fixed objects. Allowing learner drivers to drive at higher speeds increases their risk of being involved in a crash, as well as the crash severity and resultant injury.

Even with a supervising driver present, young and new drivers should take particular care when driving at high speed, as control of the vehicle is a lot more difficult should something go wrong. That is the advantage of the current provision of only allowing learner drivers to drive at 100 km/h per hour with a motor vehicle instructor in the vehicle fitted with dual brakes.

It has been argued that not allowing learner drivers to travel at up to 100 km/h can create safety issues relating to merging and speed differentials between vehicles, as the Hon. David Ridgway has outlined. Learner drivers and their supervising driver should look for safe opportunities to practise in a range of conditions, including merging in busy traffic.

By the same token, fully licensed drivers should be prepared to slow down as they approach a vehicle displaying L-plates. This is one of the reasons that learner drivers are required clearly to display L-plates. Care and consideration is required by both learner and full licence holders. As speed is a prime factor in the youth toll, the government does not support this amendment. Having lost my brother at a young age to road fatality, one death is one too many.

The Hon. D.W. RIDGWAY: The minister talks about the importance of young learner drivers developing their skills. If they do not have access to a driving instructor and a dual controlled vehicle, how can they develop skills on the open road above the speed of 80 km/h if it is illegal for them to do so? We are talking about preparing young drivers for a very important role in our community—that is, to be safe drivers—yet we are not allowing them to learn. In relation to the minister's comment about merging, I will wait for the minister to listen.

The Hon. G.E. Gago: I'm listening.

The Hon. D.W. RIDGWAY: I forget that women can do several things at once, so I apologise. If the traffic is travelling at 100 km/h, how do you merge into the traffic safely when you are doing 80 km/h? I understand the minister's concern about young drivers and speed and speed being a factor, and I am very sorry to hear that her family suffered a loss, but I suspect that it may not have been while her brother was a learner driver; it may have been beyond that time. Clearly, the statistics show that it is not learner drivers who lose their lives; it is once they are off their L-plates that there is a problem. So, to prepare them for driving in all conditions, I would like to know

how they can develop their skills if they do not actually drive at the same speed as the rest of the motorists they are working with.

The Hon. C.V. SCHAEFER: I support the Hon. David Ridgway. There is only one way to learn to drive, and that is to drive. By not supporting this amendment, what the minister is doing is condemning learner drivers, who after all are accompanied by a responsible adult, to driving below a speed which enables them to handle a car on the open road. So, what happens is that, by the effluxion of time, they get their P plates and then drive on an open road without the experience of driving at 100 km/h.

I know it is very easy to say that if you drive slowly you are safe, and that is probably the case, but the majority of people who drive on the open road travel at or just below the speed limit, which is 110 or 100, depending on where you are. So, without that experience, we suddenly allow particularly young people to drive at the speed limit, unaccompanied and under-experienced or not experienced at all. I think the Hon. David Ridgway's amendment, again, shows some common sense. The name of the licence is a learners permit, and what he is endeavouring to do is to allow them to learn while they are accompanied by an experienced driver.

The Hon. D.G.E. HOOD: Family First is attracted to the amendment of the Hon. David Ridgway, simply because it makes good, logical sense. If we are talking about someone learning to drive a vehicle, they should learn how to drive that vehicle in the circumstances that prevail on the road and not be limited to learning to drive the vehicle in some or even most circumstances. They learn the basics of driving a car—go, steer and stop—but they have to learn how to go, as well. They have to learn how to control a vehicle unaccompanied by a licensed driver when they get to the P plate level of driving. They have to learn how to travel at 100 km/h and to be able to control a car in a strong wind or whatever the circumstances might be.

The point Mr Ridgway made about merging is very valid. When we first became aware of this amendment we were attracted to it, because it made sense. We contacted a number of our country supporters—at least 20 or 30 of them, and they were adults, not children—and many of them had been through the stage of teaching their children to drive in the country and were very much in favour of the amendment. It makes sense. Learners should learn how to drive a car in all circumstances, and I would rather they learnt that when a licensed driver was sitting next to them rather than when they were not.

The Hon. G.E. GAGO: South Australia and other states have a graduated licensing system and a graduated learning system, which obviously starts with L plates, where a person is required to be supervised. Where possible, we encourage drivers to learn in learner vehicles where there are dual controls which offer greater flexibility for the learner, but we certainly accept that not every learner driver necessarily has access to that sort of service or facility.

Nevertheless, when most drivers start out on their Ls they are grossly inexperienced, and the statistics are clear. Particularly at that high level of inexperience, we are saying that even 10 km/h difference in speed can make a huge difference to the risk to that person's life. We are saying that, at that grossly inexperienced level, there are restrictions about what they can do. The next level is restricted driving, when they can drive at 100 km/h. It is about building on so people gain at least some experience and time driving, and then at the next step they are able to build a little more: they are able to drive a little faster, etc.

It is staggering their learning experience so they can build on their skills, and then they go on to a full licence. The advice I have received is that to allow those grossly inexperienced learners to be able to travel at 100 km/h is creating risks that we believe are not warranted for our young people. Of course, they can get practice, once on a provisional licence, with experienced passengers and such like.

The Hon. T.J. STEPHENS: This is one of the more sensible amendments I have seen in a long time in this place. Having a country background and having seen how dangerous it is for learner drivers on country roads doing 80 km/h, with trucks jammed up behind them and people in a hurry, I know we really are putting them at great risk. The government is saying that it is fine for them to do 80 with a driver next to them, but the day they get their P plates they can whizz off at 100 km/h without a responsible person sitting next to them. It is absolute craziness. I hope the government can come to its senses.

The Hon. M. PARNELL: When the Hon. David Ridgway talked to me about this amendment I had a great deal of sympathy, because a recent experience in my mind was taking a child on L plates on a very long country trip down to the South-East, and we did have to set off an

hour before everyone else, and we got home an hour after everyone else. The trip, incidentally, was to inspect the drains of the South-East—which will be discussed later on—and my son needed to get his hours up, as it were. It was a painful, slow trip, but it was, I believe, a safer trip than if we had been going 100 km/h the whole way.

The Hon. David Ridgway has pointed out a number of practical examples where it would be more convenient to be able to go at 100, and the merging lanes on freeways is a classic example. It is safer if you are travelling on that merging ramp at the same speed as the traffic you are merging with. One practical difficulty of the honourable member's amendment is that there is no clearly defined or signposted boundary of the Adelaide metropolitan area, and I would imagine, from my recollection of the Development Act definition used, that some ramps on the South-Eastern Freeway are in the metropolitan area and some are not. Perhaps the Crafers ramp might be, but perhaps one of the further-out ramps would not be. The learner would also need to know at what point on the freeway they were allowed to start driving at 100 km/h and did not have to stick to the 80 km/h limit.

The Hon. Terry Stephens mentioned the inconvenience experienced by motorists when you have a slow driver in front of you on a country road; it is the same inconvenience as when an agricultural machine or tractor is in front of you, and there is no talk of banning them on country roads because they slow down the traffic behind. Yes, it is inconvenient, but it is for a short period of time. The same applies with learner drivers. Yes, it might be inconvenient, especially when they are towards the end of their learner's period, are feeling more confident and want to go a bit faster, but as the minister pointed out it is a graduated system and it makes sense in a graduated system to start off our drivers at a lower speed.

Ultimately I am most persuaded by the road safety arguments. We kill 100 people a year on our roads. People say that that is unacceptable. That is not true—it is acceptable: we accept it year after year after year. It seems that if this amendment was to come through, the chance of more deaths rather than fewer is higher, and therefore we should stick with our learners learning at a lower speed and, as the minister has said, they can get practice at a higher speed once they have their provisional licence.

The Hon. A. BRESSINGTON: I also have concerns with this amendment. When the Hon. David Ridgway approached me it seemed to make common sense at the time, but after giving it further thought, and having had three boys myself go through the whole learning to drive process, at no stage when they were learners would I have wanted to get in the car with them going 100 km/h on an L-plate. This amendment combines three of the most identified causes of road deaths or accidents, namely, country roads, speed and youth inexperience. We are always talking about teaching our children to learn to crawl before they walk and walk before they run. As for the trucks jamming up the rear of a learner driver, that is an issue for trucks.

It is an education program for trucks—tailgating is illegal. Learner drivers display the 'L' for a reason: as the minister said, it is a warning to everybody else on the road that they are driving more slowly, they are less experienced and, if the trucks are not abiding by that, perhaps the learner drivers should be taking down rego numbers and reporting them. I do not see that this will contribute at all to lowering our road toll, and I certainly do not think it hurts learner drivers who learn to handle a car at a reasonable speed in those early days of their driving experience.

The Hon. D.W. RIDGWAY: To respond to a couple of comments, in particular that relating to the agricultural equipment that the Hon. Mark Parnell mentioned, I point out that such equipment must display a flashing light and big orange reflective signs, and in some cases of restriction you cannot travel at night with those pieces of equipment. They stand out a lot more and quite often are going significantly more slowly than 80 km/h—maybe only 20 km/h or 30 km/h. They are much more visible and identifiable from a long distance away. I had a property along the main Adelaide-Melbourne highway. You avoid the highway like the plague; you will go five kilometres further around the back road with a big air seeder or farm equipment purely for that reason; it is just not safe to be out there with it. On some occasions you have no choice but to travel on the road, but they are clearly identified. I do not think learner drivers and their vehicles are in the same category.

I am a little dismayed. I understand there is a correlation between speed and accidents—we all accept that—but for learner drivers who can only do 80 km/h and do not have access to a dual control vehicle, how do they learn to safely overtake, even in an overtaking lane, or judge how quickly you can get past a vehicle if they have never been allowed to drive at that speed?

The Hon. A. Bressington: That's what parents are for once they have their P-plates.

The Hon. D.W. RIDGWAY: Ann Bressington says that that is what parents are for once they have their P-plates. I am happy to be driven around anywhere by my daughter, who is on her P-plates, but that is when they get out on the road themselves without any adult supervision. That is the real risk with this group of drivers. We talk about the metropolitan area, and maybe that definition needs to be removed. I put in that definition because clearly in the city you have much more access to qualified driving instructors with the appropriate vehicles, but maybe we should look at that matter.

If this amendment gets up it will come back rejected by the government in the House of Assembly, and if the chamber is agreeable and we get to that point we could look at that definition. The Hon. Mark Parnell is correct in that some of the ramps close into the city and on the Southern Expressway are in the metropolitan area. It makes a lot of sense for those who have had young children driving. As a parent I did not want my kids out on the road when they were grossly inexperienced. As a responsible parent, I did not let my daughters go out at 100 km/h until I felt that they were competent to drive at that speed. Back in the days when I learnt to drive you could go to the police station and do a written test for your Ls; that is all you had to do, and then a fortnight later you could come back and get your licence, and we did it then. This is a great step forward.

The Hon. P. Holloway: You don't look that old.

The Hon. D.W. RIDGWAY: I am very flattered by that but, sadly, I am.

An honourable member interjecting:

The Hon. D.W. RIDGWAY: I did. I was lucky; I was a farm kid and had probably driven a fair bit. Certainly, this system is a lot better: the kids take a lot longer and get a lot more experience. We support all the measures—the 75 hours of training, etc.: we think all of that is sensible. We think this is a very sensible amendment to give our young drivers the skills they need to participate out on the open road in all conditions.

If we wanted to take it to the nth degree in terms of safety, maybe we should be looking at saying that you cannot have a licence to tow a vehicle until you have done a test to tow a trailer or a caravan. The silly thing about this is that you can get a licence, hook onto a two tonne trailer with your mum and dad's four-wheel drive and head off down the road, having never towed a vehicle in your life.

If we are serious about trying to prepare our kids, we are not preparing them to the fullest. Clearly, allowing them to drive at 100 km/h is at the judgment of the qualified driver next to them. I think the vast majority of people are responsible. As I said before, the biggest risk to our young drivers is not when they are on their Ls and there is a responsible driver with them while they are learning: it is when they get off their Ls and onto their Ps that they are most vulnerable.

Sadly, that is an area where we see road deaths, although I suspect that most road deaths occur once they are off their Ps, when they are in their early 20s and they think they are invincible and, sadly, so many of them come to grief. I urge all members to support this sensible amendment.

The Hon. J.A. DARLEY: I think the Hon. David Ridgway's amendment is sensible and I will be supporting it.

The Hon. CARMEL ZOLLO: I was not going to make a contribution, because the minister has very eloquently put on the record that this is about road safety and the safety of young people, who are over-represented in our crash statistics, but I do point out to those members who have indicated that they will support the Hon. Mr Ridgway's amendment that this is about a group of people to whom we should be displaying some tolerance. They are in the process of actually learning to drive. Their plates are clearly displayed and we as a society should be making allowances for them. If we cannot demonstrate that level of allowance for that interim period of time, then perhaps those other drivers themselves should not be on the road.

The committee divided on the amendment:

AYES (11)

Brokenshire, R.L.	Darley, J.A.	Dawkins, J.S.L.
Hood, D.G.E.	Lawson, R.D.	Lensink, J.M.A.
Ridgway, D.W. (teller)	Schaefer, C.V.	Stephens, T.J.
Wade, S.G.	Winderlich, D.N.	

NOES (8)

Bressington, A.	Gago, G.E. (teller)	Gazzola, J.M.
Holloway, P.	Hunter, I.K.	Parnell, M.
Wortley, R.P.	Zollo, C.	

PAIRS (2)

Lucas, R.I.	Finnigan, B.V.

Majority of 3 for the ayes.

Amendment thus carried.

The CHAIRMAN: The next amendment is in the name of the Hon. Mr Ridgway.

The Hon. D.W. RIDGWAY: This is an issue that the Hon. Mark Parnell raised and, on reflecting on it this morning, there are off-ramps and on-ramps on the south-western freeway in the metropolitan area that would be very difficult and, of course, the Southern Expressway is all within the metropolitan area. So, given that my second amendment identifies the metropolitan area as being within the definition of the Development Act, I will not proceed with the amendment.

Clause as amended passed.

Remaining clauses (10 to 28), schedule and title passed.

Bill reported with amendments.

Bill read a third time and passed.

CHILDREN'S PROTECTION (IMPLEMENTATION OF REPORT RECOMMENDATIONS) AMENDMENT BILL

In committee.

(Continued from 18 November 2009. Page 3943.)

Clause 7.

The Hon. S.G. WADE: I thank the minister and minister Rankine's office for working with the opposition to discuss our concerns about the breadth of the discretionary powers. In those discussions, it was clear that it was in relation to a couple of areas that the government feels it needs to have discretionary powers, in particular with respect to regulations dealing with centres authorised to issue personal criminal histories and also in relation to fees. We see the wisdom of giving discretion in relation to those two areas as the national scheme develops. I will be moving amendments, which I understand are acceptable to the government and which are merely to limit the discretionary power to the areas where the government feels it needs it.

The CHAIRMAN: Just before you move your amendment, there is an amendment in the name of the minister which deals with the matter that your amendment deals with. The minister has already moved her amendment, which is in two parts. The first question is: that the minister's amendment to insert new paragraph (ca) be agreed to.

New paragraph (ca) agreed to.

The Hon. S.G. WADE: I understand that the government will join the opposition in voting against the inclusion of the second part of the minister's amendment for the reasons that I indicated. The opposition's view is that the discretionary powers clause is too broad, and it can be limited to two particular types. As I foreshadowed, a future amendment will express the limitations.

The Hon. G.E. GAGO: I will be supporting the honourable member's amendment.

The CHAIRMAN: The next question is: that the minister's amendment to insert new paragraph (cb) be agreed to.

New paragraph (cb) negatived.

The CHAIRMAN: There is a further amendment to clause 7 in the name of the Hon. Mr Wade.

The Hon. S.G. WADE: I understand that my Wade 1(1) is redundant.

The CHAIRMAN: This is Wade 1(2).

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

Page 5, after line 11 [clause 7(6), inserted subsection (7)[—Insert:

(da) in the case of a regulation of a kind referred to in paragraph (ab) or a regulation providing for the waiver or remission of a fee—confer discretionary powers on the minister, the chief executive or another person or body; and

As I understand it and for the reasons I foreshadowed, this is the extent of the discretionary powers the government wishes, and the opposition supports that. It is unusual but we are in unusual circumstances, as the national regime develops.

The Hon. G.E. GAGO: The government supports this proposal. The intent of the government's amendment to insert paragraph (cb) was to ensure that South Australia has a sufficient legislative framework to fully participate in the Council of Australian Governments Information Exchange.

The discretionary power was intended primarily to allow for the authorisation of screening units to participate in the enhanced inter-jurisdictional criminal history exchange and also to provide the flexibility to respond quickly to any issues that might arise during the implementation phase and pilot period. We believe it is unnecessary, but we are happy to support it.

Amendment carried.

The Hon. S.G. WADE: I have further questions on clause 7. As I indicated to the minister, we hope that the government will clarify some issues that have been raised, in particular by the Australian Medical Association. The Australian Medical Association suggests that no other state in Australia requires persons to undergo a criminal history assessment merely because they have access to records relating to children. What is the justification for including access to records in terms of the risk to children?

The Hon. G.E. GAGO: Apparently, it is in line with overseas best practice. The risk to vulnerable children is not just associated with the fact that these predators have access and contact with a child but the fact that they have access to their records. That means they may have information about children. That will assist predators to identify children who might be more susceptible to being preyed upon.

Unfortunately, there are some tragic examples historically. Recently, in England, the perpetrator did not have access to children but he had access to their records and he killed two little girls because he knew of their whereabouts.

The Hon. S.G. WADE: Does the government intend to capture all employees of medical practices, including workers with minimal contact with children or no unsupervised contact with children? In particular, in consideration of the clerical and administrative employees of medical practices, does the government consider the practice policies around the use of and access to sensitive health information by virtue of the national privacy principles reduces the risk such that these staff could be exempt from the need for a criminal history check?

The Hon. G.E. GAGO: I have been advised that we want organisations to determine some of these matters for themselves within, obviously, the parameters of the proposed legislation so that organisations can look at their personnel and the procedures and systems that they have in place. They can then make determinations about what information is available to what staff and ask whether they actually need it, and what systems they could put in place that would then determine who would be required to have a check and who would not.

We are certainly encouraging organisations to have a good look at their practices and to perhaps rearrange them in a way to ensure that only those persons who need to have direct access to records do have it and, therefore, are captured by the legislation.

The Hon. S.G. WADE: I thank the minister for her answer, and I am sure that the government will be having discussions with the AMA in the period during which the regulations are being developed. However, I suspect that the minister's suggestion of separating out employees from children's records is likely to be impractical. It is basically suggesting having two filing systems: one for those who are under 18 and one for those who are not.

The AMA queried whether a declaration of criminal history—and I stress a declaration of criminal history—rather than production of a personal criminal record, which would be required to be provided to a professional registration board such as the Medical Board of South Australia, might obviate the need for a criminal history report under this act.

The Hon. G.E. GAGO: I have been advised that in practice a person is usually required to sign a statutory declaration about their criminal history in order to establish fitness and propriety. Commissioner Mullighan cautioned against this approach because it relies on the truthfulness of the person making the declaration. People who may wish to harm children have a reason not to be truthful.

In line with Commissioner Mullighan's recommendation, these changes will allow organisations providing health services to children to independently assess whether a person is suitable to work with children in their organisation having regard to the person's criminal history, the position and the safeguards that the organisation already has in place, such as child safe environment policies, procedures and suchlike.

The Hon. S.G. WADE: Will a police check done for professional registration purposes meet the requirements of this bill?

The Hon. G.E. GAGO: It has not been finalised, I have been advised. The South Australian government is aware that there is currently work occurring at a national level to establish a uniform registration and accreditation scheme for some health practitioners. A draft bill was released by the Australian Health Workforce Ministerial Council for public consultation in June 2009.

The intent of the children's protection amendment bill is to prevent unsuitable people from engaging in child-related work. It is not the government's intention to impose unnecessary administrative burdens on organisations. Once the national scheme is finalised, the South Australian government will examine the scope of the national scheme and implement strategies to avoid unnecessary duplication of process.

The Hon. A. BRESSINGTON: Will the minister inform the committee whether she is aware of any other forensic-type testing that can be done on people in relation to their backgrounds? A document that I read last week from Professor Freda Briggs stated that research shows now that people who have perpetrated a crime against children have in fact committed on average 300 to 400 crimes against children before they have actually been caught and this only requires that a person has been convicted.

It takes a long time to get from perpetrating a crime against children to being caught and to actually having a conviction recorded, and it is very hard sometimes for police to secure a conviction. There must be some other way, such as psychological evaluations, that would go towards showing a person's suitability to be working with children other than relying on a criminal record, a criminal check or whatever.

The Hon. G.E. GAGO: I understand what you are getting at. It is a very serious issue and it is one that is very difficult to control completely. Given the breadth and the scope that perpetrators can have across a wide range of different organisations, institutions and just potential social interactions, to police all of those is very difficult.

This bill does not seek to do all of those things. What it seeks to do is to address and tighten up one component of it. I accept that there are other things that can and are being looked at, and I am happy for officers to take that on notice and to engage with you and talk to you further about some of the things that are being done in other areas and areas where other work and research is being done.

The Hon. S.G. WADE: I think the Hon. Ann Bressington raises a good point, which is that there is nothing magical about a police criminal history check. I am not suggesting that the government is saying there is. However, the Hon. Ann Bressington raised the issue of the period of time that it might take for a person to come to the attention of police, for a charge to be laid, etc., and at this particular point where we are talking about a volunteer or a professional entering into an organisation where they will have access to children, I think it is worth asking the question: is there anything else that we can do since we have them engaged?

I certainly accept the minister's point that Commissioner Mullighan thinks that we should not rely on a declaration of criminal history as our primary assurance. I accept that a personal criminal history is better than a declaration of criminal history, but it is also not an either/or situation.

Has the government considered, as part of this process, also asking people as they enter an organisation to make a declaration particularly in relation to the period since their last police check? I ask that because I understand that the bill or the regulations anticipate that a person might well present a police check done in the last three years. A declaration might be able to put them under a statutory duty to declare that there are no relevant offences since the police check. If I might add another question: might it also be appropriate to place a duty on a person to advise the organisation if they are either charged or convicted of a relevant offence during their employment?

The Hon. G.E. GAGO: I have been advised that this legislation has been designed in such a way that it enables organisations to have the right to require their employees to have regular police checks. In fact, they can require an updated police check at any time. That provision would be in place. In relation to information about future charges and offences, one needs to think about the practicalities in terms of how that would be done; that is, how SAPOL or the courts would then inform all other organisations in some way of a person who has committed an offence. Serious sex crimes go on a register that is publicly available.

Approximately 150,000 people are affected by these proposed changes. We are always looking for ways to improve the safety of vulnerable children, and we need to do that in a way that is practical. We need to put measures in place that are workable and do it in a way that is fair and reasonable in terms of the imposts on those employees, most of whom are doing the right thing and are good people. We believe that the bill before us improves those safety mechanisms. We are not saying it addresses every possible problem. Obviously, it is something the agency is always mindful of, and it is always looking for other initiatives to tighten and improve regulatory protections.

The Hon. S.G. WADE: I accept the minister's comments as the government's position, but I hardly think that asking a person to sign a declaration at the same time as they are employed or engaged in an organisation is a heavy impost.

The Hon. G.E. Gago interjecting:

The Hon. S.G. WADE: The minister disorderly interjects, 'Why not get them to do a police check?' I should clarify: my comments were completely in the context of additional items we could do on top of a police check. I do not think anyone is suggesting that the police check is a magic bullet, and I do not think the government should be closed to other opportunities to provide some level of reassurance to do the best we can to identify people who could be a perpetrator. Do any other members have any other questions on that issue?

The CHAIRMAN: Order! I will chair the committee stage.

The Hon. S.G. WADE: Sorry; I had issues with another matter.

The CHAIRMAN: I will still chair the committee stage.

The Hon. A. BRESSINGTON: I agree with what the Hon. Stephen Wade is saying. People know there is a fine (I think it is $10,000) if they fill out a statutory declaration dishonestly or they do not tell the truth. It may not go towards preventing a person slipping through the cracks and getting a job with an organisation where he or she will be dealing with children, but it will ensure that, if that is discovered, that person actually does suffer some penalty for lying on a statutory declaration. We know that police checks will only get people who have been convicted. I cannot imagine that anyone who has been convicted of an offence against a child and who has been released from gaol, finished their sentence, or whatever, would be stupid enough to apply for a job to work with children again. I know the sentiments behind it but it achieves nothing.

The Hon. G.E. GAGO: Commissioner Mullighan cautioned against statutory declarations specifically because they rely on the truthfulness of the person. If you want to know whether a person has committed an offence, the best way to do it is to conduct a police check. That will determine whether that person has committed not only offences relating to children but any offence, such as serious drink-driving, for instance. You might have someone who is in charge of a bus and who is driving children. It shows all offences. Why would you put in place another hurdle that has less veracity—that is, a stat dec—that does not add anything more, that has less information, less weight and less material than the police check?

What you are trying to do is ensure that people who have committed those offences are not being employed. We know that those who prey on children have developed amazing patterns of deception to con children and their parents. We know that they are very clever in the way in which they map out, target children and work on them.

Commissioner Mullighan specifically cautioned against them because they rely on truthfulness. Why would we ask someone who has good reason to be dishonest to sign a stat dec? Why not just check the police record?

The CHAIRMAN: This is rambling on a bit.

The Hon. A. BRESSINGTON: I make the point to the minister that we are not saying either a stat dec or a police check: it is both. Filling out a stat dec is of no cost to anybody, and it is a 10 minute exercise. However, it puts an onus on the person to ensure that what is in that stat dec is the truth, or down the line, if they are caught, there is a $10,000 fine for filling it out falsely. So, it is not either/or; it is both.

The Hon. S.G. WADE: I agree with the comments the Hon. Ann Bressington has made, so I will not repeat them. First, I think it should be added that the minister indicated that the relevant offence may not be a predatory offence; it may be a road offence that is relevant to bus driving, etc., so why would you not give otherwise truthful people an opportunity to be declaratory?

Secondly, Commissioner Mullighan did not say that statutory declarations were of no use; he just said that he would prefer to rely on a police check—so would the Hon. Ann Bressington and I. Why not do more? The opposition hopes that the officers might understand this point better than the minister and that, in the future, the government looks at more opportunities to strengthen this regime. I can assure the government that, if it is not going to be open to new ideas, certainly the members of the crossbench and the opposition will be open to opportunities next time this act is opened.

The Hon. G.E. GAGO: I do not think that a lot more needs to be said about this. Commissioner Mullighan cautioned against it; therefore, the government has not adopted it in the legislation. I put on the record that Commissioner Mullighan cautioned against this. There is nothing to stop organisations from making stat decs a requirement of their employment procedures.

Organisations can do that, so if they believe it will in some way assist and inform them, I cannot say that I encourage them to do so because Commissioner Mullighan cautioned against them, but there is nothing to stop them. However, because Mullighan cautioned against them, we have not included it as part of our policy position.

The Hon. DAVID WINDERLICH: I am interested in what guidelines might be given to responsible authorities around working out what a relevant offence is and how it affects the role it plays. For example, if a person breaks someone's nose in a bar fight at the age of 19, does that mean they cannot coach football at the age of 26? If somebody steals a car at the age of 18, does that mean they cannot drive a school bus at the age of 30? What sorts of guidelines will be given to responsible authorities to work out those sorts of things?

The Hon. G.E. GAGO: I am advised that, first, the organisations are those that are employing people to perform particular role functions and take on particular positions within their organisations, and they would be determined by their position statements and job descriptions, etc. So, it is for the organisation to determine what offences they believe line up with that job description and role responsibilities that might have an influence on them. So, it is there for them to assess and make whatever cross-checks and matches they believe are suitable. Secondly, I am advised that in the phase-in year, which is all of 2010, the office will be happy to work with groups to assist them in developing whatever guidelines that they believe would assist them.

The CHAIRMAN: I intend to put this clause soon. We have had a fair debate, and members have had opportunities to move amendments if they are not happy with the clause. I will have only questions; no long drawn out statements.

The Hon. S.G. WADE: I refer to Mullighan recommendation No. 3, which is that consideration is given to reducing or waiving the fee for an organisation applying for a criminal history report in order to comply with section 8B. In the Department for Families and Communities information for community organisations in relation to the government's plans, it states that the government is meeting the cost of obtaining criminal history reports for some volunteers who work with children in volunteer organisations through the Volunteer Organisation Authorisation Number system. What proportion of the 150,000 volunteers who will need police checks under this bill will be exempt from fees under the VOAN system?

The Hon. G.E. GAGO: I am advised that it will be impossible to say what percentage of people will be volunteers until organisations have done their audits and determined that for themselves.

The Hon. S.G. WADE: To put the question another way, is the policy of meeting the costs of criminal history records only if a volunteer works in an organisation with children covered by the VOAN a different policy from the policy pre-dating this changed regime?

The Hon. G.E. GAGO: I am advised no.

The Hon. S.G. WADE: Just to make it clear to the committee, the minister answering no means that the government has not acceded to Commissioner Mullighan's recommendation that consideration is given to reducing or waiving the fee for an organisation.

The Hon. DAVID WINDERLICH: What assistance will be provided to community organisations, sports groups and so forth, in terms of training around the implementation of these changes and assistance in any additional paperwork and compliance requirements?

The Hon. G.E. GAGO: I have been advised that consultation has already been commenced and is already under way, and we have designated a full 12 month phase-in period where we will continue to work with all relevant stakeholders.

Clause as amended passed.

Clause 8.

The Hon. S.G. WADE: What estimates has the department made in relation to the number of statements in relation to child safe environments that will be received from private medical practitioners, all health providers and all affected organisations?

The Hon. G.E. GAGO: I have been advised that we will not know that until organisations have gone through the process and done their audits.

The Hon. S.G. WADE: Who will view these statements within the department and how will they be acted upon?

The Hon. G.E. GAGO: I am advised that Families SA will do it via assessing the safety plans.

The Hon. S.G. WADE: What did you call them?

The Hon. G.E. GAGO: Safety plans. Families SA will assess the safety plans; they are the plans that organisations will be required to complete identifying those particular classifications.

The Hon. S.G. WADE: What additional resources, both administrative and investigative, will be provided to the department to undertake that function?

The Hon. G.E. GAGO: I am advised that it will be within current resources, and we will continue to monitor it to see how it pans out.

The Hon. S.G. WADE: I am sure the PSA will find it incredible that you could review 150,000 child safety plans and do it with no additional resources.

Clause passed.

Clauses 9 to 12 passed.

Clause 13.

The Hon. S.G. WADE: Commissioner Mullighan said in recommendation 26:

> Consideration should be given to changing the name of the Guardian for Children and Young People to avoid confusion with the role of the minister as legal guardian of children and young people placed in state care.

Does the government agree that the title of the guardian is confusing, and what does it propose to do?

The Hon. G.E. GAGO: I am advised that it was the wish of the guardian herself.

The Hon. S.G. WADE: I accept that the guardian did not want to change her name, but the commissioner felt that it was confusing. So, does the government accept the guardian's advice and reject the Mullighan advice that the term is confusing?

The Hon. G.E. GAGO: It was thought that it would create even more confusion to bring about a change, given that it had been in place for some time.

The Hon. S.G. WADE: Commissioner Mullighan found the dismissal elements in relation to the guardian objectionable. Those same arrangements apply to members of the Council for the

Care of Children and the Child Death and Serious Injury Review Committee. Does the government intend to amend the constitutions of those two bodies to strengthen their independence in ways similar to those done by this bill?

The Hon. G.E. GAGO: I have been advised no.

The Hon. S.G. WADE: The commissioner recommended that the independence provisions of the guardian be strengthened in similar ways to the wording of the Health and Community Services Commission Act. The provisions in the bill are similar, but there are some differences. Can the minister explain them? In relation to the commissioner, it includes 'resigns by written notice given to the minister', whereas in relation to the guardian provisions it says 'resigns by notice of resignation given to the minister'. Will the minister explain the difference?

The Hon. G.E. GAGO: I am advised that it is purely administrative. If there is some other reason we will bring that back. We are happy to take it on notice.

The Hon. S.G. WADE: I thank the minister for that. In that same context, I would ask the minister for an explanation of the difference relating to the commissioner's paragraph (f), which states:

…is convicted of an indictable offence or sentenced to imprisonment for an offence—

which contrasts with the guardian's provision, which states:

…is convicted either within or outside the state of an indictable offence or an offence carrying a maximum penalty of imprisonment for 12 months or more.

The Hon. G.E. GAGO: I am happy to take that question on notice.

Clause passed.

Clause 14.

The Hon. S.G. WADE: I notice that, in relation to Commissioner Mullighan's recommendations on section 52AB, which relates to independence, he suggested that the two options would be between the provisions in the Health and Community Services Complaints Act and the employee ombudsman legislation. I would ask the minister on what basis the government preferred the health/community provisions.

The Hon. G.E. GAGO: I have been advised that it was in line with Commissioner Mullighan's recommendations. He tended to refer more to the alignment of the Health and Community Services Complaints Act rather than the Ombudsman Act.

The Hon. S.G. WADE: The clause that we just passed, clause 13, removes section 52A(6), which provides that the guardian is to be subject to the minister's direction. The current clause before the committee purports to limit the minister's capacity to make directions, particularly in relation to 52AB(2):

The minister cannot control how the guardian is to exercise the guardian's statutory functions and powers and cannot give any direction with respect to the content of any report prepared by the guardian.

My question is: where in the amended act will there be the power for the minister to make a direction?

The Hon. G.E. GAGO: I have been advised in section 52C(1)(f).

The Hon. S.G. WADE: I think we are miscommunicating there. I seem to recall, either in the bill or in the Mullighan report, it was acknowledged that section 52C(1)(f) could be construed as a direction, and that should not be seen to impinge on the independence of the guardian, and I completely agree with that. There will be matters where the minister will want to give directions, other than by requesting an investigation; that is implied by section 52AB(2), which puts a limitation on directions. Considering that section 52C(1)(f) was in the act before we struck out 52A(6), where has the successor to section 52A(6) gone?

The Hon. G.E. GAGO: I have been advised that the purpose and intention of this legislation is to strengthen the independence of the guardian; therefore, the only reference to the minister's powers of direction is section 52C(1)(f).

The Hon. S.G. WADE: I indicate my surprise at that. For example, does the minister foresee the need, such as I recall the Attorney-General had to engage the DPP as an independent statutory officer in relation to budgeting administrative matters relating to the conduct of that office?

It may well be necessary for a direction from a minister on matters that have nothing to do with the independence. I cannot see why you would limit a direction under 52AB(2) if there is not actually any power to direct.

The CHAIRMAN: That was a statement rather than a question.

The Hon. S.G. WADE: What I was asking is whether the government can envisage that it might want to give direction to the guardian in relation to administrative matters, such as the Attorney-General has done in relation to the DPP. My second question related to why we would have a power to limit the direction if there was no power to direct.

The Hon. G.E. GAGO: I have been advised that, by the act specifically saying that the minister cannot control how the guardian is to exercise the guardian's statutory functions, it is implicit that those functions outside of that scope are open to ministerial direction. So, the powers relating to ministerial direction are provided by virtue of the fact that it is not covered by statutory functions, which are implicit.

The Hon. S.G. WADE: I accept the minister's answer, but I cannot see why it is that in the original we needed to specify it and now we do not. However, if it becomes an issue, I am sure the government will come back with a bill and ask us to fix it.

Clause passed.

Progress reported; committee to sit again.

[Sitting suspended from 13:01 to 14:15]

JOHN KNOX CHURCH AND SCHOOLHOUSE

The Hon. R.L. BROKENSHIRE: Presented a petition signed by 223 residents of South Australia concerning John Knox Church and Schoolhouse. The petitioners pray that the council will—

1. Take immediate action to acquire the John Knox precinct;

2. Partner with the Onkaparinga Council to determine a use for the John Knox precinct as a public asset and thereby;

3. Return the John Knox precinct to the people of Morphett Vale and the wider South Australian community.

DRAG AND TRACK RACING

The Hon. R.L. BROKENSHIRE: Presented a petition signed by 1,586 residents of South Australia concerning drag and track racing. The petitioners pray that the council will call upon the Premier and his government to support drag and track racing in South Australia by approving the construction of the Adelaide Motorplex at Gillman.

VOLUNTARY EUTHANASIA

The Hon. D.G.E. HOOD: Presented a petition signed by 2,242 residents of South Australia concerning suicide and euthanasia. The petitioners pray that the council will reject proposed amendments in the Consent to Medical Treatment and Palliative Care (Voluntary Euthanasia) Amendment Bill that would legalise the practice of voluntary euthanasia.

PALLIATIVE CARE

The Hon. D.G.E. HOOD: Presented a petition signed by 219 residents of South Australia concerning euthanasia in South Australia. The petitioners pray that the council will urge the government to take immediate action to increase funding for palliative care and to oppose euthanasia (whether voluntary or involuntary).

ROAD SAFETY

The Hon. J.S.L. DAWKINS: Presented a petition signed by 767 residents of South Australia concerning development road safety at the junction of Main North Road and Research Road, Pooraka. The petitioners pray that the council will urge the government to take immediate action to rectify the situation by undertaking a comprehensive transport investigation to devise a suitable course of action and to comply fully with any recommendations by that investigation.

NATURAL RESOURCES COMMITTEE

The Hon. R.P. WORTLEY (14:20): I lay upon the table the supplementary report of the Natural Resources Committee on the Kangaroo Island Natural Resources Management Board Levy Proposal 2009-10 entitled 'Too Many Cooks'.

Report received.

PAPERS

The following papers were laid on the table:

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

Department of Primary Industries and Resources SA—Report, 2008-09
South Australian Citrus Industry Development Board—Report, 2007-08

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

Codes of Practice under Acts—
Gaming Machines Act—
Responsible Gambling—
Commercial hotel Code Alteration Notice 2009
Reports, 2008-09—
Adelaide Convention Centre
Adelaide Festival Centre
Board of the Botanic Gardens and State Herbarium
Child Death and Serious Injury Review Committee
Children in State Care Commission of Inquiry Report: Allegations of Sexual Abuse and Death from Criminal Conduct
Children, Youth and Women's Health Service
Coast Protection Board
Country Arts SA
Department for Correctional Services
Department for Families and Communities
Department of Health
Gaming Machines Act 1992
Health and Community Services Complaints Commissioner
History Trust of South Australia
Independent Gambling Authority
Native Vegetation Council
Public and Environmental Health Council
South Australian Psychological Board
State Opera of South Australia
Windmill Performing Arts Company

STANSBURY MARINA

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:22): I seek leave to make a ministerial statement.

Leave granted.

The Hon. P. HOLLOWAY: The state Governor has today accepted the government's advice and consented to give an early no to the Stansbury marina project on Yorke Peninsula. The decision follows the proponent's inability to respond sufficiently to specific concerns raised by industry, the community and state government agencies during the major development assessment process.

After the receipt of a draft environmental impact statement in July this year, the proponent was given a further opportunity to address a number of issues relating to the project. The response received from the proponent did not adequately address these community, environmental and industry concerns, which has prompted the decision to issue an early no.

There is no appeal available by either proponents or third parties under the Development Act in relation to major developments. The Stansbury marina proposal was declared a major

project in March 2007, and environmental impact statement guidelines were issued in the following October. The proponent was subsequently asked to submit an EIS after more than two years had elapsed since the initial major development declaration.

The draft EIS received by the Department of Planning and Local Government included revised plans for the Stansbury site that included increasing the residential subdivision from 100 to 200 allotments and reducing the marina berths from 100 to 67. While the proponent offered to reduce the number of housing allotments from 200 to 183 in response to the request to address some concerns with the draft EIS, the number of marina berths remained unchanged.

Some critics dismiss the major development declaration powers under the Development Act as a process for fast-tracking approvals. Nothing could be further from the truth. This assessment process is the toughest available under South Australia's planning and development laws. The hurdles that proponents face in terms of producing an adequate response to economic, social and environmental impacts mean that projects need to measure up before an approval can be expected.

ST CLAIR LAND SWAP

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) (14:24): I seek leave to make a ministerial statement.

Leave granted.

The Hon. G.E. GAGO: On 10 November 2009, the City of Charles Sturt wrote to me seeking my consideration for the revocation of land known as the St Clair Reserve. In order for any council to revoke community land, a proper process set out by the Local Government Act 1999 must be followed. It requires councils to create a report on the proposed revocation and then consult with its community on the report. The report must contain:

- a summary of reasons for the proposal to revoke the classification of community land;
- if there is to be a sale or disposal of the land, details of any government assistance given to acquire the land and a statement of how the council proposes to use the proceeds;
- an assessment of how implementation of the proposal would affect the area and the local community;
- if the council is not the owner of the land, a statement of any requirements made by the owner as a condition of approving the proposed revocation;
- a map or plan defining the area of each piece of land for which revocation is proposed.

Under the act, the council must adopt a consultation policy, and this policy forms the basis of the council's engagement with its local community. At a minimum, a council is required to publish a newspaper notice describing the matter under consideration, inviting submissions and subsequently advising the consideration by council given to any submissions made.

The City of Charles Sturt has provided details of all the steps it has taken to engage with and consult with the community on the revocation and its response to those submissions. It is my role to consider whether the council has fulfilled its statutory obligations and followed the processes required under its consultation policy and other statutory requirements. On receipt of the council's documentation, the application was forwarded to the Office for State/Local Government Relations for its consideration and advice. I have now received that advice and have thoroughly and diligently considered the documentation before me.

I note that this matter is the topic of some controversy and that the majority of submissions received by the council were not in favour of the proposal. I am mindful that it is my statutory responsibility not to make judgment of the merits of the project but to assess whether the council has fulfilled the steps required in relation to the community land revocation as set out under the Local Government Act 1999. It is for the council to argue the merits of the proposal and its broader vision for how its community grows.

The application before me makes it quite clear that the council has collected feedback, considered it and responded to each of those matters. The application further details the council's consultation process, as follows:

- sending out over 1,500 letters to landholders and residents living within 500 metres of the St Clair Reserve;
- letters and information to external stakeholders and community groups;
- placing a sign on the St Clair Reserve;
- advertisements in *The Weekly Times* and *Portside Messenger* of 19 August 2009 calling for public submissions;
- public notices in the above papers; and
- displays in the civic centre and Cheltenham Community Centre of the proposal.

On the basis of the information provided by the council and the departmental advice to me, I can confirm that Charles Sturt council's revocation proposal satisfies the requirements of the Local Government Act, and I have written to inform the council. The council will now need to consider whether to proceed with the revocation, which it will need to approve at a future council meeting.

PAROLE

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) (14:29): I table a copy of a ministerial statement relating to parole refused to Watson and Millar made earlier today in another place by my colleague the Hon. Tom Koutsantonis.

QUESTION TIME

HOUSING INDEMNITY INSURANCE

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:30): I seek leave to make a brief explanation before asking the Minister for Consumer Affairs a question about housing indemnity insurance.

Leave granted.

The Hon. D.W. RIDGWAY: The New South Wales government has just announced that, due to the private industry withdrawal from the housing industry insurance scheme, the government will publicly underwrite the scheme from 1 July 2010. Due to the declining pool, the Victorian government has just announced a review to consider publicly underwriting its scheme. Is the state government concerned about the ongoing viability of housing indemnity insurance, and is the government reviewing the scheme with a view to publicly underwriting it?

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) (14:31): I thank the honourable member for his question. I am advised that on 8 November 2009 the New South Wales government announced major structural reforms to the home warranty insurance scheme in that state. The changes are intended to safeguard building industry jobs and better protect home owners.

The Hon. D.W. Ridgway interjecting:

The Hon. G.E. GAGO: The honourable member does not seem to want to listen to the answer. There are differences between jurisdictions, and it is important to understand what is happening in each jurisdiction so that we can compare the status of each. He wants a monosyllabic answer. He obviously does not understand the complexity of the issue if he wants a monosyllabic answer.

The PRESIDENT: The minister should explain the complexity of it and stop debating.

The Hon. G.E. GAGO: I will; thank you for your guidance and direction, Mr President. The change involves the government underwriting the scheme and I understand that it is forecast at around $600,000, with an ongoing estimation of $650,000. The advice to the New South Wales government from its Home Warranty Insurance Scheme Board indicated that a substantial contraction in the market had occurred because of the global financial crisis and with the exit of CGU and Lumley from the home builders warranty insurance markets previously. The advice to the

New South Wales government was that the current marketplace is contracting and the concern was that that might lead to further insurers exiting the marketplace.

I am advised that part of that crisis relates to local issues in New South Wales, but I also put on the record that there are still three other national insurance operators in South Australia, so the industry has contracted from five to three. Some might say that the marketplace, given the climate, could not sustain competition among five. The contraction to three, some are saying, makes it more competitive and provides a restabilising of the marketplace. Some people have the viewpoint that that contraction alone has assisted in restabilising the marketplace.

The point I was making is that there are issues in terms of New South Wales that are quite different from South Australia. Evidence to the New South Wales government is that an increasing number of builders in New South Wales are unable to obtain insurance cover and therefore are unable to continue working. New South Wales has experienced a number of significant failures of major builders, and I am sure members are aware that Beechwood Homes have been in the papers recently. There has been a 200 per cent increase in the number of insolvencies in the building industry in the past 24 months and, consequentially, a 350 per cent increase in the number of claim lodgments and loss notifications received by insurers. New South Wales was under considerable pressure. I advise, however, that South Australia has not experienced failures similar to those in New South Wales, with only a minimal number of small operators failing during this period.

The advice I have received is that there should be no impact on South Australian builders and consumers in the short term. The responsible behaviour of both CGU and Lumley and the building industry has put a number of strategies in place to lessen any impact on their clients, and that should ensure a smooth transition out of the marketplace, and transition arrangements have been made for those people who have had cover from those companies.

I can also advise that to date the Office of Consumer and Business Affairs has not received any complaints or concerns from individual builders, the Master Builders Association (MBA) or the Housing Industry Association (HIA), which would indicate that South Australian builders have not had any problems in sourcing building indemnity insurance since the announcement that CGU and Lumley will be departing from the marketplace.

Obviously, I have requested that the department monitor these changes very closely, so we will be monitoring the marketplace in a very careful and ongoing way. At this point in time I have been advised that the marketplace in South Australia is secure and that there should be no adverse short-term effects. As I said, we will continue to monitor the situation and make any changes as might be indicated.

WASTE SITES

The Hon. J.M.A. LENSINK (14:36): I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning a question on the subject of waste sites.

Leave granted.

The Hon. J.M.A. LENSINK: Honourable members may be aware that the government has approved expansion of both the Inkerman and Dublin landfills, one of which is to accept additional low level contaminated waste, while the Dublin landfill is to accept high level waste, which was approved through the major development process. My questions for the minister are:

1. What were the views of the Wakefield Regional Council?

2. Did the EPA identify threats to human health or the environment in its assessments?

3. Where is the demand for the expansion of the two sites, particularly as the waste industry view is that current volumes make it inefficient to justify both sites?

4. Can the minister rule out the use of either site for the remediation of contaminated soil from what was formerly known as the Marjorie Jackson-Nelson hospital site?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:37): In relation to the last question: how extraordinary. One of the problems we have had in this state is that very few sites have been able to take high level waste. High level waste has been generated for many years, so we need a site. Why would one rule out using a landfill specifically designed to deal with high level

waste? Why should one rule out using it for that purpose because, potentially, soil from one particular source might be taken there? Of course I would not rule it out.

The opposition has tried before to suggest that somehow or other this landfill at Dublin is licensed purely for that purpose. I thought I had dealt with that in this parliament some time back. To suggest that the only reason one would assess an application from a private company that is running a landfill is that its one particular purpose is to enable it to deal with contaminated waste is really a nonsense, given the likely volumes involved.

The fact is that this state needs a facility to deal with contaminated soil. Fortunately, under the environmental protection laws that we have these days we do not generate the level of waste that we used to, but legislation has been passed by this government—I think it was under my colleague—about contaminated sites, because this government is trying to catch up on many of the bad practices of 100 years or more, where there are contaminated sites.

With respect to these landfill sites, so I am told, it is not just a matter of storing there, because it can be treated in various ways. Bioremediation can reduce the level of contaminants, or it can be reduced to an acceptable level of standard through dilution of that material with clean soil and used for such purposes as highway construction and the like. I do not claim to be an expert in that area; it is really up to the EPA and others. What these facilities can do, as I understand it, is enable some sort of remediation of at least a portion of contaminated soil that goes through there.

In relation to the first part of the question, there are applications from the two facilities (one at Inkerman and one at Dublin), and the government has considered both of those on their merits. My understanding is that the council did not support that. I would have to check it, but that is probably not surprising. I would think that, no matter where we put facilities dealing with contaminated waste, the local council would express some concerns about it. Presumably, they would rather it was located somewhere else, and one perhaps can understand that. Nonetheless, as a state government, we have to act in the interests of the state and make sure that we have a suitable facility for dealing with this contaminated soil.

I think the council should understand that contaminated soil is present in plenty of sites around Adelaide. For example, I am aware that there is some contaminated soil near primary schools, and so on, in various parts of the city due to former industrial activity. Contaminated soil is not unique to the railyards at Adelaide, and there are plenty of other sites around the city. Clearly, we need a site where that contaminated soil can be suitably treated and, hopefully, as much of it as possible remediated to be used for other purposes.

As for economic viability, the honourable member suggested that there was room for only one. Well, in the end, the market will determine that. I would not have thought that it is really up to the government to pick winners in relation to this matter. The government receives applications in relation to licensing these matters, and they are considered on their merits. However, in the end, if there is room for only one, that is really up to the market to determine. What the government is concerned about is that, if any facility is licensed, the rules pertaining to it—the environmental conditions that apply to it—should be appropriate and world's best practice, and that they should be adhered to by the operators of the dump and monitored by the EPA.

RENTAL AUCTIONS

The Hon. S.G. WADE (14:43): I seek leave to make a brief explanation before asking the Minister for Consumer Affairs a question about rental auctions.

Leave granted.

The Hon. S.G. WADE: The Housing Industry Association has predicted that a shortage of new dwellings will force people to bid at informal auctions to rent a house. The latest figures from the Real Estate Institute show that rental vacancies in Adelaide were running at 1.39 per cent of available dwellings in June 2009, down from 1.5 per cent a year earlier, and well below the 3 per cent the Real Estate Institute regards as a balanced market.

Rental auctions are where agents and landlords seek to push up rents, for example, by advertising properties within a price range and inviting tenants to submit their best offer, which is above the advertised price. The practice is not accepted by real estate institutes or tenant groups across Australia. My question is: what is the government doing to work with industry to protect renters from the unscrupulous practices of some landlords?

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): The government fairly recently undertook a wide range of real estate reforms to put extra protections in place for those people who want to enter the property market, as well as providing clarity for real estate operators, and that has been a real win-win situation for both real estate operators and homeowners, particularly in terms of improving confidence in relation to the real estate industry.

I know that there have been some issues around transitioning into those arrangements, but my understanding is that the uptake has been really positive and that the level of operators conforming to the new requirements is quite high, so they are to be congratulated.

In relation to the issue the honourable member outlined around inflating rental property prices, that issue has been brought to my attention before. I am happy to look into the matter. Obviously we are always looking to protect the interests of those people entering the rental market whilst, at the same time, ensuring that we are fair to the property owners. I am happy to take the details from the member and look into the matter. If there is an opportunity to improve these protections, I am happy to look at it.

MINERAL EXPLORATION

The Hon. B.V. FINNIGAN (14:46): My question is to the Minister for Mineral Resources Development. Will he provide details of recent achievements within South Australia's mineral resources sector?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:46): I thank the honourable member for his question. In fact, I can—

Members interjecting:

The Hon. P. HOLLOWAY: Today is a very significant day: a number of very important announcements were made in relation to the minerals sector within this state, but I just do not have enough time to cover them all. However, I can provide some very good news in relation to developments within South Australia's mineral resources sector.

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

The Hon. P. HOLLOWAY: Yes, it might just be enough. Several companies today have made announcements to the financial markets that should boost the confidence of all South Australians in the prospects for our mining sector. They also again highlight the success of the government's PACE program, which has created the support and certainty investors need to commit vast sums of money to long-term projects within this state.

The first good news, in a day of good news, is that Iluka Resources has achieved first production of heavy mineral concentrate from its Jacinth-Ambrosia project in the Eucla Basin. The five years taken from discovery to production at Jacinth-Ambrosia have been an extraordinary effort by Iluka Resources. Its Jacinth-Ambrosia project has been completed ahead of time and ahead of budget, with capital spending expected to be less than $390 million, compared with an approved budget of $420 million.

This landmark in the project's development hopefully marks the beginning of a pipeline of potential new mining projects for the Far West Coast region. Iluka Resources expects that Jacinth-Ambrosia production will begin to replace output from the company's Western Australian operations, which was reduced materially in 2009.

I join the company in acknowledging the support of Primary Industries and Resources SA, the Department for Environment and Heritage, the Department for Transport, Energy and Infrastructure and the local community. This combined support has enabled Iluka Resources to develop this project in such a near record time frame for mineral developments within South Australia. This milestone was achieved while still subjecting the project to comprehensive environmental management planning controls and carrying out extensive community consultation, including a native title agreement with the Far West Coast people.

Iluka Resources discovered the Jacinth and Ambrosia mineral sands deposits in 2004. The unique characteristic of Jacinth and Ambrosia is its combination of size and high zircon assemblage, making it the richest known zircon deposit in the world. About 250 new jobs are being

created in the initial construction stage of the Jacinth-Ambrosia mine, while 110 full-time jobs are expected during the 10 to 15 year life of the project.

I also bring honourable members' attention to the signing today of the joint venture agreement between AIM-listed Altona Energy and CNOOC (China National Offshore Oil Corporation) to develop energy resources in South Australia's Arckaringa Basin. One of the joint venturers, CNOOC New Energy Investment, is a unit of the China National Offshore Oil Corporation, one of China's three major oil producers.

I recently met with senior CNOOC officials in Beijing, who outlined the prospects for the South Australian project, including the development of coal to liquid and carbon capture and storage technologies.

This was part of a recent trip to China in which Primary Industries and Resources SA and the Department for Trade and Economic Development led a team to reinforce the potential world-class ore bodies and the diversity of resources. As I told the company officials in China, including representatives from CNOOC, the South Australian government welcomes foreign investment in its energy and mineral resources sector to commercialise this state's huge potential.

Primary Industries and Resources SA will be working closely with the joint venture partners to assist them to negotiate the regulatory requirements for the Arckaringa Basin project. Several companies have been looking at the potential of South Australia's Arckaringa Basin and the opportunities to develop coal to liquid and coal gasification projects. The decision by the Altona Energy and CNOOC joint venturers to carry out studies on the potential to commercialise the vast energy resources in the basin again highlights the atmosphere of certainty for investment created by the Rann Labor government.

London-listed Altona Resources earlier this year announced an £11 million share placement agreement with Tongjiang International Energy Co. Ltd, a Hong Kong based investment company. This fundraising is being used to complete a bankable feasibility study for the proposed development of a 10 million barrel a year coal to liquids plant and a 560 megawatt co-power generation plant.

The joint venture between CNOOC Energy and Altona Energy signed today establishes a long-term cooperative commitment to develop a coal to liquid and power co-generation project in South Australia. In yet another statement to the Stock Exchange today, Beach Petroleum Limited has signed a memorandum of understanding with Rentech Incorporated, a US based synthetic fuel technology company. This is a first step in relation to the commercialisation of Beach's large Cooper Basin gas resources. Under the memorandum of understanding, Beach Petroleum and Rentech will investigate opportunities for the collaborative development and commercialisation of Beach's unconventional Cooper Basin gas and petroleum liquids resources.

The final piece of good news I would like to share with honourable members is the announcement today by Iron Road of results of core testing at its central Eyre Peninsula iron ore project. Iron Road Managing Director, Andrew Stock, says the central Eyre iron project hosts a very large and very coarse magnetite iron ore deposit that may be readily upgraded to produce a range of quality products. The company believes that test results put it in a position to continue to capitalise on the continued strength in the iron ore market and the strong and growing investment interest in the South Australian iron ore sector.

Iron Road is one of a number of companies now active on Eyre Peninsula seeking to develop iron ore resources. These projects are helping this state to emerge as an alternative supply of resources to the major producers such as BHP, Rio Tinto and Vale. South Australia is establishing itself as a competitive and reliable supplier of a wide range of resources, including iron ore. So, today's announcements—all four of them—should dispel forever suggestions that South Australia's mining boom is a mirage in the desert.

Day after day, week after week, mining and energy companies are informing their investors and shareholders of real progress in exploring for and developing our state's world class resources. This state is attracting investment, which is creating jobs and exports that will only continue to strengthen the local economy and provide long-term prosperity for all South Australians.

ST CLAIR LAND SWAP

The Hon. J.A. DARLEY (14:53): I seek leave to make a brief explanation before asking the Leader of the Government a question regarding the St Clair Park land swap.

Leave granted.

The Hon. J.A. DARLEY: I understand that the plans for the new community open space have included roads and land already designated as open space in the calculation of the total area and that the exclusion of these parcels results in the loss of approximately 2 hectares of open space to the community. It is my view that the St Clair land is worth considerably more per hectare than the old Actil site and, when considering that the portion of the old Actil site is smaller than the St Clair land, I am not convinced that there is equality in value in this proposed swap. Further to this, I understand that the old Actil site has contamination issues which may make it difficult to grow vegetation on the site, and the council will be contributing $440,000 to the development of the new park. My questions are:

1. Will the minister advise of the current market value of the St Clair site and the land from the Actil site that is available for a new park?

2. Given the inequality between the two sites, why should the Charles Sturt council contribute $440,000 of community money to this project?

3. What was the basis of the $2 million offered by the joint venture partners, bearing in mind that the loss of two hectares alone would account for this and possibly more?

4. If the re-establishment and development of the new park and associated facilities exceeds $2.5 million, who will be liable to pay for it?

5. Will the minister advise whether any research has been conducted regarding any potential ongoing costs associated with the contamination at the Actil site and, if so, what are they?

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) (14:55): I have information in relation to some of those questions which I am happy to answer, and I will refer the others to the minister.

In relation to some of the costings that the honourable member has requested, I have been advised that the Valuer General's assessment for the St Clair reserve (allotment 70) is about $8.2 million—that is for the whole site. I have been advised that the swap parcel part of the reserve is around $6.1 million and the Actil site is about $17.3 million.

My understanding is that the end result—and it is a complicated way that they go about doing it—will be a swap of like with like. So, it is about a 4.7 hectare piece of land for a 4.7 hectare piece of land. I have also been advised that the open space, once the project is all said and done, will be slightly greater than that which is currently available.

In relation to the costings, however, one has to bear in mind that these values are based on the fact that currently the St Clair reserve site is zoned as recreation (for recreational purposes) and, therefore, it is at a lower value; whereas the Actil site is currently zoned as residential and, therefore, has a higher value.

Again, I have been advised that once the Actil site reserve component becomes zoned as recreation, and the current recreation component becomes zoned as residential, the effect will be that they will both be worth the same—about $17 million. So, the assessment is that it is very much like for like and value for value.

In relation to the EPA, I understand there has been one. Again, this is not my area of expertise but I have been advised that one EPA assessment has been done and it was found to be satisfactory. I was then informed that a second independent assessment would be made and I believe that it is almost complete. Obviously, the agreement depends on the outcome of that.

I cannot remember any of the other questions so, in light of that, I do not know whether the honourable member wants to add anything, otherwise I will take the rest of the questions on notice and refer them to the relevant ministers.

REAL ESTATE INDUSTRY

The Hon. T.J. STEPHENS (14:59): I seek leave to make a brief explanation before asking the Minister for Consumer Affairs a question about the real estate industry.

Leave granted.

The Hon. T.J. STEPHENS: It has now been around 12 months since this government's new real estate laws have been in effect. At the time, I spoke on behalf of the opposition with regard to the bill in this council so, naturally, I have taken an interest in how things have been progressing. I have received quite a bit of feedback from agents and consumers alike regarding the enforcement of the prescribed conditions to be read by an auctioneer at residential auctions.

The feedback has been that it takes a significant amount of time to go through this process. For instance, in the heatwave that we have just experienced, the process seems drawn out and frustrating for everyone present. This is especially so because consumers intending to bid are given access to forms detailing bidding processes and all the information necessary several days prior to the auction and at least 30 minutes prior at the place of auction. My question is: does the minister stand by this particular decision for auctioneers to be forced to recite prescribed conditions at auction, or will she move to reverse this unnecessary measure with some urgency?

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) (15:01): I thank the honourable member for his important question. Indeed, the real estate industry is to be commended for its transition into and uptake and compliance with the new real estate laws. It has done extremely well, and the Office of Consumer and Business Affairs is out there monitoring auctions, checking advertisements and things like that.

Although it has issued a number of warnings and there have been a couple of expiations for breaches, I would like to take this opportunity to say that overall the real estate sector has done extremely well, and I am very pleased with that. I would like to think that at least part of that is attributable to the very good state that our real estate industry is in here in South Australia.

We have seen it go through economic challenges over the past year or so, and we have seen the real estate sector in some states in other jurisdictions take a real hit. That did not happen here in South Australia, and I am not naive enough to think that our measures necessarily held our industry buoyant during the difficult times. Nevertheless, our industry is in good shape.

We put in some reforms to assist with the integrity of our housing sector, and we found that, although there were some challenges for the sector, nevertheless, compared to other jurisdictions, it did extremely well. We are very pleased about that, because we know that that helps underpin our economic standing. That is a very important part of our economic sustainability.

In relation to auctioneering, it is not just that area. There are a couple of other areas as well about which REISA has been in contact with me and which it would like me to have a look at. We agreed to a two year review process; I think that is actually in the legislation, if I recall correctly. If it is not, we are certainly committed to a review. The industry asked me whether I would consider something prior to that. I said I would if it came to me with some real problems and was prepared to work with me in a constructive way. I also told it that, if there were matters that we were able to address prior to the two year review that I believed needed to be dealt with prior to that, I would be happy to look at that.

REISA conducted a survey to review its reforms. It has collated that, and I think it has only just started engaging with the agency in relation to the outcome of that review, so I am actually in the throes of looking at where we can make improvements. One should always expect the unexpected and, if there are unforseen outcomes that are creating problems or some sort of detriment, I am certainly prepared to review the issue.

So, the agency is currently working with REISA. I understand that auctioneers having to read out the prescribed conditions is one matter that it has raised with us. As I said, I believe we have a very constructive working relationship with the industry, and we will work through those matters to make improvements where possible.

WHITE RIBBON DAY

The Hon. R.P. WORTLEY (15:04): I seek leave to make a brief explanation before asking the Minister for the Status of Women a question about the White Ribbon Day campaign for 2009.

Leave granted.

The Hon. R.P. WORTLEY: In 1991, on the second anniversary of the massacre of 14 women engineering students in Montreal, a handful of Canadian men started a campaign that has become known as White Ribbon Day. From the start, the idea has been for men to take

positive action to end violence against women. The United Nations has since declared 25 November as the International Day for the Elimination of Violence Against Women. It is known as White Ribbon Day after the white ribbon was adopted as a symbol for the campaign. Will the minister explain the significance of White Ribbon Day and outline any activities planned on this day in South Australia?

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) (15:05): I thank the honourable member for his most important question and note that, indeed, the Hon. Russell Wortley is one of our White Ribbon ambassadors, as well as other members whom I will acknowledge shortly. I note that on 25 November White Ribbon Day marks the beginning of 16 days of the Activism Against Gender Violence campaign, which ends on 1 December, the United Nations Human Rights Day. Today, the White Ribbon Foundation heads up the White Ribbon campaign in Australia. The chair of the foundation is someone many people know from the popular television show *Deal or No Deal* and *Sunday Sunrise*, Andrew O'Keefe.

As the Minister for the Status of Women, I have had the pleasure of working with the foundation, which shares the government's commitment to working to develop a culture of equity and respect, where attitudes and behaviours that support the use of violence are no longer tolerated. As part of this year's White Ribbon Day campaign, South Australia is hosting a 'Men in the Mall' event from 12 noon to 2pm on 25 November in Rundle Mall opposite Stephens Place. You are all welcome—men and women. A range of activities will be taking place, and I encourage you to attend with friends and colleagues, and to promote this event in the community and through your networks. Entertainment will be provided, and this year much of it will have a youth focus to encourage more young men to take part and be involved.

The event will be facilitated by current White Ribbon Day ambassadors, who will be handing out ribbons, wristbands and tattoos, and encouraging men to swear never to commit, excuse or stay silent about violence against women. This initiative, called the My Oath campaign, was launched by the Prime Minister, Mr Kevin Rudd, in September 2009. By taking this oath, men can make a powerful statement and take a stand against violence against women. The oath can also be taken online at www.myoath.com.au. The foundation's aim is to get one million men to 'swear' by White Ribbon Day 2009.

White Ribbon Day ambassadors play a very important role and are critical to the success of the campaign. Ambassadors are highly respected men who are willing to take a stand and be positive role models to other men in the community, whatever their sector, background, age or belief may be. Ambassadors support the campaign in many ways, big and small, including wearing a white ribbon or wristband in the lead-up to White Ribbon Day and encouraging others to do the same; and sharing a White Ribbon message with local communities, particularly in rural and regional areas where White Ribbon might not otherwise have a presence.

I am advised that a range of activities are taking place throughout the state to mark White Ribbon Day. They include a community launch organised by Nunga Men's Group at the Noarlunga Village and the Truckies Stop Coffee Break organised by the Adelaide Hills and Murraylands Domestic Violence and Homelessness Service at Tailem Bend. Ambassadors in regional areas are taking the lead by organising events such as Australia's Loudest Shout, in which men and boys get together to shout 'No' to violence against women. This shout is measured in decibels, and this year Mount Gambier is challenging communities around Australia to beat their record.

Since last year's successful event, I have been working to increase the number and diversity of White Ribbon Day ambassadors, and am pleased to say that we now have over 100 prominent community figures on our list. Our new ambassadors include: yes, Hon. Patrick Conlon; the Most Reverend Philip Wilson; Monsignor David Cappo; Michael Harbison, Lord Mayor; Euan Ferguson; Eric Filmer, Director of Scott's Transport; Brigadier Stephen Smith; Oliver Braes; and Mark Haysman, who is the Chief Executive Officer of Port Adelaide Football Club. I am also very pleased to acknowledge my parliamentary colleagues who are among the current ambassadors: the Hons Mike Rann, Michael Atkinson, Robert Brokenshire, John Darley, John Dawkins, John Gazzola, Ian Hunter, Mark Parnell, Stephen Wade, Jay Weatherill and Russell Wortley; and Nick Champion and Steve Georganas.

As there is an increasing focus on involving younger men, I am particularly pleased that we have the support of the Ambassador for Youth Opportunity, Gavin Wanganeen, and Julian 'Jules' Schiller from Nova 919, who will emcee the mall event. I encourage all members to support the

white ribbon campaign, as it is important that we work together to prevent violence against women and that men take the lead in their immediate communities through their networks by speaking out about violence and challenging the attitudes that allow violence and abuse to exist in our society.

ST CLAIR LAND SWAP

The Hon. M. PARNELL (15:11): I seek leave to make a brief explanation before asking the Minister for Local Government Relations a question about the St Clair land swap.

Leave granted.

The Hon. M. PARNELL: Less than a hour ago the minister made a statement to the parliament in which she described the process, as she saw it, that the council and herself as minister were required to go through before the disposal of community land could occur. Her statement included the following:

> I am mindful that it is my statutory responsibility not to make judgment on the merits of the project but to assess whether the council has fulfilled the steps required in relation to community land revocation as set out in the Local Government Act 1999.

A look at the Local Government Act shows that it says no such thing. The act sets out the process of consultation the council must go through, and then it goes on to say that 'the council must submit the proposal with a report on all submissions made on it as part of the public consultation process to the minister'. It then goes on to say that if the minister approves the proposal then the minister may make a resolution revoking the classification of the land as community land.

In fact, there is no such requirement for the minister not to have regard to the merits of the proposal, and it is quite reasonable to interpret that section as requiring the minister to have regard to the submissions because, if that was not the case, why on earth would the submissions be sent to the minister? My questions of the minister are:

1. Does she have legal advice to support the position she has taken and, if so, will she provide it to us?

2. On what basis does the minister claim that she is legally obliged not to make a judgment on the merits of the proposal when she is legally obliged to be provided with a report on the submissions, all of which deal with the merits of the proposal?

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) (15:13): I thank the honourable member for his question and the opportunity to clarify this important matter. The act requires that councils provide a report and that the report must contain a summary of the reasons for the proposals to revoke the classification for community land.

The Hon. M. Parnell: No; just the submissions.

The Hon. G.E. GAGO: That is right. I have gone through all this, but I will go through it all again. The report must have a summary of the reasons so, if there is to be a sale, the report must contain details of any government assistance, etc., and an assessment of how implementation of the proposal would affect the area and the local community. If the council is not the owner, the report must also contain a statement of any requirements made by the owner as a condition, and also a map of the defining area.

Under the act the council must also adopt a consultation policy—so that is also required—and this policy forms the basis of the council's engagement with its local community. At a minimum a council is required to publish a newspaper notice describing the matter under consideration, inviting submissions and subsequently advising the consideration by council given to those submissions. So, those matters must be included in the report. If they are not, the application does not satisfy the requirements of the act and it would be my responsibility not to approve it and to send it back.

So, there is a difference involving, for instance, the requirement for the council to have a consultation policy. There is a requirement that the council adopt that policy throughout this procedure. That consultation policy requires that the council invites submissions and then seeks responses to those particular submissions. It is my responsibility to check that an application does all those things.

It is within the legal rights, or responsibility, of council to then determine what it decides in relation to that. For instance, my requirement is to make sure that council has invited submissions, that submissions have been received in some way and that consideration has been given to those submissions. I have undergone a process to ensure that the council has done all those things.

The matter of whether the land swap is a good or bad proposal is outside of my purview. I have to ensure that council has met its legal responsibilities, which is that it has to invite submissions, consider those submissions and then respond to those submissions. That is my part of the job, and I have ticked off those responsibilities.

Members interjecting:

The PRESIDENT: Order!

The Hon. G.E. GAGO: The council has fulfilled all those responsibilities. The act is quite clear that I can consider only those matters that are relevant to the act. So, for those matters that are outside of that I could be accused of going outside my legal responsibilities, and then my decision could be challenged. So, it is most important that my decisions are made on matters that are relevant to the act, and I have outlined those matters; any other decision could quite easily be challenged.

ST CLAIR LAND SWAP

The Hon. DAVID WINDERLICH (15:17): The council's decision is the subject of a rescission motion. How can the council forward the proposal until it has finalised its consideration, which it cannot do until it has considered the rescission motion? The proposal is the subject of a rescission motion being considered by council on the 23rd: how can the council forward a proposal until it has dealt with the rescission motion?

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) (15:18): I would imagine that it will deal with the rescission motion first. I find the hypocrisy of the honourable member extraordinary. He left this chamber when there was important legislative work underway. We were passing a bill, but he left the chamber to go down to the local council of Burnside, barge in and lodge himself in the chamber, whilst important legislation was being considered in this place, which he missed out on. He should work on performing his responsibilities and duties for the work that he is paid to do.

It is outrageous behaviour. It is completely undignified. He is party to a whole range of decisions that various sectors of this community would strongly, emotionally and passionately disagree with. How would he feel if they barged into this chamber and lodged themselves on the floor blowing whistles? It is a disgrace; it undermines the dignity of the office, and that is what this honourable member is about. He does not value local government at all. He is disdainful of local government.

These people are democratically elected officials who work extremely hard. They are the backbone of our community, and most of the work they do is voluntary. He is, supposedly, a dignified member of parliament, yet he charged down there and into the chamber whilst he should have been doing the work of parliament—an important bill was put through that day. It is disgraceful behaviour. He talks about conflict of interest. He presented himself to the electors as a Democrat and was elected to the council as a Democrat—and then he dumped them. It is disgraceful behaviour. So, the answer to the question is quite simple: I would imagine that, if it is important to council to consider the rescission motion first, it will do so.

ST CLAIR LAND SWAP

The Hon. D.W. RIDGWAY (Leader of the Opposition) (15:21): I have a supplementary question. What steps has the minister taken to satisfy herself that the summary of submissions provided by the council accurately reflects the community's wishes?

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): The council has published a full—

An honourable member interjecting:

The Hon. G.E. GAGO: You should shut up and listen, you rude thing. The council has published a full list of all submissions received, including petitioners and the delegations that were given at the council meeting on the 26th, and I understand that all of those are currently on the website. They have been listed in the documentation given to me, and I am quite confident that, if that was an incorrect record, members of the public would draw that to our attention very quickly. It is on the public record; it is public, transparent and open.

VICTIMS OF CRIME FUND

The Hon. R.D. LAWSON (15:22): I seek leave to make a brief explanation before asking—

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Lawson has the floor.

The Hon. R.D. LAWSON: —the Leader of the Government, representing the Attorney-General, a question about the Victims of Crime Fund.

Leave granted.

The Hon. R.D. LAWSON: I refer to a media release issued yesterday by the Attorney-General. In this media release, the Attorney-General describes the Victims of Crime Fund in the following terms:

> A fund which is unable to meet its outgoings from current levies and which relies partly on taxpayers.

The last report of the Auditor-General for the year ended 30 June 2009 contains the following information concerning the Victims of Crime Fund. The Auditor-General says that the fund received $18.35 million in levies from offenders required to pay that levy. It also received $1 million in recoveries from offenders and an additional $1 million in recoveries from criminal assets compensation, and the amount paid out of the fund to victims was some $13 million. So, the fund received $18.35 million, and it paid out $13 million. The amount paid out over the past five years has, on average, been about $13 million, and the amount being paid by levies has increased substantially.

For the forthcoming budget, the state government budget papers show that it is estimated that the fund will receive $25.5 million in levies this year and that, if payments continue at the same level as they have for the past five years at around $13 million, there will be a substantial surplus of levy overpayments. My questions are:

1. Will the Attorney-General withdraw and correct the public record in relation to the Victims of Crime Fund?

2. Will he explain to the public of South Australia why he is misrepresenting the fact that victims of crime levies will exceed $25 million this year while payments are likely to be at the level of $13 million?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:25): I will refer those questions to the Attorney in another place and bring back a reply.

30-YEAR PLAN FOR GREATER ADELAIDE

The Hon. CARMEL ZOLLO (15:25): My question is to the Minister for Urban Development and Planning. I understand that, through the 30-Year Plan for Greater Adelaide, the government is keen to encourage better use of residential land within the urban growth boundary. Will the minister provide examples of projects using innovative design to increase density within Adelaide's existing suburbs?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:26): The honourable member is correct in pointing out that the draft 30-year plan sets a target for improving the densities of residential housing within the current urban growth boundary. During the three decades of the plan, the government hopes to encourage a 70:30 ratio of urban infill to greenfield development, which in itself will be a significant achievement, given that our current balance is about fifty-fifty.

Some people have criticised the government for identifying some of the land around Mount Barker and Gawler as potential areas to house this state's growing population and called for more

focus on infill. Of course, in the next breath, they attack the residential elements of projects such as the Cheltenham Park and Glenside redevelopments, which are just the sorts of examples of the use of density we are seeking to achieve in the 30-year plan.

The inconsistency in their argument is galling, but this just demonstrates the anti-growth, anti-development and anti pretty much everything else stance of some critics. Having said that, I was very fortunate this month to attend the opening of the latest stage of the On Statenborough retirement village in Leabrook.

This impressive development provides an example of what can be done to increase density in a way that is still in keeping with the character of an existing suburb. As members would know, Leabrook is one of Adelaide's more prestigious suburbs. It is difficult to walk through the village and believe that you are in a medium density development.

The relocation of Coopers Brewery, from its inner suburban site to Regency Park, opened up an opportunity to rehabilitate this old industrial site into an important facility for aged care. On Statenborough is a $75 million project that provides a unique lifestyle option, incorporating a range of facilities and support for older South Australians.

While I attended the opening of stage 5 of this project, the final stage is now under construction and should be completed in around March next year. This complex achieves high levels of density but in a way that is sympathetic to its suburban surroundings. It is also located close to facilities, which is one of the other objectives of this government's forward planning—putting people within walking distance of our upgraded transport infrastructure.

In South Australia, our population is older than the Australian average, and our share of the population over 65 is growing faster than the national average. Indeed, the global picture on ageing is very interesting. Globally, one out of every 10 people is 60 years or older; by 2050, one out of every five will be 60 years or older; and by 2150 one out of three people will be 60 years or older. The oldest age group (80 years or older) is the fastest-growing segment of the world's older population, and of this group 64 per cent are women.

This government is committed to major infrastructure investments that will improve health services, expand housing choices, build a more accessible transport system and make communities safer. We also need to ensure that the services required by an ageing population are understood and provided evenly across the Greater Adelaide region.

This older demographic should be able to choose a lifestyle that best suits their needs and encourages them to remain connected with their communities. In South Australia, it is important that we address ageing as an issue to plan for because we have a unique demographic, and that is why the ageing of our population is just one of the factors the government took into consideration in framing its 30-Year Plan for Greater Adelaide.

With respect to this development on Statenborough, I would suggest that anyone who has the opportunity to go past the old Cooper brewery site will see a very attractive development that integrates beautifully into the surrounding suburb and, in one of South Australia's most prestigious garden suburbs, it shows how we can have relatively high density living, from the information I was given by the developers of the site.

I congratulate David Smallacombe and Simon Chappell, the developers involved, for the high quality of the work they have done, because in a sense it shows the way we can go forward. We can get higher density, including in our existing leafy suburbs, and we can do it in a way that not only meets the needs of the residents but also is a very attractive environment. I congratulate those involved in the project on what they have achieved.

NATURAL RESOURCES COMMITTEE

The Hon. R.P. WORTLEY (15:31): I bring up the interim report of the Natural Resources Committee on the Safe Management of Bushfire Risks inquiry, South Australian evidence.

Report received.

SECOND-HAND VEHICLE DEALERS (COOLING-OFF RIGHTS) AMENDMENT BILL

The House of Assembly agreed to the bill with the amendments indicated by the following schedule, to which amendments the House of Assembly desires the concurrence of the Legislative Council:

No. 1. Clause 17, page 8, after line 30 [clause 17, inserted section 18B(7)]—After the penalty provision insert:

Expiation fee: $500.

No. 2. Clause 31, page 14—Delete clause 31 and substitute:

31—Amendment of Schedule 3—Second-Hand Vehicles Compensation Fund

(1) Schedule 3, clause 2(1)—After paragraph (a) insert:

(ab) made a payment to a dealer in respect of the purchase of a second-hand vehicle under a contract that has been rescinded in accordance with section 18B; or

(2) Schedule 3, clause 2(1)(d)—Delete 'person' and substitute:

claimant

(3) Schedule 3, clause 2(1)(e)—Delete 'person' and substitute:

claimant

(4) Schedule 3, clause 2(1)—Delete 'that person' and substitute:

the claimant

(5) Schedule 3, clause 2(2)—Delete 'This clause' and substitute:

This Schedule

(6) Schedule 3, clause 2(2)(b)—Delete 'person making the claim' and substitute:

claimant

(7) Schedule 3, clause 2—After subclause (2) insert:

(4) The personal representative of a claimant (including a deceased claimant) is entitled to make the claim on behalf of the claimant or the claimant's estate.

(8) Schedule 3—After clause 2 insert:

2B—Determination, evidence and burden of proof

(1) In determining a claim for compensation under this Schedule, any possible reduction to which the claimant's entitlement may be subject because of insufficiency of the Fund must be disregarded.

(2) Any fact to be proved by a claimant under this Schedule is sufficiently proved if it is proved on the balance of probabilities.

(9) Schedule 3, clause 3(2)—Delete subclause (2) and substitute:

(2) The following amounts will be paid out of the Fund:

(a) an amount authorised under this Schedule;

(b) expenses incurred in administering the Fund (including expenses incurred in insuring the Fund against possible claims);

(c) the costs of investigating compliance with this Act or possible misconduct of dealers or salespersons;

(g) any amounts, approved by the Minister, to be paid towards the cost of prescribed educational programs conducted for the benefit of dealers, salespersons or members of the public;

(h) any amount required to be paid into the Consolidated Account under subclause (4).

Consideration in committee.

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

That the amendments be agreed to.

There is a money clause component and a new amendment dealing with expiation. After consultation with the industry, the government has amended the bill in relation to the Second-Hand Vehicles Compensation Fund.

The amendment proposes that the Magistrates Court should still determine claims on the compensation fund. The amendment also proposes to expand the use of the compensation fund

only to prescribed education programs and investigating compliance with the act or possible misconduct of dealers or salespeople. The industry has indicated that it accepts these changes.

The Hon. T.J. STEPHENS: On behalf of the opposition I indicate our support. It has been our wish to work with the industry. If it is comfortable with these measures, we will certainly support them.

Motion carried.

SERIOUS AND ORGANISED CRIME (UNEXPLAINED WEALTH) BILL

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

CORRECTIONAL SERVICES (MISCELLANEOUS) AMENDMENT BILL

The House of Assembly agreed to amendments Nos 2 to 7 made by the Legislative Council without any amendment and disagreed to amendment No.1.

Consideration in committee.

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

That the council do not insist on its amendment.

We have agreed to a number of amendments. I understand there have been discussions with the opposition and other parties, including the Hon. Mr Brokenshire, and I understand that there is agreement, so we are happy to accept that amendment.

The Hon. R.L. BROKENSHIRE: I advise the committee that Family First will not be insisting on its amendment. I thank colleagues who supported the amendment. There is no way known, with the legal advice I have, that this prevented technology and other devices being used whatsoever. What it did was pull the 'reasonable knowledge' factor of the law out of it so that they could go in with these dogs at any time.

I simply say to the Department for Correctional Services that it has a major problem with illicit drugs in the prison system, and this was an attempt to assist it with that. We will watch the media and see how well the department goes.

The only other thing I would say regarding Crown Law is that time is moving on but, if I am re-elected to this place, after the election I will be raising issues about advice from Crown Law to government and departments. I am sick and tired of lawyers coming back when the democracy in the parliament puts an amendment there and they use this word 'could': 'This could have an implication', or 'This could have a reflection'. The word 'could' is not the word that we are actually interested in using. Anything could happen in life, but we need better Crown Law advice in this respect to ensure that the wording really has an impact.

The fact of the matter is that the word 'could' will not have an impact, and it puts pressure on members. I see it as being more of an excuse for the department to use, and maybe it is not Crown Law's fault. Maybe it is a case of the department's not wanting to take up the opportunity. For the sake of the minister, whom I respect, I hope that the department keeps focused on the ever-increasing growth of illicit drugs in the correctional services system.

The Hon. T.J. STEPHENS: I indicate that the opposition supported the Hon. Mr Brokenshire with his amendment. He is prepared to withdraw, so we will also be supporting the government's motion.

Motion carried.

BAIL (ARSON) AMENDMENT BILL

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

STATUTES AMENDMENT (SURROGACY) BILL

The House of Assembly agreed to the bill with the amendments indicated by the following schedule, to which amendments the House of Assembly desires the concurrence of the Legislative Council:

No. 1 Clause 2, page 3, line 5—Delete '3 months' and substitute:

12 months

No. 2 Clause 4, page 3, lines 10 to 17—Delete clause 4

No. 3 Clause 6, page 3, lines 23 and 24—Delete clause 6

No. 4 Clause 12, page 4, after line 21 [clause 12, inserted section 10HA(1)]—Insert:

fertilisation procedure has the same meaning as in Part 2A;

No. 5 Clause 12, page 4, lines 32 to 34 [clause 12, inserted section 10HA(1), definition of *lawyer's certificate*, (b)]—Delete paragraph (b)

No. 6 Clause 12, page 5, lines 1 and 2 [clause 12, inserted section 10HA(1), definition of *marriage relationship*]—Delete the definition

No. 7 Clause 12, page 5, line 11 [clause 12, inserted section 10HA(2)(a)(ii)]—Delete 'or' and substitute:

And

No. 8 Clause 12, page 5, lines 21 to 24 [clause 12, inserted section 10HA(2)(b)(iii)]—Delete subparagraph (iii) and substitute:

(iii) the commissioning parents—

(A) are legally married; or

(B) have cohabited continuously together as *de facto* husband and wife—

- for the period of 3 years immediately preceding the date of the agreement; or
- for periods aggregating not less than 3 years during the period of 4 years immediately preceding the date of the agreement;

No. 9 Clause 12, page 5, after line 26 [clause 12, inserted section 10HA(2)(b)]—After subparagraph (iv) insert:

(iva) either—

the female commissioning parent is, or appears to be, infertile; or

(B) there appears to be a risk that a serious genetic defect, serious disease or serious illness would be transmitted to a child born to the female commissioning parent;

No. 10 Clause 12, page 5, lines 27 to 31 [clause 12, inserted section 10HA(2)(b)(v)]—Delete subparagraph (v) and substitute:

(v) the surrogate mother has been assessed by and approved as a surrogate by a counselling service—

(A) that is accredited for the purposes of this subparagraph in accordance with the regulations; and

(B) in accordance with any relevant guidelines published by the National Health and Medical Research Council; and

(C) in accordance with any other requirement that may be prescribed by the regulations for the purposes of this subparagraph;

No. 11 Clause 12, page 6, lines 30 to 44 [clause 12, inserted section 10HA(3)]—Delete subsection (3)

No. 12 Clause 12, page 7, lines 1 to 12 [clause 12, inserted section 10HA(4)]—Delete subsection (4) and substitute:

(4) For the purposes of subsection (2)(b)(vi), a certificate complies with the requirements of this subsection if—

(a) the certificate is issued by a counselling service that is accredited for the purposes of this subsection in accordance with the regulations; and

(b) the certificate states—

(i) that the person to whom it relates has received counselling—

(A) individually; and

(B) if the person is married, or is 1 of the commissioning parents—as a couple,

about personal and psychological issues that may arise in connection with a surrogacy arrangement; and

(ii) that, in the opinion of the counsellor who undertook the counselling, the proposed recognised surrogacy agreement would not jeopardise the welfare of any child born as a result of the pregnancy that forms the subject of the agreement.

No. 13 Clause 12, page 8, line 16 [clause 12, inserted section 10HB(1), definition of *birth parent*, (b)]—After 'Act' insert:

(the *birth father*)

No. 14 Clause 12, page 8, line 35 [clause 12, inserted section 10HB(5)]—Delete '6 weeks' and substitute:

4 weeks

No. 15 Clause 12, page 9, line 4 [clause 12, inserted section 10HB(7)]—Delete 'both birth parents' and substitute:

the surrogate mother

No. 16 Clause 12, page 9, line 5 [clause 12, inserted section 10HB(7)]—Delete 'agree' and substitute:

agrees

No. 17 Clause 12, page 9, lines 7 to 11 [clause 12, inserted section 10HB(8)]—Delete subsection (8) and substitute:

(8) However, the Court may dispense with the requirement under subsection (7)—

(a) if satisfied that the surrogate mother is dead or incapacitated; or

(b) if satisfied that the applicants cannot contact the surrogate mother after making reasonable inquiries; or

(c) in any other circumstances prescribed by the regulations.

No. 18 Clause 12, page 9, after line 36 [clause 12, inserted section 10HB(9)]—After paragraph (c) insert:

(d) any submission made to the Court by, or on behalf of, the birth father.

No. 19 Clause 12, page 10, lines 12 to 22 [clause 12, inserted section 10HB(14)]—Delete subsection (14) and substitute:

(14) In the making of an order under this section in relation to a child, the child has as his or her name such name as the Court, on the application of either or both of the commissioning parents, approves in the order.

No. 20 New clause, page 14, after line 17—After clause 15 insert:

15A—Insertion of section 15

After section 14 insert:

15—Regulations

(1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

(2) Without limiting the generality of subsection (1), the regulations may—

(a) make provisions of a savings or transitional nature consequent on the amendment of this Act by another Act or the commencement of specified regulations under this Act;

(b) incorporate or operate by reference to a specified code or standard as in force at a specified time or as in force from time to time;

(c) fix fees to be paid in respect of any matter under this Act and regulate the recovery, refund, waiver or reduction of such fees;

(d) impose a penalty, not exceeding a fine of $10 000, for contravention of, or non-compliance with, a regulation;

(e) fix expiation fees, not exceeding $315, for alleged offences against the regulations.

(3) The regulations may—

(a) be of general application or limited application;

(b) make different provision according to the matters or circumstances to which they are expressed to apply;

(c) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister.

(4) If a code or standard is referred to or incorporated in the regulations—

(a) a copy of the code or standard must be kept available for inspection by members of the public, without charge and during normal office hours, at an office determined by the Minister; and

(b) evidence of the contents of the code or standard may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code or standard.

No. 21 Heading to Part 4, page 16, lines 14 and 15—Delete '*Reproductive Technology (Clinical Practices) Act 1988*' and substitute:

Assisted Reproductive Technology Act 1988

No. 22 New clause, page 16, after line 19—Insert:

20A—Amendment of section 9—Conditions of registration

Section 9(1)(c)—after subparagraph (iv) insert:

(iva) for the purposes of a recognised surrogacy agreement;

No. 23 Clause 21, page 16, lines 20 to 28—Delete clause 21

No. 24 Clause 22, page 16, lines 29 to 33—Delete clause 22

No. 25 Schedule 1, page 17, line 5 [Schedule 1 clause 1(1)]—Delete 'under' and substitute:

as defined by

No. 26 Schedule 1, page 17, lines 7 to 16 [Schedule 1 clause 1(2)]—Delete subclause (2) and substitute:

(2) Subject to this clause, if the Court, on application under this clause, is satisfied that in the circumstances of the particular case it would be an appropriate course of action for the Court to exercise the powers conferred by this clause, the Court may determine that a surrogacy contract entered into before the commencement of this clause should have effect as a recognised surrogacy agreement under section 10HA of the *Family Relationships Act 1975* (as enacted by this Act), despite the operation of Part 2B of that Act.

No. 27 Schedule 1, page 17, after line 40—After paragraph (d) insert:

and

(e) the Court may make any other related order as it thinks fit.

No. 28 Schedule 1, page 18, lines 1 to 5 [Schedule 1 clause 2]—Delete clause 2

Consideration in committee.

The Hon. J.S.L. DAWKINS: I move:

That the amendments be agreed to.

I had great pleasure in witnessing the debate in the other house today. The amendments moved by my colleague Dr McFetridge, the member for Morphett, and also other amendments moved by the Minister for Health were agreed to by the House of Assembly, and the amended bill was then agreed to convincingly. I am happy to accept all amendments put in the other place.

The Hon. D.G.E. HOOD: Are these the surrogacy amendments we are dealing with?

The CHAIRMAN: Yes.

The Hon. D.G.E. HOOD: It appears that the amendments have the numbers to go through. Literally five minutes ago these amendments were put on my table and I have not even read them and we are voting on them. It is unreasonable to expect people to go through these sorts of amendments in that time frame.

The CHAIRMAN: I do not intend to have this delayed until the next Wednesday of sitting.

Motion carried.

CHILDREN'S PROTECTION (IMPLEMENTATION OF REPORT RECOMMENDATIONS) AMENDMENT BILL

In committee (resumed on motion).

(Continued from page 4054.)

Clauses 15 to 17 passed.

Clause 18.

The Hon. S.G. WADE: In recommendation 10 Commissioner Mullighan stressed how important it was that the young people involved in the Youth Advisory Committee have financial

support. Will members of that committee be remunerated for their participation and have any costs of such participation covered by the government?

The Hon. G.E. GAGO: I am advised that there are currently no sitting fees.

The Hon. S.G. WADE: I am interested to know how the government responds to the following recommendation by Commissioner Mullighan:

> Resources be allocated to ensure the participation of children and young people on the Youth Advisory Committee appointed by the Guardian of Children and Young People and on the minister's Youth Council is not limited by financial barriers.

One of the comments the commissioner made in his report is that we need to make sure the ability of children and young people to participate is not limited by the financial barriers. The matter of reimbursement of participants for out-of-pocket expenses and looking at the possibility of arranging sponsorships or subsidies for conferences and forums was raised by other organisations. Some people may need cash up-front just to make it to the group or meeting.

The Hon. G.E. GAGO: I am advised that, as part of the Mullighan response, the guardian was given extra funding for the functions of her office and, obviously, we continue to monitor that and make whatever adjustments need to be made.

The Hon. S.G. WADE: In summing up the second reading, the minister explained that the government did not want to put the charter in the schedule to the act, as was done with the Carers Recognition Act, because, on the one hand, the government wanted to make sure that it was dynamic enough to keep fresh and, on the other hand, it wanted to be able to change it without needing to come back to this place. Why is that any different to the Carers Recognition Act? As I said in my second reading contribution, the young people, and Commissioner Mullighan, specifically likened it to the Carers Recognition Act charter; that is, a schedule to an act.

The Hon. G.E. GAGO: I am advised that in this instance we believed that it was better to support the charter in legislation but allow the document to be changed and updated through regulation, which would allow us to better meet the needs of children and families.

The Hon. S.G. WADE: There is no contrast there with the Carers Recognition Act, but I take it that the minister is not going to take us any further on that, so I will move on to the next issue. We are still on clause 18 and what is proposed to be section 52EE, Approval of charter. It provides that the minister may, on receipt of the charter, require an alteration to the charter after consultation with the guardian, and then approve the charter or variation as altered. The final product needs to be tabled in the parliament, but I would like the minister to advise the committee whether the Legislative Council and the House of Assembly will be advised if a variation of the charter is required by the minister of the guardian.

The Hon. G.E. GAGO: I am advised that it would depend on the advice of the guardian, but I am happy to take that question on notice.

The Hon. S.G. WADE: I cannot see why the guardian would need to give advice to the minister as to whether or not the minister's variation to the guardian's own draft charter needed to be advised to the council. What we need to remember here is that we are in the section relating to the charter of rights. Commissioner Mullighan stressed how important it was that the guardian be independent. The inclusion of this 'Approval of charter' provision clearly indicates that the government agrees that there needs to be a high level of accountability on variations to the charter.

So, whilst not foreshadowing any amendment to this section, the least that I would hope the government could give today is an assurance that, if the guardian provides a charter to the minister, and the minister then requires an alteration to that charter, when the copy of the finalised charter is laid before both houses of parliament they will be advised of what the variations were from the original charter proposed by the guardian.

The Hon. G.E. GAGO: This bill gives the guardian independence. I am advised that, if the guardian was, for instance, to provide a charter and then was not happy with any change that a minister might make to that charter in the future, the guardian has the power to table that information in parliament because the guardian has independent powers to do so. So, the guardian herself (or himself) could make that known to parliament.

Clause passed.

Clause 19 passed.

Clause 20.

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

Page 13, line 30 [clause 20, inserted schedule 1, clause 1(1)]—Delete 'the regulations' and substitute:

Regulations made for the purposes of section 8B

I understand this amendment is a follow-up to the previous amendment.

The Hon. S.G. WADE: The opposition regards this as a particularly tidy approach by parliamentary counsel, but we are happy to support it.

Amendment carried; clause as amended passed.

Schedule and title passed.

Bill reported with amendments.

Bill read a third time and passed.

INTERVENTION ORDERS (PREVENTION OF ABUSE) BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 4039.)

The Hon. S.G. WADE (16:05): I rise to speak on the Intervention Orders (Prevention of Abuse) Bill and indicate that the opposition will be supporting it. I think it is important that we are up-front about what domestic violence is not: domestic violence is not lovers' tiffs. Domestic violence is a matter of life and death.

Statistics from the Office for Crime Statistics and Research, within the Attorney-General's Department, show that between July 2001 and June 2008 there were 37 domestic violence related homicides in South Australia, of which 32 involved female victims and five involved male victims. The figure is even higher when the deaths of perpetrators are included. I understand that on that basis, since November 2008 14 South Australians have died as a result of domestic violence—that is, seven women dead, two children dead and five men dead.

The Attorney-General used a quote from a recent discussion paper from the Queensland Domestic Violence Death Action Group to describe domestic violence. I agree that it is a particularly clear definition, and so I propose to read it to the council, as follows:

> Domestic Violence is described as the use of violence by one person to control another and is used to describe any abuse that occurs in intimate relationships.
>
> The abuse may take the form of physical, emotional, sexual, spiritual, social and financial abuse. Abusive behaviours may range from intimidation, stand-over tactics and threats to sexual assaults, rape, strangulation and death.
>
> The abuse may continue long after the relationship has ended and it is well recognised that many women have either left the relationship or are in the process of leaving when they are killed. Often the threats made to victims are not idle threats and each year a significant number of adults and children continue to die as a result of domestic/family violence.

I think it is important that we affirm that the term 'domestic' is not limited to marriage and that it includes intimate partners, whether in a de facto relationship or otherwise. Similarly, 'domestic' does not merely refer to violence in the home context. An abusive or violent relationship may be maintained in and out of the home, in a social context and even in the workplace.

This bill has been under development for a number of years. In 2005, the government committed to reviewing the rape, sexual assault and domestic violence laws as part of the initiative entitled 'Our Commitment to Women's Safety in South Australia'. Ms Maurine Pyke QC was commissioned to prepare a discussion paper, which was released in February 2007 and which considered options for reform in the management of domestic violence.

The shadow attorney-general in another place noted that a range of state-based reviews and legislative reforms in other jurisdictions in recent years provided a rich seedbed for Ms Pyke's work. The opposition expresses its appreciation for the work of Ms Pyke and her comprehensive report.

The bill repeals the Domestic Violence Act 1994 and parts of the Summary Procedure Act 1921, which govern personal restraining orders, and makes consequential changes to other acts. The bill retains many of the features of the current Domestic Violence Act 1994 and the

personal restraining order provisions of the Summary Procedure Act 1921. The bill brings together and reforms laws restraining domestic violence, and laws restraining other forms of personal violence, and seeks to make these laws more understandable.

While the bill deals with a range of personal violence, it has a strong emphasis on domestic abuse, as the laws will most likely be used by people seeking to protect themselves and their children from domestic violence. The reality of violence is that it is the tool to maintain a power relationship. For example, to say that rape is about sex is like saying that being hit over the head with a shovel is about gardening.

In this context, the bill broadens the definition of abuse to cover not only the obvious forms of violence but also the other aspects of controlling behaviour that are typical in the context of intimate relationships. This form of violence is particularly insidious. The violence may occur behind closed doors. Victims may even cooperate in concealing it. They often feel trapped.

The bill also extends the types of relationships that will be considered to be domestic. They include not only relationships between spouses or partners and children but also those between grandchildren and grandparents, brothers and sisters, within an Aboriginal kinship group and between a carer and the person cared for.

The bill is now so broadly written that the act could authorise inappropriate interference in domestic and other relationships. For example, on my reading, it is technically possible for a child to have an order put on them to financially support a grandparent. That goes well beyond the use of orders in the past. I will not dwell on this point, because the Hon. Dennis Hood very ably highlighted this issue in his second reading contribution.

The opposition has researched this issue and understands that the implementation of similar provisions interstate has not led to inappropriate use of such provisions. Human relationships, on the other hand, are so diverse and complex that any regime to deal with domestic and personal violence needs to be broader than most regimes, so on balance we are inclined to support the bill as it stands. We would indicate that our support will be followed through with maintenance of oversight of the implementation of the regime to make sure that implementation focuses on the real risks.

A key reform of the bill is a new regime for intervention orders. The bill proposes an enhanced intervention order regime. It is proposed that police will have enhanced powers to intervene in situations of domestic or personal abuse, including the power to issue an interim intervention order to direct a person to remain in a place and, if necessary, to detain the person while arrangements are made to protect the victim or to facilitate the preparation and service of orders.

Both the police and the court would have the capacity to issue interim intervention orders against a person if it is reasonable to suspect that the defendant will, without intervention, commit an act of abuse against a person and if the issuing of the order is appropriate in the circumstances. Currently, the processes under the Domestic Violence Act and the Summary Procedure Act provide only for a court to undertake this role. The grounds I mentioned are anticipatory. There is no need for proof of the commission of an act of abuse before an intervention order can be issued.

The government's approach in relation to the interim intervention order regime is a novel one. The government has based many of its provisions on the Pike review, and they have the opposition's support, but the interim intervention orders is not something it recommended. It is interesting to note that the Law Reform Commission review of the Victorian legislation considered whether the police should have the power to make short-term intervention orders rather than having to apply to a Magistrates Court for after hours orders.

On balance, the commission came to the view that it was more appropriate for a Magistrates Court to make the interim orders outside business hours rather than the police. It made the decision that it was a matter for the jurisdiction of the court, not the role of the police. Like the Victorian Law Reform Commission, the opposition holds the view that the roles of the adjudicator and enforcers of an order should be separated and that the role of adjudicator more appropriately should remain with the courts.

The review by Ms Pike recommended consideration of the Western Australian model, which provides the power to police to make orders for a very short period, usually 24 hours. This is in the nature of providing a cooling-off period. It is a different approach from the approach of this bill, where the police would be making an interim order which could last a week. In line with this

view, the opposition proposed amendments to this bill in the other place which sought to remove the provision for police not just to prosecute but also to determine interim intervention orders and to replace that procedure with a time out procedure.

While we will not be moving those amendments that were defeated in the lower house, we still prefer that approach. Just as we have concerns about and will monitor the implementation of the breadth of these orders, we also have concerns about and will monitor the extent to which police are involved in intervention orders and the length of those orders. We hope that the police focus on protection, not adjudication.

In conclusion, I would like to mention a couple of other aspects of domestic violence prevention and prosecution. I reaffirm my interest in the domestic violence court approach as a therapeutic diversion for perpetrators of domestic violence. In a number of areas of the state it has proven to be a very useful device to help offenders to focus on their offending behaviour, and to avoid or minimise the risk of recidivism.

I also reiterate my interest in the domestic violence death review process. We do have reviews in relation to child deaths. The research and practice around the world is that there may well be value in domestic violence death reviews, and I note that in the past year or two three Australian jurisdictions have either introduced domestic violence death reviews or are considering doing so.

In question time today the minister reminded the council that we will be celebrating White Ribbon Day next Wednesday—'celebrating' in the sense that it is a positive movement of men to stand against violence against women. Of course, another current event is the government's 'Don't cross the line' campaign. I find it an interesting campaign. I ask the minister: what research underlies the campaign and what evaluations are planned?

I think it is extremely important, in public information campaigns, to make sure that we understand where the community is, where we believe the community needs to be, and that we are respectful in that dialogue. In that context, I think research before a campaign and evaluations afterwards, on such a sensitive matter, are very important.

In conclusion, I reiterate that the opposition supports the bill. We join other members of this council to affirm that we will not tolerate the use of violence to control or intimidate another person, particularly in a domestic setting, and we hope that the bill passed today will be another step in providing safety for South Australians in their homes and in their community.

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) (16:17): I thank honourable members for their support for this bill and will take the opportunity to answer questions put by the Hon. Dennis Hood in the second reading debate. The Hon. Dennis Hood queried whether the breadth of the definition of abuse may lead to unwarranted state intrusion into private family life or to the upholding of spurious claims of abuse.

He cited several examples, including common parental decisions that are often disputed by children, and wondered whether applications for restraint by a disgruntled child in such a situation might be upheld by a court under this legislation. I reassure the council that this bill cannot be used in that way.

For a start, we know that the vast majority of domestic violence restraining orders are sought and made when the victim is genuinely in need of protection. This is true under the current law and under the new laws in Victoria. We also know, from past experience—including the recent reports of domestic violence deaths—that it is better to err on the side of safety than to treat each application for intervention as suspect or potentially trivial and risk the well-being of vulnerable victims.

The bill's definition of abuse, and the examples of the types of abuse, reflects actual past experience. They are designed to illustrate to the public and to enforcing authorities the type of behaviour that victims of domestic violence commonly experience, but they are simply examples. The bill firmly restricts the making of an intervention order to circumstances where the making of the order is both reasonable and appropriate.

There will need to be evidence sufficient to form a reasonable suspicion that the allegation that the defendant may commit an act of abuse is genuine. The circumstances will need to be such

that the issuing of an intervention order is appropriate. Importantly, an act of abuse is defined, wherever needed, in terms of reasonableness.

Also, the bill does not describe acts that result in physical injury or emotional or psychological harm in terms of reasonableness, because surely we must assume that injury or harm is unreasonable and abusive, but it does require a non-consensual denial of financial, social or personal autonomy to be unreasonable and therefore to be an act of abuse.

It does this to eliminate altogether the possibility of intervention orders being made in the kinds of circumstances described by the Hon. Dennis Hood where the anticipated behaviour that is sought to be restrained is essentially within the bounds of reasonable parenting behaviour. That is what we seek to avoid. Police are most unlikely to agree to apply for an intervention order on a person's behalf in such cases.

The bill allows the court to dismiss an application for an intervention order at the first possible opportunity at the preliminary hearing if it thinks that the application is frivolous, vexatious, without substance or has no reasonable prospect of success or on any other ground considered sufficient by the court. This provision will stop spurious applications by individuals.

The expanded definition of abuse is based on recently passed Victorian legislation. Although it is too early for a formal review of the impact of those provisions in Victoria, an informal six month review has just been undertaken. Officers from Victoria have advised that the review found that the expanded definition of abuse had not led to many applications based on that wider expression of abuse, nor to orders being made inappropriately. Indeed, it found that most allegations of economic or emotional abuse were ancillary to allegations of physical violence or other obviously abusive behaviour.

I now turn to thank the many people who helped us with this legislation whether during its preparation or by comments after it was introduced and, in particular, Ms Maurine Pyke who prepared the initial discussion paper which was released for public consultation and then made recommendations for reform based on the consultation.

I thank the Attorney's department for its hard work, the Office for Women, SAPOL, and Housing—there are just so many agencies that have helped us—and, in particular, Helen Wighton for all her hard work, advice and assistance. It is landmark legislation for victims of domestic violence and in particular for the hidden victims, the children who watch and hear violence in their home and have to live with its consequences.

I particularly acknowledge the cooperation of the opposition and the Hon. Stephen Wade who is representing the opposition on this bill. The opposition has been particularly cooperative, given the lateness of the parliamentary session, in assisting us to pass this bill.

Bill read a second time.

In committee.

Clause 1.

The Hon. S.G. WADE: I asked a question in my second reading contribution which the minister overlooked. It is something I am more than happy to take on notice. I was wondering whether the minister might be able to give me some information on the government's Don't Cross The Line campaign in terms of what research was undertaken in the development of the campaign and what plans are there for evaluations of the campaign.

The Hon. G.E. GAGO: I am happy to take that on notice and bring back a response. Some of those details are available but I do not have them with me today.

Clause passed.

Clause 2 passed.

Clause 3.

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

Page 6, lines 8 and 9 [clause 3(1), definition of *public sector agency*]—Delete '*Public Sector Management Act 1995*' and substitute:

Public Sector Act 2009, but does not include the Legal Services Commission

This amends the definition of 'public sector agency' to achieve two things: first, to make it refer to the Public Sector Act 2009, instead of the Public Sector Management Act; and, secondly, to exclude the Legal Services Commission of South Australia from the definition of the public sector agency for the purposes of this legislation. This is so that the commission is not required to provide information about its clients to police under clause 37 of the bill, on advice that this would be contrary to statutory secrecy obligations, its special statutory independence from the government and the rules of legal professional confidentiality.

The Hon. S.G. WADE: The opposition supports the amendment.

Amendment carried; clause as amended passed.

Clauses 4 to 11 passed.

Clause 12.

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

Page 13, after line 10—After subclause (2) insert:

(2a) If an intervention order is designed to prevent a form of abuse involving the use or threatened use of particular weapons or articles, the terms of the order should, as far as is practicable, include surrender of the weapons or articles or other measures designed to minimise the risk of the defendant using or threatening to use the weapons or articles to commit an act of abuse against the protected person.

This amendment was prepared at the suggestion of the Commissioner of Police. It draws the issuing authority's attention to the need for the terms of the order itself to minimise the chances of the defendant using weapons or articles to abuse the victim. This requirement is an addition to the other provisions in the act requiring orders to contain firearm terms and allowing police to search for and seize weapons.

The Hon. S.G. WADE: The power to seize weapons already exists within the current powers, which seems to be confirmed by clause 12(3), because it talks about the safe keeping of those weapons. I take it that the commissioner simply wants it to be, if you like, more up-front; that is, the officers to be reminded about that opportunity.

The Hon. G.E. GAGO: The member is exactly right. That was an issue that the commissioner did raise.

The Hon. S.G. WADE: The opposition supports the amendment.

Amendment carried; clause as amended passed.

Clauses 13 and 14 passed.

New clause 14A.

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

Page 14, after line 22—After clause 14 insert:

14A—Terms of intervention order—date after which defendant may apply for variation or revocation

(1) The Court may, when issuing or varying an intervention order (other than an interim intervention order), include a term fixing a date after which the defendant may apply for variation (or further variation) or revocation of the order.

(2) The date must fall at least 12 months after the date of issue or variation of the order.

(3) If the Court does not include in an intervention order (other than an interim intervention order) a term under subsection (1), the intervention order will be taken to include a term fixing the date falling 12 months after the date of issue or variation of the order as the date after which the defendant may apply for variation (or further variation) or revocation of the order.

This new clause allows a court making an intervention order other than an interim intervention order to include a term that sets a date no sooner than 12 months after the issue of the last variation of the order, after which the defendant may apply to vary or revoke the order. It also provides that if the court does not set such a date the order will be taken to include a term fixing a date 12 months after the date of the issue or variation of the order, after which the defendant can apply to vary or revoke that order.

Clause 11(1) of the bill makes all intervention orders ongoing and indefinite, lasting, subject to variation, until they are revoked. To avoid any doubt about the ongoing nature of intervention orders, clause 11(2) prohibits an issuing authority setting a fixed term for an intervention order. The reason for these provisions is that no one can predict, when issuing an order, at what point the defendant will no longer be likely to commit an act of abuse again and at what point the person protected by the order will no longer be at risk of abuse from that defendant.

The amendment I now move does not change these fundamental elements of the bill and its scheme but simply removes what some people believe to be an insurmountable barrier to revocation or variation of orders, and gives some incentive to a defendant to consent to an intervention order being made against him or her, reducing the number of contested cases.

The related amendment to clause 25 (amendment No.6) contains safeguards against manipulation by defendants so they cannot use the process to bring back victims to court unnecessarily and victims do not have to attend or give evidence for the court to be able to dismiss such an application. We know that, unfortunately, those things occur more often than they should.

The Hon. S.G. WADE: I appreciate the minister putting this amendment in the context of the other provisions of the legislation, but she did not say what specific mischief this amendment seeks to address. What harm does the government see in people subject to an order coming back before 12 months is up?

The Hon. G.E. GAGO: The harm we are trying to avoid is the defendant bringing a case back into court almost straight away to vary or revoke the order, which can be very stressful and is often used as a form or type of intimidation of the victim.

The Hon. S.G. WADE: I take that point, but does not the government's proposed amendment No.6 to clause 25 and new subclause (3a)—the last sentence in amendment 6—cover that? If a magistrate is satisfied that there has not been a substantial change in the relevant circumstances since the order was issued or last varied, they would not need to entertain the application.

The Hon. G.E. GAGO: It is a very complex area, so I will try to give as simple an answer as possible. As I have been advised, under the bill and current arrangements the defendant has to seek leave of the court, first, to vary an order and indicate that there has been significant change in the relevant circumstances. What this provision does is obviate the need for leave to be granted first. The defendant has the opportunity to apply without leave under this but still has to satisfy the court that there has been significant change, as the member has just pointed out.

The Hon. S.G. WADE: I certainly appreciate the government's concern to avoid a protected person being put to undue distress by an application for variation or revocation, and I particularly welcome clause 25 and the fact that in considering an application for a variation or revocation, even before they have received submissions or evidence from the protected person, they can dismiss the application.

My concern with section 14A is that, depending on the nature of the abuse, particularly if it is not violence, if it is within the new fields of abuse, if you like, it may not be helpful to disengage the person who is subject to the order by putting an arbitrary 12 months on it. Particularly with domestic violence victims, I am glad to see the clause 25 protections, and with those protections there I question the risk that we are putting particularly on non-domestic violence orders if we were to put in section 14A.

The Hon. G.E. GAGO: I do stress that it is quite complex. It might help if I explain that this amendment is in response to the magistrates' request for a fixed term, which the government was not prepared to adopt. This amendment is a compromise position arising from their wanting a fixed term. So, that might help with the context.

A date has to be set somewhere. The honourable member is quite right: it is arbitrary. However, the closer you fix it to the offence, the easier it is for the defendant to keep bringing the case back to the courts and using it as a means of harassing the victim, because they have to keep coming back to court. If you put it too far out, there are problems associated with that.

If it is a fixed term, the responsibility is on the victim to keep seeking to renew and extend it. We wanted to get away from that because we found it a most unreliable and onerous way of extending orders. So, the honourable member can see that we have sought to achieve a balancing act, and it is arbitrary. The government, with the support of the opposition, is happy to try this and

monitor it. It is a new approach, and we are prepared to monitor it and make changes if it is not working.

The Hon. S.G. WADE: On the point the minister has raised in terms of the enduring nature of the orders, we welcome and understand that. We are specifically concerned about constraining the variation of revocation. I thank the minister for the exposition in terms of the genesis of the clause because that is helpful. Can the minister explain to me on what basis the magistrates were concerned? Was this to try to manage workload; that too many cases would otherwise be brought before the court?

The Hon. G.E. GAGO: I have been advised that it was to manage the workload, to a large extent—not solely, but it was significant.

The Hon. S.G. WADE: I will leave it to the shadow attorney-general to remind the Attorney-General of the need to resource the Magistrates Court. Can the minister also advise what length of time the magistrates sought?

The Hon. G.E. GAGO: They did not stipulate a particular length of time, but I have been advised that they are currently setting fixed terms under current provisions where there is some ambiguity around the capacity to do that. It is an area we do need to address.

The Hon. S.G. WADE: I indicate to the minister that, whilst we will not be opposing this amendment, we are concerned that we do not have people who are defendants not remaining engaged in dealing with their offending behaviour, and we would be concerned that if that was the consequence of this. We also believe that magistrates courts and other courts are best able to make decisions in terms of whether or not a defendant is ready for a variation or revocation of the order to be considered. However, on the basis of the minister's commitment to join with the opposition in monitoring the implementation of the provision, we will support the amendment today.

New clause inserted.

Clauses 15 and 16 passed.

Clause 17.

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

Page 15, line 14 [Clause 17(3)(d)]—After 'order' insert:

> or, if the Court will not be sitting at the place within that period, within 2 days after the Court next commences sitting at the place

Subclause (3)(d), interim intervention order issued by police, provides that when the nearest court will not be sitting within the eight day time limit set for the hearing of an application for an intervention order, police issuing an interim order (which is such an application) can set a later date for the hearing that is no more than two days after the court next commences sitting.

This amendment is in response to advice from the Courts Administration Authority about the sitting times for remote circuit courts. Without this amendment, police would not be able as intended to issue interim intervention orders in remote areas because those court sit at intervals longer than the eight days set by clause 17(3) for the application to be brought for the hearing at the nearest court.

The Hon. S.G. WADE: The opposition supports this amendment.

Amendment carried; clause as amended passed.

Clauses 18 and 19 passed.

Clause 20.

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

Page 17, line 34 [Clause 20(7)(c)]—After 'order' insert:

> or if the Court will not be sitting at the place within that period, within 2 days after the Court next commences sitting at the place

This amendment relates to the preliminary issue of interim intervention orders to achieve the same effect for courts issuing interim orders as for police issuing interim orders under the amendments I moved in the previous amendment. Under this amendment, courts issuing interim orders can also set a later date for the hearing of the application in the same circumstances.

The Hon. S.G. WADE: The opposition supports the amendment.

Amendment carried; clause as amended passed.

Clauses 21 to 24 passed.

Clause 25.

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

Page 21, lines 26 to 30 [Clause 25(3)]—Delete subclause (3) and substitute:

(3) An application for variation or revocation of an intervention order (other than an interim intervention order) may only be made by the defendant after the date fixed by the order.

(3a) On an application for variation or revocation of an intervention order (other than an interim intervention order) by the defendant, the Court may, without receiving submissions or evidence from the protected person, dismiss the application—

(a) if satisfied that the application is frivolous or vexatious; or

(b) if not satisfied that there has been a substantial change in the relevant circumstances since the order was issued or last varied.

This amendment is to division 4, variation or revocation or orders, clause 25, intervention orders. I have already discussed and described this when I moved amendment No. 3, and it is consequential.

The Hon. S.G. WADE: I prefer to say 'related'. Will the minister advise or take on notice the number of 'leave sought, denied' (I do not know the technical term) cases in which magistrates took the view that circumstances had not significantly changed since the order was issued and they denied leave or not allowed an application to proceed?

The Hon. G.E. GAGO: Under current legislation?

The Hon. S.G. Wade: Yes.

The Hon. G.E. GAGO: I am happy to take that on notice and bring back a response if that information is available.

Amendment carried; clause as amended passed.

Clauses 26 and 27 passed.

Clause 28.

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

Page 23, lines 26 to 32 [Clause 28(4)(b)]—Delete paragraph (b) and substitute:

(b) if the defendant is not legally represented in the proceedings—to be undertaken—

(i) by the defendant submitting to the Court, in the manner required by the Court, the questions the defendant proposes the witness be asked in cross-examination and the Court (or the Court's nominee) asking the witness those of the questions submitted that are determined by the court to be allowable in cross-examination; or

(ii) as otherwise directed by the Court.

This amendment relates to special arrangements for evidence and cross-examination. This clause prohibits an unrepresented defendant cross-examining in person in intervention proceedings unless through counsel but allows him or her instead to submit questions through the judge in writing. The judge vets those for improperness and relevance before asking them of the witness. This amendment removes the requirement for the questions to be submitted in writing and, instead, lets the court stipulate how the questions are to be submitted.

This amendment is in response to advice from the Legal Services Commission, magistrates and others that many unrepresented defendants cannot write or write well enough for it to be fair to require them to submit their questions in writing. These amendments would give the court enough latitude, taken with its ability to control questions for impropriety and relevance and special arrangements for taking evidence from victims, to ensure that the unrepresented defendant can in effect cross examine effectively without speaking directly to the victim.

The Hon. S.G. WADE: The opposition supports the amendment.

Amendment carried; clause passed.

Clause 29 passed.

Clause 30.

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

Page 24, after line 29—After subclause (3) insert:

(4) Section 10(6) of the Criminal Law (Sentencing) Act 1988 does not apply in relation to an offence against subsection (1).

This amendment inserts after subclause (3) a provision that section 10(6) of the Criminal Law (Sentencing) Act 1988 does not apply to an offence against clause 31 of the bill. Clause 31 makes it an offence to contravene a term of an intervention order imposed under clause 13 of this bill, namely, a term that requires the defendant to be assessed for or participate in an intervention program and comply with any requirements regulating participation in such assessment or program.

This amendment was suggested by the Chief Magistrate. It deals with the anomaly in section 10(6) of the Criminal Law Sentencing Act which provides that a person's failure to comply with or complete an intervention program is not relevant to sentence and was not designed for offences of contravening terms of intervention orders that require a person to be assessed for or participate in intervention programs.

Section 10(6) was designed for breaches of bail agreements, which are not of themselves offences, and for the sentencing, should the defendant be convicted, on the charges from which those bail agreements arose.

The Hon. S.G. WADE: The opposition supports the amendment.

Amendment carried; clause as amended passed.

Clause 31 passed.

Schedule.

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

New clause, page 28, after line 22—Before clause 2 insert:

1A—Amendment of section 10—Discretion exercisable by bail authority

Section 10(1)(b)—After subparagraph (iii) insert:

(iv) commit a breach of an intervention order under the Intervention Orders (Prevention of Abuse) Act 2009;

1B—Amendment of section 10A—Presumption against bail in certain cases

Section 10(A)(2), definition of prescribed applicant—After paragraph (b) insert:

(ba) an applicant taken into custody in relation to an offence against section 30 of the Intervention Orders (Prevention of Abuse) Act 2009 if the act or omission alleged to constitute the offence involved physical violence or a threat of physical violence; or

This inserts new clauses 1A and 1B. New clause 1A will amend section 10 of the Bail Act to require bail authorities to take into account when determining whether to release a person on bail the possibility that the applicant may, if released, breach an intervention order. New clause 1B will amend section 10A of the Bail Act to apply a presumption against bail to a person who has been taken into custody for an offence of breaching an intervention order if the act or omission alleged to constitute the offence involved physical violence or a threat of physical violence. These amendments are to correct an anomaly pointed out by Mr Bill Morris. The reason for restricting the acts or omissions to those involving physical violence is to be consistent with the reasons for the presumption against bail for breach of bail agreement under 10A(2(b) of the Bail Act. The presumption applies only where the breach is of a condition relating to the physical protection of the victim.

The Hon. S.G. WADE: I am trying to think through the fact that the order might have nothing to do with physical violence. If somebody is accused of emotional or financial abuse, is it relevant to question their physical violence behaviour?

The Hon. G.E. GAGO: If the offence is abuse like financial or psychological abuse, this provision will not pertain. The breach can occur only where there has been an act of physical violence; none of the other forms of domestic violence abuse.

Amendment carried.

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

Page 30, after line 30—After clause 10 insert:

Part 5A—Amendment of District Court Act 1991

10A—Amendment of section 54—Accessibility of evidence

Section 54(2)(fa)—after 'Criminal Law (Sentencing) Act 1998' insert:

or the Intervention Orders (Prevention of Abuse) Act 2009

Section 54 governs the accessibility of evidence admitted by the District Court. Section 54(2)(fa) deals with reports made to the District Court about the eligibility of a person for an intervention program. It refers to reports made under the authority of the Bail Act 1985 and the Criminal Law (Sentencing) Act 1988. This bill will now also gives courts the authority to require people to be assessed for these intervention programs. Reports will be made to the District Court under the authority of this legislation, too.

The new clause also ensures the restriction on access to reports made to the District Court about eligibility for intervention programs when these reports are made under the authority of the Intervention Orders (Prevention of Abuse) Act. Without this amendment, reports on the eligibility of a person to undertake an intervention program would be freely accessible to the public if made under the Intervention Order (Prevention of Abuse) Act. However, if made under the authority of any other act they are accessible only by leave of the court.

The amendment ensures that any such reports, however ordered, are accessible only by leave of the District Court. Of course, most intervention orders that refer people for assessment and participation in intervention programs will be made by the Magistrates Court.

Amendment No. 12 deals with the accessibility of reports made to that court, but the Supreme Court and the District Court may also make intervention orders in the same way when they sentence a person, as these courts may make restraining orders. That is why the government is also moving identical amendments to their acts.

Amendment carried.

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

Clause 11, page 31, after line 3—Before the present contents of clause 11 (now to be designated as subclause (3)) insert:

(1) Section 13B(1)(b)(ii)—delete subparagraph (ii) and substitute:

(ii) if the defendant is not legally represented in the proceedings—to be undertaken—

(A) by the defendant submitting to the judge, in the manner required by the judge, the questions the defendant proposes the witness be asked in cross-examination and the judge (or the judge's delegate) asking the witness those of the questions submitted that are determined by the judge to be allowable in cross-examination; or

(B) as other directed by the judge.

(2) Section 13B(2)—delete subsection (2)

This amends section 13B of the Evidence Act 1929 along the same lines as amendment No. 7 to clause 28(4)(b) of the bill and for the same reasons. This amendment is made to ensure the prohibition on cross-examination in person by unrepresented defendants, unless by counsel in civil proceedings, is in the same terms under both this act and the Evidence Act.

Amendment carried.

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

Page 31, after line 23—After clause 13 insert:

Part 7A—Amendment of Magistrates Court Act 1991

13A—Amendment of section 51—Accessibility of evidence

Section 51(2)(fa)—after 'Criminal Law (Sentencing) Act 1988' insert:

or the Intervention Orders (Prevention of Abuse) Act 2009

This is in the same terms as amendment No. 10 with respect to the equivalent section of the District Court Act, and I have already outlined the reasons.

Amendment carried.

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

Page 33, after line 19—After clause 29 insert:

Part 9A—Amendment of Supreme Court Act 1935

29A—Amendment of section 131—Accessibility of evidence

Section 131(2)(fa)—after 'Criminal Law (Sentencing) Act 1988' insert:

or the intervention Orders (Prevention of Abuse) Act 2009

That is pretty much the same thing.

Amendment carried; schedule as amended passed.

Title.

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

Delete 'the Evidence Act 1929, the Firearms Act 1977, the Problem Gambling Family Protection Orders Act 2004, the Summary Procedure Act 1921' and substitute:

the District Court Act 1991, the Evidence Act 1929, the Firearms Act 1977, the Magistrates Court Act 1991, the Problem Gambling Family Protection Orders Act 2004, the Summary Procedure Act 1921, the Supreme Court Act 1935

Amendment carried; title as amended passed.

Bill reported with amendments.

Bill read a third time and passed.

MAGISTRATES COURT (SPECIAL JUSTICES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 28 October 2009. Page 3814.)

The Hon. R.D. LAWSON (17:02): Liberal members will support this bill, which will extend the jurisdiction of those justices of the peace who are qualified as special justices. The Liberal Party has always been a strong supporter of justices of the peace and we commend the excellent work they do. We also support the great work of the Royal Association of Justices of South Australia Incorporated.

Justices of the peace and special justices are the holders of an honourable and ancient office under the Crown. The presence in the community of a body of citizens of honour and integrity is important, and it is important not only for the administration of justice but also for a number of other functions, for example, the certifying and endorsement of documents and the like.

The Attorney-General has made some unfair and misguided comments about the Liberal Party and about the alleged attitude of the leader, Mrs Isobel Redmond, in relation to this bill. In one sense, I welcome these comments because they demonstrate the fears of the Labor Party about the increasing public acceptance of Mrs Redmond which is coming at a time when the scales are falling off the eyes of the electorate in relation to the lacklustre performance of many ministers in the Labor government.

The Attorney-General should in my view examine his own conscience before casting aspersions against the Leader of the Opposition. Let me provide the council with an example. One of the issues that has long concerned justices of the peace in South Australia and also the Royal Association of Justices—and when I say 'long', I mean for many years—is the fact that justices of the peace who desire to undergo the course of training with TAFE have to pay their own fees.

This does not apply to special justices for whom the government does pay the fees but to the thousands of other justices of the peace who wish to undergo a course and who have to pay a

fee. If the Attorney-General had any close connection with justices and their concerns, he would be well aware of this issue. Indeed, he is aware of it. He was asked in an estimates committee by the member for Morphett:

> Why is the government not meeting the cost of training courses for justices of the peace who volunteer to serve in the court system? I have been told by justices who attend the training course at Adelaide TAFE organised by the Attorney-General's Department and the Royal Association of Justices that they have to pay $52.50, which is reduced to $42.50 if they are members of the association.

The Attorney-General responded. He said, first, that the government paid the fees of special justices, but then he went on to say:

> If justices of the peace who are not going to be special justices and who only witness and attest documents, as I do as a justice of the peace, wish to do a TAFE course, they have to meet that from their own resources.

So, it is clearly established that the Attorney-General is aware of this issue. However, I was intrigued to read that, on 16 September this year, just before this bill was introduced, the Attorney appeared on Leon Byner's show on radio FIVEaa. He extolled the benefits of this particular bill and made a number of other statements not relevant to the debate tonight nor, indeed, relevant to anything. However, a caller named Bruce called in and said:

> I'm a JP and I think what you're planning to do is in order, however why should JPs…have to go and pay to be a JP, the course they run at TAFE…you don't have to do the course which I think is an issue, but if you do elect to go and do the course, like I did, why should you have to pay to actually volunteer time to public service?

The Attorney responded:

> The vast majority of people who do this are happy to pay and I've never had that complaint made to me before.

Caller Bruce went on:

> …but would you agree that any volunteer, regardless of what their role is, should not be out of pocket by virtue of volunteering their time?

The Attorney said in response:

> Well Bruce many volunteers are out of pocket, but that's part of the spirit of volunteering, this is not a complaint that is commonly made…Bruce, but when your political party is in office, I'm sure they'll do what you say.

Bruce had not identified himself as a member of any political party. I certainly do not know who he is. He had commended the Attorney-General for introducing the bill and had not acted in a hostile fashion at all, but there on the public airwaves you get a snide response from someone who flies under the colours of the first law officer of the state.

In the same interview, the Attorney talked of what he described as 'just another example of the spirit of volunteering in South Australia'. What hyperbole and what hypocrisy. Where was the great spirit of volunteering when the Labor government of the day did away with volunteer ambulance drivers at the insistence of the ambulance drivers' union? The spirit of volunteering was thrown out the window. Hundreds of volunteers had been volunteering their time and were prepared to continue to do so, but they were tossed out.

This spirit of volunteering that the Attorney-General speaks of in relation to the matter of justices of the peace and special justices, in particular, is disingenuous to say the least. The fact is that this is a cost saving measure. It is a measure which might be dressed up as designed to take the workload off the shoulders of hardworking and highly paid magistrates. The Attorney-General mentions on a number of occasions the level of pay of magistrates (which is higher than that of the Premier, to clearly demonstrate the fact that what he wants to do is save money) and these persons who are willing having these burdens cast upon them. I know, from my own experience with the Royal Association of Justices and from speaking to many justices, that this is a task that many are happy to pursue, and we on this side of the chamber do not disparage them but encourage them to continue their community service.

The Attorney-General at around the same time was boasting of the fact that in this year's budget a further $450,000 to facilitate additional sittings by special justices and to enable further training in the court was provided. A further $450,000 sounds a reasonable sum of money, but he omitted to mention that it was over four years and that it is not at all a great contribution to the justice budget.

There are serious issues about the technical aspects of this bill. It is firstly proposed that the provisions relating to the constitution of a petty sessions division court are altered in a proposal that will enable a court constituted by a special justice to hear and determine uncontested applications of a class prescribed by the regulations. We on this side of the chamber do not like matters such as jurisdiction being defined or expanded by regulation; it is a sloppy practice. We would prefer to see those provisions in the legislation itself. My questions to the minister in relation to this aspect of the matter are: has consideration been given to what class will be prescribed in the regulations; what class of applications have been considered in this regard; and what recommendations have been made by the Chief Magistrate in relation to it?

The amendment in clause 4 relates to the jurisdiction of special justices sitting in the petty session division and will be expanded to include any charge of a prescribed nature, and we accept that a special justice is not permitted under these provisions to impose a term of imprisonment. But they are given jurisdiction to now hear a charge of a prescribed offence. 'Prescribed offence' is described as 'an offence in respect of which the maximum penalty does not exceed a fine of $2,500, but does include imprisonment'. There are many offences for which there is no maximum fine at all prescribed, but a maximum sentence of imprisonment is imposed. The section goes on to provide, 'that is prescribed by the regulations for the purposes of this definition'.

So, I ask, basically, the same question again in relation to the proposed prescription by regulations: what discussions have been had with the chief magistrate, or others, about which offences will be prescribed? What criteria is being adopted in relation to the selection of those offences? It may well be, and I imagine the answer will be, that a list has not yet been finalised, but surely there is a list of those offences which are being considered for this purpose. I would ask that the minister, in his response, provide details of these matters.

It has been suggested, in the other place, that the special justices, who were appointed only in recent years under amendments passed in 2004, are presently sitting only in the Elizabeth, Holden Hill and Coober Pedy courts. In other courts, the supervising, or managing, magistrate does not list cases before special justices. All that the special justices in those places are allocated to do is paperwork consideration of applications made, mainly under the Expiation of Offences Act.

Principally, the special justices are assessing form 51s, which is a form that a person makes to apply for the review of an enforcement order that is made under sections 13 and 14 of the Expiation of Offences Act, and also to consider form 48s, which are applications for review of a cancellation of a relief order under the Expiation of Offences Act. I understand that the special justices who are not allocated work on the bench are given the rather menial task of culling enforcement warrants.

I ask the minister to indicate: is it true that in those courts that I mentioned special justices are not being allocated to the bench? Is that so and, if so, for what reason? Will the minister confirm information that I have which suggests that there are presently some 65 special justices: 44 in the metropolitan area, 24 in the country and five who are allocated to the Youth Court? Whether or not those figures are true, I ask the minister to indicate whether it is proposed to recruit and appoint additional special justices to undertake the additional work which is being made available by reason of this bill.

Some of the publicity concerning this matter is that the Attorney has claimed that some 18,000 additional offences can be dealt with by special justices, which is, indeed, 20 per cent of the cases currently before the Magistrates Court. I ask the minister to indicate how that figure is calculated and what proportion of those cases fall into the various categories now permitted.

I also ask a question to be answered before we go into committee in relation to the current rate of remuneration for special justices. What is the pay rate for sitting fees paid to special justices, and is the claim correct that special justices who perform this important task are actually paid less than jurors, who similarly perform a service for the justice system?

We have today received a copy of a letter from the Law Society addressed to the Attorney-General. The letter is dated 17 November, and it refers to a letter from the Chief of Staff for the Attorney-General, Mr Peter Louca, which was seeking comment from the Law Society on this bill. The bill was introduced on 23 September, but Mr Louca did not get around to writing to the Law Society until 6 October, and the government has been pressing ahead to have the matter dealt with expeditiously. No explanation is given for the delay.

As has previously been mentioned, the Law Society is certainly acting in a voluntary manner when it makes comments on these bills, and I am not prepared to be critical of it. This letter

was not previously before us, and it does raise a serious question not of principle but of detail. The letter states:

The Society supports, as a matter of principle, lessening the burden on the magistracy by expanding the jurisdiction of special justices. To that end, we support the bill, save and except for one aspect of it. The bill seeks to expand the jurisdiction of the Petty Sessions Division to include offences with a maximum penalty of imprisonment, although sentences of imprisonment may not be imposed.

So, in a technical sense, if there is a provision of the criminal law which provides for a maximum penalty of imprisonment for five years, a magistrate may consider that particular charge even though the magistrate himself would not be in a position to impose a term of imprisonment at all. The letter goes on to state:

It is these last mentioned offences that we consider should not be dealt with by special justices...Justices are not qualified or experienced to act as judicial officers. The proposed amendments will involve justices exercising judicial discretions. The fact that this already occurs to a minor extent is not a reason to expand it...One of the concerns with justices adjudicating upon matters that may attract imprisonment, in the context of not having the power to imprison, is that the justices are, for the first time in the Petty Sessions Division, required to determine the limits of their jurisdiction. Previously, those limits were determined for them by parliament (i.e., justices were only permitted to sentence for offences where a fine and licence disqualification was the maximum penalty).

With the increased jurisdiction, the justices must now determine whether imprisonment is a sentencing option before sentencing. We believe they, as lay people, should not be called upon to examine a judicial discretion of such magnitude. Whether a sentence of imprisonment is justified or required in a given case is a serious decision involving consideration of a multiple of complex matters that should be reserved for judicial officers...In addition, the proposed section allowing justices to hear offences attracting imprisonment creates a major anomaly and the real potential for fragmentation of matters within the criminal justice system. The anomaly is with the justices being invested with jurisdiction to determine liability on a matter which is too serious for the justices to sentence on (i.e., on those matters worthy of imprisonment). This situation does not occur at any other level of the criminal justice system.

We consider it to be of fundamental importance that an accused's liability for an offence worthy of imprisonment should be determined only by a judicial officer (ie, one having the jurisdiction to sentence him/her to imprisonment). By determining liability when imprisonment should or might not be imposed, the justices will necessarily (and inappropriately) be adjudicating upon serious matters.

If, after determining guilt, the justice considers that imprisonment is or might be appropriate, the matter should then be referred to a magistrate. This fragmentation of the process between liability and sentence is highly undesirable and unique. There are many reasons why the officer sentencing an offender should be the one who determines his/her guilt…

This provision may not achieve the efficiency savings it is hoped to. Indeed, the appeals, referrals and consequent delays may outweigh any savings…

We do not believe the consent of both parties to the justices' jurisdiction (ie, that a sentence of imprisonment is not appropriate) will overcome the concerns. Essentially, this is because the judicial discretion on the issue of imprisonment should not be left to the parties. Indeed, it is a fundamental principal of sentencing that the judicial officer's sentencing discretion is not fettered by the agreed attitude of both parties…

I here interpose that we very often hear complaints in this place and elsewhere, and in the public domain, about the fact that prosecution and defence counsel come to some agreement with which, for example, victims do not agree. We hear long and loud wailings from many quarters—the Attorney-General included—yet here we are being asked to support a system which, as the Law Society points out (and I must admit I had not realised) will be here created. The letter continues:

Licence disqualification is a significant penalty in that it greatly impacts on an individual's independence (and can significantly affect one's livelihood). Granted that justices currently have the power to disqualify, we are concerned that the Bill increases the seriousness of the licence disqualification offences that may be dealt with by justices by including those with imprisonment (albeit limited to a $2,500 fine). For the reasons outlined, we question the appropriateness of justices dealing with such matters…

Our recommendation, therefore, is that the Bill be amended to limit the jurisdiction of offences to those not including imprisonment as a penalty.

If that amendment is made, we consider that the Bill still goes some way towards enlarging jurisdiction of the justices and, thereby, alleviating the burden on the magistracy…

We have considered the Bill in the knowledge that justices can, in limited circumstances, determine matters involving imprisonment—where there are no magistrates available to constitute a court…In such instances, the same limitation of not being able to sentence to imprisonment applies to justices.

We maintain our views, notwithstanding the existing position, because the Bill seeks to enlarge the jurisdiction of the Petty Sessions Division exercisable solely by justices to include serious matters. That is a far different, and more concerning situation, than the present which only provides for a fall-back position in the event that a magistrate is not available. In practice, it is likely that a justice would do no more than the minimum required until a magistrate becomes available (ie, the justice would not determine the matter).

There are two other matters upon which we would like to comment/ make a suggestion…

The first relates to the matter I alluded to previously, namely, the fact that this jurisdiction can be extended by prescriptions in regulations. The Law Society's comment is, as follows:

We consider that the criminal jurisdiction of the Petty Sessions Division is not one which should be capable of expansion by regulation. The appropriate safeguards of legislative amendment should apply to it.

Finally, in relation to adjournment and interlocutory matters, it says:

…we believe that consideration could be given to reducing the workload of magistrates by enabling justices to deal with some adjournments and interlocutory processes.

That courteous and constructive letter would have landed on the Attorney-General's desk only today or yesterday. I think it is appropriate that there be put on the record a response to each of the concerns raised by the Law Society. I am glad to see that, contrary to claims made by the Attorney-General, the Law Society has not adopted a dog in the manger attitude. It is not out there to support the work of lawyers. It supports as a matter of principle lessening the burden on the magistracy, and I commend it for that, but I do believe that it is appropriate that a detailed response be placed on the record. With those comments, and subject to appropriate and timely responses being received, we support the bill in principle.

The Hon. D.G.E. HOOD (17:31): Family First supports this bill. It is a good initiative. We see it as perhaps foreshadowing future reform along these lines. I believe there is capacity for this legislation to go further, perhaps not this particular piece of legislation, but I think there is capacity for greater reform in our courts. The number of procedural matters that are caught up in the courts is extensive. Members will be aware that Family First introduced a bill two or three years ago which substantially freed up the courts and which allowed drivers who were driving unregistered and uninsured to be dealt with by expiation notices rather than the courts, as was then occurring, and that has saved substantial time in our courts.

A number of things can be done. To think that we face situations in our courts where people sometimes wait 12 months or even more for trial is absolutely inexcusable, and for that reason we wholeheartedly support the measures in this bill. In essence, this bill expands the operation of special justices within our magistrates courts. The current sections 7A and 9A of the Magistrates Court Act 1991 define the current scope of jurisdiction available to special justices. The current jurisdiction includes the power to hear petty session matters and any matters where a magistrate is unavailable, although they are not allowed to impose a sentence of imprisonment. Petty session matters are defined in the current section 9A to include 701 criminal law sentencing matters; they are the reconsideration and reduction in fines due to hardship, as well as any offences against the Road Traffic Act that do not carry a period of imprisonment and reviews of enforcement orders under section 14 of the Expiation of Offences Act 1996.

This bill expands the jurisdiction of special justices to hear and determine uncontested applications of a class prescribed by regulation. The definition of petty session matters is expanded to cover contested expiation notices, any offences that do not have a penalty exceeding $2,500 and offences which do have imprisonment attached to them but which are prescribed by regulation. This bill does allows special justices to hear imprisonable offences if those offences are declared by regulation.

I would like the minister to outline prior to concluding this bill the specific imprisonable offences likely to be declared under regulation as being able to be dealt with under this new scheme. I wonder also whether it is likely that special justices will be tasked with good behaviour appeals for drivers who have run out of demerit points, as I understand these often take up a good deal of Magistrates Court time.

Special justices are appointed under the Justices of the Peace Act 2005. They are lay people who are JPs and are not required to be legal practitioners, although they are required to attend a short TAFE SA training course. The role of special justice is technically voluntary, although I understand they are paid $25 a session or $50 a day to cover expenses. I think that is very low indeed. My view is that it should at least compensate them for their time, and that sort of money surely does not. In my view it should be of the order of at least double or even triple that to compensate people for their time. It has been pointed out elsewhere that this is well below the several hundred thousand dollars a year paid to magistrates, and obviously there is a substantial cost saving for taxpayers involved in these measures. That alone, I think, suggests that the bill is worthy of support. One wonders why we have for years been paying magistrates hundreds of thousands of dollars to do things that special justices can do for $25 a session.

I also have the impression that magistrates have several other fringe benefits available regarding motor vehicles and so forth. In fact, just recently when my parliamentary vehicle was changed over (from one vehicle to the next), I was informed by Fleet SA that I had no rights as the lessee of that vehicle to attempt to purchase it at the expiry of the lease. Even though I did not necessarily agree with it, I thought if that was the policy so be it. Then I was informed by the gentleman I was talking to that judges and magistrates do; that somehow they have special rights to be able to purchase their cars which is excluded from other members. Is that right?

An honourable member interjecting:

The Hon. D.G.E. HOOD: I am informed that federal members of parliament can, too. However, that is a matter for another day. Just to reiterate the point, one wonders why we are paying these magistrates a couple of hundred thousand dollars a year or more and giving them access to extensive special privileges for years and years when, in fact, now people are paid $25 a session or $50 a day and they are able to do the same job. It is nothing short of outrageous.

My general view is that special justices do a valuable and important job and, indeed, I myself am (as I am sure many other members of this chamber are) a registered JP, and it is a voluntary role that I would consider taking up at some stage in the future as a means of community service. The increased scope of the responsibilities will, I am sure, do much to decrease the caseload of magistrates generally and will therefore save taxpayers a small fortune in the medium term.

As I said at the outset, there is considerable scope—I see this really as almost a pilot program—to expand the scheme well beyond its current level of impact as proposed in this bill, and I indicate to honourable members that, should a bill come to this council to that effect, it will very likely enjoy Family First support.

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

STATUTES AMENDMENT (PUBLIC SECTOR CONSEQUENTIAL AMENDMENTS) BILL

Adjourned debate on second reading.

(Continued from 18 November 2009. Page 3948.)

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) (17:37): By way of some preliminary concluding remarks, I want to thank the Hon. Rob Lucas for his contribution and his support thus far for the bill, albeit qualified. He has asked a number of quite technical and detailed questions. Answers have been provided to those questions, and I seek leave to have them inserted in *Hansard* without my reading them.

Leave granted.

1. Public Sector (Honesty and Accountability) Act 1995.

The Honourable Member asked a question about the reference to the Public Sector (Honesty and Accountability) Act 1995.

The Public Sector Management Act 1995 is amended by the Public Sector Management (Consequential) Amendment Act 2009 so as to retain only the honesty and accountability provisions (sections 6C-6ZF) and, as amended, is renamed the Public Sector (Honesty and Accountability) Act 1995.

The Public Sector Act 2009 sets out the employment framework for the public sector and includes annual reporting and immunity provisions.

The Public Sector (Honesty and Accountability) Act 1995 contains conflict of interest and other honesty and accountability measures.

The Public Corporations Act 1993 contains a special regime that may be applied to public corporations. I have a table of examples of public corporations which I seek be inserted into Hansard.

2. Non-consequential amendments

The Honourable Member asserted that there were a number of non-consequential amendments included in this Bill.

There are 2 amendments, and 2 amendments only, included in this Bill that are not strictly consequential on the Public Sector Act and Public Sector Management (Consequential) Amendment Act. They are in clauses 121 and 272. Both are minor editorial corrections of absolutely no consequence and including them in this exercise was designed to avoid spending any Parliamentary time on such trivial matters.

Clause 121 amends section 29 of the Equal Opportunity Act 1984—'person' is deleted to match amendments to all other provisions in the Act following enactment of the Equal Opportunity (Miscellaneous) Amendment Act 2009.

Clause 272 amends section 21A of the Police (Complaints and Disciplinary Proceedings) Act 1985—'member of police force' is replaced with 'designated officer' to match amendments to all other references in the section following enactment of the Protective Security Act 2007.

These are oversights of a printing error nature and are hardly worthy of comment and that is why no specific mention was made of them in the second reading speech. Possibly they could have been corrected through the use of the powers of the Commissioner for Legislation Revision and Publication under the Legislation Revision and Publication Act 2000, but the Commissioner, quite correctly, takes a cautious approach to the use of such powers and preferred in this case, out of an abundance of caution, to ensure that the corrections were achieved through Parliamentary amendment.

Every other clause in the Bill is consequential.

This does not mean that there are no substantive changes to the law—indeed substantive change is essential and intended in order to achieve consistency across the Statute Book, in particular, in relation to conflict of interest provisions for the public sector.

It is important to note that this whole exercise has been approached as one of a technical drafting nature and not one of a policy nature. Parliamentary Counsel undertook the work of examining the Statute Book and proposing what amendments were necessary as a consequence of the new public sector legislation and the previous honesty and accountability exercise (with a view to consistency and keeping the status quo wherever practicable). A draft Bill was then circulated to agencies so that agencies had an opportunity to raise any concerns in relation to their own legislation. Crown Law and Parliamentary Counsel officers had input into resolving the matters raised by agencies.

This was a massive exercise when one considers the number of provisions on the Statute Book affecting the public sector and the analysis uncovered all sorts of different approaches and oddities that have arisen over time and that required some sort of resolution.

It should be obvious from the approach that the only motive of the Government in this exercise is to clean up the Statute Book and make it rational.

To address the particular cases of apparent concern mentioned by the Honourable Member:

Adelaide Festival Centre Trust

Clause 13 of the Bill inserts a new section 6(4a) providing that 'A trustee may, but need not, be a Public Service employee.' This replaces section 16 (repealed by clause 14) which currently provides 'A trustee shall not, as such, be subject to the Public Service Act 1967, as amended, but this section does not affect the rights, duties and obligations under that Act of any trustee who is otherwise an officer in the Public Service of the State.'

Clause 15 deletes section 17 which is currently a limited provision requiring a trustee to declare financial interests in a matter before the Trust and not to act in relation to such matter in favour of the honesty and accountability provisions enacted in 2003. There is no reason for a trustee of the Adelaide Festival Centre Trust to be treated differently to members of other bodies. New section 17 elevates to the Act the exemption for Trustees that is currently contained in the Public Sector Management Regulations 1995.

Clause 16 simply substitutes an Act reference.

Courts Administration Act

The amendments maintain the status quo and are necessary because of the substitution of the Public Sector Management Act. The status quo is that there are some limitations on the powers of government generally to affect the employment arrangements within the Courts Administration Authority, in order to ensure judicial independence is not compromised. In addition, particular sections of the Public Sector Management Act are referred to in the Courts Administration Act. For both these reasons the amendments required are slightly more detailed than with other Acts. The amendments have been considered by the Authority.

New section 17A provides for delegation as currently provided through the Public Sector Management Act delegation provision (section 17).

New section 21B(1) excludes the Administrator and staff from the Public Service (see current s16(6) for the Administrator and section 21B(1) for staff).

Under new section 21B(2) and (3) Part 7 of the Public Sector Act is to apply (that is, the general employment provisions) subject to the regulations. Subsection (2) also makes sure that the employees are public sector employees for the other provisions of the Public Sector Act (for example, the principles) and are subject to the Public Sector (Honesty and Accountability) Act provisions (comparable to current section 21B(1) and (4)).

New section 21B(4) equates to current section 21B(3) and provides that machinery of government transfers are not to apply (comparable to current section 21B(3)).

New section 21B(4a) excludes the power to give whole of government directions to the Authority and is necessary in the context of the new Act.

New section 21B(4b) excludes functions of the Commissioner relating to monitoring and reporting on observance of determinations etc and to conducting reviews of public sector employment or industrial relations matters and equates to part of current section 21B(2) (comparable to the exclusion of section 22(1)(c) and (e) in current section 21B(2)).

The administrator can be declared to be a senior official for the purposes of the Public Sector (Honesty and Accountability) Act (remainder current s16(6)) and can be given the powers of a chief executive by notice under section 40 of the Public Sector Act (current section 17(3)).

Family and Community Services Act

Clause 138 substitutes the definition of Department to avoid the difficulties associated with references to departments by name.

Section 34 of the Public Sector Act 2009 allows the Premier or a Minister to appoint an acting chief executive and so clause 139 of the Bill removes section 8(4) which duplicates the section.

Clause 140 removes an ordinary immunity provision for persons engaged in the administration of the Act in the form that refers to honest acts or omissions. The matter is covered by section 74 of the Public Sector Act 2009.

Motor Vehicles Act

Clauses 217 and 218 of the Bill make amendments in order to remove references to the Department of Family and Community Services. These references have been changed in a manner requiring the regulations to specify the concession card to be recognised—this achieves the necessary level of specificity so that there can be no doubt about what cards result in a reduction in fees. It is intended that the regulations will refer to the administrative unit that is, under a Minister, responsible for the administration of the Family and Community Services Act.

Clause 219 removes an ordinary immunity provision for the Registrar, a Member of the review committee and a person engaged in the administration of the Act in the form that refers to an honest act or omission. Section 74 of the Public Sector Act covers the matter.

Solicitor-General Act

The Solicitor-General Act 1972 is amended because it contains references to the Public Service Act 1967. In fact, section 4 is obsolete and section 5 is unnecessary because the Solicitor-General is not in the Public Service since the conditions of appointment are determined by the Governor.

South Australian Housing Trust

Clauses 314 and 315 remove the honesty and accountability provisions and rely on those in the Public Sector (Honesty and Accountability) Act. There is no reason for a member of the board to be treated differently to a member of any other board. The interpretation provision (section 3) is amended to delete references that are only relevant to the deleted provisions. The current provisions match those for WorkCover and the Motor Accident Commission and will be described in more detail later.

New section 12 contains a more complex exemption that exactly matches clause 32 of Schedule 1 of the current Public Sector Management Regulations 1995.

Clause 316 deletes the immunity provision for members of the Board since this is covered by section 74 of the Public Sector Act 2009.

Clause 317 updates a reference to the Commissioner for Public Sector Employment and deletes the immunity provision for members of the Appeal Panel since this is covered by section 74 of the Public Sector Act 2009.

Not one of these matters alluded to by the Honourable Member has any hint of controversy or inappropriateness associated with the amendments. They are all clearly consequential and maintain the status quo in the context of the new Acts.

3. Changes to Honesty and Accountability Provisions

The Honourable Member refers to new drafting in connection with the conflict of interest provisions—it must be emphasised that there is no new drafting—the honesty and accountability provisions are as enacted by Parliament in 2003. In the Public Sector Management (Consequential) Amendment Act 2009 exercise, a minor adjustment was made to the *exemptions* for the disclosure of interests provision for corporate agency members, but nothing new is added in this exercise. The minor adjustment involved including the provision: 'A corporate agency member who is an employee of the agency or an employee employed or assigned to assist the agency will not be taken to have a direct or indirect interest in a matter for the purposes of this section by reason only of the fact that the member is such an employee.' This exemption had been included haphazardly in the Public Sector Management Regulations and in some Acts and the amendment generalised the approach and raised it to the level of the Act.

The Honourable Member questions changes to levels of penalties in relation to the honesty and accountability provisions. The time for debating the levels of penalties applicable for offences relating to disclosures of potential conflicts as compared to offences of acting dishonestly or entering into unauthorised transactions etc was in 2003 when the Statutes Amendment (Honesty and Accountability in Government) Bill was before the House.

When the honesty and accountability measures were introduced into the *Public Sector Management Act 1995* by that Bill, it was with a view to creating a new standard that would be consistently met by various

categories of public sector officials, workers and contractors right across government. It was known at that time that there were inconsistencies in penalties and approach and Parliament enacted a standard set of provisions that it considered appropriate.

The standard set of provisions was derived from the Public Corporations Act and was 'to ensure consistency across the whole public sector' (HA Hansard 8 May 2002 p45).

The scheme is comprehensive and covers duties to exercise care and diligence, duties to act honestly, duties not to be involved in unauthorised transactions and duties to disclose interests and particular conflicts.

The provisions are different for each of the categories covered—corporate agency members, advisory body members, senior officials, corporate agency executives, public sector employees and persons performing contract work for a public sector agency or the Crown.

There is absolutely nothing sinister in the adjustments to penalties and other aspects that result through consistent reliance on the provisions enacted for the purpose. Nothing can be made of the fact that some penalties are increased and some decreased since that is just a necessary result of achieving the consistency intended by Parliament when it enacted the Statutes Amendment (Honesty and Accountability in Government) Act. The only criticism that might be made is that it has taken too long to bring the consequential amendments to Parliament, but that should not mean that they are not worthy of support.

To address the particular cases of apparent concern mentioned by the Honourable Member:

WorkCover Corporation Act 1994 and *Motor Accident Commission Act 1992*

The set of honesty and accountability provisions included in these Acts match those included in the South Australian Housing Trust Act 1995. There is a pattern—a precedent that was no doubt copied from one Act to the other.

That precedent is closer to that currently contained in the Public Sector Management Act than that used in many other Acts on the Statute Book—the provisions are often limited to disclosure of interests requirements.

For the purposes of the Public Sector (Honesty and Accountability) Act, the members of the board of WorkCover and the directors of the Motor Accident Commission are 'corporate agency members'.

The Public Sector provisions relating to corporate agency members mirror, with relevant modifications, the provisions of the Public Corporations Act applying to directors of public corporations (ie sections 16 to 19 and 21 of the Public Corporations Act). The duties must be complied with by members of a public sector agency that is a body corporate or members of the governing body of a public sector agency that is a body corporate (in circumstances where the Public Corporations Act does not apply).

The duty to act honestly is the same and subject to the same penalties. The duty to act with care and diligence is the same except that the Public Sector approach contains a refinement which makes it an offence if a corporate agency member is culpably negligent in the performance of his or her functions. This refinement is designed to provide a level of certainty appropriate to a criminal offence.

The duty relating to disclosure of interests is similar, although the Public Sector (Honesty and Accountability) provisions require disclosures to be in writing and there is an additional requirement relating to personal or pecuniary interests that may conflict with duties but not relate to a matter under consideration by the agency. The penalty under the precedent is a Division 5 fine or Division 5 imprisonment and under the Public Sector provisions is a higher Division 4 fine. Imprisonment is reserved for the more serious honesty and accountability offences.

The Public Sector provisions will also impose a duty not to be involved in unauthorised transactions with the agency and not to have an unauthorised interest in the agency.

Provisions of the Criminal Law Consolidation Act (sections 249 to 253) relating to improper use of information and official position will no longer be duplicated. The Criminal Law Consolidation Act provisions are much more expansive

The immunity provision for members of the board of WorkCover is in the form that refers to an honest act or omission but not extending to culpable negligence. The one for the Motor Accident Commission is an unusual variation referring to anything done honestly and with reasonable care and diligence. Both of these approaches leave the member open to being sued personally by a person who suffers loss. Other immunity provision precedents refer to acts undertaken in good faith.

The Public Sector Act immunity provision provides immunity for all acts of an employee or board member and includes an express statement that the provision does not prejudice rights of action of the Crown or a public sector agency in respect of an act or omission of a person not in good faith.

Good faith is thought to be a higher threshold than honesty and so a good faith indemnity is narrower. For instance, the following acts may be honest acts but not acts in good faith:

- recklessness, ie where a an office holder does an act or refrains from doing an act without caring whether or not the act or omission constitutes a breach of duty;
- an office holder acts honestly but fails to make or real or genuine attempt to discharge their duties.

The Public Sector approach is to not expose public officers to civil suits but to ensure that the Crown or the relevant body corporate can take action against a public officer for any act or omission that is not in good faith.

It is difficult to see what justice would be served now by insisting on applying different standards to these corporate agency members than apply to corporate agency members under other Acts. There is no reason to think that the precedent that happened to be around in the early to mid 1990s should displace that which was worked out with a concerted effort and included in the Public Sector Management Act in 2003.

And it is slightly disingenuous for the opposition to be suggesting a concern that we are somehow easing standards. After all, when the honesty and accountability provisions were being debated in 2003, while the opposition were generally supportive, they expressed a clear concern that the provisions might be *too draconian*, and would lead good people not to serve on Boards.

I reiterate—this Bill is truly a consequential amendment exercise—akin to a Statute Law Revision exercise—and it should be treated by this House accordingly. There is, contrary to the insinuation of the Honourable Member, no ulterior motive or hidden intent behind these amendments.

The detailed explanation of this Bill to which the Honourable member referred has been provided to Family First and each independent member's office. I urge members to read it if they continue to have any concerns.

As they read it, I hope that they will come to appreciate the patience and admirable attention to detail of Parliamentary Counsel - in this case Christine Swift - in putting this Bill together.

Public Corporations—examples

The *Public Corporations Act* applies to the following bodies:

- Adelaide Cemeteries Authority
- South Australian Forestry Corporation
- South Australian Water Corporation
- TransAdelaide

Subsidiaries established under Public Corporations Regulations:

- Adelaide Convention Centre Corporation
- Adelaide Entertainments Corporation
- Adelaide Film Festival
- Australian Children's Performing Arts Company
- Bio Innovation SA
- Distribution Lessor Corporation
- Economic Development Board
- Education Adelaide
- Generation Lessor Corporation
- Land Management Corporation
- Playford Centre
- Transmission Lessor Corporation
- 2007 World Police and Fire Games Corporation

The Hon. G.E. GAGO: The Hon. Rob Lucas has not had a chance to look at those responses in detail and may want to put further questions on the record, so at this point it is probably best if I seek leave to conclude my remarks.

Leave granted; debate adjourned.

SPENT CONVICTIONS (NO. 2) BILL

Second reading.

The Hon. J.A. DARLEY (17:39): I move:

That this bill be now read a second time.

This bill very simply provides for certain convictions to be spent after a specified period of time has lapsed. Provided there are no further convictions, convictions relating to adults or children tried as adults that did not result in a gaol term of more than 12 months will be spent after a period of 10 years. For juvenile offenders, convictions that did not result in a gaol term of more than 24 months will be spent after a period of five years.

In cases where there has been a subsequent conviction, the conviction will not be spent until the relevant qualification period has passed unless a pardon is granted, the conviction is quashed, the offence was minor or committed against the law of another jurisdiction where the mutual recognition principle does not apply.

Naturally, only convictions for minor offences are able to be spent, and the bill provides that convictions for sex offences, offences against a body corporate or offences prescribed by regulation cannot be spent. With the exception of excluded agencies and persons as outlined in schedule 1, the bill also makes it an offence for a person to disclose details of another's spent conviction and provides that a person cannot be required to disclose information about their own spent conviction. This clause is particularly important, especially given the stigma that is often associated with a conviction.

The bill will assist many people who have encountered difficulties in their life due to a conviction for a minor offence that occurred quite a number of years ago. It is envisaged that the bureaucratic delays encountered when travelling, prejudice and often exclusions experienced in gaining employment and preclusions from holding certain licences will now be eliminated for those whose conviction has been spent.

Juvenile offenders who have had a clean record for five years and adult offenders who have had a clean record for 10 years after committing a minor offence demonstrate a strong indication that one has reformed and should be afforded the opportunity of a fresh start. I hope that the bill will pass expeditiously, especially due to the support shown in another place. I commend the bill to honourable members.

Debate adjourned on motion of Hon. R.P. Wortley.

BUILDING AND CONSTRUCTION INDUSTRY SECURITY OF PAYMENT BILL

Second reading.

The Hon. R.P. WORTLEY (17:42): I move:

That this bill be now read a second time.

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

Leave granted.

This bill seeks to ensure that a person who undertakes construction work, or who supplies related goods and services under a construction contract, is entitled to receive *and is able to recover* progress payments for the carrying out of that work or the supplying of those goods and services.

The bill addresses what is known in building and construction industry parlance as the 'security of payment problem'.

This problem arises when the subcontractors and suppliers in the building and construction industry are unable to secure in a timely fashion, or sometimes at all, payment for work performed or goods and services supplied—despite, in many cases, having a contractual right to such payments.

As much of the building and construction industry operates under a system of hierarchical contract chains (head contractor, subcontractors, suppliers and consultants), the industry is particularly vulnerable to security of payment problems.

This is clearly due to the fact that the failure of any one party in the contractual chain to honour its obligations can have a flow-on effect on other parties.

Such a failure will obviously restrict cash flow, and it is the case that insolvencies have ultimately been caused.

There have been a number of inquiries into the security of payment problem in Australia.

In general, these reviews have concluded that the security of payment problem was indeed a matter that justified government action. A consistent theme across the reviews was that traditional legal remedies provide inadequate protection to subcontractors and suppliers. These reviews initiated government action.

New South Wales, Queensland, Victoria, Western Australia, the Northern Territory and New Zealand have all legislated to address the security of payment problem in their building and construction industries.

To date, there has been no formal, specific examination of the scope of the security of payment problem in South Australia.

However, I am aware that a number of members in the other place have been approached by industry participants who have reported the existence of such a problem in this state. I am entirely convinced that action in the form of legislation is required.

The bill I put before the Chamber today is based on the Building and Construction Industry Security of Payment Act 1999 of New South Wales.

The bill applies to most forms of construction contracts other than contracts involving 'resident owners' under the Building Work Contractors Act 1995.

Importantly, however, the bill will cover owner/builders who engage contractors and trades people in a building contractor role.

The bill provides that, irrespective of the terms of a construction contract, a person who performs work or supplies related to goods and services under the contract is entitled to a progress payment.

The amount and timing of a progress payment is calculated either in accordance with the terms of the contract or, if the contract does not provide for this, in accordance with a formula set out in the legislation.

The notorious 'pay when paid' and 'pay if paid' provisions are consequently rendered invalid.

Under the bill:

- a person who has carried out construction work or provided related goods or services may make a claim for progress payments;
- upon receipt of a payment claim, the respondent will have 10 business days in which to serve a payment schedule on the claimant. If the respondent seeks to withhold in whole or in part a claimed progress payment, he or she will be required to state the reason in the payment schedule;
- if the respondent fails to provide a payment schedule, he or she becomes liable to pay the whole amount of the payment claim on the due date;
- if the respondent serves a payment schedule that includes reasons for withholding payment, the claimant will have 10 business days to accept the response or submit the payment claim to adjudication. (A claimant will also be able to submit a claim to adjudication where no payment schedule is provided);
- adjudicators will be non-government individuals or companies offering specialist adjudication services to industry participants. Their fees will be payable by the parties to an adjudication. Adjudicators will be nominated by nominating authorities and nominating authorities will be authorised by the minister;
- after an adjudicator accepts an adjudication application, he or she will have 10 business days to make a determination. The parties may extend this;
- upon completing adjudication, an adjudicator will be required to determine the amount (if any) of progress payments due to the claimant, the due date for payment and interest, and
- a successful claimant will have the right to suspend work under the contract and enforce the adjudication decision in court.

The rights and liabilities created under the bill do not affect any other entitlement a person may have under a construction contract or any other remedy a person may have for recovering any such entitlement.

However, in court proceedings in relation to a matter arising under a construction contract, the court must allow for an amount paid to a party to the contract as a result of an adjudication under the legislation in any order or award it makes to those proceedings.

It follows that the court may make orders for the restitution of any amount paid as a result of the adjudication.

The time frames set out by the bill for responding to payment claim and for the making of an adjudication are tight.

They are aimed at ensuring that the disputes under legislation are resolved rapidly and at minimal expense to the parties.

The bill has undergone a number of amendments in Committee. I will address the clauses in turn.

Clauses 1, 2 and 3 remain intact.

Clause 4 has been amended so that on page 4, line 22, there has been inserted:

'or

(c) any other day on which there is a statewide shut-down of the operations of the building and construction industry;'

This amendment, which springs from consultation with industry and in particular the MBA, takes into account industry shut-down days and days - such as rostered days off - not included in the calculation of response times.

Clause 5 has been amended so that on page 6 line 6 [clause (5)(1)(e)(iii)], after 'dismantling of', there has been inserted:

'fences or'

This amendment increases the definition of services that are included.

Clause 6 has been amended so that on page 6 line 36, [clause 6(i)(b)(iii)] after 'advisory', there has been inserted:

'or technical'

Again, this amendment increases the definition of services that are included.

Clauses 8 to 10 remain intact.

Clause 11 has been amended so that on page 9 line 18, [clause 11(1)(b)], the number '10' has been deleted and the number '15' substituted.

This increases the number of days for response and adjudication from 10 to 15. This is a reasonable extension and is in line with the NSW legislation.

Clause 12 remains intact.

Clause 13 has been amended so that on page 10 line 35, [clause 13(4)(b)], the number '12' has been deleted and the number '6' substituted.

This decreases the number of months during which persons wishing to avail themselves of the provisions of this legislation may do so.

This amendment is intended to stop the practice of 'ambush' claims, whereby a person may make a claim dating back nearly twelve months while the other party had (prior to the amendment of Clause 11) only 10 days to respond.

Clause 14 has been amended so that on page 11 line 20, [clause 14(4)(b)(ii)], the number '10' has been deleted and the number '15' substituted.

Clause 15 remains intact.

Clause 16 has been amended so that on page 12 line 20, [clause 16(1)(b)(ii)], the number '10' has been deleted and the number '15' substituted.

Clause 17 has been amended so that on page 13 line 20, [clause 17(3)(c)], the number '10' has been deleted and the number '15' substituted, and so that on page 13 line 38, [clause 17(3)(e)], the number '10' has been deleted and the number '15' substituted.

Clause 18 has been amended so that on page 14 after line 20, [clause 182] there has been inserted:

'(ab) if either or both of the parties have nominated the person to be an adjudicator in relation to the contract;

or'

This removes any perception of prejudice or actual prejudice on the part of one party over another if a nominated adjudicator is written into a building contract. The amendment prevents stipulation in a contract, or an unfair selection or use of an adjudicator.

The remaining clauses—19 to 35—remain intact.

Schedule 1 page 22, after line 30, has been amended as follows:

Part 1A—Amendment of Building Work Contractors Act 1995

1A—Amendment of section 30—Payments under or in relation to domestic building work contracts

Section 30(1)—delete 'the payment'

Section 30(1)(a)—before 'constitutes' insert:

the payment

Section 30(1)—after paragraph (a) insert:

(ab) the person is entitled to the payment under the *Building and Construction Industry Security of Payment Act 2009* ; or

Section 30(1)(b)—before 'is of a' insert:

the payment

Section 30(2)—delete 'paragraph (a) or (b)' and substitute:

paragraph (a), (ab) or (b)

Section 30(3)—delete subsection (3)

Amendment to the Building Work Contractors Act consequent to the inclusion of the full chain, including residential houses, is required. These provisions allow that synchronicity.

Finally, the Title has been amended to delete 'a related amendment to the' and substitute:

related amendments to the Building Work Contractors Act 1995 and the'.

Mr President, these provisions are the result of lengthy consultation with industry representatives *and* the product of fruitful discussions with those opposite at the Committee stage.

I commend the Bill.

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

At 17:43 the council adjourned until Tuesday 1 December 2009 at 14:15.