# LEGISLATIVE COUNCIL

**Wednesday 22 November 2006**

**The PRESIDENT (Hon. R.K. Sneath)** took the chair at 2.18 p.m. and read prayers.

## AUDITOR-GENERAL'S REPORT

**The PRESIDENT:** I lay upon the table the supplementary report of the Auditor-General in relation to matters arising from the further audit examination of the administration of the Criminal Law (Forensic Procedures) Act 1998 and other matters.

## PAPERS TABLED

The following papers were laid on the table:

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

Reports, 2005-06—

Courts Administration Authority

Guardianship Board of South Australia

State Coroner

Claims Against the Legal Practitioners Guarantee Fund—Report, 2005-06

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

Inquiry into the Death in Custody of Michael John Hulsinga—Report

Report on Actions taken following the Coronial Inquiry into the Death in Custody of Darryl Kym Walker

By the Minister for Road Safety (Hon. C. Zollo)—

Speed Management—Report, 2005-06

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

Reports, 2005-06—

Land Board

Radiation Protection and Control Act 1982

South Australian Heritage Council

By the Minister for Mental Health and Substance Abuse (Hon. G. E. Gago)—

Report on Actions taken following the Coronial Inquiry into the Death in Custody of Darryl Kym Walker.

## LEGISLATIVE REVIEW COMMITTEE

**The Hon. J. GAZZOLA:** I bring up the 14th report of the committee.

Report received.

**The Hon. J. GAZZOLA:** I bring up the 15th report of the committee.

Report received and ordered to be read.

## CERTIFICATE OF EDUCATION

**The Hon. CARMEL ZOLLO (Minister for Emergency Services):** I lay on the table a copy of a ministerial statement made in relation to the South Australian Certificate of Education made today by the Minister for Education and Children's Services.

# QUESTION TIME

## VON EINEM, Mr B.S.

**The Hon. J.M.A. LENSINK:** I seek leave to make a brief explanation before asking the Minister for Correctional Services a question about Bevan Spencer von Einem.

Leave granted.

**The Hon. J.M.A. LENSINK:** On 20 November in this place the minister reported in relation to the administration of medication to prisoners and said:

> . . . all medication is issued by nursing staff on a dose by dose basis up to three times a day. . . There are some smaller prisons where this does not happen, where so-called Webster-paks are used. Prisoners are not allowed to have or store medication in their cells, with the exception of medication that needs to be taken in the case of emergency, for example, asthma puffers.

Yesterday in the House of Assembly during question time the Minister for Health (Hon. John Hill), in relation to von Einem and the administration of sex performance enhancing drugs, said:

> As I understand it the drugs were given to von Einem over a three-month period and given in two lots. We assume that was in two equal lots, but it may not have been the case. There were eight of these pills altogether and they were given to him. What he then did with them is anyone's business, but there is some suggestion, of course, that he did take them himself; there is a lot of evidence to suggest that that was the case.

Later, in response to a supplementary question, he said:

> The advice I have is that a money order was transferred to the dispensary—the pharmacist.

How does the minister reconcile these two different scenarios of administration of medication in our prisons?

**The Hon. CARMEL ZOLLO (Minister for Correctinal Services):** I need to firmly place on the record, as I have many times, that health services in our prisons are administered by the Department of Health. The information I placed on the record the other day is what should happen in our prisons; what did happen is the subject of an investigation and, until that investigation is complete, I am unable to make any comment. I made my ministerial statement and comments before the Hon. John Hill made his in the other place.

I learnt of this incident last Friday afternoon, but what actually did happen in this case is the subject of an investigation and I suggest honourable members await the outcome of that. As I said yesterday, honourable members should not play politics with this issue, which is very serious. I reiterate that we are advised that the first time this Viagra-like drug was administered was in 2001 under the Liberal administration.

*Members interjecting:*

**The PRESIDENT:** Order!

**The Hon. J.M.A. LENSINK:** I have a supplementary question. In stating that—

*Members interjecting:*

**The PRESIDENT:** Order! The Hon. Ms Lensink has the call.

**The Hon. J.M.A. LENSINK:** The minister has responded that it is the responsibility of the Department of Health to administer drugs. Is she 100 per cent confident that no corrections staff were involved in the administration or handling of this medication?

**The PRESIDENT:** The minister answered that question yesterday.

**The Hon. CARMEL ZOLLO:** We really have to get down to basics in this chamber. An investigation is occurring as to how this happened; there is nothing else I can add.

**The Hon. R.I. LUCAS (Leader of the Opposition):** I have a supplementary question arising out of the answer. How is it that minister Hill is able to provide details on this matter without contravening this minister's edict that it is the subject of an investigation and that she is unable to throw—

*The Hon. P. Holloway interjecting:*

**The Hon. R.I. LUCAS:** So, the minister who is responsible can provide answers?

*The Hon. P. Holloway interjecting:*

**The Hon. R.I. LUCAS:** And that does not strike at the heart of the investigation?

*Members interjecting:*

**The PRESIDENT:** Order!

**The Hon. CARMEL ZOLLO:** I would have thought it was very obvious. The doctor who is the subject of the investigation is an employee of the Department of Health. I understand that at some level he did admit to what did actually happen. Whether that is—

*The Hon. R.I. Lucas interjecting:*

**The Hon. CARMEL ZOLLO:** Well, they are not my employees and I learnt about it last Friday.

**The Hon. R.I. Lucas:** Why are you covering it up?

**The Hon. CARMEL ZOLLO:** We are not covering anything up; there is absolutely no cover-up. This is very basic information that anyone should understand. I should place on the record that we inherited a system that had significant procedural deficiencies—

*Members interjecting:*

**The Hon. CARMEL ZOLLO:** If you want to go down that path, I can go down that path, too. I reminded the council yesterday that some of these incidents go back a long way, including under the opposition's administration. Our information is that the first time the drug Cialis was administered was in 2001, under the Liberal administration.

## PARADISE HOTEL

**The Hon. R.I. LUCAS (Leader of the Opposition):** I seek leave to make an explanation before asking the Leader of the Government a question relating to a police incident.

Leave granted.

**The Hon. R.I. LUCAS:** I understand that on the evening of Monday 13 November the Paradise Hotel in the north-eastern suburbs was visited in the early hours of the morning—I guess it would have been Tuesday 14 November by then. Five uniformed police officers entered the gaming room at 1 a.m., at which time there were some eight elderly players of gaming machines—all, clearly, 60 years old or over—plying their trade on the machines.

When these police officers were approached by the hotel's gaming manager to ask what assistance they might require, the officers indicated that they were checking for patrons who were under-age players. The gaming manager suggested that a quick visual sighting of the eight patrons (aged 60 years and over) crouched next to the gaming machines would indicate that there was no-one under the age of 18 in those premises at the time.

Nevertheless, the officers then approached each of the gaming machine players, took out their notepads and asked for name, address and identification from each of the patrons. I have a copy of a statement from the gaming machine manager—I will not read all of it, given that this is question time—and it states:

> I understand that the police have a job to do, a difficult job at times, but as a bystander I felt the measures taken in this instance were a little extreme, as did my patrons, all of whom felt that their privacy had been invaded. Some even left. One woman even apologised to us for her verbal confrontation with an officer when she refused to show ID. I secretly applauded her because I thought she was quite controlled, considering the tone the officer had used when talking to her. They definitely scored no points on this PR exercise.

Further information in relation to concerns expressed by the hotel management are available. I seek answers from the minister to the following questions:

1. Will he seek advice from the Police Commissioner as to the purpose of the visit of five uniformed officers to the Paradise Hotel at 1 a.m. on Monday 13 November?

2. Why were five uniformed police officers required for this particular task, whatever it was?

3. Is this incident part of a wider operation in the area? I note that one of the police officers evidently told the manager that, after visiting the Paradise Hotel, they were going to move on to the Glynde Hotel.

4. Is it normal protocol for SAPOL to demand ID in circumstances such as those that I have outlined at the Paradise Hotel on 13 November?

**The Hon. P. HOLLOWAY (Minister for Police):** I am certainly not aware of the events that have taken place. If the hotel management has any issues, it should take them up directly either with the local head of the police service or the Police Complaints Authority. If they are alleging that police have acted improperly or overstepped the mark, that is what they should do. In one sense, I am pleased to see that police are visiting hotels looking for under-age gamblers.

*Members interjecting:*

**The Hon. P. HOLLOWAY:** Wasting their time? I imagine that the number they do would depend on—

*Members interjecting:*

**The Hon. P. HOLLOWAY:** We have heard in this parliament lots of allegations of under-age gambling. Members in this place cannot have it both ways. On the one hand, they complain that police are not effective enough, and then we get these sort of implicit complaints when they are actually doing their job. Whether the reasons that the leader alleges were the reasons why the police were there—

*The Hon. R.I. Lucas interjecting:*

**The Hon. P. HOLLOWAY:** That's right. The police may have had other reasons for conducting—

*Members interjecting:*

**The PRESIDENT:** Order! The minister is answering the question.

**The Hon. P. HOLLOWAY:** There is a number of reasons why the police might have been there and why they might have taken names. We would really need to know the basis of the complaint (if there is one) on which the police were acting and whether there are other reasons. I suggest that, as with all of these types of allegations, it is far better that we get the facts first. So, I will refer this matter to the Commissioner of Police to see—

*The Hon. R.I. Lucas interjecting:*

**The Hon. P. HOLLOWAY:** I will tell you why: because anyone can go and ask the police directly. The Leader of the Opposition was at a graduation ceremony, as I was. There were plenty of police officers at Fort Largs Police Academy. You can do it two ways: you can either ask the police or you can raise it in public. Why would you raise it in public?

Presumably, it is because you want to get some media attention. Why else would you raise it in this parliament? If this hotel had raised it with the police and got an unsatisfactory answer, I could understand why people would raise it in this parliament, but if you have not gone through that step one can only assume that it was done to get some publicity. That is why I made those comments. Until we get the police officers' side of the story, I suggest that none of us will be any the wiser.

**The Hon. NICK XENOPHON:** I have a supplementary question. Will the minister outline in due course the training and protocol for police officers in determining whether a person is under age and whether questions ought to be asked and, further, the extent of police operations and resources used to establish the extent of underage drinking and gambling?

**The Hon. P. HOLLOWAY:** I will see what information is available. As I understood it, I think the parliamentary committee that my colleague the Hon. Bernie Finnigan is chairing has had some information from police in relation to that. I have certainly seen some evidence that was supplied to that committee in relation to gambling and how the police interact and how the Liquor Licensing Branch interacts with the Independent Gaming Authority in relation to these matters. I know that a significant amount of information has or will be supplied by the police in relation to that committee. I understand that the Hon. Nick Xenophon is on that committee, but if there is any further information that is not being provided through that source I will seek to get it for the honourable member.

## BOLIVAR PIPELINE

**The Hon. J.S.L. DAWKINS:** I seek leave to make a brief explanation before asking the Minister for Environment and Conservation a question about the Bolivar pipeline project.

Leave granted.

**The Hon. J.S.L. DAWKINS:** Last Thursday I asked the minister questions about the state government's failure to match the Australian government's $2 million commitment to the extension of the Bolivar pipeline project. That commitment was made in October 2005. On two occasions the minister denied that she had any portfolio responsibility relating to the Bolivar treatment process and the pipeline which delivers treated waste water to the Virginia horticultural region. My questions are:

1. Will the minister now confirm that SA Water's licence to operate the Bolivar waste water plant and to reduce ocean outfall is granted under the Environment Protection Act 1993, an act which is committed to her?

2. What action will the minister take to ensure that the Bolivar pipeline extension goes ahead, ensuring that ocean outfall is reduced by a further 6 per cent?

**The Hon. G.E. GAGO (Minister for Environment and Conservation):** I thank the honourable member for his questions. I will need to take those on notice and bring back a response.

## AIR CONDITIONING TECHNOLOGY

**The Hon. R.P. WORTLEY:** I seek leave to make a brief explanation before asking the Leader of the Government a question about international interest in local air conditioning technology.

Leave granted.

**The Hon. R.P. WORTLEY:** I understand that the minister recently led a very successful delegation by a South Australian education and business group to China. Along with its busy schedule of meetings and seminars, the group also helped to celebrate the 20th anniversary of South Australia's sister state relationship with Shandong Province. I further understand that one of the minister's meetings in China focused on a South Australian company's air conditioning technology. Can the minister please provide details of the result of that meeting?

**The Hon. P. HOLLOWAY (Minister for Police):** I thank the honourable member for his important question. For the benefit of the Hon. Michelle Lensink, it is actually a very important development for this state. During the delegation's recent visit to China, I joined the Managing Director of South Australian air conditioning company Air Con Serve, Wayne Ryan, at a meeting with Mr Zhang Lijun, who is China's Vice Minister for the State Environment Protection Administration. At that meeting, the Vice Minister agreed to implement a trial of the company's air conditioning technology with a view to its possible introduction in buildings throughout the country. As with all other countries, China is looking at its burgeoning greenhouse emission problem and growing consumption of energy. It has set targets to try to contain the growth in those elements, and that is why there is a lot of interest in this technology.

This is a major coup for the company, and all credit goes to Wayne Ryan and his team at Air Con Serve for the time and effort invested in convincing the Chinese authorities to look at this new technology. I am sure that all members can imagine what sort of possibilities such a trial will open up for the company. Air Con Serve is an award-winning, privately-owned South Australian company established in 1978. On its website, the company's profile suggests that, since the introduction in the mid-1980s of the microprocessor-based air conditioning controls for commercial buildings, Air Con Serve has installed air conditioning management systems in more than 200 buildings. The company has 15 staff, and all its technical experts are qualified electrical or refrigeration technicians. The company's website states:

> Our company has adopted the policy of supplying and installing only those products that have expected quality attributes to ensure customer satisfaction. We are dedicated to providing the highest level of service to our customers, with many of our clients being with us since our inception.

The company's Shaw air conditioning technology (a system invented by the late Dr Allan Shaw, who was a lecturer in mechanical engineering at the University of Adelaide) customises air conditioning plant size to suit the needs of a given building and has the potential to significantly reduce greenhouse gas emissions. As we know in this state, air conditioning is one of the significant drivers of electricity demand, which, in turn, is one of the most significant sources of greenhouse gas emissions. Put simply, the technology optimises the performance of an air conditioning plant to consume the least energy under all prevailing conditions. Air Con Serve has already installed the technology in the Art Gallery of South Australia, where I understand that the energy used for air conditioning has been slashed by 50 per cent. Such a result can help the government achieve the South Australian Strategic Plan target of reducing greenhouse gas emissions.

The company's success at the Art Gallery is also proving to be a useful marketing tool for the technology. The Chinese

Vice Minister is now looking for suitable buildings in which to trial the technology and, if it is successful, the company could face the exciting prospect of having it installed in buildings throughout the country. While Mr Ryan and I were meeting Chinese officials, this technology was being awarded the National Environment and Energy Efficiency Award at the National Electrical and Communications Association's annual industry dinner in Sydney. I congratulate Mr Ryan on his success, and I think that it is much deserved. He has spent many years promoting the advantages of this system. The award cites that the technology has addressed the issues of humidity control and long-term energy savings with the air conditioning upgrade at the Art Gallery. It also recognises the company's high level of innovation and business skill with the development and installation of the Shaw air conditioning technology.

Again, I congratulate this small South Australian company. I think it has achieved deserved success and recognition with the award, and I certainly hope that it receives the commercial success it deserves through the trial of this technology in markets as large as those in China.

## MAGILL TRAINING CENTRE

**The Hon. M. PARNELL:** I seek leave to make a brief explanation before asking the Minister for Correctional Services, representing the Minister for Families and Communities, a question about the Magill Training Centre.

Leave granted.

**The Hon. M. PARNELL:** In her 2005-06 annual report the Guardian for Children and Young People, Pam Simmons, refers to the Magill Training Centre and says:

> . . . is a cheerless institution which inhibits proper care and behaviour change. The facility falls well below national standards for both youth and adult detention facilities, it contravenes United Nations Rules for the Protection of Juveniles Deprived of Liberty and is potentially in violation of article 40 of the United Nations Convention on the Rights of the Child.

The Minister for Families and Communities, Jay Weatherill, is quoted in today's *Advertiser* as saying that the government's replacement plans for the Magill centre could still be five years away. This is something that we have heard before. In reply to a question in this place asked by the Hon. Sandra Kanck in May 2000 the then minister, Diana Laidlaw, was delighted to announce the imminent construction of a facility to replace the Magill Training Centre. It did not happen then and it could still be five years away, apparently.

Some 11 years ago in this place the parliament passed, with very little debate, a special act, the sole purpose of which was to undermine the effect of international treaties on South Australian administrators. In fact, this act, the Administrative Decisions (Effect of International Instruments) Act 1995, was a direct response to the High Court's decision in the case of Minister for Immigration and Ethnic Affairs v Teo, where the court held that Australian citizens had a legitimate expectation that our public servants and ministers would have proper regard to international treaties we have signed when making administrative decisions. That High Court case related to the Convention on the Rights of the Child, which was ratified by Australia in 1991. My questions are:

1. Does the minister believe that the United Nations Rules for the Protection of Juveniles Deprived of Liberty and the United Nations Convention on the Rights of the Child represent appropriate standards for the operation of youth detention centres in South Australia, including the Magill Training Centre?

2. Will the minister now issue a directive to all staff involved in the detention of juveniles to comply with these United Nations standards?

3. Given the breaches of international standards highlighted by Ms Simmons in her report in relation to the Magill Training Centre, will the minister now support the repeal of the Administrative Decisions (Effect of International Instruments) Act 1995?

**The Hon. CARMEL ZOLLO (Minister for Correctional Services):** I thank the honourable member for his questions, which I will refer to the Minister for Families and Communities in the other place and bring back a response for him. I place on record that there will be a new youth detention centre to be redeveloped at Cavan at a cost of $79 million—we obviously heard that in the budget. It is a figment of nobody's imagination; I can assure the honourable member that it will be going ahead.

## ROADSIDE MEMORIALS

**The Hon. S.G. WADE:** I seek leave to make a brief explanation before asking the Minister for Road Safety a question relating to roadside memorials.

Leave granted.

**The Hon. S.G. WADE:** Earlier this month the minister advised the council that for road safety reasons her department does not encourage roadside memorials and the government is working with local government to ensure that if roadside memorials are placed they are situated sufficiently back from the kerbing to ensure they do not distract people. Saturday's *Advertiser* reported that the Local Government Association is no longer pursuing a new policy on roadside memorials. A spokesman for the Local Government Association is reported as saying 'the councils have decided to look at whether the problem in this area results from state legislation.' I quote:

> Clearly if people are not applying for permission and in 99 per cent of cases councils are not taking any action, then it may be that the legislation is out of step with current requirements.

I ask the minister:

1. In light of the revelation that councils are not applying the law in relation to roadside memorials, what action will the minister take to protect road safety?

2. Does the minister agree that the problem, in fact, in this area is the state government legislation governing them?

**The Hon. CARMEL ZOLLO (Minister for Road Safety):** I thank the honourable member for his question. I responded to a question—actually, we have got the Hon. Terry Stephens here but I thought it was you who asked the question. No? I think they must have had the wrong person in the *Hansard*. I have certainly placed on the record the view of the Department of Transport from the road safety point of view, both in estimates and in this place. Again, I do understand that different people grieve differently when a fatality does occur to their loved ones.

We obviously had discussions with the LGA in relation to its draft policy, but I have now been advised that it will defer that draft policy. The LGA will be having discussions with the Minister for State/Local Government Relations. I will be kept informed as to the outcome of those discussions and then I will be in a better position to bring back a response for the honourable member.

## AMY GILLETT FOUNDATION

**The Hon. I.K. HUNTER:** I seek leave to make a brief explanation before asking the Minister for Road Safety a question about the Amy Gillett Foundation.

Leave granted.

**The Hon. I.K. HUNTER:** I am quite sure that all members were saddened by the tragic death of cycling champion Amy Gillett in Germany in July 2005. Following her death, the Amy Gillett Foundation was formed. Will the minister explain how the foundation is working to improve cycling safety?

**The Hon. CARMEL ZOLLO (Minister for Road Safety):** I thank the honourable member for his question. As members would know, Amy Gillett was an ambitious Australian in the prime of her life when she was tragically run down by a car while training. Amy, a true member of the nation's athletic elite, not only had a successful career in rowing that saw her represent Australia at the Atlanta Olympic Games but she was also a champion cyclist on the path to achieving even further success.

In March this year, the Amy Gillett Foundation was officially launched. The foundation is supported by the state government which donated $50 000 in 2005. The Premier also encouraged other state governments to do so, and Victoria and Queensland followed suit. Earlier this year, I met with the Amy Gillett Foundation General Manager, Melinda Jacobsen, to discuss how our state government is working towards an ambitious road safety target of a 40 per cent reduction in fatalities and serious injuries by the end of 2010. We discussed the foundation's goal of a safe and harmonious relationship of shared respect between cyclists and motorists, as well as various road safety initiatives, including Safety in Numbers: The Cycling Strategy for South Australia 2006-2010.

Ms Jacobsen mentioned that she believes this strategy is one of the best in Australia and a leading example of how whole of government can work together. In addition to the strategy, Ms Jacobsen praised the government's approach to improving roads and cycling lanes, including the state government dedicating $600 000 towards improving cycling black spots and $400 000 towards the State Bicycle Fund in 2006-07, as well as the Share the Road campaign, Bike Ed and enforcement regarding driver behaviour.

Today I was pleased to have the opportunity to meet again with Ms Jacobsen and I noted that the foundation has produced its first annual report detailing its achievements so far. I congratulate the Amy Gillett Foundation for its dedication to improving road safety. Not only is it raising cycling awareness but it is also assisting Amy's injured team mates with their recovery and career aspirations. The foundation has created the Amy Gillett Scholarship which supports young female cyclists who embody the sporting and educational aspirations of Amy. The foundation should be proud of how it has honoured the memory of Amy Gillett.

## DRUG TESTING

**The Hon. D.G.E. HOOD:** I seek leave to make a brief explanation before asking the Minister for Police questions about drug testing outside licensed venues.

Leave granted.

**The Hon. D.G.E. HOOD:** *The Basingstoke Gazette* reported on Friday 17 November this year, just a few days ago, that in Winchester on the south coast of the UK police that weekend—that is, last weekend—would be testing people on their way into four city pubs, stopping and questioning anyone who gave a positive result for illicit substances. The testing involved the door supervisor brushing a small tab across the tips of the customer's fingers and then inserting the tab into a machine in order to give a reading. If the customer produced a positive reading for any illegal substance, they were detained and questioned by police. Those testing positive were also banned from entering the pub that night, while anyone actually caught with drugs on them were arrested and prosecuted. The machine, which the gazette reports costs $A79 000, tests for cocaine, ecstasy, amphetamines, cannabis and, importantly, date rape drugs such as GHB and Rohypnol. My questions are:

1. Will the minister purchase such a machine for random drug testing at licensed venues and rave parties in South Australia?

2. Without such technology, what method do SA Police currently use at licensed venues and rave parties to patrol for illicit substances?

3. Do SA Police have the necessary powers to perform the same sort of venue drug testing as is being adopted on the south coast of the United Kingdom?

**The Hon. P. HOLLOWAY (Minister for Police):** The honourable member asks an important question and, rather than trying to give my lay person's understanding of the legal issues involved and given that it is a fairly complicated issue, I think it would be wise for me to take that question on notice and get advice from the Attorney-General's Department. Certainly, as a matter of general practice, the most common form of drug testing undertaken now is through random tests on roads, but that is not looking at the illicit consumption of drugs so much as trying to take people who are affected by drugs off the road, so that has a different purpose. I am sure the honourable member is also aware of the debate in relation to dogs that are trained to sniff. There are issues involving legal powers and how far they can be used in terms of detecting drug use in situations referred to by the honourable member such as rave parties and the like.

So, a number of important issues are involved and tied up in the question. By comparison, if one looks at alcohol, I think the provisions generally are similar in that, if someone is behaving in an apparently intoxicated way, police can test the person. If they have a reasonable belief the person is intoxicated or affected by drugs, they can undertake that test but, in terms of random tests, I think the position is pretty much the same as that which applies to randomly testing people for alcohol. As I understand it, there is essentially no difference. There are some complicated legal opinions, and I have probably already blundered too far into them. I will make sure we get a properly considered viewpoint for the honourable member.

**The Hon. A.M. BRESSINGTON:** I have a supplementary question, Mr President. Is the minister saying that it is not acknowledged that it is actually illegal to consume illegal drugs?

**The Hon. P. HOLLOWAY:** Of course it is illegal to be intoxicated and it is illegal to consume drugs. The police have the power to search for drugs where they have a belief. Perhaps I can answer the question this way. Police powers in relation to search, of course, have to be generally based on a reasonable belief. Therefore, in relation to searching for drugs or testing people who it is believed have consumed them, it is my understanding (as I said, I will get a full picture

for the honourable members concerned) that there has to be some reasonable belief before they can undertake that test.

Of course, it is illegal to consume drugs, and the police have adequate powers, I would suggest, to perform the relevant tests that are necessary to come up with the evidence. Whether with no belief you can just stop someone at random at an airport is one of the questions that has to be looked at. If, for example, we are going to have dogs randomly checking people, this parliament will ultimately have to determine what level of checking can be undertaken.

**The Hon. T.J. STEPHENS:** I have a supplementary question arising from the original answer. Will the minister promote legislation to ensure that there is no impediment to using drug dogs in any situation?

**The Hon. P. HOLLOWAY:** The point to be made is that the law is quite complicated in relation to these matters and, as I indicated in an answer during the estimates committees, the government is awaiting the advice or recommendations of the police in relation to this matter to clarify what legislation is necessary. If we get advice from the police that we need it, then of course we will take it on board. At this stage I am still awaiting advice from the police in relation to exactly what, if any, changes need to be made to the legislation.

## POLICE TRAINING

**The Hon. T.J. STEPHENS:** I seek leave to make a brief explanation before asking the Minister for Police a question about police training in South Australia.

Leave granted.

**The Hon. T.J. STEPHENS:** I have been advised that, currently, police training recruits no longer take part in exercises such as wall climbing and some parts of self-defence and riot training, where objects such as tennis balls are thrown at recruits to simulate riot conditions, albeit a softer object than would usually be thrown during a riot. Police work is often physical and dangerous, so it would seem that these aspects of training are quite important. Police officers who have contacted me seem to share this viewpoint and are concerned by these changes. The same officers have also shared with me that these training drills have been a staple part of training for many years. Will the minister advise whether the reported changes to the training program are correct and, if so, why the decision was made to effectively soften training programs?

**The Hon. P. HOLLOWAY (Minister for Police):** I am certainly not prepared to concede that training has necessarily been softened. Today I was at the graduation ceremony for the 17 graduates of the first course for 2006, as was the shadow minister. It was pointed out that this was the first course to come through a new training program. I am aware that some changes have been introduced, one being that after graduation these officers will remain in the metropolitan area for at least six months before they are assigned to regional areas so that they can have more intense training during that period. The idea is to try to ensure there is more follow-up. They will have trainers involved during at least the first six months of the probation period.

Certainly the training has been changed, but I would not agree that it has been softened. As to the exact details, I will take that question on notice and get some information for the honourable member. In relation to the particular types of applications that the honourable member mentioned—crowd control and so on—I am sure it will be the Police Commissioner's intention that, whenever there is deployment of his forces in relation to those activities, he will ensure they have adequate training for the job. Whether that should all be done during the nine-month program of initial recruitment or whether these extra skills are honed during later training is a matter for the Police Commissioner. I will obtain information from him in relation to that specific question.

## WATER SUPPLY

**The Hon. J. GAZZOLA:** I seek leave to make a brief explanation before asking the Minister for Environment and Conservation a question about water savings and efficiencies.

Leave granted.

**The Hon. J. GAZZOLA:** We all know that in South Australia we are possibly experiencing a one in 100-year drought and that, as a result, the most stringent water restrictions in the state's history have been implemented and this government is now taking action to secure South Australia's water future.

*Members interjecting:*

**The PRESIDENT:** Order! The Hon. Mr Gazzola has the call.

**The Hon. J. GAZZOLA:** We all have responsibility for our water and, no matter whether you are simply a home owner or involved in a major industry, water saving measures are critically important. Can the minister elaborate on what is being done to help householders conserve South Australia's precious water resources?

**The Hon. G.E. GAGO (Minister for Environment and Conservation):** I thank the honourable member for his very important, insightful and well-informed question. I am pleased to inform the chamber that measures to conserve our threatened water supplies go way beyond those that simply fill local headlines, such as water restrictions. While water restrictions and permanent water conservation measures target outdoor water use, we know that there are many water savings to be made inside our homes.

The state government is committed to the sustainability of our precious water resources and we know that this requires a combined effort right across the country. Just this weekend I was very pleased to unveil an important industry-related water saving program, EcoSmart, on behalf of the Minister for Industrial Relations, the Hon. Michael Wright. The EcoSmart environmentally sustainable plumbing program is sponsored by SA Water and is designed to raise awareness of water and energy initiatives in the plumbing industry, as well as encouraging plumbers to promote wise water use to customers in the course of their work.

Plumbers are in an ideal position to help householders identify areas of water wastage and understand more about water conservation indoors. Just think of the power of local tradespeople armed with the latest knowledge when dealing with customers—knowledge on the latest water-saving products (including shower heads, toilet cisterns and low-flow fittings) and how these can be utilised, often for comparatively similar costs as traditional products, as well as details of the savings householders can make in the long term by choosing wisely. This program will also equip accredited plumbers to help manage property-based grey water recycling systems, prepare water efficiency audits, and advise customers on water saving. Plumbers completing this course will also help the government deliver on our Waterproofing Adelaide strategies that target household use.

EcoSmart is an invaluable front line initiative that I can honestly say is being embraced by the industry, and it is one example of how we can work with industry and the community to make a difference and achieve some of our Waterproofing Adelaide targets to increase water efficiency. More than 80 trainees have completed the EcoSmart training program—and they are all to be congratulated—and at least six programs will be run each year.

**The Hon. D.W. RIDGWAY:** I have a supplementary question arising out of the minister's answer. In relation to the Waterproofing Adelaide strategy, can the minister provide details of what projects, other than the ones started by the previous government or funded by the federal government, this government has commissioned?

**The PRESIDENT:** The honourable member will complete his question before he sits down.

**The Hon. G.E. GAGO:** He is tired, Mr President; they are all very tired on that side. It is a very tired opposition. It is with great pleasure that I have the opportunity to answer the supplementary question. The South Australian government is committed to water conservation by promoting innovative—

*An honourable member interjecting:*

**The PRESIDENT:** Order!

**The Hon. G.E. GAGO:** —new ways to supply water. There are numerous initiatives under way to optimise the use of Adelaide's water sources, including water use efficiency, and also to promote alternative water use. We have, for instance, a permanent—

*An honourable member interjecting:*

**The PRESIDENT:** Order! I must say how quiet the first half of question time was before the Hon. Mr Ridgway entered the chamber. The Hon. Mr Ridgway will cease to interrupt the council.

**The Hon. G.E. GAGO:** In terms of some of the initiatives that I have been asked to outline, let me just start with our permanent water conservation measures, which were introduced into South Australia back in October 2003. These ongoing measures restrict the use of sprinkler systems between 8 a.m. and 8 p.m.—

**The Hon. D.W. Ridgway:** Restrictions; that's a good strategy!

**The Hon. G.E. GAGO:** I have only just started; there are a lot more. Sit back in your seat. I know you are tired; you are very tired so sit back, get your cushion and get comfortable while I outline—

**The Hon. J.S.L. DAWKINS:** I rise on a point of order, Mr President. I do not think it is appropriate to be saying, 'You're tired.' The minister should direct her comments through the chair.

**The PRESIDENT:** I can assure the council that the President is getting tired of the interjections.

**The Hon. G.E. GAGO:** As I said, these ongoing measures restrict the use of sprinkler systems between 8 a.m. and 8 p.m.; ban hosing of driveways and cars; and introduce mandatory use of trigger nozzles for all hoses. Waterproofing Adelaide: A thirst for change 2005 to 2025 establishes strategies for the management, conservation and development of Adelaide's water resources to 2025, and that was released in July 2005. The Waterproofing Adelaide area comprises metropolitan Adelaide and adjacent regions, including the Mount Lofty Ranges Watershed, the Northern Adelaide Plains and the Willunga Basin. Waterproofing Adelaide contains 63 strategies under three themes—

**The Hon. D.W. Ridgway:** What actually have you done?

**The Hon. G.E. GAGO:** I will get to it, if you just relax—

*Members interjecting:*

**The Hon. G.E. GAGO:** There is more; there is a lot more.

**The PRESIDENT:** Order! Opposition members will sit there and cop their punishment.

**The Hon. G.E. GAGO:** Waterproofing Adelaide contains 63 strategies under three themes: managing our existing water resources; responsible water use and additional water supplies; and fostering innovation. Full implementation is estimated to save 37 gigalitres (1 000 million litres) per annum through these conservation based initiatives, and 33 gigalitres per annum of stormwater and recycled effluent use. The strategy recognises a number of initiatives taken by the government since its adoption. Each of the 63 strategies have started to be implemented; seven of the strategies have already been completed, with many of the others nearing completion or remaining as ongoing activities—and I am happy to outline those.

Under this Waterproofing Adelaide strategy the South Australian government has taken the following steps to improve water use efficiency in households: on 1 July 2006 it became mandatory in South Australia to install rainwater tanks and have them plumbed into the house, for new developments and some extensions or alterations to existing homes—there were some provisions there; and the additional water supply is required to be plumbed to a toilet, to a water heater, or to all cold water outlets in the laundry of a new home.

I am also informed that, to further build on the mandatory rainwater tank requirements for new homes, the government has introduced a rainwater tank plumbing rebate scheme for existing homes, from 1 July 2006, whereby rebates up to $400 are available to plumb new or existing rainwater tanks into existing homes built or approved before 1 July 2006. SA Water is responsible for administering this particular scheme. The government is investing half a million dollars a year over four years in this scheme. A range of rebates is also available to encourage households to undertake other water saving measures. These include rebates for the purchase of water saving devices, such as water efficient shower heads, tap timers, and water flow restrictors. This scheme, known as the Drought Response Rebate Scheme, has been in operation since June 2003.

The South Australian parliament recently passed water efficiency labelling standards under the South Australian Water Efficiency Labelling and Standards Act 2006, which came into operation on 17 July 2006. The labelling of water efficiency products assists purchasers in making better, well-informed choices about water, using fittings and appliances for the home. Waterproofing Adelaide anticipates savings of about 8 per cent, achievable over a 10-year period through the implementation of this particular labelling scheme. The government, through SA Water, also offers a voluntary water audit service for industrial and commercial water users and, of course, there are also resources provided by SA Water on how to undertake your own household water audit.

In addition to the Australian government's Water Fund, the National Water Commission has approved South Australia's water projects, which have attracted $80 million from the Australian government's Water Fund and generated total investments of $204 million when combined with South Australian government, local government and industry contributions. These include a range of water conservation

improved water management initiatives and infrastructure projects arising from the Waterproofing Adelaide strategy. For example, there is the Mount Lofty Ranges sustainable Management Project, which will improve the management of the region's water resources; metropolitan Adelaide stormwater reuse projects, which will implement stormwater harvesting capture treatment; underground storage; and reuse of three—

**The Hon. D.W. Ridgway:** A good use of question time. It's a disgrace.

**The Hon. G.E. GAGO:** You asked the question. You wanted to know what we have done. They sit there scoffing and bagging this government in terms of its response to water conserving measures, with all the work we have done and now, Mr President, they do not want to hear all the things we have done. It takes time to list all of our initiatives and they call this an abuse of question time. It is an absolute disgrace.

*Members interjecting:*

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

**The Hon. G.E. GAGO:** To wind up, other projects include: ground water assessment initiatives; integrated water resource management in the South-East; remote reading of irrigation water meters in the Riverland; an environmental water trading initiative; implementing National Water Initiative reforms in South Australia; waterproofing in the south; statewide waste water recycling projects; and many others. I could go on and on, but I think that at least gives a brief outline of just some of the initiatives we have put in place.

**The Hon. M. PARNELL:** I have a supplementary question relating to the minister's original answer which, members might remember, was to do with plumbers trained in water conservation. Will the government lead by example and engage one of these environmentally conscious plumbers to audit the showers in Parliament House? To the best of my knowledge, not one of them has a water saving shower-head fitted, although I have not been into the women's showers.

**The Hon. G.E. GAGO:** I would be very pleased to follow up that matter.

**The Hon. A.M. BRESSINGTON:** I have a supplementary question. Will the minister confirm that the $400 rebate for the purchase or fitting of tanks, the $250 000 spent on that, will service 5 000 people in South Australia? What will we do with the other 995 000 people?

**The Hon. G.E. GAGO:** A scheme has been put in place. It is an important initiative which the previous government did not think about. We are rolling out these initiatives in terms of those who request these rebates. It is such a churlish and begrudging question, but I am happy to bring back a response.

## BOLIVAR PIPELINE

**The Hon. G.E. GAGO (Minister for Environment and Conservation):** I seek leave to make a ministerial statement.

Leave granted.

**The Hon. G.E. GAGO:** Earlier today I was asked a question about the SA Water project to extend the pipeline from the Bolivar treatment works to Virginia. As I have said in this place before, the proposal to extend that pipeline is led by SA Water, which comes under the portfolio of the minister in another place. The questions the honourable member asked the other day pertained to that project being led by SA Water and the minister and, as I have already indicated, I am happy to take the question on the project to the minister in another place.

Since the honourable member's question today, I have had my staff check, and I can advise that the EPA does licence the Bolivar treatment works, just as it independently licenses many other industries. However, I am advised that the existence of an EPA licence has no direct relevance to the progress of that particular project.

## VON EINEM, Mr B.S.

**The Hon. CARMEL ZOLLO (Minister for Emergency Services):** I seek leave to table a ministerial statement which has just been delivered in the other place—

*Members interjecting:*

**The Hon. CARMEL ZOLLO:** We can extend question time.

**An honourable member:** You do a good job of that anyway.

**The Hon. CARMEL ZOLLO:** Thank you. I seek leave to read this statement by my colleague the Hon. John Hill.

Leave granted.

**The Hon. CARMEL ZOLLO:** It states:

I have further information to inform the house in addition to my statement yesterday on the prescription of Viagra-style drugs to Bevan Spencer von Einem. After I learnt of this appalling incident, I asked the department to seek advice from the Crown Solicitor's Office regarding whether the doctor involved breached any laws, policies, directions, rules or regulations. The doctor was suspended from his current position in the health portfolio pending this investigation.

I have now received advice from the Assistant Crown Solicitor who concludes that there was no breach of policies or directions and therefore no basis to discipline the doctor. I understand that the doctor has been told he is no longer suspended and will be soon returning to work. The Crown Solicitor believes that there may be proper grounds for the referral of the doctor to the Medical Board, and that has happened.

In addition to my ban on the Prison Health Service's issuing these drugs, the Crown Solicitor recommends changes to the Correctional Services Regulations. I have forwarded that advice to the Minister for Correctional Services for her advice. The Department of Health is also conducting an inquiry into the way that clinical decisions are made within the Prison Health Service, and the Department for Correctional Services is reviewing the joint protocol between the two services.

## CHELTENHAM RACECOURSE

**The Hon. NICK XENOPHON:** I seek leave to make a brief explanation before asking the Leader of the Government, representing the Minister for Infrastructure, questions on the proposed redevelopment of the Cheltenham Racecourse.

Leave granted.

**The Hon. NICK XENOPHON:** On 18 October, the Premier and the Minister for Infrastructure announced that the state government would be prepared to give approval to the South Australian Jockey Club (SAJC) to sell the Cheltenham Racecourse for the purpose of potential redevelopment on the proviso that developers allow for 20 hectares (40.6 per cent) of open space, despite widespread community opposition to the Cheltenham open space being reduced in this way.

I note the hard work and advocacy on behalf of the local community by the federal Labor member for Port Adelaide, Rod Sawford, who has been very critical of this proposal. However, the Land Management Corporation (LMC) has also advised the government that this open space offers significant

community benefit from the proposed redevelopment. The endorsement by the state government has paved the way for the SAJC to put the development of the land to tender on the open market to seek expressions of interest from developers.

I recently obtained a copy of the Cheltenham Racecourse Preferred Development Option Map, which includes a 'community sport and recreation centre adjacent to a neighbourhood shopping centre', with retirement and housing accommodation being incorporated into the development. There are a number of people in the local community who consider the so-called community sport and recreation centre is a euphemism and a smokescreen for a pokies venue in the complex and, as such, the description is inherently misleading. I table the map referred to. My questions are:

1. What role, what input, did the LMC have in relation to the map referred to?

2. Will the minister confirm that the plans for the community sport and recreation centre will contain a pokies venue, and what knowledge of this did the LMC have and at what time?

3. Given that the plan refers to a shopping centre in the proposed complex, has the LMC or any other entity given the minister any advice about any breach of section 15A of the Gaming Machines Act, which prohibits pokies venues being located under the same roof as shops within a shopping complex or a common car park and, if so, what has that advice been?

**The Hon. P. HOLLOWAY (Minister for Urban Development and Planning):** The Minister for Infrastructure has control of this matter, but I can say that any rezoning of that area to take place would have to come through a plan amendment report or a development plan amendment, as they would be called. I am sure that any proposals for community centres, with or without poker machines, would all have to be closely analysed in relation to that process. I am not aware of any pokies venue being a part of that, but I will refer that question on to the Minister for Infrastructure or else get further information from Planning SA, should it be relevant, in relation to that question.

## MATTERS OF INTEREST

### WOMEN, VIOLENCE

**The Hon. I.K. HUNTER:** This coming Saturday is International Day for the Elimination of Violence Against Women. For 16 days up to International Human Rights Day on 10 December, people the world over will take action to highlight and help eliminate violence against women. These 16 days of activism, which also take in International Women and Human Rights Defenders Day and World AIDS Day, is used by groups such as Amnesty International and other groups and individuals around the world to call for the elimination of all forms of violence against women by raising awareness about gender-based violence as a human rights issue for local, national, regional and international levels; strengthening local work around violence against women; establishing a clear link between local and international work to end violence against women; demonstrating the solidarity of women around the world who work towards eliminating violence against women; and creating tools to pressure governments to implement policies and promises made to eliminate violence against women.

Amnesty International has compiled a sobering collection of statistics highlighting the fact that women in Australia are still experiencing unacceptable levels of violence. At least one woman per week is murdered by a current or former partner in Australia. Over 126 000 women in Australia have experienced some sort of sexual assault in the past year; that is 345 (on average) each day. Then, 41 per cent of women have experienced sexual harassment in their lifetime. Violence and abuse of one form or another affect over half of Australian women in their lifetime. There are also disturbing figures about the estimated rates of trafficking of women for sexual exploitation and the incidence of forced marriage. These figures are truly appalling.

Apart from the human toll there is an economic imperative to get our house in order regarding violence against women. Access Economics estimates that the total cost of domestic violence to the Australian economy—and it notes that this is only domestic violence and does not include sexual violence, stalking, sexual harassment and the horrifying so-called honour crimes and murder—was around $8.1 billion for the year 2002-03.

The latest ABS figures indicate that violence against women is on the rise. Obviously more needs to be done to curb violence against women, but the approach needs to be systematic. Under international law, nations have clear responsibilities to protect their citizens from preventable violence. General recommendation 19 of the United Nations Committee on the Elimination of Discrimination Against Women states:

> Under general international law and specific human rights covenants, States may. . . be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.

In 1995, Australia, along with many other nations and NGOs, became a signatory to the Beijing Platform for Action, which requires signatory governments to develop comprehensive, adequately funded strategies to prevent and eliminate violence against women. For example, we still have insufficient funding for emergency accommodation, with one in two women and two out of three children being turned away from refuges. We have a situation where children accompanying women to refuges are not treated as clients, so funding allocation for these refuges is inaccurate and inadequate. As well, there are acute shortages in services for rural and remote areas, where the majority of women and children seeking help are indigenous.

The arguments for a stronger, better funded, more integrated national approach are clear. We, as legislators, need to look at the underlying causes of violence against women and approach the problem in a multifaceted way, looking at the impact of geography, ethnicity, education, cultural and religious expectations, socio-economic contributors, disability and sexuality on both the incidence of violence and our responses to it. We need to look seriously at an overhaul of the definitions and penalties for acts of violence against women so that what is a major crime in one state or territory is not treated in a different fashion in another. Laws need to be consistent across our borders to protect women wherever they are within Australia.

It is easy to feel overwhelmed by statistics like these, and it is easy to conclude that we can do nothing about them. But

we know as legislators that we can make a difference and that national political leadership on issues can influence society as a whole. Australia is a signatory to the Beijing Platform for Action and the Declaration on the Elimination of Violence against Women and, therefore, it has committed to develop a comprehensive plan of action to eliminate violence against women. By participating in these 16 days of activism, and by wearing the white ribbon, we are making a visible declaration that we expect all governments to continue their efforts to properly address and work towards eliminating violence against women.

## FEDERALISM

**The Hon. S.G. WADE:** Federalism is central to the vibrancy of our Australian democracy. Federalism supports a strong national government able to defend the nation, maintain international relations and coordinate a range of services at a national level. At the same time, federalism facilitates vibrant government in each state, dealing with issues in a way that is sensitive to the diversity of our nation. The Liberal Party's federal platform, approved by Federal Council in 2001, puts it well:

> Australian federalism reflects the fact that, while some tasks of government are best performed nationally, many responsibilities are better carried out by other spheres of government. Liberals strongly support federalism. Federalism. . . takes government closer to local people, creating higher levels of democratic participation and government more closely reflecting the people's wishes and regional needs.

For Liberals, this is not a matter of states' rights: it is a matter of the rights of individuals. Decisions should be made as close as possible to people. If the individual cannot make them, the decision should go only as far beyond them as absolutely necessary and no further. There may be scope for improving our federal arrangements but, as Liberals, we believe that improvements are more likely to be truly federal, not centralist.

Unfortunately, the same cannot be said for the Australian Labor Party, and certainly not for this government in South Australia. While Premier Rann pays lip service to federalism, it is more often a guise for cheap political shots where words are not backed up with actions. First, Labor denies responsibility. In spite of huge GST and property related revenue windfalls, whenever it is held to account for its mismanagement of basic services, the Rann government tries to blame the commonwealth. Revenue that could go into improved services or lower taxes is being squandered through mismanagement of the Public Service. As I highlighted in my Appropriation Bill speech, rather than take action on obesity, the Rann government prefers to try to distract attention from its inaction on to fast food advertising—an area of federal government responsibility.

Secondly, the Rann Labor government abdicates responsibility. This government too often abdicates responsibility, for example, by waiting for a national regime. In July, *Advertiser* journalist Greg Kelton noted this trend amongst Rann government ministers, particularly minister Gail Gago. He said that it is perceived that seeking a national approach is pollie-speak for, 'It's too hard, so let's fob it off for a few years.' Waiting for leadership from this government is like waiting for Godot.

Thirdly, the Rann government seeks to evacuate responsibility. For example, earlier this year Treasurer Kevin Foley called on the federal government to take over the management of the health system in South Australia. Having put the health system in crisis rather than fix it, Labor wants to evacuate. The people of South Australia elect us to govern well and we must not shirk our responsibility. As a federalist, I am concerned that the recent High Court decision on WorkChoices may give scope for undermining the federal balance. But, again, I refer to the Liberal Party federal platform, as follows:

> A strong federal system requires commitment for the governments of the states and the commonwealth. Responsibilities should be divided according to federal principles without the commonwealth taking advantage of powers it has acquired other than by referendum.

I trust that the Howard Liberal government will ensure that the High Court decision is not exploited inappropriately so as to disturb the federal balance.

Let us be clear about Labor's hypocrisy on this. While Rann decries the damage to federalism and the loss of a state-based industrial relations regime, federal Labor is committed to a national industrial relations regime. Following the High Court's decision, Kim Beazley has pledged to use 'the full powers' made available by the High Court judgment to build a national industrial relations system. This is not surprising. Through Whitlam, Hawke and Keating we saw Labor's creeping centralism. At times, Labor breaks out into open displays of contempt for the states, such as Whitlam's plan to abolish the states in preference to an expansion of regional government. While the Liberal Party is committed to a modern, dynamic federation, Labor's craving for power feeds centralism. While Rann cries crocodile tears and Beazley licks his lips, the Australian government would do well to keep federal government in the hands of the party which has a long and proud tradition of supporting federalism—the Liberal Party.

## MOUNT GAMBIER CHRISTMAS PAGEANT AND BETTER LIFE FESTIVAL

**The Hon. B.V. FINNIGAN:** What an extraordinary contribution from the Hon. Mr Wade! He is a bit like a communist commissar clinging to his little red book and reading about the great platforms of justice that the party represents while the tanks are rolling through the streets.

I begin by noting the 43rd anniversary of the death of President John Fitzgerald Kennedy, and also Clive Staples Lewis, and wish them eternal rest. However, I rise today principally to congratulate the participants and organisers of the Mount Gambier Christmas Pageant and the Better Life Festival, which occurred last weekend. The Christmas pageant, which I remember going to as a child, happened again this year. The pageant has been going for over 50 years, and it is a very important event for the local community and for communities in the area. I place on record an acknowledgment of the mayor, Mr Perryman, and Mr Graham Gilbertson, the parade committee chairman, as well as Miss Gina Ploenges, the parade secretary, and Mr Peter Mounsey, a development adviser engaged to work on the pageant this year.

There are, of course, a large number of floats and participants in the pageant, and special mention should be made of the bands that participated, some of which travelled quite some distance. Participating bands were: the Mount Gambier City Band which is, of course, a local band; the Tarrington Brass band, which comes from near Hamilton in Victoria; the Hamilton Brass Band; the Mildura District Brass and the BIU Broken Hill Band; the Marion City Band and Warriparinga Brass Band; the Sunshine Community Brass Band from

Melbourne; the Salisbury City Band; and the Tanunda Town Band. I say a great thank you to all of those bands, many of which travelled some distance to participate in the parade, and to the sponsors who assisted them with transportation.

A number of floats were very impressive, three of which I will mention in particular: the Sutton Town Primary school; St Martin's Kindergarten; and the Mount Gambier Gift Organising Committee. These floats all had one very important thing in common: they featured members of my family. My nieces and nephew participated in those floats and did a very good job.

**The Hon. R.I. Lucas:** Were you in one?

**The Hon. B.V. FINNIGAN:** I was not; I was a spectator.

**The ACTING PRESIDENT (Hon. J.M. Gazzola):** Order!

**The Hon. B.V. FINNIGAN:** Thank you, Mr Acting President, for your protection. I congratulate St Martin's Lutheran College also, which had a very good float of Noah's ark, which was followed by a lot of the students dressed up as pairs of animals, which was a good and fitting scene. The St Paul's World Youth Day Committee had Joseph and Son, carpenters of Nazareth, which had a couple of people dressed as St Joseph and a younger Jesus working in the carpentry shop, which was a good demonstration of the humility and simplicity of the holy family.

It was also a good sign of local commitment that television, Channel 8 down there, covered the event, as it has done for 33 years, and telecast the event later in the evening. The Christmas pageant was followed by the Limestone Coast Better Life Festival, which happened in Vansittart Park and gardens on the weekend, as well as a farmers' market, which was a good opportunity for local performers and various bands to exhibit themselves, as well as story telling and face painting for children and a number of other activities. There was also a large number of people talking about making quality choices in their health and life with a number of different presentations on a number of themes. That event attracted a lot of sponsorship from local companies, including the local television station and the City of Mount Gambier. I congratulate all those involved in the Christmas pageant and the Better Life Festival, particularly the council and all the sponsors and participants.

## GOVERNMENT PERFORMANCE

**The Hon. R.I. LUCAS (Leader of the Opposition):** I join with Mr Finnigan in congratulating the people of Mount Gambier. I suggest that the Hon. Mr Finnigan should participate next year. I could suggest a couple of ideas for floats that he may be quite appropriate for. We will pursue it on another occasion. Last week I raised the issue of the arrogance of this government, its ministers and members, and I talked about the bullying and intimidation with which I am sure members would be familiar. The instances I gave last week I will not repeat, but I highlighted briefly at the end the examples of Cora Barclay, John Darley (the former valuer-general), and my very good friend and colleague the Hon. Mr Xenophon, who was verbally abused by the Treasurer and the Minister for Infrastructure—an incident that attracted some publicity. There was also the case of the RAA. Two of those I will refer to in some detail. John Darley led an organisation called the Land Tax Reform Association, and still does. Initially it was a small group that grew rapidly—

*The Hon. B.V. Finnigan interjecting:*

**The Hon. R.I. LUCAS:** Well, he is. They were very active in terms of opposing what they saw as outrageous increases in land tax imposts on their investments. Without going into all the detail, he is a former valuer-general who was respected and, certainly from my side of politics, not known to be associated with any particular party or view but became active on the issue of land tax, as did many others. The government's behaviour towards Mr Darley, in particular the Treasurer's behaviour, was absolutely disgraceful. As an indication of his and the government's behaviour towards any critic of the government, it becomes a personal battle that involves not only personal abuse but, on occasions, public abuse. In essence, he and his group were described as a Liberal front, Liberal Party branch meetings and other phrases like that. There has also been the example given in the parliament of an exchange between Mr Darley and the Treasurer at a meeting, which again I do not have time to go into. However, in my view it is attempted bullying and intimidation by the government.

The RAA is another good example. This is an organisation not known for taking sides in terms of political interests, having roundly condemned both Liberal and Labor parties (state and federal) when something cuts across its particular area of interest. Again, the government's response was, in essence, to attack the RAA and attempt to bully and intimidate it into submission on the grounds that it had been unfairly critical of the state Labor government in relation to that government's performance on roads.

Another example I did not mention was the case of the member for Florey, and evidence has been given regarding action taken by the Attorney-General towards that honourable member. There are many examples of a government rotten to the top in relation to bullying and intimidation and reeking with arrogance. It is not just the Premier, it is also the Treasurer and the Attorney-General—and, sadly, it seeps down even to the backbenchers in this chamber and the other place in terms of their approach to anyone who has a view different from their own.

However, they are very thin-skinned. Last week, I highlighted the approach of the Treasurer and the government when *The Australian* took up some issues with them. Another example was straight after the state budget. Matthew Abraham and Deb Tribe made a reference to Kevin Foley's partner, Emma, who was there watching at the budget lock-up, saying:

> His partner Emma was there watching, I thought that was different, I hadn't seen that before, but that's nice I suppose. . .

My sources within the government media advisory group tell me that the Treasurer went right off his tree over that particular reference—which, I might say, was fairly innocuous—and it will be interesting to note the frequency (or otherwise) of the Treasurer's future appearances on the Matthew Abraham and David Bevan show. I may well refer to that on another occasion.

## THOMPSON, PASTOR M.

**The Hon. NICK XENOPHON:** Last Thursday, along with my colleagues the Hons Ann Bressington and Andrew Evans, I was privileged to attend the funeral of Pastor Morrie Thompson, the director of Teen Challenge in South Australia, who passed away on Remembrance Day, 11 November 2006, after a long battle with cancer. He left us too young at the age of 60.

Morrie was a Vietnam War veteran who served with distinction in the Army. On completion of his service he returned to Adelaide suffering from the traumas of that war. He lived under a tree in Victoria Square for a number of years and became an alcoholic with no prospects for the future. In Mount Gambier in 1980, after becoming a Christian and conquering his alcoholism, Morrie married Julie. His first assignment as a pastor was to a church in Millicent, where he served for many years. He also became involved in local government. He was certainly a community leader, and he built up that church—which was a reflection of his following in terms of the message he was taking to the community.

In 1989 he returned to Adelaide to take over Teen Challenge. Because of his background he identified with those who lived on the streets, those who were addicted to drugs, alcohol and gambling, and those who were victims of abuse, and he made himself available any time of day or night to nurture those whose self-esteem had hit rock bottom. Accommodation for small groups was provided by Lutheran Homes and, through the special rehabilitation program provided by Teen Challenge, many have found freedom from their addictions and now lead a normal life, able to be employed in the community and make a useful contribution.

In the last year, because of poor health, he had to hand over the leadership of Teen Challenge to Graham Ross who, I am sure, will do an outstanding job in filling the very large shoes of Morrie Thompson. As well as his work with Teen Challenge, Morrie was a pastor of the Mansfield Park Community Church, and he continued to be actively involved in the life of the church up to just two weeks before his passing.

Morrie's great gift was that he loved people, especially the homeless and those on whom society had given up. With his strong personal faith in God he typified the modern day version of the Good Samaritan. If you were down, Morrie would help you fix it, especially those who had given up on life. He helped thousands of people, many of whom are now leaders in Teen Challenge and the wider community. Morrie was dependable; he was always there for people. He was a preacher whose compassion shone like a beacon. People like Morrie Thompson are rare jewels.

His impact on the community during the past 26 years became evident when over 500 people celebrated his life at his funeral last Thursday at the Northgate Christian Life Centre. The service was conducted by Pastor Stewart Leggett, a former member of parliament for the seat of Hanson from 1993 to 1997. Stuart did an outstanding job in reflecting on and paying tribute to Morrie's life.

One recollection of Morrie that I would like to share with members took place when I needed help for a stunt several years ago when the Casino redevelopment was about to be reopened. I wanted to set up a soup kitchen outside the Casino. The only soup kitchen I could think of was Morrie Thompson's Teen Challenge soup kitchen. Morrie rolled up his sleeves with me and we ran that soup kitchen on the night of the reopening of the refurbished Casino. We both had a lot of fun; we both made a point; and Morrie was doing what he did best—talking to vulnerable people and getting his message across about the good work that Teen Challenge does.

Morrie also had a saying. Whenever you rang him up he would say, 'What do you know?' What I know is that the South Australian community has lost a good man. To Morrie's wife, Julie, his family and his children (Adam, James, Lisa, Luke, Mark and Sarah) and his extended family at Teen Challenge, I extend my deepest condolences. South Australia has lost a good man and I personally have lost a great friend.

## YOUTH, CAREER RESOURCES

**The Hon. M. PARNELL:** Last week, I was pleased to officiate at the launch of two significant career resources for young South Australians: first, Catapult, which is the third edition of the school leavers' guide (I helped to launch the 2007 guide); and, secondly, a promotional DVD for Vocational Education and Training in South Australian schools. Four thousand of these booklets and DVDs are being distributed across the central and eastern regions of Adelaide. I would like to take this opportunity to put on the record my congratulations to YouthJET, the organisation behind this initiative. I would also like to recognise two individuals who put a lot of time and effort into both these resources: Jo Walsh, who is responsible for the school leavers' guide, and Ben Matthews for the DVD.

At the launch I referred to a recent report from the Dusseldorp Skills Forum entitled *How Young People are Faring 2006*. What this report highlights is the importance of improving the transition of young people to school, further study and work. The report identified that South Australian school leavers have fared worse than their counterparts in other states in that approximately 40 per cent of those who left school last year were still not in either full-time work or undertaking further education by May of this year. The report states further that young people who make a poor transition from school to further education and work experience more financial and personal stress and lower levels of participation and integration with civil society, and they are less satisfied with their life. That got me thinking about what sort of a society our young people are coming into.

Recently, I had the chance to hear what a group of young people referred to as Generations X and Y (people mostly in their 20s and 30s) have had to say about their impressions of Adelaide. It was certainly an eye-opener for me. The first thing that many of them said was that there were two Adelaides—one for those over 45, referred to as 'boomers' (as in baby boomers, I guess)—and those under 45. The over 45s were largely seen to be self-serving, and their interests were largely irrelevant to Generations X and Y. The boomers were regarded as being all talk and no action and incapable of fixing the problems of the day, in particular, in relation to things such as pollution.

Young people expressed a great deal of embarrassment at how Adelaide is portrayed in other states. All of us have been on aeroplanes coming back to Adelaide from a trip interstate when the pilot informs us that we must now wind back our watches 15 years as we enter South Australia. It gets a laugh from the interstaters, but most of us do not find it that funny. However, it is an impression that is out there in the community.

Today's *Advertiser* has a report describing Adelaide as Australia's 'blandest city'. This national survey, which asked people to nominate their blandest city, revealed that 39 per cent of Adelaide participants voted their own city as the blandest. Generation X and Y people have also expressed frustration at the focus on sexuality. The comment was made that, nowadays, people do not care who is gay, straight, or whatever, and there is embarrassment that we are the last state to be removing discrimination against same-sex couples.

There is also a feeling that there is a moral backlash underway in South Australia, and that there are people seeking to impose the values of an earlier time on the current generation. One of the things that generations X and Y are savvy with is the media. They have grown up with the media and understand propaganda. Young people feel like they are being taken for fools when they are fed government advertising that tells them that something has been introduced for their benefit when, clearly, it has not. A good example of this is the WorkChoices legislation.

Young people are also very critical of Adelaide and say that it is associated with bad pay. We pay our young, bright workers about one third less than they can get interstate. As a result, Generations X and Y are not complaining, but they are voting with their feet, and many of them are inclined to go to other jurisdictions where they think they will be treated better. So, I think that we need to stop apologising about some mythical time when Adelaide was the 'Athens of the South' and make a conscious effort to reinvent ourselves in the eyes of creative young South Australians.

## POLICE, HAND GUNS

**The Hon. T.J. STEPHENS:** I rise today to talk about the reasons why I have been pushing for answers as to why South Australia's valued police officers are not being equipped with semiautomatic hand guns instead of outdated Smith and Wesson revolvers. It is not about more firepower for our police. I simply want them to be equipped with the best firearms for their and our protection, just as other police forces across the country and around the world are doing.

This government's arrogant attitude to this issue is highly offensive to South Australian police officers—people who deserve to be provided with the very latest equipment to protect them and help them fight against crime. Yesterday, in response to my questions relating to police hand guns, the Leader of the Government and his colleagues totally trivialised this matter. They do not care about police officers in the field. I will repeat from *Hansard* the sledging I received from the Leader of the Government. The leader responded to my question with the following tirade:

> . . . why don't we give them bazookas or something?. . . The honourable member might want to play Rambo, and he might think our police should [all] be like Dirty Harry.

Our police have a proud record of using firearms as an absolute last resort. Why would this Minister for Police trivialise this matter? However, as the Leader of the Government continued his attack on me, he then got it right when he said the following:

> He might think our police should be out there with the latest weapons.

Yes; that is right. He said:

> He might think our police should be out there with the latest weapons.

How laughable is that? Of course I want our police to be out there with the latest weapons, and I think that the Leader of the Government may regret saying that. The leader essentially said that South Australian police officers do not need the latest and best weapons and equipment available. He may have even implied that they may not be capable of handling them, and I include Taser guns—

*The Hon. B.V. Finnigan interjecting:*

**The Hon. T.J. STEPHENS:** The Hon. Bernard Finnegan interjects and says, 'Check the *Hansard*'. He has repeatedly said that instances where police need to use their firearms in South Australia are few and far between, and that Star Force officers who are equipped with Glocks are called to the scene immediately. Yes; just as they were in May this year when officers on ordinary police duties had to use their firearms to shoot a man armed with a shotgun following a high-speed chase before Star Force officers arrived.

Reports show that weapons like a Glock semiautomatic hand gun with safety features is a far superior weapon to the outdated Smith and Wesson revolver, and yet SAPOL recently ordered thousands more of these Smith and Wesson revolvers. The January 2004 Police Association of South Australia report submitted to the Select Committee of the Legislative Council on the Staffing, Resourcing and Efficiency of South Australia Police recommended that self-loading pistols replace the outdated revolvers.

Nearly every other police force in this country has upgraded from revolvers. The Victorian Labor government has promised $10 million to provide funds for the purchase of and training with Glock hand guns. Yesterday, the Hon. Paul Holloway also referred to a recent case in New Zealand, when a police officer did not use his weapon properly (in this case, a Taser). He went on to say something along the lines of, 'Do not worry about training or serious examination as to which weapon is best.' However, that is precisely what I am asking for—this government to provide SAPOL with the most up-to-date weapons and funding for the necessary training that is, of course, required.

The reason I first became interested in this issue was that officers were suffering splatter injuries from Smith and Wesson revolvers; this led to my researching other weapons. I found that the Police Association and officers with whom I have spoken have given their endorsement to an upgrade from revolvers to semiautomatic hand guns. I will continue to push for change because I believe that our police must have the best technology available. It is our front-line officers and their association who know what is best for them, not politicians, but we can help to highlight the fact that a change is necessary.

The Leader of the Government also said yesterday, 'This is a matter on which I will receive advice from the Police Commissioner, not the Hon. Terry Stephens.' I implore the leader to meet with the Commissioner soon to discuss this topic again. The fact that the rest of Australia and so many other jurisdictions around the world are phasing out revolvers from operation is proof that we should be following their example. Again, South Australia lags behind as this government makes excuses that just do not make any real sense. The Leader of the Government can continue to call me names such as Rambo. I am happy to cop the abuse, but let me be on the record as saying that the lives of front-line officers are in his hands.

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## WORKCOVER CORPORATION

**The Hon. R.I. LUCAS (Leader of the Opposition):** I move:

> That this council requests that the Treasurer, under section 32 of the Public Finance and Audit Act 1987, requests that the Auditor-General examine and report on all aspects of the performance and management of the WorkCover Corporation and, in particular, report on the reasons for the recent increases in the level of unfunded liability and levy rates.

As members would be aware, in the past week the Hon. Mr Xenophon has moved a legislative change to the WorkCover Corporation legislation and suggested that the Auditor-General be involved in the annual and ongoing audit of the corporation's accounts. I will address some comments to that issue as I speak to this motion. Just briefly by way of background, I think that most people are now starting to realise that we have a significant problem under Rann government management (or mismanagement) here in South Australia over the past five years. The WorkCover unfunded liability position, depending on which figure you want to take, has jumped from around $60 million, just five years ago, to almost $700 million under the management (or mismanagement) of the Rann government.

The longer this government's term goes the less credible will be the attempts it makes to indicate that it has not had time to work through all the problems or issues that confront it. This particular issue is significant and impacts on the competitiveness of our business and industry here in South Australia, particularly our some 80 000 small and medium-sized enterprises.

To be fair, as a result of changes over the past 20 years many of our major employers have either closed down, moved away or changed management significantly and become smaller. So the engine room for job growth and economic growth in South Australia remains our small and medium-sized enterprises. These enterprises are confronting 3 per cent levy rates (on average) whereas in Victoria, our closest competitors, in particular in the manufacturing sector, have a levy rate of only 1.6 per cent (almost half). So, if you are a business in South Australia and trying to compete with a business in Victoria—which is closer to the Eastern States markets anyway, the bigger markets—their WorkCover levy rates are almost half.

The Victorian government—indeed, a Labor government—has somehow managed to make significant progress on their unfunded liability and have had three levy reductions in the past 12 to 18 months. How is it that a Labor government in Victoria is able to achieve progress against the twin targets of reducing unfunded liabilities and reducing levy rates as they apply to business, yet—

*The Hon. B.V. Finnigan interjecting:*

**The Hon. R.I. LUCAS:** Baillieu's mother-in-law, I think it is, rather than mother. I am sure the Hon. Mr Finnigan would like to reveal there are members of his family, I suspect, who vote for the Liberal Party and the Liberal opposition as well, but I will not go into the detail of those members of his family whom we understand not to be supporters of his party in government. All families have a breadth of views, I suspect, across the political spectrum. I am not going to be diverted by inane interjections from the Hon. Mr Finnigan in relation to Mr Baillieu's mother-in-law—I am not sure of the connection with the WorkCover mess that we see here in South Australia.

Other administrations have been able to achieve progress towards the twin targets of reducing unfunded liability and reducing levy rates. The questions that remain for this government are: why has it not been able to make progress and, indeed, why is it going backwards on both counts? The levy rate has increased significantly from about 2.4 per cent up to 3 per cent, and the unfunded liability has increased from approximately $60 million to nearly $700 million, and it is possibly increasing even further.

There are significant issues in relation to the WorkCover scheme in South Australia. The former Liberal government made some best endeavours in terms of correcting the problems and, indeed, had made significant progress on reducing both levy rates and the level of unfunded liability in the scheme. Some of the changes the former government wanted to introduce were unable to be introduced. Inevitably, legislation was subject to compromise and negotiation in both houses of parliament. Nevertheless, I remember the former minister responsible, Graham Ingerson, and others warning that this was a particularly important issue and that there were remaining and ongoing issues that would need to be resolved.

*Members interjecting:*

**The PRESIDENT:** Order!

**The Hon. R.I. LUCAS:** So, the warning signs were there, from many years ago, and we have certainly now seen under the Rann government and administration significant problems in the areas of levy rates and management and also the levels of unfunded liability.

I do not intend today to go through all of the particular problems of WorkCover. As I said, I think at last it is starting to surface as an issue in the media and the community and, certainly, in the business sector. Recent statements have been made by the Motor Trade Association. I understand that Business SA may well be prominent in the coming weeks and months in indicating its concerns as an industry organisation about WorkCover's performance, and I think that other business associations and organisations may well be emboldened over the coming months to take up the challenge as well in order to highlight the fact that we have significant problems and that something has to be done.

The policy that the Liberal Party took to the last election, which was drafted by my former colleague the Hon. Angus Redford and approved by the party room, was basically to argue that, if elected, we, a Liberal government, would commission an urgent independent review of WorkCover with the goal of ascertaining an accurate summary of the organisation's financial position and developing recommendations for immediate action.

*The Hon. R.P. Wortley interjecting:*

**The Hon. R.I. LUCAS:** It's certainly not the Rann government. That remains the preferred policy position of the Liberal Party: namely, an independent commission of audit, comprising people who actually know something about the management of WorkCover or WorkCover-type schemes in the states or nationally, together with specialist expertise such as actuarial advice and the like that would be useful in terms of a proper independent audit of what is occurring within WorkCover.

The brutal reality is that we are in opposition and our policy position has no prospect of being implemented. Sadly, this government will take the position, I suspect, that it would not want to turn over all of the stones in WorkCover lest it reveal the rottenness of the mismanagement that has transpired over the past five years under the Rann government. The parliament needs to consider what other alternatives are available to it. As I said, in our case, our preferred option of an independent review is not possible. The Hon. Mr Xenophon has proposed one process and, at this stage, we reserve our position on that, although we are prepared to consider further discussion with the Hon. Mr Xenophon on his particular proposition. We are not ruling support for it in or out.

Today, we are flagging an alternative course which is a section 32 audit under the Public Finance and Audit Act. One of the issues we will need to consider when we debate the Hon. Mr Xenophon's bill is how much information and what

the extent of the Auditor-General's audit will be. In essence, the Hon. Mr Xenophon's proposal is to replace the current private auditing of WorkCover with an audit of the accounts of WorkCover by the Auditor-General. The relevant clause states that the Auditor-General may, at any time, and must at least once in each year, audit the accounts of the corporation.

At this stage, I am not aware of significant concern being expressed by anyone about the accuracy of the accounts of WorkCover. That is, I am not aware of any criticism (minor or significant) of the private auditing of WorkCover's accounts. I think the criticisms are more to do with management and policies, and I am sure that one of the significant debating points will be the quality of the actuarial assessment that has been conducted by WorkCover's actuaries in relation to the unfunded liability. Those who are familiar with the work of actuaries will know that you need to get only half a dozen self-respecting actuaries looking at one particular issue and you can get half a dozen eminently defensible different estimates of the unfunded liability of a particular fund. That is no particular criticism of the actuaries. It is, however, an indication of the complexity of the task they undertake.

On the surface of it, at least, just looking at the accounts of the WorkCover Corporation in our view goes nowhere near wide enough. Given the approach of the current Auditor-General, and I guess we need to take into account the approach of any possible future Auditor-General—

**The Hon. B.V. Finnigan:** The one you want to retire.

**The Hon. R.I. LUCAS:** Well, the one who, under current law, retires in February, but put that to the side. If current law remains, we would be talking about a future auditor-general. But, whatever auditor-general is there, it will depend on their interpretation of their legislation. Some auditors-general may well interpret their legislation extraordinarily widely. Others, history has shown, tend to interpret it more closely in terms of what they are being asked to do. So, one of the questions that we would want to explore with the Hon. Mr Xenophon is exactly what would be possible under the terms of the amendment that has been moved by him. As I said, we have not ruled out support for the proposition yet. Our second preferred course is the section 32 audit but, clearly, all we can do as a parliament (and I will explain that in a moment) is request of the Treasurer that he seek a section 32 audit.

I think that is one of the first issues that need to be resolved; that is, what exactly will the Auditor-General be able to do? That is also an issue in relation to the provision that we move because, with the greatest respect to the Auditor-General again, his expertise is in auditing accounts. He is not an expert in actuarial assessments of bodies such as WorkCover. It is not his area of expertise. He has a legal background—

**The Hon. B.V. Finnigan:** Are you speaking for or against your motion?

**The Hon. R.I. LUCAS:** I am speaking for my motion—and what would be required is the employment of a consulting actuary. In our view, if this was to proceed, under a section 32 audit the Auditor-General would have to employ a consulting actuary. In my view, if the proposition of the Hon. Mr Xenophon is interpreted widely enough to allow him to look at the actuarial assumptions as opposed to just auditing the accounts, even under that course he would have to then consider the employment of a consulting actuary to look at some of the issues, because they are far too complicated for anyone other than a small body of people with considerable expertise in this area. That is why, again, our preferred position is to have an independent assessment of WorkCover's position by experts, but our preferred position is not capable of implementation. We are now looking at less than perfect opportunities, from our viewpoint, for throwing some light on what the problem might happen to be.

Another flexibility of a section 32 audit we have seen from a number of section 32 audits. There was one of the Port Adelaide Flower Farm; there was one of the Hindmarsh Soccer Stadium; and I think the Treasurer implemented a section 32 audit of the McLaren Vale ambulance station. I think he has also had another section 32 audit—I am not sure whether basketball might have been the subject of a section 32 audit as well, earlier in the government's term. I stand to be corrected if that is not the case, but I think the current government has had at least a couple of section 32 audits, so it is a not a rare provision. It has been used by treasurers to set specific terms of reference in relation to trying to throw more light and get more information on a particular issue or problem. So, as I said, based on that precedent, we think that a section 32 audit potentially has greater flexibility and the capacity perhaps to throw more light on the issue from the parliamentary viewpoint and the public viewpoint.

**The Hon. Nick Xenophon:** But this council cannot compel the audit.

**The Hon. R.I. LUCAS:** No; I have touched on that briefly and I will touch on it again. Of course, legislation cannot compel the government unless it has passed both houses.

**The Hon. Nick Xenophon:** This motion cannot.

**The Hon. R.I. LUCAS:** No, exactly. Both options, in essence, are going to require government support of one form or another. Coming back to the other advantage of the section 32 audit, as I have said, there has been no criticism—to me, anyway—of the quality of the private auditing of WorkCover's accounts. To be frank, one of the criticisms in relation to the Auditor-General's auditing of accounts is that there has been considerable evidence that his costs are significantly higher than those of private auditors, and this scheme is paid for by the businesses, the employers of South Australia. So, one of the disadvantages of the proposition of the Hon. Mr Xenophon is that every year, in an ongoing way, businesses will confront higher costs because of the higher costs of an auditing by the Auditor-General than currently. Management and the board will say, 'Our costs have been increased.'

In some cases I have had evidence that the Auditor-General's costs have been double those quoted by private auditors for the same audit. I am not saying all of his charges are the same, because I am not familiar with his charging regime but, for example, I am aware that in relation to Parliament House the Auditor-General's charging practices are significantly higher than those of private auditors. A couple of other organisations have confided in me and said that the charges in their case were up to double.

This is not solely an issue of parliament deciding how taxpayers' money will be spent, because we have to bear in mind that it is not taxpayers' money yet but actually employers' money—levy rates they are being charged to provide for WorkCover. The issue of public accountability in this comes into the notion the Auditor-General has, with which I do not disagree, that in the end if WorkCover goes belly up there is an implied guarantee in essence from the people of South Australia—not a technical or legal one—that the people of South Australia through the government—the crown—would pick up the problem and fix it.

At this stage we are talking about not taxpayers' money but employers' money, and that has been one of the arguments in relation to WorkCover and the auditing of its accounts. The private sector says, 'Hey, this is our money. This is a scheme employers are putting in; it does not involve taxpayers' money and we are entitled, if we are getting quality private auditing advice, which is significantly cheaper than the Auditor-General charges, to reduce the levy rate, albeit marginally, by cutting our costs.'

As the Hon. Mr Xenophon would know, WorkCover is endeavouring to cut its legal, management and many other costs right across the board as we speak. Although auditing costs are not as significant as the other two, they are a not insignificant cost for any business in this day and age. One of the advantages of section 32 is that you can go in and do a once-off audit, find out what are the problems and, if the problem is the quality of the private sector auditing going on, the parliament could at that stage move down the path that has been suggested of implementing the Auditor-General's ongoing auditing of the process. On the other hand, the significant argument in relation to some involvement for the Auditor-General, whether it be section 32 as we are suggesting or the ongoing auditing as the Hon. Mr Xenophon originally suggested, is that at least in this way some further public light will be thrown on the problems of WorkCover. That is the principal reason we are supporting this proposition.

We all know there is a problem there but, other than the minister responsible—minister Wright or whoever is acting now—his advisers and the Rann government, the rest of the parliament and the community are not aware of what is actually going on and what is going wrong in relation to the operation, performance and management of WorkCover. An independent audit, either along the lines of the Hon. Mr Xenophon's bill or section 32, gives the capacity for public light to be thrown on the problem. That will of course depend on the quality of work undertaken by the Auditor-General and his staff. That is the principal reason why we are, first, supporting section 32 and reserving our position on the Hon. Mr Xenophon's provisions. We see some argument for that, while in essence trying to reserve our position as to whether there ought to be an ongoing and annual involvement of the Auditor-General in relation to these matters.

Finally, the Hon. Mr Xenophon raised by way of interjection the strength of these options. Both options have disadvantages. Section 32 is just, if passed by this chamber, an expression of view by perhaps 14 out of 21 voting members—if everyone was to support it other than the government—to say that this is serious and that we think you should do a section 32. That occurred in relation to the Port Adelaide Flower Farm and also in relation to Hindmarsh Stadium, where I understand motions were passed in the Legislative Council requesting the Treasurer to do it. Other examples in more recent times have not been as a result of motions of the parliament. The Treasurer, as is his right, simply instituted a section 32 in relation to the McLaren Vale ambulance station and the Basketball Association.

The Hon. Mr Xenophon is right: even if we pass this motion overwhelmingly, the Treasurer may adopt an arrogant, combative and dismissive approach—which is not unknown—and just ignore the will of the Legislative Council. However, on the other hand, the issue is that, if the Legislative Council passes the Hon. Mr Xenophon's bill and if the Treasurer adopts the same position, the bill will not pass the House of Assembly either.

**The Hon. Nick Xenophon:** It's Labor Party policy.

**The Hon. R.I. LUCAS:** Indeed, but there are a lot of things the Labor Party does not do or support that are Labor Party policy. We are talking about the Treasurer, who has the moral fibre to break all his promises. That is the fundamental moral underpinning of the Rann government. I would not worry too much about what it promises or has as its policy. To refresh the Hon. Mr Xenophon's memory, the Deputy Premier will not be held to account for any promises he made publicly on ABC Radio either, as he indicated in relation to statements he made on Matthew Abraham's show on Public Service job cuts. So, that will not be a restriction on this government, should it choose to change its position. In both cases the point I make is that, unless the government and/or the Treasurer are prepared to agree on some role for the Auditor-General, it will not happen. We believe that that will ultimately be to the cost of the people of South Australia and to the cost of the Rann government.

People may ask why we are trying to help the Rann government when it would be to our political advantage to let it flounder and let this become a billion-dollar plus problem. The reality is that we do not want to play politics on this issue. We are concerned about it from the viewpoint of the state's economic and job growth, and small and medium-sized enterprises, and we cannot continue to go down the path we are now on. For those reasons we support section 32.

As I have indicated in discussions with the Hon. Mr Xenophon, we are interested to see what the government's position is on the bill. If it sticks to the (I think) 2003 bill that it introduced, in which it supported the Auditor-General monitoring the accounts of WorkCover, it should support the honourable member's bill—and we will certainly take that into account when determining our position on the legislation. However, if, for whatever reason, the government sees some attraction in the section 32 one-off audit of WorkCover, it has that capacity as well, and it can support our motion.

Our view, and I have raised it with the Hon. Mr Xenophon, is that we would like to keep both his bill and section 32 ongoing and operative in the dying days of parliament. We are disappointed that the government is not taking up the option of the extra three or four days of sitting in December because we have a number of bills that are being rushed through at the moment and some important motions like this one that, we think, deserve proper consideration. Nevertheless, we now have four sitting days left before the Christmas break and a lot of these things need to be resolved. I urge support for the motion.

**The Hon. J. GAZZOLA** secured the adjournment of the debate.

## WORKCOVER CORPORATION (AUDITOR-GENERAL) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 15 November. Page 974.)

**The Hon. A.L. EVANS:** This bill seeks to amend the WorkCover Corporation Act 1994 to replace the private auditing requirements of WorkCover with sole auditing oversight by the Auditor-General. Before I address the content of the bill, I wish to address the manner of its presentation. This bill was only introduced on the 15th of this month, with the remark that debate should be concluded by today. Today has been set down as the first and last oppor-

tunity to speak on this private member's bill, yet I understand that convention dictates that honourable members get an opportunity—that is, some time—to consider a bill before being required to vote upon it. Whilst the bill is wafer thin its impact may not be, and we have not had the opportunity of weighing that up.

The Hon. Mr Xenophon assumes that honourable members are familiar with the proceedings of the previous parliament, but there are new members (in Family First's case, the Hon. Mr Hood) who have been elected, and I suspect that, in the case of the Hon. Mr Parnell, the Greens come at this afresh without any great familiarity with what has gone before. I do express regret that we have been rushed into this decision, because such haste does not sit well with us. Legislation on the run can be unwise.

Family First has some concerns about this bill. We wonder about the present workload of the Auditor-General and also about whether the case has been made out that the present auditing performance has been unsatisfactory. We also wonder whether the amendment actually loosens the auditory burden upon the WorkCover Corporation. It may even turn out that the Auditor-General's term is not extended, in which case his successor will have to take on the added burden. With his bill the Hon. Nick Xenophon seeks to replace section 19 of the act which provides that there must be an annual audit of the WorkCover Corporation. The auditor must be a registered company auditor or a firm of registered company auditors, and the section prescribes the accounts to be audited and the specific powers requiring access to the records and personnel of the corporation to get the best possible audit. The auditor's statement is protected by qualified privilege for the benefit of the auditors and to embolden them to give clear statements where there has been wrongdoing or error. These requirements are far more particular than the honourable member's bill, which simply states that the Auditor-General may at any time, and must at least once each year, audit the accounts of the corporation.

I have again been through the second reading speech made by the Hon. Nick Xenophon and am concerned regarding his comments about WorkCover's blown-out unfunded liability—now apparently in the order of $694 million. However, we have not had the benefit of knowing the content of the previous audits performed under section 19 of the act. It may be that the auditors are doing an excellent job and the WorkCover Corporation is not complying with the auditors' recommendations. In any event, changing auditors may do more harm than good, as the private auditors may have greater familiarity with the books than the Auditor-General presently has. Had I more time to look into the merits of this bill I could have had discussions with the government and investigated the matter further.

I understand the honourable member's intention with this bill, but to my mind he has seized upon a comment made by the Treasurer and sought to help the government by forcing the issue to a quick vote. So, at this preliminary stage, we do have some concerns and I am not yet fully persuaded. I will listen closely to the debate on the bill before reaching a final conclusion.

**The Hon. J. GAZZOLA** secured the adjournment of the debate.

## SUMMARY OFFENCES (TICKET SCALPING) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 15 November. Page 977.)

**The Hon. S.G. WADE:** I rise to speak to this bill on behalf of the opposition. I indicate that we will not be supporting the bill. The bill seeks to prohibit the practice of ticket scalping—that is, buying large amounts of tickets for the purpose of reselling them to patrons at an inflated price. It is an issue which has been raised by patrons, performers and event organisers who are concerned that the practice of ticket scalping can often drive away customers by pricing tickets beyond their reach. The bill seeks to address the issue by making it an offence to resell tickets at a cost of more than 110 per cent of the original sales price.

However, as I said, the opposition does not support the bill. Our first concern is enforceability. While the bill may be well intentioned and seems reasonably simple, it does not take into account the difficulties in enforcing the legislation and actually proving that a ticket was to be sold at a price of more than a 10 per cent increase. In many cases the negotiations relating to the resale of tickets are done verbally and, therefore, to prove that the price was in excess of the allowable amount may be extremely difficult.

The Victorian government has encountered this problem. As the Hon. Mr Hunter mentioned last week, since the introduction of similar legislation in Victoria, there has not been a single prosecution in relation to ticket scalping. Similarly, if a person was to take the ticket interstate and resell it there, there would not be a contravention of the law under this proposed legislation.

What would happen if I was unable to attend an event and wanted to sell my ticket on eBay? I could start the auction at less than the original resale price, but what would happen if the bidding on eBay reached a point where the price increased by more than 10 per cent of the original sale price? Would I be committing an offence? Would I be forced to immediately stop the auction the minute the price reached the limit? This bill is essentially a form of price control. In this case there would clearly be a demand for the ticket such that people were willing to bid to a level exceeding the original cost by more than 10 per cent but, under this legislation, that would not be allowed. The government would be dictating the price to the market.

This leads to the opposition's second concern in relation to this bill in that it is removing responsibility from the market, ticket sellers and patrons, and putting the onus on the government to deal with the problem—a problem which we believe does not justify government intervention. If ticket scalping is a major issue for sporting facilities and event organisers, it is primarily their responsibility to address the issue. Event organisers need to consider what action they may need to take, on their own behalf—such as requiring ID for redemption of a ticket, or other measures—rather than expecting the South Australian taxpayer to foot the bill. The opposition believes strongly in minimising government intervention in people's lives. The opposition does not believe that there is justification for shifting the responsibility for dealing with ticket scalping and placing it on the shoulders of government, at a cost to the South Australian taxpayer.

**The Hon. T.J. STEPHENS** secured the adjournment of the debate.

## HICKS, Mr D.

Adjourned debate on motion of Hon. M.C. Parnell:

1. That the Legislative Council calls on the Australian government to insist that citizen of South Australia, Mr David Hicks, be treated the same as citizens of the United States of America—no more, no less.
2. That this resolution be forwarded to the Minister for Foreign Affairs.

(Continued from 30 August. Page 552.)

**The Hon. I.K. HUNTER:** I am happy to support this motion. Whether or not David Hicks committed the acts he is accused of—and let us not forget that not one of these charges has yet been tested in any legally constituted court—the manner in which he has been held for the past five years is an affront to our sense of justice. Indeed, history even makes a mockery of the very value that we are supposed to be fighting for in this so-called war on terror. Even the United Kingdom which, by the way, has been a much more active supporter of the US actions in the Middle East (in terms of allocation of material, personnel and resources) has been successful in repatriating its citizens from Guantanamo Bay to face justice in their own country.

If Hicks has broken an Australian law, let him face justice in Australia. If he has broken an American law, let him face justice in America. If he has broken some international law, let us see him brought before the appropriate authorities. Yet, Mr Hicks has been held without trial for nearly five years, nearly three of those without being charged, in appalling conditions, in legal limbo, on a remote outpost of American territory.

The conditions Mr Hicks is being held under have been described by both the International Red Cross and the United Nations Human Rights Commission as torture: being confined to a tiny cell no more than 12 feet across, for 22 hours a day, subjected to sleep deprivation and various forms of degrading and humiliating treatment. Our foreign minister claims that Mr Hicks' health and welfare are fine. If Mr Hicks were tried and sentenced for some offence in Australia or, indeed, the United States, it is unlikely that any sentence imposed would exceed the time that he has already spent incarcerated. Even if Mr Hicks was not able to be tried in Australia for any specific offence, the federal government's new control order legislation could be invoked and Mr Hicks could be closely monitored by our own authorities, facing a five-year gaol term should he breach such an order.

Despite, it must be said, the best efforts of his Australian legal team and his US military lawyer, Major Michael Mori, Hicks has been denied even the basics of the legal protections which are rightly his as an Australian citizen, or those which would be afforded an American citizen. Let me reiterate: if David Hicks is found to have broken the law, then he should face justice, but the justice system itself needs to be consistently applied for us to have any faith in its efficacy.

The signal that David Hicks' treatment sends to the rest of us is that the Australian government will not protect its own citizens against the so-called neo-conservatives in the Bush administration who have no respect for the law and, it needs to be said, no respect for their own conservative heritage. Prime Minister John Howard's blind kowtowing to this regime is looking more and more embarrassing everyday. Just weeks ago, the American people made it very clear what they thought of the war on terror and the way they thought the war on terror is being prosecuted. Let us hope that the people of this great democracy take the next step of closing down these extralegal concentration camps and restoring the world's faith in the American justice system, because it seems we can have no faith that Mr Howard's government will take any action to defend our civil liberties overseas.

The war on terror, particularly in Iraq, is going from bad to worse. It is about time that the Howard government recognised that if we throw away our own values and the basic legal rights of our citizens we cannot expect others to see these values as a way of life worth striving for. There is no excuse any more not to bring David Hicks home. I urge members to support this motion.

**The Hon. T.J. STEPHENS** secured the adjournment of the debate.

## MONITORED TREATMENT PROGRAMS BILL

**The Hon. A.M. BRESSINGTON** obtained leave and introduced a bill for an act to provide for properly monitored treatment programs for substance abuse; to make related amendments to the Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981: the Children's Protection Act 1993; the Controlled Substances Act 1984; and the Education Act 1972; and for other purposes. Read a first time.

**The Hon. A.M. BRESSINGTON:** I move:

That this bill be now read a second time.

The Monitored Treatment Programs Bill targets problematic drug users in the community. It is not a punitive measure. It is, however, an effective way to intervene and prevent individuals from downward spiralling into criminal and self-harming behaviours. It is not the intention of this bill for police to go out and drag people off the street and force them into treatment. This bill targets people who have continually appeared before the courts for drug-related, non-violent crime, and also for those parents in the community who are using drugs and who are, for this reason, maltreating their children.

It is interesting that minister Gail Gago told me last week in this chamber that the government would not support this bill because the time frame for the treatment program of 15 months was actually not proven to be valid. There is ample evidence and research from overseas that long-term treatment, engagement and support of clients actually provides the best possible outcome for them to break the cycle of addiction and move forward in their life. In fact, Drug Beat of SA has been delivering a 15 month program for some five years now and has experienced a great deal of success with both voluntary and coerced treatment in that time period.

I stipulated 15 months based on years of personal experience of being involved in treatment rehabilitation and feedback from clients who say that after they have actually got over the intense cravings, the ongoing support for life skills and also reparenting and dealing with the underlying issues that spurred the substance abuse in the first place has actually changed their life. They do not actually wake up every morning with that monkey on their back having to make the decision that, today, they are not going to use drugs. In fact, many of them have commented to me that they wake up in the morning and do not even think about using drugs any more, because those underlying emotional issues have been dealt with, reconciled and resolved.

If this 15 month period is invalid, as the Hon. Gail Gago suggests, I am curious as to why the government continues to fund programs like the Woolshed, and Kuitpo and, in fact, Drug Beat, because they are all long-term treatment rehabilitation programs. To my mind, that contradicts our having any of these programs funded at all. I am not suggesting that the government should defund these programs because they are all successful. With the problems that we are experiencing at the moment in this state with methamphetamines and also the high rate of cannabis use, one would think that the government would be open to considering extending those programs and actually providing proper monitoring.

The National Drug and Alcohol Research Centre (NDARC) released a technical report, written by Professor Wayne Hall. It states:

> In the USA, the correctional and public health arguments for drug treatment under coercion have been reinforced by the economic argument that it is less costly to treat drug dependent offenders in the community than it is to incarcerate them.

It also states:

> If the community wishes to reduce relapse and criminal recidivism, and since treatment reduces relapse, coerced treatment provides an alternative to imprisonment and may reduce recidivism as a result.

I would also be very surprised if the Hon. Sandra Kanck did not support this bill. On a number of occasions I have heard her refer to drug policy in the Netherlands, and her predecessor, the Hon. Mike Elliott, made many references to the fact that Australia should look to the Netherlands for guidance on drug policy because, in fact, they now have mandatory drug treatment similar in nature and approach to that provided in the bill. In the Netherlands, treatment is for a minimum of two years, so this bill is quite generous in relation to the time span.

It is interesting that the Democrats would support looking to the Netherlands for things such as prescription heroin and injecting rooms, yet they may not support a mandatory treatment order because of the words 'mandatory' or 'coerced'. Franz Koopman from the Netherlands said this about drug policy:

> Recognising that the government needs to take firm action to deal with the increasing levels of addiction, in April 2001 the Dutch government established a penal care facility for addicts. Like American drug treatment courts, this facility is designed to detain and treat addicts of any drug who repeatedly commit crimes and have failed voluntary treatment facilities. Offenders may be held in this facility for up to two years, during which time they will go through a three-phase program. The first phase focuses on detoxification, while the second and third phases focus on training for social reintegration.

So, this is not a new thing at all. One of the objectives of the bill is to provide timely and relevant treatment for drug users. Through a trial in Baltimore in 1998, it was recognised that there is a small window of opportunity to engage and keep addicts engaged in treatment and that, if we can get people into treatment within 24 hours, there is an increased opportunity to retain them in treatment. Another objective is to provide young offenders, who are caught in the cycle of addiction, with access to specific services that will help them both change their behaviours and break the cycle of addiction.

The bill also provides for appropriate treatment for parents who are drug users. On two occasions in this chamber I have asked the Minister for Mental Health and Substance Abuse about services available for drug-affected people. The first question (which I asked on my first day in this chamber) was: what services are available for single parents or families to take their children into treatment with them so that they are not fearful of losing their child to the welfare system? The minister explained that this was a very complex issue—and that was it. Two days later, she spoke to me one to one and said, 'Actually, there's nowhere for them to go.' My next question referred to youth drug users and offenders, and I asked what specialist facilities we had for them. Again, the minister said that this was a very complex issue and that there were other things to consider. Basically, the answer was again, 'Nothing is available.'

I put to the council that the reason these issues are so complex is that this government does not focus on getting people off drugs to deal with the other issues first. From my 11 years of experience, I know that you cannot socially reintegrate a person successfully, and you cannot improve their life to the point where they can be responsible for themselves and others until the drugs are removed. There may be some people out there who can manage their drug use, but they are not affected by this bill because it targets problematic drug users. I suggest that, once drug use becomes a problem, it is mostly impossible for a drug user to pull back, monitor their behaviour and change how they interact with society.

**The Hon. Nick Xenophon:** It becomes everybody's problem.

**The Hon. A.M. BRESSINGTON:** The Hon. Nick Xenophon is right. Another objective is that a person required to attend such treatment receive proper assistance and support to maximise their chances of successfully completing the treatment program and that proper systems be put in place for the ongoing monitoring of persons required to attend such treatment.

Six years ago, I attended a training session run by the government, and I listened to the person in charge of training people in the alcohol and other drugs sector. My program manager and I asked why in-depth counselling was not taught as part of the training regime. The people who have made it through treatment most successfully and who have been able to sustain abstinence and stay off drugs have all said that grief and loss counselling and abuse and trauma counselling were the key to their recovery—and that takes a long time. The answer the trainer gave—and she has been the trainer for Drug and Alcohol Services for some 17 years—is that the reason why retraining is not delivered is the cost of retraining the entire sector. She has been a trainer for 17 years and not once did she suggest that the training for grief, loss, abuse and trauma was not necessary. What she did suggest was that what stood in the way of this was money to retrain the sector. I suggest that, if we put enough money into drug treatment at the present time, surely we would want to see our 'bang for the buck'.

Application of the legislation would apply to a person who is required, in accordance with a court order, to undergo assessment or treatment for substance abuse, including assessment or treatment required as a condition of a bail agreement or a bond entered into in accordance with a court order. The person is required under an act or law, or under the terms of a voluntary agreement entered into under an act or law, to undergo assessment or treatment for substance abuse.

In the United States the criminal justice system has written an enormous number of papers and has published research showing that coercion can sometimes be more effective than voluntary treatment; that sometimes people who are drug affected are not able to make a decision in their own best interests and sustain a changed behaviour, whereas a court

order makes it a requirement and they are actually forced to comply, otherwise they may spend some time in gaol.

I would say that even gaol for a drug user who was on a downward spiral is a better place than out on the street and dealing with the thugs that people in the drug culture are forced to deal with on a daily basis. I am not suggesting that drug users should be locked up. I do not believe that gaol is the place for drug users to be at all, but we need to do something. At the moment we have had a number of incidents brought up in this chamber in question time where people have been on bail, have been known to be substance abusers and have broken bail and have reoffended because they have not been getting treatment for the original problem, the core problem, which is substance abuse.

Clause 6 of the bill deals with the approval of assessment and treatment services, as follows:

A person who provides an assessment or treatment service for any substance abuse may apply to the minister for approval of the service for the purposes of the act.

Well, that just says it all. I think any abstinence-based program that is currently funded by the government should be considered to be a fit service to be able to enforce this act if this bill should go through. I will not go through all of the really technical stuff.

**The PRESIDENT:** The honourable member can seek leave to have the remainder of the explanation inserted in *Hansard* without reading it.

**The Hon. A.M. BRESSINGTON:** I will do that. I seek leave to insert the remainder of the explanation of the bill in *Hansard* without my reading it.

Leave granted.

Explanation of Overseas approach:

Coercion means that a criminal justice offender is given a choice between entering and complying with a drug treatment program, or receiving alternative consequences prescribed by the law. Participation is mandatory and non-compliance is threatened with sanctions up to and including incarceration; others sanctions may include the loss of child custody, employment, and benefits.

Coercion is the leverage that can keep addicted offenders in treatment long enough to benefit from the positive effects of a supportive therapeutic experience, and become intrinsically motivated to remain and succeed. In addition, coerced treatment provides services for addicts which may otherwise have been unavailable to them.

This has been true among clients who receive treatment in their work setting, as well as those in criminal and welfare populations. Findings also reveal that legally coerced clients even though they enter treatment with less favourable prognosis.

One key to coerced treatment success is Anglin and colleagues' findings when they reviewed eleven distinctive studies of coerced treatment programs. On the whole, coerced clients begin treatment sooner and remain in it longer than those who enter treatment voluntarily. Treatment retention is a critical variable in predicting recovery.

Finally, coerced treatment is associated with clear and substantial benefits such as decreased medical costs, decreased crime, and improved psycho-social and employment status. These findings demonstrate that criminal justice practitioners and drug treatment providers are cooperating effectively to produce enhanced treatment outcomes for addicted offenders.

**Source: (1) Coerced Drug Treatment for Offenders: Does it Work: Centre for Excellence in Criminal Justice at TASC.**

On Thursday 13 July 2006 The Advertiser ran an article stating that Drug users facing court for non-violent crimes could soon be forced to choose between intensive treatment or gaol under new legislation to be introduced to parliament by me. I was quoted as saying ***"under my legislation they must stay engaged, stay clean or spend more time in gaol***

The Hon Gail Gago stated in the Advertiser that ***"existing laws were sufficient".***

The Advertiser quoted the Hon member's statement that ***"We have the Drug court process in place which combines intensive judicial supervision, mandatory drug testing and treatment and support services to help drug abuse offenders break the cycle of drug abuse and crime***

Moreover she was quoted in saying that ***"there was also the Police Drug Diversion initiative, which provides for people apprehended by the police for minor drug offences to be diverted from the criminal justice system into education, assessment and treatment as part of a nationally agreed approach***

I interpret her statements to say that the Drug Courts are efficient and the laws were sufficient to cover drug rehabilitation.

· **Drug Court Statistics**

Up until March 2004 only 43 offenders had completed the 12 Months Drug Court Program and had at least six months "free time" post-program in which to re-offend.

Of these 43 offenders who completed the program 33 of them continued to re-offend.

Total participants from the inception of the Drug Court in 2000 to 2006 is 1033 persons.

Of these 877 were male and 156 were female

Accepted for assessment were 736 persons

Accepted on to the program were 484 persons

Applications pending to date 24 applications

Currently on the program to date 56

Currently on home detention 48

Persons completed the program to date 119

Of all the persons on the program 309 were terminated, withdrew from the program or died.

Only 28% of persons completed the program and 48 percent of them re-offended.

There are no statistics provided to show if offenders were required to not use drugs during their participation in the program.

It is obvious from these statistics that the Drug Court Program is not working efficiently.

According to the Office of Crime Statistics and research a key problem common to virtually all Australian Drug Courts has been the relatively low retention rates.

During the first 38 months of the Drug Court Program 263 were on the program 69 of them (26.2%) completed the program 147 of the 55.9% were terminated and 47 of them 17.9% withdrew from the program

Perhaps the Minister may explain in her response what drug treatment approach is most commonly prescribed, i.e. maintenance or recovery.

The statistics indicate just over three quarters (77.6%) remained on the program at the end of the third month only half survived until the end of the sixth month. For several months thereafter, the rate of drop out was lower, with 40% still on the program at the end of the ninth month and 33.5% still participating in the program by the eleventh month. However this trend changed in the twelfth month, when levels declined more sharply to 21.7% this is mainly due to some actually being assessed as having completed the program just prior to the one year period. ***(source The South Australian Drug Court An analyse of Participant Retention rates. OSCAR retention rates page 12 )***

The figures show very average outcomes for the Drug Court and it is about time we took a more serious look at current legislation and made amendments to legislate for a properly monitored treatment program for all those who appear on drug charges before the court.

Minister may argue that this process, that long-term engagement is not effective – to me, it indicates that the programs offered simply do not meet the needs of the clients.

This poses the question why has the Government persisted with the same old same old, what evaluation has been done that includes the participants.

**5—Application of the Act**

Firstly this act applies only to those persons in receipt of and in accordance with a court order to undergo assessment or treatment for substance abuse (including assessment or treatment required as a condition of a bail agreement or a bond entered into in accordance with a court order or a person who is known by welfare agencies for child maltreatment.

Secondly the person is required under an Act or law, or under the terms of a voluntary agreement entered into under an Act or law, to undergo assessment or treatment for substance abuse that will achieve abstinence over a period of time workable for the client.

Child abuse and neglect, also known as 'child maltreatment', is a confronting reality for many Australians. Children often experience different forms of maltreatment in combination, whether

they be physical abuse, sexual abuse, emotional/psychological abuse or neglect.

**Source: (2) Child Maltreatment – Volume 236, Issues in Society – Editor: Justin Healey**

Children are entering care for increasingly complex reasons associated with parental substance abuse, mental health and family violence.

Over the last 6 years, the number of child protection notifications in Australia more that doubled from 107 134 in 1990-2000 to 252 831 in 2004-2005. From 2003-2004 to 2004-2005, the number of notifications increased in all jurisdictions. Some of this increase reflects changes in child protection policies and practices in the jurisdictions and could also reflect increased public awareness of child abuse.

**Source: (3) Child Maltreatment – Volume 236, Issues in Society; Facts and Figures – Editor: Justin Healey**

**6—Approval of Assessment and Treatment Services by Minister**

There has been some support for this contention, with research investigating homicide, assault and domestic violence all producing substantial associations between alcohol abuse and violence (Gelles 1993)

Similarly, as the popularity of alternatives to alcohol increased, other addictive, mind altering substances, such as cocaine, crack heroin, marijuana and LSD, have also been considered to be casual agents in domestic violence and other forms of family violence. (Flanzer 1993)

Consistently over the last 30 years, substance abuse has been increasingly cited as a contributory factor in child maltreatment. **(Browne and Saqi 1988; National Research Council 1993)** Such inferences have been based primarily upon the assessment of children and young people in child welfare, medical or psychiatric programs, rather than those presenting as part of a family unit at drug and alcohol treatment agencies (Freeman 1993).

It has been suggested that the factors showing the strongest connection to both substance abuse and child maltreatment are those relating to the parents and family, in particular, parenting behaviours and family structure. (Finkelhor and Baron 1986; Hayes and Emshoff 1993)

Variables found to be associated with both substance abuse and child maltreatment are: Parental inconsistency, Poor limit setting, Excessively harsh disciplinary measures, Parental conflict, Poor communication, Parental absence or unavailability

Social isolation of the family (Hayes and Emshoff 1993)

Reliable estimates of the prevalence of mind altering substance use are more difficult to obtain and the available data are likely to be an underestimate. However, the prevalence of opiate addiction at ages 15—39 years has been estimated at between 0.5 per cent and 0.8 per cent (National Drug Abuse Information Centre 1988, as cited in AIHW 1996).

There have been few Australian attempts to determine accurately the extent to which child maltreatment and substance abuse interact (Keys Young 1993). The child maltreatment case information provided by the various Australian States and Territories to the Australian Institute of Health and Welfare for inclusion in the national child maltreatment data summaries, does not enable an accurate estimation of the extent to which substance abuse is identified in cases.

However, in the 1994—95 national child maltreatment statistics, Angus and Hall (1996), indicated that 22 per cent of all substantiated emotional abuse cases in New South Wales were reported to result from a parent's substance abuse problem. No specific category was provided for cases of neglect or other abuse where parental substance abuse may have contributed to the maltreatment experienced by the child.

Clark (1994) cites an analysis of 75 randomly selected cases from the Protective Services Branch, Health and Community Services Victoria (now the Department of Human Services), which showed that 41.5 per cent of families sampled had substance abuse concerns recorded as contributing to protective concerns.

In cases of neglect (of which 80 per cent occurred in single parent families), 57 per cent of cases had a substance abuse concern recorded. Typically, such concerns were linked to the mother or both parents. In physical abuse cases, alcohol abuse was the most commonly recorded family problem, and in each instance was recorded in association with a report of family violence.

My first question to the Minister in this place relates to the number of beds available for single mothers or parents with substance abuse issues. The answer is none and her …… states it is time the Government took responsibility and provided treatment and services as well as support …….. intervention.

**Source: (4, 5, 6, 7) Child Maltreatment and Substances Abuse (Discussion paper no.2) – National Child Protection Clearing-house**

A Key feature of this bill is that the Minister of Health must approve the assessment and treatment services and the treatment services must comply with all aspects of this Act and be capable of providing proper assessments or treatments for drug abusers.

Another feature is that the Minister **must not** grant an approval in respect of an assessment or treatment service unless satisfied that the service is capable of providing assessments or treatment in accordance with the requirements of this act

- **Important point as some treatment centres do not provide adequate care or become neglectful in monitoring their clients.**

There are extraordinary differences in those who suffer from addiction. Each of us has a unique family and environmental history, unique living conditions, unique social backgrounds and unique personal experiences. Of additional importance is our understanding that the physiological ailments that contribute to addiction are diverse and require specific assessment and treatment to address the central nervous system disorder created by the ongoing and problematic use of mind altering substances,

A person's psychological condition is at least partially responsible for their addiction There may be traumatic memories that remain overwhelming which contribute to chronic self-medication. Because of the severity of the painful memories, we may have covered them over with layers of forgetfulness. These memories can then disturb us on a conscious and/or subconscious level causing us to abuse drugs to manage the pain. We may be unable to cope with marriage, work, relationships, death of a loved one, financial burdens, illness, insecurity or physical impairment. Until someone can assist us with discovering our hidden pain or trauma and formulate a treatment program to heal those areas, it is most likely that they will continue abusing substances to self-medicate the underlying condition.

- Mental Illness and Substance Abuse
- Diagnosis of a mental illness while still using mind altering substances.
- Profile of an addict resembles mental illness
- Irrational thoughts, feelings and actions often seeming quite bizarre.

**7—Initial Assessment Part 2**

The Bill also stipulates In Part 2 what is required on an Initial Assessment. Firstly the Referral authority must refer the person to an approved service for assessment, this would mean any abstinence based program funded by the Government that delivers services. The referral authority can be:

- In the case of assessment or treatment required as a condition of a bail agreement or bond entered into in accordance with a court order –The intervention program manager;
- In the case of assessment or treatment required under any other court order—the court that made the order and
- In the case of assessment or treatment required under an Act or law, or under the terms of a voluntary agreement entered into under an Act or law—the person or body with responsibility under the Act or law for issuing the requirement or entering into the agreement.

Secondly the referral authority must give the person a notice that sets out particulars of the date, place and time and number of contacts each week at which the person must attend the service.

The Bill then contains details on what happens to a person referred to an approved service. The service must proceed to carry out and complete its initial assessment as expeditiously as reasonably practicable. Mr President, there is a very small window of opportunity to engage drug users. In Baltimore it was that if a client could be engaged within 24 hours, retention was improved.

For the purpose of carrying out the assessment, the approved service may, by notice in writing given personally or by post, require the person to do any of the following:

1. The person referred must give written consent to
- The release of the person's medical and other treatment records to the service and to any other approved service that is to provide treatment to the person in accordance with this Act; and
- The release to the service of—

A records held by or on behalf of an approved service or any agency or instrumentality of the Crown relating to

previous assessments of or treatment provided to the person under this Act; and

B The person's criminal record i.e. record of any convictions recorded against the person.

· Submit to any testing or physical examinations

· Attend interviews, by the service or by any other person, to determine whether the person is experiencing physical, psychological or social problems connected with substance abuse and, if so, to determine the treatment (if any) appropriate for the person.

**8—Report to referral authority on the initial assessment**

On completion of the initial assessment of a person, the approved service must provide a report to the person and to the referral authority on the results of the assessment.

A report under this section of the Act must Firstly specify whether or not treatment is recommended

Secondly, if treatment is recommended, set out a treatment plan for the person in accordance with the requirements of this Act;

And Thirdly comply with guidelines (if any) issued by the Minister for the purposes of this section.

**Treatment—Part 3**

**9—Referral for Treatment**

(1) If a report provided to a referral authority under section 8 recommends that a person undergo treatment for substance abuse, the referral authority may refer the person to an approved service for treatment and give the person a notice that sets out particulars of the date, place and time at which the person must attend the service

(2) A copy of the referral notice and the report provided under section 8 must be forwarded to the approved service.

(3) On a person being referred to an approved service, the service must arrange a treatment program for the person in accordance with the recommendations contained in the report.

(4) For the purposes of the treatment program, the approved service may, by notice in writing given personally or by post, require the person to do any of the following:

So that the ongoing Monitoring and Assessing of the person can be effective the approved treatment service bust have access to the persons Medical, Other treatment records and past criminal records or any other records held by the crown relating to previous assessments of a person.

It will be a requirement under this act for the person to give written consent for the service to obtain any the above records.

The person must submit to testing and this includes blood, saliva, urine or hair follicle testing and or any physical examinations.

So that the treatment service can get to the underlying problems that lead to drug abuse this act will require the person to attend interviews, counselling sessions or programs of an educative, preventative or rehabilitative nature, provided by the service or by any other person, to deal with the:

(a) any physical psychological or social problems connected with substance abuse; or

(b) any other matters that will in the opinion of the service, assist the person to overcome any personal problems that may tend to lead, or that may have led, to the substance abuse.

**10—Treatment Programs**

An important aspect of this Act will ensure that the monitoring of the client will be for a period specified by the referral authority not to be less than **15 months** and be designed to assist the person to recover from the substance abuse by supporting abstinence (not harm minimisation) from the substance and addressing the underlying causes of the substance abuse.

· **Post drug impairment syndrome – Dr Forest Tennent; Robby House 1980's.**

· **Explain dry drunk dry drug**

· **Explain long term treatment works better than short term.**

The treatment program will include requirements relating to ongoing monitoring and assessment in accordance with the following section

**11—Ongoing Monitoring and Assessment**

A special feature of this section is that the Service approved by the minister must take reasonable steps to monitor the progress of the person in that treatment and most importantly, to monitor whether or not the person is abstaining from substance abuse by ensuring they take tests and obtain records according to section 9(4) of this Act

· **Lay down reasons why it is so important that the person is monitored for his or her complete abstinence.**

**12—Reports to referral authority**

Following the completion of the treatment program, the approved service must provide a report to the person and to the referral authority on the results of the treatment.

A report under this section must comply with guidelines (if any) issued by the Minister

**Miscellaneous—Part 4**

**13—Matters to be considered in issuing referrals**

Under this Bill there are a number of miscellaneous items that must be considered in issuing referrals.

(a) whether the approved service is the most appropriate service to which the person could be referred having regard to the purpose of the referral and the nature of the substance abuse (or suspected substance abuse);

(b) whether the person being referred requires access to child care facilities and whether the approved service is able to provide such facilities

(c) the location of the approved service in relation to the person's usual place of residence and whether the person will be reasonably able to obtain transport to attend the service:

(d) in relation to a referral for treatment—whether the approved service has treatment facilities and programs of a kind recommended for the person in the assessment report provided under section 8;

(e) Any other matters the referral authority considers relevant.

**14—Release from custody for the purposes of assessment or treatment.**

Similar to the ***Controlled Substances Act 1984*** this Bill has a release from custody component for the purposes of assessment or treatment.

If a person who is in custody is required, by notice under this Act, to attend and approved service or any other place for assessment or treatment in accordance with this Act, the manager of the place in which the person is being detained must cause the person to be brought to the service or other place as required by the notice.

**15—Termination of referral**

Another key feature of this bill is a Termination of referral clause

(1) An approved service must, by notice in writing to the person give personally or by post, terminate a person's referral to the service.. This component deals specifically if the person referred does not comply or co-operate with the treatment service.

The referral can be terminated if

(a) a person fails, without reasonable excuse, to attend the service in accordance with the referral notice or with any other notice requiring the person to attend; or

(b) if at any time during the assessment or treatment it becomes apparent to the service that—

(i) it would not, in the circumstances, be appropriate to require the person to undergo the assessment or to continue with the treatment program; or

(ii) the person does not want the service to deal with the matter

(2) An approved service may, by notice in writing to the person given personally or by post, terminate a person's referral to the service—

(a) if the person hinders, or does not cooperate with, the service in carrying out the assessment or in providing the treatment program; or

(b) if the person, without reasonable excuse, refuses or fails to comply with a requirement issued by the approved service in accordance with section 7(4) or section ((4);or

(c) If the person refuses to comply with the court order or other requirement in respect of which the referral was made.

(3) A notice of termination under this section must set out a short statement of the service's reasons for the termination

(4) The service must give a copy of the notice of termination to the referral authority

**16—Referral Following Termination**

(1) On termination of a referral under section 15, the referral authority may, if it considers it appropriate in the circumstances, refer the person to another approved service to continue the assessment or treatment (as the case may be).

(2) If a person is referred to an approved service for assessment or treatment under this section the following provisions apply:

(a) subject to this subsection, this Act applies to the referral as if it were—

(i) in the case of a referral for assessment—a referral under part 2; or

(ii) in the case of a referral for treatment—a referral under Part 3;

(b) a copy of the termination notice must be provided to the approved service (in addition to any other documents required under this Act to be provided to an approved service following referral of a person);

(c) In the case of a referral for treatment—the referral authority may, despite section 10(a). Specify that the treatment program is to be for a period of less than 15 months if the referral authority thinks that would be appropriate, taking into account any period during which the person underwent treatment in accordance with the terminated referral.

(d) **17—Confidentiality**

A person who is, or has been, engaged in duties related to the administration of this Act must not disclose information relating to a person referred for assessment or treatment under this Act, being information obtained in the course of those duties, unless the disclosure is made—

(a) in the administration of this Act: or

(b) as authorised or required by law; or

(c) With the consent of the person to whom the information relates.

This part also sanctions a penalty in the way of a fine for breaching the Confidentiality clause.

The Maximum penalty for a breach is: $10 000

**18—Reports to Minister**

To prevent misuse of public monies, corruption and to keep the Minister informed of all approved treatment service's programs and activities, these facilities must before 30 September of each year:-

(a) Deliver to the Minister a report on the operations of the approved service during the previous year.

(b) The Minister must, within 12 sitting days after receiving a report under this section, cause a copy of the report to be laid before both Houses of parliament.

**19—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 subsection (1), regulations may be made empowering the minister to require the provisions of reports, statements, documents or other forms of information from approved services in connection with the administration or operation of this Act.

**Schedule 1—Related amendments and transitional provisions**

**The Hon. I.K. HUNTER** secured the adjournment of the debate.

## LOCAL GOVERNMENT (OPEN SPACE) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 21 June. Page 435.)

**The Hon. J. GAZZOLA:** The government opposes this bill, which represents a knee-jerk reaction to ongoing events in the City of Campbelltown. The council has submitted an application to the Minister for State/Local Government Relations for approval to revoke the classification of community land for part of Oakdale Reserve in Newton. However, the bill assumes, as a given, that part of Oakdale Reserve will be lost. This assumption is premature, as the minister is yet to give due consideration to the application.

At present the minister is seeking further information and is not prepared to approve the revocation for Oakdale Reserve on the information that has been presented. The bill has also been built upon the fact that some 172 applications for revocations have been made since 2002, and somehow this figure is presented as unwarranted. What needs to be understood is that all of these applications had to be publicly advertised, with at least three weeks for the public to make submissions.

The vast majority of these applications included either evidence of community support for the revocation or no submissions against the revocation. Of those 172 applications only six have involved significant opposition—20 or more people against the revocation—of which only one has been approved in the face of opposition from a small group within the community concerned.

It must be remembered that the minister, when considering such an application, already takes into account all relevant matters, including any submissions made by the public and the adequacy of community consultation. Importantly, it should be noted that additional work is currently being undertaken to provide guidance for councils on the kinds of matters that are relevant to this type of application: in particular, how community consultation should be managed and how these applications are assessed when there is significant community opposition to a revocation.

The bill proposes that burdensome, expensive and binding referenda should be imposed upon local councils, even though the current act already allows for ministerial discretion to guide these matters. Further, if this bill were to be supported it would mean that a minority of electors within a local council could, and most probably would, limit council's ability to effectively manage its open spaces. This bill is unnecessary and is opposed by the government.

**The Hon. I.K. HUNTER** secured the adjournment of the debate.

## CONTROLLED SUBSTANCES (EXPIATION OF SIMPLE CANNABIS OFFENCES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 20 September. Page 669.)

**The Hon. A.M. BRESSINGTON:** I rise today in support of this bill. In this place on 31 May 2006, the Hon. Dennis Hood introduced a bill to eliminate expiation for growing cannabis plants. The right to expiation makes the law on possession of the illicit drug cannabis a joke, and it mocks those who are trying to serve the public good. Current legislation makes possession of marijuana no more of a crime than speeding or not wearing a seatbelt. The expiation system makes cannabis half legal and half illegal, and the result has been an explosion in the cultivation and distribution of a dangerous and toxic substance.

In *The Advertiser* of 25 October 2000, the Police Commissioner, Mr Mal Hyde, said, 'There are many people in the community who believe that it's legal to use cannabis because of the expiation nature of the scheme'. Mr Hyde continued:

> . . . one of the problems we've got in dealing with illicit drugs is we don't have a clear and consistent message within the community. We actually confuse the message. I think we have ended up with our own home-grown problems as a result of the legislation.

It is interesting to note that the government opposed this piece of legislation because of a lack of evidence, and only in this chamber today and yesterday the police minister, the Hon. Mr Holloway, insisted that we should be listening and looking to the Police Commissioner because he knows best; he is the one; he is the law and order man. Yet, for this bill, the government chooses to ignore the comments of the Commis-

sioner for Police and the recommendations that he has made to change this legislation and go its own sweet way with this.

As to these home-grown problems that we have created, in 2000 there were 14 home invasions in the metropolitan area which police believe were committed to obtain cannabis grown within these premises. Again, in *The Advertiser*, Mr Hyde said that two people had been killed and another left with brain damage in those incidents. He thinks that is only the tip of the iceberg. These are the reported cases. If you engage in cultivating cannabis in your home, you stand a very strong likelihood of being the victim of a serious crime. These are the words of a highly respected leader in our law enforcement department and community. These are the words of an experienced police officer, and I think we should listen to him.

Legislation needs to be amended so that those in the community get a clear and precise message that possession, cultivation and dealing in illicit drugs such as cannabis is a serious crime regardless of what the civil libertarians say and regardless of the myths that this is a harmless drug and that it is legal. It is far more serious than a traffic offence. It is about time we put an end to those who profit from the suffering and addictions of others. The Hon. Dennis Hood also mentioned in this place that many experts say there is now little doubt that cannabis causes, or is linked to, psychotic illnesses such as schizophrenia, depression and anxiety disorders, particularly when smoked by young people.

Most importantly, the honourable member quoted from the New South Wales Mental Health Review Tribunal, cited in the Melbourne *Herald Sun* of 19 April 2006, which found that four out of five mentally ill patients committed to an institution in New South Wales, or who needed compulsory treatment, had regularly smoked cannabis between the ages of 12 and 21. Our own Dr Jonathan Phillips, former head of mental health in South Australia, has stated that the current drug problem in this state has seen an increase of 75 per cent in drug-related emergency room admissions and violent behaviour in those emergency rooms.

Today, we need to be aware that the cannabis that is on the street is nothing like the cannabis of the 1960s. In the National Police Intelligence Report of 1993, research showed that in 1993 the streets had begun to be flooded with a hybrid known as 'skunk'. This hybrid is known overseas as 'madweed' because of its ability to bring on a psychotic episode after just one use. This skunk, or madweed, has up to 29 per cent more THC content than any other strain of marijuana that we have had to date. It has flooded our streets now for 20 years. It is not unreasonable to assume that the marijuana of days of old is long gone.

It beggars belief that the government with its approach of being tough on law and order and tough on drugs has opposed this bill, claiming that no research shows that a fine and court appearance would be any more effective than an expiation notice. This government relies so much on research, yet it is unwilling to apply commonsense or even take on board the recommendations of our own Police Commissioner. How are we ever going to gather the research needed if we are not willing to do things differently in order to get some idea of different things that will work? If we do not practise it, we cannot research it and, therefore, we cannot provide the evidence.

In this place, the Hon. Sandra Kanck made light of my comments about organised crime and the drug problem the wider community is facing. I ask the honourable member and others where they believe the prime source of cannabis stems from. I know from years in the treatment and rehabilitation sector that members of illegal bikie gangs set up users with hydro equipment and seedlings and pay users about $3 000 a crop as it is diced and bagged for sale. These are the anti-social members of our community who prey on our kids, and any parent who is concerned for their child's wellbeing wants to see a tougher stance.

This bill proposed by the Hon. Dennis Hood is not suggesting gaol but rather a fine that reduces the profit made from one plant. This government is imposing tougher penalties for tobacco—and rightly so—but it is a legal drug. The Legislative Review Committee today talked about fines in relation to tobacco and the cost of a licence for shops to sell cigarettes going from $12.90 to $200 a year to discourage shop owners from selling tobacco. That is not a bad move, but why would we apply a different recipe for illegal drugs? Why do we not understand that the revenue people get from one plant far exceeds $150, or $300 which the fee is soon to be? Why do we make it profitable for people to grow one plant in their backyard? A $150 expiation fee is nothing.

This government has been entrusted with making decisions that will benefit the state of South Australia and on this issue it is failing, and failing badly. It has taken us a long time to earn the title of 'cannabis capital' of Australia. Now we are seeing the flaws in the liberal attitudes. There is a wave of change out there. People are demanding that action be taken on these issues, and they are not looking any more for the liberal approach because, guess what—it has not worked. There are more people out there hurting because their children are using drugs than five, six or seven years ago, and there is a groundswell of people demanding that the government take responsibility and change the legislation.

We are seeing kids as young as 10 years old using cannabis. We are seeing an explosion of drug-induced mental illness and families literally being torn apart, yet we still persist, perhaps thinking that one day we will wake up and it will all have gone away. The other alternative is that the majority of people are too doped to give a stuff about what we do in this place. Some time ago I spoke to a member of the public who, seven or eight years ago, came to South Australia from Great Britain to join the police force here. This man said that the attitudes to drugs in this country are a joke and that the laws we have demoralise members of the police force.

If this government wishes to castrate the police in the execution of their duties, at least it should have the courage to speak out openly and honestly on that particular agenda. If that is not the intention of the government, it should be listening to the police and the Police Commissioner and changing the legislation to allow the police to do their job and also to send the right message to those members of the community who use this drug believing that it is less harmful than tobacco or alcohol. Statistics show that one in three people sitting in this chamber will be indirectly or directly affected by a loved one using cannabis. If that is correct, then I would hope that sensible legislation is not being dismissed and laws are not being created or inhibited in an effort for members to do what they believe will protect their family members.

If we had sufficient and effective rehabilitation facilities in this state, we would not have to grapple with the only other option being gaol. I defy any member in this place to publicly speak out and say that they believe that using cannabis is nothing more than a personal choice, because the rest of the community pays for the cost of that personal choice in many

ways. Perhaps the fines that the Hon. Dennis Hood has suggested could be redirected to provide treatment and rehabilitation centres, and then at least there would be an even exchange between drug users and the community. I support this bill and encourage all members in this place to do likewise. It is a genuine step in the right direction to stop this hideous drug and the low-lifes who profit from those suffering the addiction of THC and its effects.

**The Hon. R.P. WORTLEY** secured the adjournment of the debate.

## UPPER SOUTH EAST DRYLAND SALINITY AND FLOOD MANAGEMENT (NATURAL RESOURCES COMMITTEE) AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 27 September. Page 774.)

Order of the day discharged.
Bill withdrawn.

## SOUTHERN STATE SUPERANNUATION (INSURANCE, SPOUSE ACCOUNTS AND OTHER MEASURES) AMENDMENT BILL

**The Hon. P. HOLLOWAY (Minister for Police)** obtained leave and introduced a bill for an act to amend the Southern State Superannuation Act 1994. Read a first time.

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

That this bill be now read a second time.

This bill seeks to make some amendments to the Southern State Superannuation Act 1994, the statute that establishes and maintains the Southern State Superannuation Scheme, known as the SSS Scheme. The SSS Scheme provides superannuation benefits for government employees, including police officers, who commenced employment after May 1994.

The main amendments proposed in this bill deal with the invalidity and death insurance arrangements in the Triple S Scheme, and when enacted will complete a package of insurance enhancements being made by the government to the Triple S Scheme. The legislation will also amend the definition of 'salary' in the act to provide that in all cases superannuation benefits will be based on a member's salary before any component is sacrificed and taken in a non-monetary form.

Further amendments provide for spouses of members to have their own superannuation account in the Triple S Scheme and access to post-retirement investment products. The proposals will enable members to split or share their contributions with their spouse in line with the principles introduced for the superannuation industry by the commonwealth government. The legislation will also enable a spouse to take out death insurance cover in the Triple S arrangement.

The package of proposals will also enable members who invest in a post-retirement investment product to have access to insurance cover through the Triple S insurance arrangement. An actuarial review of the insurance arrangements in the Triple S Scheme undertaken in 2005 in accordance with the requirements of the act indicated that the existing premiums being charged to members were more than adequate to meet the cost of benefits expected to be paid under the insurance arrangements. In fact, the actuary undertaking the review reported that there was a surplus of $27 million that had built up in the insurance pool. The actuary therefore advised that there was ample scope for enhancements to be made to the existing arrangements and also premium reductions.

The healthy state of the insurance pool gave the government the opportunity to implement the changes recommended by the actuary and the Superannuation Board. The changes to the insurance arrangements that have already been made by regulation, combined with the remaining changes dealt with in this bill, will combine to make the total insurance package available through the scheme more attractive to members and ensure that the arrangements are competitive with insurance cover being offered by other government and industry superannuation schemes.

The most significant of the package of insurance changes are those already introduced by regulation. The regulations introduced in October 2005 brought a reduction of at least 25 per cent in the amount of premiums for most members and an increase in the value of a unit of insurance of at least 50 per cent. The premium reduction and increase in the value of a unit of insurance have been well received by members.

The legislation contained in the bill will when enacted complete the package of insurance changes by proposing the following enhancements to the Triple S Scheme invalidity and death insurance arrangements:

· There will be an increase in the age at which a member is eligible for a temporary disability pension under what is often called income protections insurance from age 55 to age 60;

· There will be an increase in the amount of temporary disability pension from 66.6 per cent of salary to 75 per cent of salary;

· There will be an increase in the maximum period over which a temporary disability pension can be paid from the existing 18 months to 24 months;

· Members will no longer have to exhaust their sick leave entitlements prior to accessing a temporary disability pension, as a member who qualifies for a temporary disability pension will commence to be paid the benefit after 30 days from the date that the member ceased to be able to work due to disability;

· Members who do not contribute will have an option to take out temporary disability insurance cover, provided they can provide satisfactory proof of no impending disability and commence making the required premium;

· The age at which members can access total and permanent invalidity insurance will be increased from 60 to 65; and,

· Some of the current restrictions on certain members taking out voluntary insurance cover will be removed. In particular this will enable members of the closed defined benefit schemes who are salary sacrificing contributions to the Triple S Scheme to take out insurance.

All of the proposed enhancements to the insurance arrangements have been actuarially costed and can be provided within the new lower level of premiums that have been prescribed by regulation under the act. As required under section 13A of the Southern State Superannuation Act, the insurance arrangements will be actuarially reviewed again as at 30 June 2007 to ensure that the existing premiums being charged are adequate to cover the cost of the benefits expected to be paid under the insurance arrangements. The actuary who performed the insurance review believes the existing surplus in the insurance pool should enable the new discounted premiums to be maintained for about 15 years.

The bill also proposes a minor amendment to the act to remove the requirement for an enterprise agreement to be

prescribed in regulations before non-monetary salary under a salary sacrificing arrangement can be recognised for superannuation purposes. The requirement to prescribe an enterprise agreement was put in place before salary sacrifice arrangements across government were commonplace. Salary sacrificing arrangements across government are now commonplace, with the general acceptance that the part of an employee's salary sacrificed and taken in a non-monetary form will be taken to be salary for superannuation purposes. In the circumstances, the requirement to prescribe enterprise agreements can now be removed, bringing administrative efficiencies.

The commonwealth government recently passed the Tax Laws Amendment (Superannuation Contributions Splitting) Act 2005 and brought into operation several sets of associated regulations that enable members of superannuation schemes to split and share with their spouse contributions made to a scheme on or after 1 January 2006. Superannuation entitlements accrued up to 1 January 2006 cannot be split. Under the commonwealth splitting arrangements, only an accumulation interest in a scheme can be split. This means that, if a member of the State Pension or Lump Sum Scheme wishes to split contributions with their spouse, they would have to be making salary sacrifice contributions to the Triple S Scheme.

The bill introduces legislation that will not only enable members to split their contributions with their spouse in terms of the commonwealth law, but also legislation that will more generally enable a member to establish a spouse member account. Once a spouse member account has been established by a member, a spouse may make contributions directly to the spouse account. In conjunction with the provision of spouse accounts, and the recent introduction of post-retirement investment products, the bill provides that members of a public sector superannuation scheme and spouse members will also have an option to take out insurance through the Triple S insurance arrangement. Spouse members will be able to have access to death insurance cover, and members who invest in the post-retirement product, known as the flexible rollover product, will be able to access voluntary invalidity and death insurance cover.

The terms and conditions of this insurance cover will be prescribed in regulation, as is the case for all insurance cover under the scheme. The premiums to be charged and the insurance cover to be provided to these members will be actuarially determined and will take into account the risk profile of the persons who will be seeking this insurance cover. The insurance arrangements for people with post-retirement investments will be subject to the same triennial review as the insurance arrangements for ordinary Triple S members.

This new option will generally allow members and spouse members of the Triple S scheme who retire with insurance cover to continue with that cover if they roll over part or all of their benefit to the flexible roll-over product offered by the Superannuation Board. The insurance cover for persons investing in the flexible roll-over product would be available only until the person attained the age of 65.

The bill also provides for some minor technical amendments to be made to the Southern State Superannuation Act. In particular, some amendments are being made to the provisions of section 48 of the act, which was intended to give the Superannuation Board the power to resolve any doubt or difficulty that arises in the application of the act to particular circumstances. There have been difficulties for the board in using the provisions of section 48 as originally intended, as the Crown Solicitor has advised that the provision does not give the board any powers to deal with a matter in a manner that may cause conflict with an express provision of the act. The wording of the existing provision also does not allow the board to determine rules to apply to circumstances and situations not covered by the provisions of the act.

The proposed amendments to section 48 will address the current technical and legal issues associated with the provisions. The new provisions will enable the board to address issues and particular circumstances which may arise and which are not dealt with in the act, and also to extend a time limit or waive a procedural step under the act in certain circumstances. A similar amendment has already been made to the Superannuation Act 1988, which governs the state pension and lump sum schemes. Any action taken by the Superannuation Board under this provision will require the board to report on such action in its annual report to the minister. A further minor amendment is being made to section 47B to clarify the roles of both the Funds SA board of directors and the Superannuation Board in setting the terms and conditions for investment in the post retirement products.

The unions and the Superannuation Federation have been consulted with respect to this bill and have indicated their support. I commend the bill to members. I seek leave to have the explanation of clauses incorporated into *Hansard* without my reading it.

Leave granted.

**EXPLANATION OF CLAUSES**

**Part 1—Preliminary**

**1—Short title**

This clause is formal.

**2—Commencement**

This clause provides that the measure will come into operation on a day to be fixed by proclamation.

**3—Amendment provisions**

This clause is formal.

**Part 2—Amendment of *Southern State Superannuation Act 1994***

**4—Amendment of section 3—Interpretation**

This clause amends section 3 by removing the definition of ***non-monetary remuneration***. That definition is no longer required as a consequence of other amendments made to the section. A new definition of ***non-monetary salary*** is substituted for the existing definition. The new definition, which is substantially similar to the deleted definition of ***non-monetary remuneration***, provides that non-monetary salary is remuneration in any form resulting from the sacrifice by a member of part of his or her salary.

The definition of ***salary*** in section 3 of the Act is amended so that salary includes all forms of remuneration, including non-monetary salary. The exclusion of non-monetary remuneration that is currently effected by paragraph (a) of the definition is removed.

Subsections (3) to (3a) of section 3, which are relevant to the current exclusion from the definition of salary of non-monetary remuneration and the inclusion of remuneration received as a result of salary sacrifice, are also removed. The clause inserts a new subsection (3) that provides that the value of non-monetary salary received by a member will be taken to be the amount of salary sacrificed by the member in order to receive the salary as non-monetary salary. This is consistent with current subsection (3b).

Other amendments to section 3 are consequential on the insertion into the Act of new provisions relating to spouse members. ***Spouse member*** is defined by reference to new section 26D (inserted by clause 18). A ***spouse account*** is contribution account, rollover account or co-contribution account established and maintained by the South Australian Superannuation Board for the benefit of a spouse member.

This clause also removes the definition of ***additional invalidity/death insurance*** and substitutes a new definition of ***voluntary invalidity/death insurance***.

Amendments are also made to section 3(5), under which members employed on a casual basis are taken to remain in employment for 12 months following the last time they perform work for their employer and are potentially entitled to certain benefits under the Act if they suffer incapacity during that 12 month period. The amendments do two things:

· first, they clarify that the provisions apply to persons employed on a casual basis pursuant to arrangements under which the persons work for nine or more hours each week or for periods that average, over a three month period, nine or more hours each week;

· second, they remove the current reference to section 34(8) of the Act (which has been problematic because of a reference in section 34(9) to subsection (8)) and make it clear that a member to whom the provisions apply may be entitled to benefits under section 34 on account of invalidity if the Board is satisfied that the member's incapacity for all kinds of work is 60 per cent or more of total incapacity and is likely to be permanent.

**5—Amendment of section 4—The Fund**

The amendments made by this clause are consequential on the insertion into the Act of provisions providing for the establishment of accounts for the benefit of members' spouses.

**6—Amendment of section 7—Contribution, co-contribution and rollover accounts**

The Board currently has a power under section 7(3) to debit administrative charges against contribution accounts established under Part 5A (Family Law Act provisions) or established to accept money rolled over under provisions that correspond to Part 5A. As a consequence of this amendment, the Board will be authorised to debit administrative charges against members' contribution accounts generally (that is, not just those contribution accounts established under, or for the purposes of, Part 5A).

**7—Amendment of section 8—Other accounts to be kept by Board**

This clause recasts subsection (1) of section (8) as a consequence of the introduction into the Act of spouse members and spouse accounts. The Board will be required to maintain proper accounts of payments made to, on behalf of or in respect of spouse members and, under new subsection (1a), to include in relevant financial statements information about amounts debited against spouse member accounts in respect of premiums for death insurance.

**8—Amendment of section 13—Reports**

This amendment to the provision dealing with the Board's reporting requirements is consequential on the introduction of new accounting requirements relating to payments made in respect of spouse members.

**9—Amendment of section 13A—Report as to cost of invalidity/death insurance benefits**

Section 13A currently requires the Minister to obtain an annual report on the cost of basic and additional invalidity/death insurance benefits. This clause amends the section to make it clear that the report must refer to the cost of voluntary death insurance taken out by spouse members and invalidity or death insurance granted to public sector superannuation beneficiaries under new section 47BA (inserted by clause 32).

**10—Insertion of section 15A**

New section 15A applies to persons who are members of the Triple S scheme by virtue of section 14(4) of the Act.

Under section 14(4), a member of the scheme of superannuation established by the *Superannuation Act 1988* becomes a member of the Triple S scheme whenever an entitlement to benefits needs to accrue to the member under the Triple S scheme to satisfy the requirements of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth.

Under new section 15A, if a person who is a member of the Triple S scheme by virtue of section 14(4) elects to make contributions to the Treasurer under section 25 of the Act, or if payments are made to the Treasurer on behalf of the member under section 26(1a) of the Act, the member will be taken, for the purposes of the *Superannuation Act 1988*—

· to have resigned from employment and to have preserved his or her accrued superannuation benefits (whether he or she has reached the age of 55 years or not); and

· not to reach the age of 55 years until he or she reaches that age and ceases to be employed in employment to which the Act applies.

The member will, in effect, be taken to have made an election under section 15(1).

**11—Amendment of section 15B—Salary sacrifice by members of State Scheme**

This clause recasts subsection (1) of section 15B. That subsection provides that a person who is an active contributor to the scheme of superannuation established by the *Superannuation Act 1988* may elect to become a member of the Triple S scheme in order to establish an entitlement to the employer component of benefits under Part 5 of the Act by sacrificing part of his or her salary in accordance with a contract, award or prescribed enterprise agreement.

The subsection as recast potentially widens the group of persons who may elect to become members of the scheme under the provision so that in addition to active contributors to the State Scheme, certain persons prescribed by regulation may make such an election. Additionally, it will no longer be necessary under the new subsection to prescribe enterprise agreements.

The second amendment is consequential on the amendment made by clause 13 to section 22 of the Act, which will have the effect of allowing persons who are members of the insurance scheme by virtue of section 15B to apply for additional invalidity/death insurance.

**12—Amendment of section 21—Basic invalidity/death insurance**

This amendment has the effect of widening the group of persons who are entitled to basic invalidity/death insurance so that persons who are members of the scheme by virtue only of section 14(4) are no longer excluded from that group. Section 21(2) as recast also provides that spouse members and persons employed or engaged for specific periods of time who are remunerated solely by a fee, allowance or commission are not entitled to basic invalidity/death insurance.

**13—Amendment of section 22—Application for additional invalidity/death insurance**

Section 22(1b) currently provides that a person who is a member of the Southern State Superannuation Scheme by virtue only of section 14(4), (5), (6), (10) or (10a) or section 15B cannot apply for additional (now to be known as "voluntary") invalidity/death insurance. Clause 13 amends that provision by removing the references to section 14(4) and (6) and section 15B, so that persons who are members of the scheme by virtue of one of those provisions is entitled to apply to the Board for voluntary invalidity/death insurance.

New subsection (1ab) has the effect of providing that persons employed or engaged for specific periods of time who are remunerated solely by a fee, allowance or commission are not entitled to apply for voluntary invalidity/death insurance.

**14—Amendment of section 23—Variation of voluntary insurance**

**15—Amendment of section 24—Amount of invalidity/death insurance benefits and amount of premiums**

**16—Amendment of section 24A—Voluntary suspension of invalidity/death insurance**

The amendments made by clauses 14 to 16 are consequential on the renaming of additional invalidity/death insurance as voluntary invalidity/death insurance.

**17—Amendment of section 25—Contributions**

Currently under section 25(1), a member of the scheme may elect to make contributions to the Treasurer at one of a series of specified percentages of the member's combined monetary and non-monetary salary between 1 and 10. This clause recasts subsection (1) so that a member may elect to make contributions to the Treasurer at any whole number percentage, or at 4.5%, of the member's combined monetary and non-monetary salary.

As a consequence of the second amendment made by this clause, persons who are members of the scheme by virtue only of section 14(4) will be entitled to make contributions to the Treasurer under section 25(1).

**18—Insertion of Part 3A**

This clause inserts a new Part into the Act. Part 3A is comprised of provisions relating to the establishment and maintenance of spouse accounts, and the provision of death insurance cover for spouse members.

**Section 26A** includes a number of definitions necessary for the purposes of Part 3A. An ***eligible member*** is a member of the scheme in respect of whom payments are being made to the Treasurer under section 15B or section 26. (Section 15B relates to salary sacrifice by members of the scheme of superannuation established under the *Superannuation Act 1988*. Section 26 provides for payments to be made in respect of members by their employers.)

A ***prescribed payment*** is the payment of an amount that is a spouse contributions-splitting amount for the purposes of the definition of ***contributions splitting ETP*** under the Commonwealth *Income Tax Assessment Act 1936*. The definitions of ***voluntary death insurance*** and ***voluntary death insurance benefits*** relate to insurance available to spouse members under Part 3A.

Under **section 26B**, an eligible member may apply to the Board to make a prescribed payment from the member's contribution account or employer contribution account into a rollover account established for the member's spouse. The application and the making of the payment are subject to, and must comply with, both the Commonwealth *Superannuation Industry (Supervision) Regulations 1994* and such terms and conditions as may be specified by the Board. The Board is authorised to fix fees payable in respect of applications under section 26B, and any such fee may be deducted from the applicant's employer contribution account or a spouse account established in the name if the applicant's spouse.

**Section 26C** provides that an eligible member may make monetary contributions to the Treasurer for crediting to a contribution account in the name of the member's spouse. A spouse member may also make monetary contributions to the Treasurer under the section. Under **section 26D**, if a prescribed payment is made by a member for the benefit of his or her spouse, or a contribution is made by a member under section 26C, and the spouse in respect of whom the payment or contribution is made is not already a spouse member of the Triple S scheme, the spouse becomes a spouse member.

The Board is required under subsection (2) to maintain a contribution account for a spouse member who is making contributions, or on behalf of whom contributions are being or have been made, under section 26C. The Board is also required to maintain a rollover account for a spouse member if a prescribed payment has been made for the spouse member or if an amount of money has been carried over from another fund or scheme for the spouse member. If a co-contribution is made in respect of a spouse member, the Board must maintain a co-contribution account in the name of the spouse member.

Administrative charges may be debited against spouse accounts in appropriate cases.

**Section 26E** requires the Board, at the end of each financial year, to adjust each spouse account that has a credit balance to reflect a rate of return determined by the Board in relation to spouse members' accounts for that financial year. The provisions of section 26E are substantially similar to those of section 7A of the Act, which relates to accretions to members' accounts.

Where a spouse member is or becomes a *member* of the Triple S scheme, **section 26F** authorises the Board to transfer the amounts standing to the credit of the spouse member's spouse accounts to an account in the name of the member. If all of the amounts standing to the credit of a person's spouse accounts are transferred by the Board under the section, the person ceases to be a spouse member of the scheme and, if he or she has any voluntary death insurance under section 26G, that insurance is taken to be voluntary invalidity/death insurance under section 22 of the Act.

**Section 26G** authorises spouse members to apply to the Board for voluntary death insurance. A spouse member may only apply for voluntary death insurance, and will only be covered by such insurance, while the spouse member is the spouse of a member of the scheme. The provisions of section 26G are substantially similar to those of section 22, which relate to voluntary invalidity/death insurance available to members of the scheme. An applicant under section 26G is required to provide the Board with prescribed information as to his or her health and may be required to provide additional information. The cost of any medical examination required will be borne by the applicant.

Under **section 26H**, a spouse member may apply to the Board to vary his or her level of voluntary death insurance. **Section 26I** provides that the amount of voluntary death insurance benefits and the amount of the premiums in respect of those benefits will be fixed by or under regulation. As with invalidity/death insurance for members of the scheme, the regulations may provide—

- for different amounts of voluntary death insurance benefits depending on the spouse member's age or on any other relevant factor; and
- for annual increases in the amount of voluntary death insurance; and
- for the amount of premiums to be fixed by the Board.

Premiums may be debited against any of a spouse member's spouse accounts.

**Section 26J** deals with the payment and preservation of spouse member benefits. If a spouse member is aged 55 or over and is the spouse of the member who caused him or her to become a spouse member (the ***relevant member***), and the relevant member's employment has terminated, payment of the amount standing to the credit of the spouse member's spouse accounts may be made to the spouse member subject to any restrictions imposed by the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth (the ***SIS Act***).

If a spouse member is not yet 55 years of age and is married to the relevant member, and the relevant member's employment has terminated, an amount standing to the credit of the spouse member's spouse accounts must be preserved. The amount must also be preserved if the member is not the spouse of the relevant member and has not reached the age of 55. If, however, the spouse member has reached the age of 55 and is not the spouse of the relevant member, the amount may be paid to the spouse member subject to any restrictions imposed by the SIS Act.

Where an amount is preserved as outlined above, the spouse member may elect to carry the amount over to some other fund or scheme approved by the Board. Alternatively, the spouse member may, at any time after he or she turns 55, require the Board to authorise payment of the amount. If no such requirement has been made on or before the date on which the spouse member turns 65, the Board will authorise payment of the amount to the spouse member.

If a spouse member suffers physical or mental incapacity and the Board is satisfied that the spouse member's incapacity for all kinds of work is 60 per cent or more of total incapacity and is likely to be permanent, the spouse member is entitled payment of the amount standing to the credit of the spouse member's spouse accounts.

If a spouse member dies, the amount standing to the credit of each of the spouse member's spouse accounts, and the spouse member's voluntary death insurance benefit (if any), will be paid to the spouse member's spouse or, if there is no spouse, the spouse member's estate.

**19—Amendment of section 27—Employer contribution accounts**

This clause amends section 27(7) so that the section provides that a disability pension premium, rather than "the disability pension factor", is to be debited against the employer contribution accounts of members. A new subsection (9) is also substituted. This subsection provides that a disability pension premium is not payable by an employer under section 27(7)(c) in relation to a member who is not entitled to a disability pension under section 33A under any circumstances and a member who is exempted under new subsection (15) of section 33A from the ambit of that section.

An additional amendment recasts section 27(7a) so that premiums relating to voluntary invalidity/death insurance can be debited against the employer contribution accounts of persons who have elected to become members of the Triple S scheme under section 15B. This amendment is consequential on the amendment to section 22 made by clause 13.

**20—Amendment of section 33A—Disability pension**

Section 33A provides that a member of the scheme who is temporarily or permanently incapacitated for work and has not reached the age of 55 years is entitled to a disability pension. The first amendment made by this clause increases the age limit to 60 years. The amendment also makes it clear that a disability pension is only available to a member who is no longer engaged in work in respect of employment to

which the Act applies on account of the incapacity. New subsection (1a) provides that an application for a disability pension must be made within 6 months of the day on which the member ceases to be engaged in work in respect of employment to which the Act applies.

This clause also increases the amount of a disability pension from two-thirds of the member's notional salary to 75 per cent of salary.

Section 33A(4) specifies the circumstances in which a member is entitled to a pension, the most significant being that the member has, for a period of at least 12 months immediately before his or her incapacity, made contributions from his or her salary. Clause 20 amends subsection (4) by the insertion of a new paragraph providing that a member may be entitled to a pension under new subsection (4a). This subsection provides that a member is entitled to a pension in respect of an incapacity for work if—

· the member does not qualify under one of the circumstances referred to in subsection (4); but

· the member is, at the time of the occurrence of the incapacity, paying premiums to the Board for the purposes of obtaining a benefit under section 33A in the event of an incapacity for work.

New subsection (4b) applies some additional provisions in connection with the requirement that the member pay premiums to the Board for the purpose of obtaining a benefit, namely:

· a member may apply to the Board, in a form approved by the Board, to pay premiums for the purposes of section 33A;

· the Board must, in order to assess the application, require the member to provide information about his or her health and the status of any medical condition or disability;

· the Board will be able to grant an application on conditions if there is a risk of incapacity for work due to the member's state of health;

· the amount of any premium will be fixed by the Board;

· a member who is paying premiums may, by notice in writing to the Board, elect to cease paying those premiums, in which case the person ceases to come within the ambit of the section.

An election to cease paying premiums will take effect from a date determined by the Board.

Section 33A(7) provides that a disability pension is not payable in respect of a period in which a member is entitled to sick leave. That provision is amended to provide that a disability pension is not payable in respect of the period of thirty days following the day on which the member ceases work on account of the disability.

Under section 33A(9), a disability pension cannot be paid for a continuous period of more than 12 months unless the Board thinks there are special reasons for extending the limit (which it may do for not more than six months). The provision is amended by this clause so that a pension cannot be paid for a continuous period of 18 months.

Section 33A(10) currently provides that a disability pension cannot be paid in respect of one incapacity, for an aggregate period of 18 months in any one period of 36 months. This clause amends the provision so that a pension cannot be paid in respect of an incapacity for an aggregate period of 24 months in any one period of 48 months.

Clause 20 also inserts a number of new subsections into section 33A. New subsection (14) states that spouse members and persons prescribed by the regulations for the purposes of the subsection are not entitled to a disability pension under any circumstances. Subsection (15) provides a mechanism whereby certain members may apply to the Board to be exempted from the ambit of section 33A. Those members are—

· members employed on a casual basis; and

· members who satisfy the Board that the majority of their income is derived from employment to which the Act does not apply, or that they are covered by an insurance policy that provides income protection entitlements superior to the entitlements provided under section 33A.

A member who applies successfully to the Board to be exempted from the ambit of the section will not be entitled to a disability pension under the section and, because of a related amendment to section 27, a disability pension premium will not be debited against the member's employer contribution account.

Subsection (16) provides that a member previously exempted from the ambit of section 33A under subsection (15) may apply to the Board to be brought within the ambit of the section. If the member's application is successful, the member will again be entitled to a disability pension under the section (subject to section 33A). The member will be required to provide the Board with information about his or her health and the status of any medical condition or disability.

Subsection (20) states that if a person who is a member of the scheme by virtue of section 14(4) (ie, a member of the State Scheme or any other scheme established by or under an Act or a scheme of superannuation established for the benefit of the employees of an agency or instrumentality of the Crown) becomes entitled to a benefit under section 33A, the person is not entitled to a benefit under section 30 or 36 of the *Superannuation Act 1988*. (Those sections provide for a disability pension payable to members of the scheme of superannuation established under that Act.)

Subsections (21) and (22) apply in relation to a member in receipt of a disability pension who is engaged in remunerative activities for the purposes of a rehabilitation or return to work arrangement. The member may receive a disability pension while engaged in those remunerative activities, but the amount of the pension will be offset by the amount by which the pension and income exceed, when aggregated, the member's notional salary.

**21—Amendment of section 34—Termination of employment on invalidity**

Section 34(1) lists the benefits payable to a member whose employment is terminated on account of invalidity before the member reaches the age of 60 years. Clause 21 amends the provision by increasing the age limit to 65 years.

Other amendments made by this clause are consequential on the change of the name of "additional invalidity/death insurance" to "voluntary invalidity/death insurance".

**22—Amendment of section 35—Death of member**

This amendment is consequential on the change of the name of "additional invalidity/death insurance" to "voluntary invalidity/death insurance".

**23—Amendment of section 35AA—Commutation to pay deferred superannuation contributions surcharge—member**

As a consequence of this amendment to section 35AA, a member who has become entitled to a benefit but has not received a surcharge notice from the Commissioner of Taxation may request the Board to apply an amount of the member's benefit in payment of the anticipated surcharge. The Board must, within seven days of the member's request, convert an amount of the member's benefit equal to the surcharge amount into a pension. The pension must then be commuted and the resulting lump sum paid to either the member or the Commissioner of Taxation. After the payment has been made, the Board must reduce the member's remaining benefits by an amount equal to the amount of the member's surcharge.

**24—Amendment of section 35B—Interpretation**

**25—Amendment of section 36—Information to be given to certain members**

**26—Amendment of section 41—Power to obtain information**

**27—Amendment of section 43—Division of benefit where deceased member is survived by lawful and putative spouse**

**28—Amendment of section 45—Payments in foreign currency**

**29—Amendment of section 47—Liabilities may be set off against benefits**

The amendments made by clauses 24 to 29 are consequential on the change of the name of "additional invalidity/death insurance" to "voluntary invalidity/death insurance" or the insertion into the Act of provisions providing for the establishment of accounts for the benefit of members' spouses.

**30—Amendment of section 47A—Confidentiality**

Section 47A(1) currently prohibits members or former members of the Board or the board of directors of the

Superannuation Funds Management Corporation of South Australia (the *Corporation*), or a person employed or formerly employed in the administration of the Act, from divulging information as to the entitlements or benefits of any person under the Act except in certain circumstances. This clause amends subsection (1) by extending the prohibition to information of a personal or private nature. This amendment is consistent with an amendment recently made to the corresponding section of the *Superannuation Act 1988*.

**31—Amendment of section 47B—Post retirement investment**

Under section 47B, the Board is authorised to accept money from public sector superannuation beneficiaries for investment with the Corporation. This clause amends the section so that the Board will also be able to offer to accept money from the spouses of public sector superannuation beneficiaries. Although the definition of ***public sector superannuation beneficiary*** as amended will include members of public sector superannuation schemes, under new subsection (1a), the Board will, in relation to a particular type of investment, be able to offer to accept money only from public sector superannuation beneficiaries (or their spouses) who have received a benefit under a public sector superannuation scheme.

Section 47B(2), which currently provides that an offer under the section will be on terms and conditions determined by the Board and the Corporation, is amended so that, rather than being involved in determination of the terms and conditions of an offer, the Corporation must be consulted by the Board about relevant matters for which the Corporation is responsible.

**32—Insertion of section 47BA**

New section 47BA provides that a public sector superannuation beneficiary may apply to the Board for invalidity/death insurance. The spouse of a public sector superannuation beneficiary may apply to the Board for death insurance. The Board is authorised to provide such insurance subject to the terms and conditions (if any) prescribed by regulation.

A person aged 65 years or over cannot apply for, and is not entitled to, invalidity or death insurance. The amount of invalidity and death insurance benefits and the amount of the premiums in respect of those benefits will be fixed by or under regulation. Under subsection (4), the regulations may provide—

- for different amounts of invalidity or death insurance depending on a person's age or whether a person is employed on a full time, part time or casual basis, or is not employed, or on any other relevant factor; and
- for annual increases in the amount of invalidity or death insurance for the benefit of persons who wish to have annual increases in their insurance; and
- for the amount of premiums to be fixed by the Board.

**33—Amendment of section 48—Resolution of difficulties**

The amendments made by this clause are consistent with amendments recently made to the corresponding section of the *Superannuation Act 1988*. The section as amended will authorise the Board to give directions if the Board is of the opinion that the provisions of the Act do not address particular circumstances that have arisen. The directions must be reasonably required to address the circumstances (but only insofar as the Board determines it to be fair and reasonable in the circumstances). Any such direction will have effect according to its terms. (The section already authorises the Board to give directions reasonably required if any doubt or difficulty arises on the application of the Act to particular circumstances.)

Under new subsections inserted into section 48, the Board may, in certain circumstances, extend a time limit or waive compliance with a procedural step. The section lists matters that the Board must have regard to in determining whether to extend a time limit or waive compliance with a procedural step. If such action is taken by the Board, the Board's report to the Minister for the year in which the action occurs must include details of the action.

**34—Amendment of Schedule 3—Transitional provisions**

This is a further amendment consequential on the change of the name of "additional invalidity/death insurance" to "voluntary invalidity/death insurance".

**Schedule 1—Transitional provision**

**1—Transitional provision**

This clause provides that the amendment made by section 10 to insert new section 15A only applies prospectively. The amendments made by section 20(1), (3) and (6) of the *Southern State Superannuation (Insurance, Spouse Accounts and Other Measures) Amendment Act 2006* ("the amendment Act") apply with respect to an incapacity for work that commences after the commencement of the amendment Act. The amendments made by section 20(2), (7) and (8) extend to a person who, immediately before the commencement of the amendment Act, is being paid a disability pension under section 33A of the principal Act. All of these amendments are to section 33A (Disability Pensions). The amendment made by section 21(1) to provisions dealing with termination of employment on invalidity apply with respect to a termination of employment that occurs after the commencement of the amendment Act.

A further transitional provision applies in respect of a person under the age of 65 years whose basic or voluntary invalidity/death insurance cover (within the meaning of the *Southern State Superannuation Act 1994* ceased before the commencement of the amendment Act only because the person had reached a particular age. Under the transitional provision, the person will be covered by the basic or voluntary invalidity/death insurance that applied in relation to the person before he or she reached that age, subject to the same terms, conditions and restrictions, as if the relevant provisions of the *Southern State Superannuation Act 1994*, as amended by the amending Act, had been in operation before the person's cover ceased.

The final transitional provision relates to the application of two new subsections inserted into section 48 of the Act by clause 33.

**Schedule 2—Statute law revision amendment of *Southern State Superannuation Act 1994***

Schedule 2 makes various statute law revision amendments.

**The Hon. D.W. RIDGWAY** secured the adjournment of the debate.

## STATUTES AMENDMENT (ELECTRICITY INDUSTRY SUPERANNUATION SCHEME) BILL

**The Hon. P. HOLLOWAY (Minister for Police)** obtained leave and introduced a bill for an act to amend the Electricity Corporations Act 1994 and the Electricity Corporations (Restructuring and Disposal) Act 1999. Read a first time.

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

That this bill be now read a second time.

This bill seeks to amend the Electricity Corporations Act 1994 and the Electricity Corporations (Restructuring and Disposal) Act 1999 for the purpose of making some technical amendments to the provisions of those acts dealing with the Electricity Industry Superannuation Scheme. The amendments have been sought by the Electricity Industry Superannuation Board, and the proposed amendments contained in the bill have the support of all interested parties.

The Electricity Industry Superannuation Scheme (EISS) is the former ETSA superannuation scheme that was renamed on the commencement of parts 2 and 3 of schedule 3 of the Electricity Corporations (Restructuring and Disposal) Act 1999 on 1 December 1999. The Electricity Corporations (Restructuring and Disposal) Act 1999 also renamed the ETSA Superannuation Board as the Electricity Industry Superannuation Board. Schedule 1 of the Electricity Corporations Act 1994 provides for the continuation of the Electricity Industry Superannuation Scheme and the Electricity Industry Superannuation Board as the trustee of the scheme.

Under the Electricity Corporations Act 1994 employees of electricity businesses operating in the state who were

members of the former ETSA superannuation scheme continued as members of the EISS. The proposed amendments seek to clarify the meaning and provisions of the Electricity Industry Superannuation Scheme Trust Deed (the trust deed) contained in schedule 1 of the Electricity Corporations Act 1994, that deal with the cessation of employment by a member of the scheme with one employer in the electricity industry and the commencement of employment by that member with another employer in the electricity industry. The amendments will address some technical difficulties and questions of interpretation that have become apparent where an employee changes or switches employment between employers in the industry, referred to in the act as a 'transfer of employment'.

The proposed amendments also clarify the meaning of the term 'employer' as it is used in subclauses 2(7) and 2(8) of the trust deed so as to make it clear that interstate persons or bodies will not be taken to be employers for the purposes of the deed in certain circumstances. This clarification is necessary because some of the employers of members of the scheme are now national employers, and members can have a change or switch in employment between the South Australian operations of a national electricity body and the operations of that same body in another state.

The first provision causing difficulty is clause 2(7) of the trust deed. Questions of legal interpretation have been raised in relation to what is meant where the deed refers to a transfer of a member from one employer to another employer. Part of the interpretational problem relates to whether a transfer is a voluntary or involuntary changing or switching in employment. The bill therefore seeks to clarify this issue by making it clear that a transfer can be effected by any means, whether voluntary or involuntary. Part of the problem with the current wording of the provision is the existence of the legal argument that a transfer must be a switching or changing in employment arranged, agreed or orchestrated between two employers in the electricity industry. This interpretation, which has been applied in clause 2(7) of the trust deed, was not intended when the provision was enacted. Some consequential provisions are to be inserted as part of the package of proposals in clarifying the meaning of this legislation dealing with transfers between employers.

The proposed amendments relating to the transfer of an employee between employers will maintain and strengthen the government's intention in the original Electricity Corporations (Restructuring and Disposal) Act. The government's intention was that employees who were members of the Electricity Industry Superannuation Scheme would be required to remain members of the scheme as long as they remained employed by an employer engaged in the electricity industry in South Australia.

Related to the transfer of employer problem, there has been a problem in respect of the definition of 'employer'. The problem stems from the fact that there are national employers engaged in operating businesses serving this state's electricity industry. The problem that exists and needs to be addressed is that a strict interpretation of the existing provision requires a member of the scheme who takes up employment with an employer interstate to remain a member of the EISS. The existing provisions would therefore require the interstate employer to make employer contributions to the EISS established under the Electricity Corporations Act. The issue is that interstate employers are not bound by the requirements of the Electricity Corporations Act and are generally not interested in contributing to a superannuation scheme based in this state, as they have their own corporate schemes.

Section 24 of the Electricity Corporations (Restructuring and Disposal) Act 1999 (the Restructuring and Disposal Act) provides that those employees of an electricity business who are identified as being surplus to the employer's requirements are entitled to a separation package and, subject to certain conditions, an offer of public sector employment. This provision also provides that, where a transferred employee, as defined in section 24, fails to accept either an offer of a separation package or employment with the government, the employee will be taken to have accepted the offer of a separation package and, in such circumstances, will be paid out his or her superannuation entitlement.

The Electricity Industry Superannuation Board has had difficulty with the interpretation of subsection (9) of section 24 of the Restructuring and Disposal Act. The board has advised that it has received legal advice that the provisions are open to an interpretation that is not consistent with the intention of the legislature when the section was enacted. In fact, based on legal advice provided to the board, several members of the EISS scheme have been given access to their accrued benefits in the scheme on taking up employment with the government in terms of section 24 of the Restructuring and Disposal Act.

The original intention of the provision was that members would not have access to their accrued benefit on transfer into the government under the provisions of section 24. Whilst the members who have been paid out were happy to receive the money, as the action taken by the board was in response to the members' request, there remains a legal difficulty that needs to be addressed. The difficulty is a legal argument that, based on the provisions of the trust deed governing the scheme, the persons who have been paid out are still members and therefore entitled to a benefit on the future termination of their current service with the government. The bill therefore proposes an amendment to clarify the meaning of section 24(9) of the Restructuring and Disposal Act to make it clear that as a condition of an offer of a separation package or public sector employment a transferred employee is only entitled to an immediate payment of a superannuation benefit if the employee accepts, or is taken to have accepted, a separation package.

This proposed amendment will maintain the government's original intention underlying the provisions contained in section 24. As a consequence of some members having been paid out their accrued superannuation benefit on taking up the offer of employment with the government, the bill includes a consequential amendment to make it clear that any person who has been paid a benefit on accepting an offer of employment in terms of the provisions of section 24 will be taken to have ceased to be a member of the scheme when those entitlements were paid. This amendment will remove any argument that these employees are still entitled to a benefit from the scheme on terminating their employment with the government.

The third amendment contained in the bill seeks to insert a requirement into the trust deed that the Auditor-General will be responsible for auditing the accounts and financial statements of the Electricity Industry Superannuation Scheme. Whilst a similar provision was included in the original trust deed contained in the Restructuring and Disposal Act, the provision was removed when the relevant amending provision contained in Part 4 of Schedule 3 of the Restructuring and Disposal Act was brought into operation

in May 2002. The requirement for the Auditor-General to be responsible for the audit was originally removed as part of the preparation of the scheme to become a complying fund in terms of the Superannuation Industry (Supervision) Act 1994—that is a commonwealth act. However, as the Electricity Industry Superannuation Board has now recognised that it will never be able to become a fully complying fund in terms of commonwealth law without members forgoing longstanding options and rights, the board has decided to have the scheme remain an Exempt Public Sector Superannuation Scheme in terms of commonwealth law.

An Exempt Public Sector Superannuation Scheme is a scheme that is not supervised or regulated by the commonwealth. The EISS is already an Exempt Public Sector Superannuation Scheme and, as such, it should remain subject to having its accounts audited by the Auditor-General, since the accounts will not be audited by the commonwealth superannuation regulation authorities. As I stated at the beginning of this speech, these changes have been sought by the Electricity Industry Superannuation Board. I can also advise that all employers and unions involved in the state electricity industry have been consulted and no objections to the proposals have been received. I commend the bill to members and seek leave to have the explanation of the clauses inserted into *Hansard* without my reading it.

Leave granted.

**EXPLANATION OF CLAUSES**

**Part 1—Preliminary**

**1—Short title**

This clause is formal.

**2—Commencement**

This clause provides that operation of the measure will commence on a day to be fixed by proclamation.

**3—Amendment provisions**

This clause is formal.

**Part 2—Amendment of *Electricity Corporations Act 1994***

**4—Amendment of Schedule 1—Superannuation**

This clause makes a number of amendments to The Electricity Industry Superannuation Scheme Trust Deed, which is included in Schedule 1 to the *Electricity Corporations Act 1994*.

A definition of ***amending Act***, being the *Statutes Amendment (Electricity Industry Superannuation Scheme) Act 2006*, is inserted.

Clause 2(7) of the deed provides that the transfer of a member from one employer to another under the Scheme will not be taken to involve the termination of the previous employment and does not give rise to an immediate or delayed entitlement to benefits under the Electricity Industry Superannuation Scheme (the ***Scheme***). Clause 4 amends subclause (7) to make it clear that this is so whether the transfer is voluntary or involuntary.

Clause 2 is further amended by the insertion of a new subclause that applies in relation to any person who ceases employment with an employer under the Scheme with the intention of taking up employment with another employer under the Scheme within one month of the cessation but dies or becomes an invalid before commencing employment with the second employer. Such a person will be taken to have terminated his or her employment on account of the death or invalidity on the date of the cessation of his or her employment with the first employer.

A new interpretation provision retains the existing definition of ***employer*** (currently in subclause (7)) but adds an additional limb to the definition. In subclauses (7) and (8), the term ***employer*** does not include a person or body if the relevant member of the Scheme is employed by the person or body in another State or a Territory. However, if the person or body has commenced making payments on behalf of the member or has otherwise agreed with the Board to be treated as an employer for the purposes of subclause (7), the person or body does fall within the meaning of the term 'employer'.

Subclause (10) provides that this new limb to the definition of ***employer*** applies both prospectively and retrospectively.

The term ***transfer of employment*** is defined as follows:

- a transfer of employment includes a case where a member resigns his or her employment with an employer under the Scheme and commences employment with another employer under the Scheme; and
- a person is to be taken to have transferred his or her employment if, and only if—
- the person's employment with a new employer under the Scheme commences within one month after the cessation of employment with his or her previous employer under the Scheme; or
- the person ceased his or her employment with an employer under the Scheme and commenced employment with another employer under the Scheme before the commencement of the amending Act and is taken by the Board to have transferred his or her employment.

Subclause (10) provides that the definition of ***transfer of employment*** applies prospectively only in relation to a person who has, before the commencement of the amending Act, been paid, or elected to preserve, a benefit on account of the cessation of his or her employment with an employer under the Scheme. In relation to any other person, the definition applies both prospectively and retrospectively.

Clause 4 also amends clause 6 of the Electricity Industry Superannuation Scheme Trust Deed. Clause 6 relates to membership of the Scheme. New subclause (4) applies in relation to any person who has, prior to the commencement of the amending Act, accepted an offer of public sector employment under section 24 of the *Electricity Corporations (Restructuring and Disposal) Act 1999* and been paid his or her accrued entitlements under the Scheme. Such a person will be taken to have ceased to be a member of the Scheme when the entitlements were paid.

A new subclause added to clause 8 provides that a person who has been paid, or has elected to preserve, his or her accrued entitlements under the Scheme as at the date of the cessation of his or her employment with an employer, and has later commenced employment with a new employer, is not entitled to a benefit arising from his or her membership of the Scheme before the commencement of his or her employment with the new employer (other than in respect of a preserved benefit).

Clause 18 of the Electricity Industry Superannuation Scheme Trust Deed is amended by the insertion of a requirement that the Auditor-General audit the accounts and financial statements of the Scheme.

**Part 3—Amendment of *Electricity Corporations (Restructuring and Disposal) Act 1999***

**5—Amendment of section 24—Separation packages and offers of alternative public sector employment**

Section 24 of the *Electricity Corporations (Restructuring and Disposal) Act 1999* prescribes certain requirements in relation to offers to be made to transferred employees whose positions have been identified as surplus to an employer's requirements. In certain specified circumstances, where a private sector employer offers a separation package to a transferred employee, an offer of public sector employment must also be made to the employee. If a transferred employee has been offered both a separation package and public sector employment, and has failed to accept either offer within a certain period, the employee is taken to have accepted the offer of a separation package.

Under section 24(9), it is a condition of an offer of a separation package or public sector employment that the employee waives any right to compensation or any payment arising from the cessation or change of employment, other than the right to superannuation or certain other payments. The amendment made to subsection (9) by this clause makes it clear that the right to superannuation or other payments applies only if the employee accepts, or is taken to have accepted, a separation package.

**The Hon. D.W. RIDGWAY** secured the adjournment of the debate.

## RESIDENTIAL PARKS BILL

Adjourned debate on second reading.
(Continued from 14 November. Page 916.)

**The Hon. G.E. GAGO (Minister for Environment and Conservation):** The Residential Parks Bill 2006 was designed to protect people who live in caravan and mobile home parks as their principal place of residence, whether they live in a dwelling rented from the park operator or whether they install their own home and simply rent the site. The bill provides stability and predictability for both parties to a residential park agreement, as well as giving the parties access to low cost dispute resolution. The bill sets out the basic rights and duties for both the park operator and the resident and is based on the types of rights and duties that arise under the Residential Tenancies Act 1995. It requires that:

- all residential park agreements be in writing;
- residents must receive instructions for operating shared appliances or common facilities;
- be given a copy of the park rules which can only cover specific topics listed in the bill or the regulations;
- provides that the park operators must consult with the residents if they wish to change the park rules;
- provides that residents can apply to the Residential Tenancies Tribunal if they believe that the park rules are unreasonable;
- limits the amount of rent that can be required in advance at the start of the tenancy to two weeks;
- limits the amount of bond that can be required to the equivalent of four weeks rent;
- requires that all bonds be paid into the Residential Tenancies Fund;
- limits rent increases to once per year;
- provides that residents are entitled to quiet enjoyment of the premises;
- limits the park owner's right of entry to the rented sites;
- requires park residents to be given 24 hours vehicle access to the rental property;
- requires the park owner to keep the park and rented buildings in a satisfactory state;
- requires residents not to cause any damage to the park and report defects when they notice them;
- provides that residents are vicariously responsible for the actions of their visitors;
- contains provisions regarding the assignment of subletting of sites or dwellings;
- entitles residents to sell dwellings on-site without interference from park owners;
- sets out the manner in which a residential park agreement can be terminated;
- contains provisions about how the owner is to deal with the abandoned property of a resident;
- provides that the Residential Tenancies Tribunal has jurisdiction to deal with matters arising from residential park disputes.

The bill does not apply to people who stay in caravan and mobile home parks as holiday makers. In relation to the violent behaviour, clauses 95 to 100 of the bill provide that, if a resident has committed a serious act of violence in the park, or if the safety of anyone in the park is in danger from a resident, the park owner may serve a notice requiring the resident to leave the park immediately, and the agreement is suspended. In that case, the resident must leave and cannot return to the park for at least two business days. The owner may, in the meantime, apply to the tribunal to terminate the agreement. The resident cannot return to the park at all during the period of suspension unless the tribunal so orders. To cover the possibility that an owner may misuse this power, clause 99 (5) provides that the tribunal may order that compensation be paid to the resident if it is satisfied that the owner has no reasonable grounds for suspending the agreement.

In relation to lifestyle villages, the Hon. Ann Bressington raised the issue that the provisions of the bill would not cover residents of lifestyle villages, such as Elizabeth Park Village, Rosetta and Seachange. The provisions of the bill will apply to owners and residents of those villages. Lifestyle villages are those where residents live in self-contained units for which they pay rent. The units are strata or community title and owned by a group of investors. They are managed by a company that collects the rent and, through a non-site manager, provides services to the residents; for example, meals, household repairs, and a linen service. The company remits a dividend to the investors.

The services that are provided to the residents would not generally be provided in residential parks. The unit remains the property of the investor and the resident merely occupies it in the same way a tenant might occupy a flat in a strata titled block of flats. The Hon. Ann Bressington made reference to an application made by the residents of the Elizabeth Park Village to the Residential Tenancies Tribunal. It is correct to say that, at that time, the tribunal did not have jurisdiction over residential park disputes. Under the Residential Parks Bill, the tribunal has been given the power to hear residential park disputes. If residents of villages, such as Rosetta, believe that the park operator has breached the terms of their written agreements, they will be able to lodge an application for an order of the Residential Tenancies Tribunal.

Questions have been raised about circumstances where an individual enters into a park agreement based on certain rules that they consider desirable. The concern is that that rule may subsequently be changed. Clause 9 of the bill provides that, if residents from the majority of the occupied sites believe the park rule is unreasonable, they can lodge a joint application to the Residential Tenancies Tribunal for a declaration that the rule is unreasonable. If they are able to convince the tribunal that the rule is unreasonable, then it will be changed. However, if it is not unreasonable, they will be unsuccessful. The bill does not make allowances for individual applications to the tribunal in relation to park rules.

A question has been raised about what constitutes hardship in the case of one party seeking to terminate an agreement. The hardship provisions contained in the bill in clause 81 are in line with the provisions contained in section 89 of the Residential Tenancies Act. Under the Residential Tenancies Act, the Residential Tenancies Tribunal will generally not grant termination of a tenancy on the grounds of hardship if the tenant has gained employment elsewhere and wants to break a fixed-term lease. Clause 81(2) of the bill provides that, if a tenancy is terminated on the grounds of hardship, the tribunal may make an order compensating the park owner or the resident for loss and inconvenience resulting, or likely to result, in the early termination of the agreement.

A question has been asked about who bears the onus of proof if there are allegations of victimisation of park residents. Clause 88(3) of the bill places the burden to prove that behaviour is not retaliatory on the park owner. A question has

also been raised about violent behaviour and procedural fairness if residents are thrown out of a park on the basis of a false accusation. Clause 58 of the bill provides that the park owner can serve a notice of termination on a resident, which will come into effect immediately if they believe that the resident, or a person permitted on the rented property with the consent of the resident, has or is likely to cause or permit personal injury to the park owner, a person in the park or in the vicinity of the park.

The termination provisions of clause 58 also apply if the park owner believes that a resident, or a person permitted on the rented property with the consent of the resident, has or is likely to cause or permit serious damage to the park or serious interference with the peace, comfort or privacy of any resident, or a person residing in the immediate vicinity of the park. Following service of a notice under clause 58, if the resident fails to leave the park in response to the termination notice, the park owner must apply to the Residential Tenancies Tribunal for an order for vacant possession. In relation to the matters concerning long-term residents, their issues were highlighted during the consultation process. The government had the option to proceed with this bill in order to provide protection to a large number of vulnerable residents in residential parks who currently have no protection is at all, or to delay the bill to allow for further consultation to address the particular problems associated with that much smaller group of residents with long-term fixed leases.

The government decided that it was imperative for it to provide protection for the most vulnerable. There is a range of options we can consider for long-term residents, some of which are being implemented interstate. They include the provision of specific and prescriptive compensation rules, together with guidelines for the resolution of any disputes that may arise over the amount of compensation. However, this may have an adverse effect on rental changes if the park owner adopts the view of a need to build up a surplus of funds to cover this contingency.

Another option is the registration of a fixed term residential park site agreement of longer than a certain period on the certificate of title. This option may have an impact on the value of the land by potentially diminishing its value. Another option is the registration of a caveat against the title of a property. Under this option, a park owner may seek removal of the caveats lodged by residents, and residents may not have the resources required for establishing their entitlements under a caveat. Another option is amending the Real Property Act 1996. Such a process, however, may be quite lengthy and require extensive research and consultation.

The government is committed to addressing issues in relation to long leases in residential parks, but a decision on any option needs to be more fully explored and put out for public consultation. In the meantime, however, those residents with long-term leases will, with the passage of this bill, have a range of protections that they do not currently enjoy. I take this opportunity to thank members for their valuable contribution to the debate.

Bill read a second time.

## STATUTES AMENDMENT (JUSTICE PORTFOLIO) BILL

Adjourned debate on second reading.

(Continued from 21 November. Page 1079.)

**The Hon. P. HOLLOWAY (Minister for Police):** I thank honourable members for their expressions of support for the second reading of the bill. The Hon. Robert Lawson expressed some concern about the proposed amendment to the Fire and Emergency Services Act 2005 and indicated that he will outline his concerns in more detail during the committee stage. Section 29 of the Fire and Emergency Services Act 2005 currently provides that nominations for appointment to positions within the Metropolitan Fire Service are to be notified to all officers of equal or lower rank to that of the position in question and that any person so notified may appeal against a nomination to the District Court of South Australia.

The amendment in question provides for appeals to be heard by the Industrial Relations Commission instead of the District Court. These appeals are really of an industrial nature; that is, they are about deciding whether the nominee or any of the appellants is the best candidate for the job. The District Court does not hear any other appeals of this type. The Chief Judge of the District Court, the Metropolitan Fire Service and the South Australian Fire and Emergency Services Commission all agree that the most appropriate forum for these appeals is the Industrial Relations Commission.

The Hon. Robert Lawson also proposed some further amendments to the Security and Investigation Agents Act 1995. The amendments provide that, if the Commissioner of Police is able to obtain a satisfactory record of fingerprints previously taken, the Commissioner need not request a further set of prints. The Hon. Robert Lawson said, 'This will avoid the not inconsiderable expense of obtaining fingerprints in this state.' The Office of Consumer and Business Affairs, however, advises that applicants are not charged a fee for fingerprinting.

Furthermore, SAPOL advises that the requirement to have fingerprints taken in this state helps to reduce identity fraud. If a person comes to SAPOL and claims to have had fingerprints taken in the Northern Territory, how does SAPOL satisfy itself that the person who stands before them is the same person who was fingerprinted in the Northern Territory? The administrative cost to SAPOL of obtaining the relevant documentation from the Northern Territory, and checking that it matches the person in question, would far outweigh the minor inconvenience of attending for a second set of fingerprints. The requirement to have fingerprints taken in this state does not cost applicants any money and reduces the risk of identity fraud. The government intends, therefore, to oppose the amendments at the committee stage. I thank members for their indication of support for the bill.

Bill read a second time.

## FISHERIES MANAGEMENT BILL

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

**The Hon. G.E. GAGO (Minister for Environment and Conservation):** 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 is for improved fisheries legislation to replace the current Fisheries Act which was enacted in 1982, some 24 years ago. This Bill will provide for the ecologically sustainable development of our fisheries and other living aquatic resources found in the

marine and inland waters of South Australia. No longer can we just focus on the fish in terms of our management practices, as it is recognised world wide that an ecosystem-based approach is necessary to ensure fish stocks are managed sustainably for current and future generations.

Over the past 20 years many countries have borne witness to the collapse of many wild fish stocks. Australia, and South Australia in particular, has an enviable record internationally for the sustainable management of its fish stocks and this has much to do with the governance arrangements implemented though superior legislation. This legislation provides the government with powers to ensure fish harvest strategies for commercial fisheries are sustainable over the longer term and that opportunities for recreational fishers to enjoy reasonable access to fish for personal use and sporting purposes are maintained and enhanced. The Bill builds on the excellent legacy of the current Act and provides an improved governance framework for the future management of our fisheries.

The wild fisheries in South Australia are very important for regional economic development and this support for fisheries management and development will continue under this Bill, so that regional communities continue to benefit.

The objectives of this Bill make it clear that the sustainable management of our fisheries resources is of paramount importance and that it is only within a sustainable management framework that these resources can be developed for the benefit of the community as a whole. The avoidance of over-fishing is set out as the primary principle of the legislation. The Bill also sets out a number of other principles that need to weighed up when making decisions under the legislation, including the requirement to explicitly allocate access to fish resources between stakeholders and to provide for optimal utilisation and equitable distribution of fish resources between stakeholders. Optimal use of our aquatic resources is very important to economic growth and development of new resources and value adding of existing resources is to be encouraged under this legislation.

The principles also require that commercial, recreational and Aboriginal traditional fishing activities be fostered, and that the aquatic ecosystems on which fisheries rely upon for their productivity, are not endangered or irreversibly damaged.

The great success of wild fisheries management in South Australia has been the science-based and precautionary approach taken to management decisions, through close, transparent formal consultation with industry groups and the broader community utilising the Fishery Management Committees.

This co-management approach will continue under this Bill with the establishment of a new Fisheries Council to provide advice to the Minister on the management of fisheries, whether they are for commercial use, recreational use or for Aboriginal traditional fishing purposes. The Fisheries Council will be expertise-based and will have 9 members appointed by the Governor, plus the Director of Fisheries as an *ex officio* member. This will maintain close links between the Department and the Council. The Council will have a broad advisory role and key responsibility for the development of new fishery management plans. The government has already committed ongoing funding support for the Fisheries Council in the Budget Forward Estimates. This is an important and significant policy decision, as for the first time it recognises and supports the common law principle that fisheries are a common property resource owned by the people of South Australia. Accordingly, this government believes that a proportion of the costs for management of this community resource should be borne by the government on behalf of the community. Additional costs for management of the commercial fisheries will continue to be collected through commercial licence fees under the government's full cost recovery policy.

To assist with its advisory role to government, the Fisheries Council will be required to establish advisory committees and co-opt expertise as necessary to ensure robust advice on fisheries management issues, within a co-management framework. The establishment of these committees will be under the control of the Minister, to ensure that a minimum number and type of committees is established. These committees will ensure the ongoing involvement of stakeholders in fisheries decision-making.

Clause 10 gives the Minister broad delegation powers. These will allow for a conscious move to greater industry control over management in those commercial fisheries where good governance and due diligence arrangements are demonstrable and memorable to ensure these fisheries and associated species and habitats can continue to be sustainably managed by industry groups.

The proposed statutory management plans will establish arrangements for managing recreational and commercial fisheries and the eco-system impacts of those fisheries. The legislation sets out a comprehensive process for developing and approving the plans, ensuring greater levels of involvement from the community in the preparation of the plans. A key feature of the plans is the requirement to include provisions relating to the allocation of access to aquatic resources and mechanisms for adjusting that access between sectors in the future. They will also provide the framework for granting commercial fishing licences for periods of up to 10 years, providing an improved investment climate for the commercial fishing industry, as currently commercial fishing licences can only be issued for a period of 12 months. Another important feature of the plans will be the inclusion of biological reference points and triggers. This will define what over-exploitation means in relation to a particular fishery and establish rules for maintaining stock levels and responding to stock declines.

Recreational fishing is an important activity in South Australia. It has been estimated that about 320 000 people fish at least once a year in our waters, with the most popular species being King George whiting, snapper and rock lobster. This Bill will maintain the right of everyone in the community to have reasonable access to fish for personal use. New strict possession limits are proposed for recreational anglers. This will involve determining appropriate maximum amounts of fish for a non-commercial fisher to have in his or her possession. This move to possession limits, as already introduced in all of the other States and the Northern Territory, will assist in reducing the level of illegal fishing and illegal sales and provide for our fish resources to be more evenly shared within the recreational sector. Possession limits may also assist in reducing the risk of localised depletion of fish stocks. The actual possession limits will be established by regulation, following a separate community consultation process. The regulations will limit the application of strict possession limits to prescribed circumstances. For example, it is proposed that possession limits will not apply to a person's principal place of residence. Fisheries officers will still need to obtain a warrant to enter residential premises if illegal activity is suspected.

As already mentioned, the Bill provides for a new category of fishing being Aboriginal traditional fishing. This provides for cultural access for a native title group, which has reached a formal agreement with the government through an Indigenous Land Use Agreement under the Commonwealth Native Title Act. The Aboriginal Legal Rights Movement in South Australia, which represents native title interests, commercial fishing industry groups and local governments have endorsed this approach. For the first time, this will provide clear access arrangements to fisheries for Aboriginal people for their cultural community purposes. Commercial fishing opportunities will also be progressed by this government within the current limited entry licensing framework for commercial fisheries. In other words, no new licences will be created but investment opportunities may be provided to buy existing commercial licences on the open market.

Fisheries officers' powers in this Bill remain essentially unchanged. However, there is a new power which provides officers with the ability to search a person suspected of hiding important evidence or material on their person, once suspected by an officer of committing an offence against specified serious offences. This is an important power, as there is an increase in organised criminal activity in the fishing industry and many of these illegal activities occur in distant places or waters. Officers need the ability to search persons for mobile phones, documentation and other material that may provide critical evidence in the investigation of the illegal activity. There are strict controls in the Bill about how a search of a person will be conducted, including requirements for same sex searches and reporting of searches. Clause 80(1)(b) will enable fisheries officers to attach to or implant in aquatic resources identification devices, thereby providing another technique for tracking fish in investigations. This is particularly important in fisheries investigations given the volumes of fish that may be involved or the remoteness of the activity being investigated.

This Bill has greatly increased the penalties for breaches of the fisheries legislation. The last 24 years have seen major increases in value of our major species and therefore the incentive to operate illegally. This Bill addresses the imbalance between the penalties and the impact of illegal activity, both in terms of damage to the fish stock, but also of impact on the economic potential of the industry. Most of the offences in the Bill are summary offences that have a maximum penalty of $120 000 and/or 2 years imprisonment, but the

Bill also creates a number of new minor indictable offences. These indictable offences pertain to serious criminal and fraud activities related to the sale and purchase of fish taken illegally. A new offence of trafficking of priority species, such as abalone and rock lobster, will allow for organised criminal elements to be effectively dealt with. Illegal proceeds from the sale of fish will be traced with the potential for their confiscation on successful prosecution.

The Bill will provide for a new system of demerit points for all persons who expiate or are found guilty of offences. Demerit points will be applied automatically under the legislation, with consequences for accruing 200 points in a 5 year period. A person or company (and its directors) will be liable to be disqualified from holding any authority for a period of 10 years. Furthermore, if a person or company holds a transferable authority (a commercial licence), the licence will have to be transferred to a non-related third party within 6 months or the Minister may compulsorily acquire the authority. The deterrence value of the demerit points system will come through setting the points that will apply to various offences. This will be done by regulation and in consultation with industry and the community. An important aspect in introducing a demerit point system is that it will replace the current power to cancel a transferable authority. This will give recognition to the value of commercial fishing licences, by removing the discretion currently associated with that type of decision. Therefore, a licence will not be able to be cancelled except in accordance with the demerit points scheme.

The Bill includes a number of types of court orders that may be used in addition to traditional types of penalties . The provisions are intended to provide guidance to the courts, highlight the severity of fisheries offences and promote consistency in sentencing for fisheries crime. One of the types of orders may be to exclude a person from being in, on or near specified waters with fishing gear. The courts have already used these orders on an ad hoc basis for restricting the activity of fish thieves involved in serious abalone theft and this explicit power is to formalise use of this tool for dealing with serious and repetitive fisheries crime.

Biosecurity of our marine and freshwater environments is very important to support sustainable fisheries and aquaculture production. Introduced species of noxious fish present a significant risk to the future of these valuable industries and the Bill provides new powers to deal with the illegal introduction, sale, purchase and possession of noxious species. The effective control of exotic aquatic species will be required under national agreements through the Natural Resource Management Ministerial Council and the provisions in this Bill will allow for appropriate licensing, monitoring and response to exotic pests to occur.

The Bill also provides many other useful fisheries management tools, including the constitution of aquatic reserves for fisheries management purposes, which should not be confused with marine protected areas that will be established for biodiversity conservation under other legislation. Aquatic reserves may be used for purposes such as protecting fish nursery areas, fish spawning grounds, and establishing marine research zones or recreational fishing areas. There are 15 aquatic reserves established under the current Fisheries Act and these reserves will continue in existence under the new legislation.

Another feature of the legislation is the introduction of protection and reparation orders, which may be used to ensure compliance with fisheries management arrangements.

Fisheries research, fisheries development opportunities and other investigations will be facilitated through a new permit system that may be established by regulation under the Bill. Currently there is no effective mechanism to allow for short term access to fish resources, other than issuing exemptions under section 59 of the current Act. Permits will provide greater support of these initiatives in the future.

This Bill has been through a long development and consultation process over the past 5 years and the community and industry groups have been thoroughly engaged in the development of the legislation. The legislation is innovative and dynamic, with a balance between the required regulatory role of government to ensure aquatic resources are managed at sustainable levels for current and future generations, whilst allowing for a move to greater control over management in those commercial and cultural fisheries where the maturity of an industry or community group warrants this level of delegation. This Bill will provide for continued ecologically sustainable development of the fisheries of South Australia.

I commend the Bill to the House.

**EXPLANATION OF CLAUSES**

**Part 1—Preliminary**

**1—Short title**

**2—Commencement**

These clauses are formal.

**3—Interpretation**

Subclause (1) defines terms used in the measure.

***Aquatic resource*** is defined to mean fish or aquatic plants. ***Fish*** is defined as an aquatic animal other than an aquatic bird, aquatic mammal, reptile or amphibian or an aquatic animal of a kind excluded from the definition by the regulations. ***Aquatic animal*** means an aquatic animal of any species, and includes the reproductive products and body parts of an aquatic animal, and an ***aquatic plant*** is an aquatic plant of any species, and includes the reproductive products and parts of an aquatic plant.

In Part 4, ***fishery*** means a class of fishing activities identified in an arrangement under that Part as a fishery to which the arrangement applies.

In other Parts of the measure, ***fishery*** means a class of fishing activities declared by the regulations to constitute a fishery, and ***fishing activity*** or ***fishing*** is defined to mean means the act of taking an aquatic resource, or an act preparatory to, or involved in, the taking of an aquatic resource. ***Take***, in relation to an aquatic resource, means catch, take or obtain the resource (whether dead or alive) from any waters or kill or destroy the resource in any waters.

***Waters*** means any sea or inland waters (including any body of water or watercourse of any kind whether occurring naturally or artificially created and the bed of such waters, and a reference to waters includes a reference to the intertidal and supra tidal zones of waters.

Subclause (2) provides that a class of fishing activities may be defined by regulation or other statutory instrument by reference to one or more factors such as a species of aquatic resource, the sex, size or weight of an aquatic resource, a number or quantity of exotic resource, a period of time, an area of waters or a place, a method of fishing, a class or number of boats, a class of persons or a purpose of activities.

Subclause (3) provides that a reference to ***engaging in a fishing activity of a class*** is to be construed as a reference to doing an act that falls within the defined class and as including a reference to acts such as using a device or boat for the purpose of the activity, being in charge of, or acting as a member of the crew of, a boat that is being used for the purpose of the activity or diving in waters for the purpose of the activity.

***Commercial fishing*** is defined to mean fishing for a commercial purpose (ie the purpose of trade or business), and ***recreational fishing*** is defined as fishing other than commercial fishing or aboriginal traditional fishing. ***Aboriginal traditional fishing*** is defined to mean fishing engaged in by an Aboriginal person for the purposes of satisfying personal, domestic or non-commercial, communal needs, including ceremonial, spiritual and educational needs, and using fish and other natural marine and freshwater products according to relevant aboriginal custom.

Subclause (4) provides that for the purposes of the measure an aquatic resource will not be regarded as having been taken if it is taken but immediately returned to the water unencumbered in any way and with as little injury or damage as possible.

**4—Declaration of aquatic reserves**

This clause provides for the creation of aquatic reserves by proclamation. An aquatic reserve can comprise waters, or land and waters, but only land placed under the care, control and management of the Minister can form part of an aquatic reserve.

**5—Application of Act**

This clause provides that the measure is to apply—

- in relation to all waters within the limits of the State; and
- except for purposes relating to a fishery to be managed in accordance with Commonwealth law under a Commonwealth-State arrangement or for purposes relating to certain recreational fishing activities—in relation to any waters of the sea not within the limits of the State on the landward side of waters adjacent to the State that are within the Australian fishing zone; and
- for purposes relating to a fishery to be managed in accordance with the law of the State under a

Commonwealth State arrangement—in relation to any waters to which the legislative power of the State extend, with respect to that fishery; and

· for purposes relating to recreational fishing activities engaged in otherwise than by use of a foreign boat (other than such activities prohibited or regulated under a plan of management under the Commonwealth Fisheries Management Act)—in relation to any waters to which the legislative power of the State extend with respect to such activities.

The clause also provides that the measure does not apply in relation to an activity (other than the taking of aquatic resources for a commercial purpose or the introduction of exotic aquatic organisms or disease in aquatic resources) engaged in relation to inland waters if those waters are surrounded by land in the ownership, possession or control of the same person (being a person other than the Crown or an instrumentality of the Crown).

**6—Ownership of aquatic resources of State**

This clause provides that the Crown in right of the State owns all aquatic resources of the State (whether living or dead). Property in the aquatic resources of the State passes—

· to the holder of an authority granted under this measure when taken in accordance with that authority; or

· to any other person when taken lawfully in circumstances in which no authority is required under this measure for the taking.

**Part 2—Objects of Act**

**7—Objects of Act**

This clause provides that an object of this measure is to protect, manage, use and develop the aquatic resources of the State in a manner that is consistent with ecologically sustainable development, and to that end, the following principles apply:

(a) proper conservation and management measures are to be implemented to protect the aquatic resources of the State from over-exploitation and ensure that those resources are not endangered;

(b) access to the aquatic resources of the State is to be allocated between users of the resources in a manner that achieves the optimum utilisation of those resources to the benefit of the community;

(c) aquatic habitats are to be protected and conserved, and aquatic ecosystems and genetic diversity are to be maintained and enhanced;

(d) recreational fishing and commercial fishing activities are to be fostered for the benefit of the whole community;

(e) the participation of users of the aquatic resources of the State, and of the community more generally, in the management of fisheries is to be encouraged.

Principle (a) has priority over the other principles.

The clause provides that a further object of this measure is that aquatic resources are to be managed in an efficient and cost effective manner and targets set for the recovery of management costs.

The Minister, Director of Fisheries, Fisheries Council, Environment, Resources and Development Court and other persons or bodies involved in the administration of this measure, and any other person or body required to consider the operation or application of this measure (whether acting under this measure or another Act), is required to act consistently with, and seek to further, the objects of this measure. In so far as the measure applies to the Adelaide Dolphin Sanctuary, these persons and bodies must seek to further the objects and objectives of the *Adelaide Dolphin Sanctuary Act 2005*, and insofar as the measure applies to the River Murray, they must seek to further the objects of the *River Murray Act 2003* and the *Objectives for a Healthy River Murray* under that Act.

**Part 3—Administration**

**Division 1—Minister and Director**

**8—Minister**

This clause provides that the Minister has the functions and powers assigned or conferred by or under this measure.

**9—Director**

This clause continues in existence the office of the Director of Fisheries.

**10—Delegation**

This clause empowers the Minister and the Director to delegate functions or powers under this measure.

**Division 2—Fisheries Council of South Australia**

**11—Establishment of Council**

This clause establishes the Fisheries Council of South Australia. The Council is to consist of at least 10 members, of whom 9 will be appointed by the Governor on the nomination of the Minister. The Director of Fisheries will be a member *ex officio*. All members must have expertise in fisheries management and at least 1 must have knowledge and experience of aboriginal traditional fishing.

**12—Presiding member and deputy presiding member**

This clause requires the Minister to appoint a presiding member and a deputy presiding member.

**13—Terms and conditions of membership**

This provides for the appointment of members of the Council on conditions determined by the Governor for a term not exceeding 3 years. A member can only hold office for a maximum of 2 consecutive 3 year terms.

**14—Vacancies or defects in appointment of members**

This clause provides that an act or proceeding of the Council is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

**15—Remuneration**

This clause entitles a member of the Council to remuneration, allowances and expenses determined by the Governor.

**16—Functions of Council**

This clause sets out the functions of the Council.

**17—Council's procedures**

This clause deals with the Council's procedures at meetings.

**18—Annual strategic plan**

This clause requires the Council to prepare an annual strategic plan and submit it to the Minister.

**19—Annual report**

This clause requires the Council to prepare an annual report on its operations and submit it to the Minister. The Minister is required to table the report in both Houses of Parliament.

**Division 3—Advisory committees**

**20—Establishment of committees**

This clause empowers the Minister and the Fisheries Council to establish advisory committees.

**Division 4—Fisheries Research and Development Fund**

**21—Continuation of Fund**

This clause continues the Fisheries Research and Development Fund in existence, specifies sources of money for the Fund and authorises its application by the Minister for certain specified purposes.

**22—Accounts**

This clause requires the Minister to cause proper accounts to be kept in relation to the Fund.

**23—Audit**

This clause requires the Auditor-General to audit the accounts of the Fund at least once a year and empowers him or her to audit the accounts at any time.

**Part 4—Commonwealth-State arrangements**

**Division 1—Commonwealth-State joint authorities**

**24—Powers and functions of Minister**

This clause provides that the Minister may exercise a power conferred on the Minister by Part 5 of the *Commonwealth Fisheries Management Act*.

**25—Judicial notice**

This clause requires judicial notice to be taken of the signatures of members of a Joint Authority and their deputies.

**26—Functions of Joint Authority**

This clause provides that a Joint Authority has such functions in relation to a fishery in respect of which an arrangement is in force under Division 2 as are conferred on it by the law in accordance with which the fishery is to be managed.

**27—Delegation**

This clause empowers a Joint Authority to delegate powers under this measure.

**28—Procedure of Joint Authorities**

This clause provides that certain sections of the Commonwealth Act apply in relation to the performance by a Joint Authority of its functions under this measure.

**29—Report of Joint Authority**

This clause requires the Minister to table in both Houses of Parliament a copy of the annual report prepared by a Joint Authority under the Commonwealth Act.

**Division 2—Arrangements with Commonwealth with respect to management of particular fisheries**

**30—Arrangement for management of certain fisheries**

This clause provides that the State may, in accordance with the Commonwealth Act, enter into an arrangement for the management of a fishery. It also provides for the termination of an arrangement and the preliminary action that is required to bring an arrangement into effect or terminate an arrangement.

**31—Application of this Act to fisheries in accordance with arrangements**

This clause provides that if there is an arrangement for a fishery to be managed in accordance with the law of the State, the provisions of this measure apply in relation to the fishery.

**32—Application of Commonwealth law to limits of State in accordance with arrangements**

This clause provides that if there is an arrangement for a fishery to be managed in accordance with the law of the Commonwealth, that law applies to the limits of this State as a law of the State.

**33—Functions of Joint Authority**

This clause sets out the functions of a Joint Authority that is to manage a fishery in accordance with the law of the State.

**34—Joint Authority to exercise certain powers instead of Minister or Director**

This clause provides that certain powers under this measure conferred on the Minister or Director in respect of a fishery to be managed under the law of the State by a Joint Authority are exercisable by the Joint Authority to the exclusion of the Minister or Director.

**35—Application of certain provisions relating to offences**

This clause applies references made to an authority in a provision creating an offence under this measure to any such authority issued or renewed by a relevant Joint Authority.

**36—Presumption relating to certain statements**

This clause is an evidentiary provision that facilitates proof of the waters to which an arrangement applies.

**37—Regulations relating to Joint Authority fishery**

This clause empowers the Governor to make regulations in relation to a fishery to be managed by a Joint Authority in accordance with a law of the State.

**Division 3—Arrangements with other States**

**38—Arrangements with other States**

This clause empowers the Minister to enter into agreements with the Minister administering a corresponding law, or with an authority of another State or Territory concerned in the administration of that law, for the purpose of co-operation in furthering the objects of this measure (whether in this State or in that other State or Territory).

**39—Functions**

This clause provides that for the purposes of this Division, the Minister may perform any function and exercise any power conferred on the Minister under Division 1 or 2 as if the Commonwealth Act applied under this Division.

**Part 5—Management plans for commercial fishing, recreational fishing and aquatic reserves**

**40—Interpretation**

This clause includes interpretation provisions required for this Part.

**41—Application of Part**

This clause provides that this Part does not apply to an aboriginal traditional fishing management plan.

**42—Duty of Council to prepare management plans**

This clause requires the Council to prepare management plans if required by the Minister. Management plans may relate to classes of commercial or recreational fishing activities or to aquatic reserves.

**43—General nature and content of management plans**

This clause sets out the matters which a management plan must address.

**44—Procedure for preparing management plans**

This clause sets out the procedures that apply to the preparation of management plans, including the public consultation processes required.

**45—Tabling of management plans**

This clause requires management plans adopted by the Minister to be tabled in both Houses of Parliament.

**46—Procedure for making certain amendments to management plans**

This clause specifies the types of amendments to a management plan that may be made by the Minister by notice in the Gazette. These include the correction of errors, changes of form not involving changes of substance, changes that do not substantially alter the plan, and changes authorised by the regulations or the plan itself.

**47—Duration of management plans**

This clause provides that a management plan for a development fishery expires on the third anniversary of its commencement, or on the expiry date specified in the plan, whichever is the earlier. Any other management plan expires on the tenth anniversary of its commencement, or on the expiry date specified in the plan, whichever is the earlier.

**48—Availability and evidence of management plans**

This clause requires copies of management plans to be kept available for inspection and purchase by the public during ordinary office hours.

**49—Review of management plans**

This clause requires the Council to conduct comprehensive reviews of management plans at least once every 5 years, and empowers the Council to conduct reviews at any time. The Council must submit a report on the outcome of a review to the Minister and the Minister must table the report in both Houses of Parliament.

**50—Implementation of management plans**

This clause requires the Minister to manage commercial and recreational fishing activities and aquatic reserves in accordance with any relevant management plan adopted by the Minister.

**Part 6—Regulation of fishing and processing**

**Division 1—Commercial fishing**

**51—Interpretation**

This clause defines terms used in the Part.

**52—Obligation of commercial fishers to hold licence or permit**

This clause makes it an offence for a person to engage in commercial fishing unless the person holds a licence or permit or is acting as the agent of a licence or permit holder. The maximum penalty for an offence related to fish of a priority species is $500 000 if the offender is a body corporate, or $250 000 or imprisonment for 4 years if the offender is a natural person. In any other case, the maximum penalty is $100 000 if the offender is a body corporate, or $50 000 or imprisonment for 2 years if the offender is a natural person.

**53—Obligation for boats and devices used in commercial fishing to be registered**

This clause makes it an offence to use a boat for the purpose of commercial fishing, or cause, suffer or permit a boat to be used for such purpose, unless—

- the boat is registered or is being used in place of a registered boat with the consent of the Minister; and
- the boat is in the charge of a natural person registered as the master of a boat that may be so used or is acting in place of a registered master with the consent of the Minister.

The clause also makes it an offence for a person to use a device for the purpose of commercial fishing, or cause, suffer or permit a device to be used for such a purpose, unless the device is registered for use under a licence or permit held by the person or a person for whom he or she is acting as an agent.

Each offence is punishable by a maximum fine of $250 000 if the offender is a body corporate or $50 000 if the offender is a natural person.

**54—Applications for licences, permits or registration**

This clause specifies the form and manner in which an application for a licence, permit or registration must be made. It provides that a licence or permit granted to a natural person will include a photograph of the holder, and empowers the Minister to refuse an application if the applicant fails to meet the Minister's requirements. In such a case the Minister may keep the fee that accompanied the application. The clause also specifies other grounds on which the Minister may refuse an application, and requires the Minister to consult with the Minister for the River Murray before determining applications relating to, or applying in respect of, the River Murray.

**55—Conditions of licence, permit or registration**

This clause empowers the Minister to impose conditions on fishery licences, permits and registrations. It is an offence for

the holder of an authority to contravene a condition of an authority. If the condition relates to the holder's quota entitlement under the authority the maximum penalty is $20 000. In other cases it is $10 000.

**56—Duration of authority and periodic fee and return etc**

This clause specifies the duration of a fishery authority. The maximum term of a licence is 10 years. The maximum term of a permit is 3 years.

The clause requires the holder of an authority to pay an annual fee, and lodge periodic returns in accordance with the regulations. The Minister may require the holder of an authority to pay a penalty for default in payment of an annual fee, and if the person fails to pay the fee, or the penalty for default of payment, or fails to lodge a return as required, the Minister may suspend the authority until the person complies.

**57—Transfer of licence or permit**

This clause provides that a fishery licence or permit is not transferable unless the regulations for the fishery provides that the licence or permit may be transferred.

If the holder of a transferable licence or permit dies, the licence or permit vests in the personal representative of the deceased as part of the estate but cannot be transferred in the course of the administration of the estate except with the Minister's consent.

If the licence or permit is not transferred within 2 years after the death of the holder of the licence or permit, or such further period as the Minister may approve, the licence or permit is suspended pending transfer.

**58—Obligation to carry authority and identification while engaging in fishing activities**

This clause requires the holder of a fishery licence or permit who is a natural person to carry the licence or permit and identification in the form issued by the Minister, at all times when engaging in fishing activity pursuant to the licence or permit.

If a registered boat is being used on waters for any purpose, the person in charge of the boat must carry with him or her the licence or permit under the boat may be used to take aquatic resources and identification in the form issued by the Minister.

If a registered device is being used on waters for any purpose but not on or from a boat, the person using the device must carry with him or her the licence or permit under which the device may be used and identification in the form issued by the Minister. If the device is being used on or from a boat, the person in charge of the boat is required to carry the licence or permit and identification.

The maximum penalty for non-compliance is $2 500.

**Division 2—Aboriginal traditional fishing**

**59—Management of aboriginal traditional fishing**

This clause enables the Minister and a native title group that is party to an indigenous land use agreement to make an aboriginal traditional fishing management plan under the agreement for the management of specified aboriginal traditional fishing activities in a specified area of waters.

**60—Availability and evidence of aboriginal traditional fishing management plans**

This clause requires aboriginal traditional fishing management plans to be available for inspection and purchase by members of the public.

**Division 3—Processing**

**61—Obligation of fish processors to be registered**

This clause makes it an offence for a person to act as a fish processor unless he or she is registered as a fish processor. However, registration is not required if the person only processes aquatic resources obtained from a registered fish processor or is the holder of a fishery authority or aquaculture licence and only processes aquatic resources taken or farmed under the authority or licence for sale to a registered fish processor or directly to consumers. Also, a person need not be registered if he or she belongs to a prescribed class of persons.

The term ***fish processor*** is defined in clause 3 to mean a person who for the purpose of trade or business processes, stores, transports or deals with fish or other aquatic resources. ***Processing***, in relation to fish, means scaling, gilling, gutting, filleting, freezing, chilling, packing or any other activity involved in preparing fish for sale. In relation to any other aquatic resource, processing means any activity involved in preparing the resource for sale.

It is also an offence for a registered fish processor to use any premises, place, boat or vehicle for or in connection with processing, storing or dealing with aquatic resources unless the premises, place, boat or vehicle is specified in the certificate of registration. For offences against this clause the maximum penalty is $50 000 if the offender is a body corporate or $10 000 if the offender is a natural person.

**62—Classes of registration**

This clause creates 2 classes of fish processor registration, being restricted registration subject to a condition limiting the kind of activities authorised by the registration, and registration authorising a person to do any act involved in processing.

**63—Applications for registration**

This clause specifies the manner and form an application for fish processors registration must be made and empowers the Minister to refuse an application in certain cases.

**64—Conditions of registration**

This clause provides that it is a condition of registration as a fish processor that the processor will only process aquatic resources of a class specified in the registration. The registration may be subject to other conditions imposed by the Minister limiting the processing that may be carried out under the authority of the registration.

**65—Duration of registration and periodic fee and return etc**

This clause specifies the duration of fish processors registration. The maximum term of registration is 3 years.

The clause requires a registered fish processor to pay an annual fee, and lodge periodic returns in accordance with the regulations. The Minister may require a registered fish processor to pay a penalty for default in payment of an annual fee, and if the person fails to pay the fee, or the penalty for default of payment, or fails to lodge a return as required, the Minister may suspend the registration until the person complies.

**Division 4—Miscellaneous**

**66—Misuse of authorities**

This clause makes it an offence to misuse an authority by giving another person possession or control of an authority that is not in the name of that person, by having possession or control of an authority not in the person's name, or by falsely representing that the person is the person named in an authority. The maximum penalty is $5 000.

**67—Issue of duplicate authority**

This clause empowers the Minister to issue duplicate authorities.

**68—Effect of suspension of authority**

This clause provides that an authority has no force or effect while it is suspended.

**Part 7—Offences**

**Division 1—Offences relating to fishing activities**

**69—Prescribed fishing activities prohibited**

This clause makes it an offence to engage in a fishing activity of a prescribed class. The maximum penalty if the fishing activity involves fish of a priority species is $10 000 for a first offence, $20 000 for a second offence and $35 000 for a third or subsequent offence. In any other case the maximum penalty is $5 000 for a first offence, $10 000 for a second offence and $20 000 for a third or subsequent offence.

**70—Taking, injuring etc aquatic mammals and protected species prohibited**

This clause makes it an offence to take an aquatic mammal or aquatic resource of a protected species or injure, damage or otherwise harm an aquatic mammal or aquatic resource of a protected species. It is also an offence to interfere with, harass or molest an aquatic mammal or aquatic resource of a protected species, or cause or permit interference with, harassment or molestation of an aquatic mammal or aquatic resource of a protected species.

If the offence involves an aquatic mammal, the maximum penalty is $250 000 if the offender is a body corporate or $100 000 if the offender is a natural person.

If the offence does not involve an aquatic mammal the maximum penalty for a first offence is $50 000 if the offender is a body corporate or $10 000 if the offender is a natural person. For a second or subsequent offence the maximum fine is $100 000 if the offender is a body corporate or

$20 000 if the offender is a natural person. An offence not involving an aquatic mammal is expiable. The expiation fee is $500.

**71—Sale, purchase or possession of aquatic resources without authority prohibited**

This clause makes it an offence to sell or purchase aquatic resources taken without an authority. It is also an offence to sell or purchase, or have possession or control of an aquatic resource taken in contravention of this measure or a corresponding law, an aquatic resource of a protected species or an aquatic resource of a prescribed class.

The maximum penalty for an offence involving fish of a priority species is $250 000 if the offender is a body corporate or $50 000 or imprisonment for 4 years if the offender is a natural person. In any other case the maximum penalty is $100 000 if the offender is a body corporate or $20 000 if the offender is a natural person.

It is a defence if the defendant proves that the aquatic resources were purchased from a person whose ordinary business was the selling of such aquatic resources and were purchased in the ordinary course of that business. It is also a defence if the defendant proves that the defendant did not take the aquatic resources in contravention of this measure or a corresponding law and did not know, and had no reason to believe that the aquatic resources were (as the case may be) taken not under an authority, or taken in contravention of this measure or a corresponding law, or were aquatic resources of a protected species or aquatic resources of a prescribed class.

In proceedings for an offence, if it is proved that a person had a commercial quantity of an aquatic resource of any species in his or her possession or control, it will be presumed, in the absence of proof to the contrary, that the person had that aquatic resource in his or her possession or control for the purposes of sale.

If it is proved that a person had a commercial quantity of an aquatic resource of any species in his or her possession or control in circumstances in which it is reasonable to presume that the aquatic resources were taken by that person in waters to which this measure applies, it will be presumed, in the absence of proof to the contrary, that the person took the aquatic resources from such waters.

**72—Possession of prescribed quantity of aquatic resource in prescribed circumstances**

This clause makes it an offence to have possession, in prescribed circumstances, of a quantity of aquatic resource exceeding the quantity fixed by the regulations. The maximum penalty for an offence involving fish of a priority species is $10 000 for a first offence, $20 000 for a second offence and $35 000 for a third or subsequent offence. In any other case the maximum penalty is $5 000 for a first offence, $10 000 for a second offence and $20 000 for a third or subsequent offence.

It is a defence if the defendant proves that the aquatic resource was taken for a commercial purpose under an authority or was kept under an aquaculture licence or the person has a prescribed defence.

**73—Unauthorised trafficking in fish of priority species prohibited**

This clause makes it an offence to traffic in a commercial quantity of fish of a priority species, or have possession or control of a commercial quantity of such fish, unless authorised to do so under this measure. The maximum penalty is $500 000 if the offender is a body corporate or $100 000 or imprisonment for 4 years if the offender is a natural person.

**74—Interference with lawful fishing activities prohibited**

This clause makes it an offence to obstruct or interfere with a lawful fishing activity, or interfere with aquatic resources taken in the course of a lawful fishing activity, without reasonable excuse. The maximum penalty is $5 000.

If a person is obstructing or interfering with a lawful fishing activity in contravention of this provision, the person must, at the request of a person engaged in the lawful fishing activity, cease or discontinue the obstructive conduct or interference or remove the obstruction. The maximum penalty for failure to do so is $5 000.

In addition, the court by which a person is found guilty of an offence against this clause may, whether or not a penalty is imposed, order the defendant to pay to a person affected by the commission of the offence such compensation as the court considers proper for loss or damage suffered by that person as a result of the commission of the offence.

**Division 2—Miscellaneous offences**

**75—Entering etc aquatic reserve, or engaging in fishing activity in aquatic reserve, without authorisation prohibited**

This clause makes it an offence to enter or remain an aquatic reserve, or engage in a fishing activity in an aquatic reserve, except as authorised by the regulations, a management plan or a permit issued by the Minister. The maximum penalty is $5 000 for a first offence, $10 000 for a second offence and $20 000 for a third or subsequent offence.

**76—Disturbance of water beds, or removal or interference with animals or plants, in aquatic reserve without authorisation prohibited**

This clause makes it an offence to engage in an operation involving or resulting in disturbance of the bed of any waters of an aquatic reserve or removal of or interference with aquatic or benthic animals or plants of any waters in an aquatic reserve, except as authorised by the regulations, a management plan or a permit issued by the Minister. The maximum penalty is $5 000 for a first offence, $10 000 for a second offence and $20 000 for a third or subsequent offence.

**77—Unauthorised activities relating to exotic organisms or noxious species prohibited**

This clause makes it an offence to bring, or cause to be brought, into the State, or sell, purchase, deliver, or have possession or control of, aquatic resources of a noxious species, except as authorised by a permit issued by the Minister.

It is also an offence to release or permit the escape of exotic fish, aquaculture fish or fish that have been kept apart from their natural habitat, into any waters, or to deposit in any waters such fish or exotic aquatic plants, except as authorised by a permit issued by the Minister.

The maximum penalty for an offence is $250 000 if the offender is a body corporate or $120 000 if the offender is a natural person.

***Exotic aquatic organism*** is defined to mean fish or an aquatic plant of a species that is not endemic to the waters to which this measure applies. ***Noxious***, in relation to an aquatic resource, means a species of aquatic resource declared by the Minister by notice in the Gazette to be a noxious species for the purposes of this measure.

The Minister must, before making a decision on an application for a permit that relates to, or is to apply in respect of, the Adelaide Dolphin Sanctuary, consult with the Minister for the Adelaide Dolphin Sanctuary. Before making a decision on an application for a permit that relates to, or is to apply in respect of, the River Murray, the Minister must consult with the Minister for the River Murray.

**Division 3—Temporary prohibition of certain fishing activities etc**

**78—Temporary prohibition of certain fishing activities etc**

This clause empowers the Minister make a declaration by notice in the Gazette that it is unlawful for a person—

- to engage in a fishing activity of a specified class during a specified period;
- to have possession or control of aquatic resources of a specified kind during a specified period.

A declaration remains in force for a period, not exceeding 12 months, specified in the declaration and may be renewed once for a further period not exceeding 12 months.

The Minister must, on the request of the Minister for the Adelaide Dolphin Sanctuary, make a declaration, or vary or revoke a declaration, in relation to a fishing activity undertaken in respect of the Adelaide Dolphin Sanctuary. On the request of the Minister for the River Murray, the Minister make a declaration, or vary or revoke a declaration, in relation to a fishing activity undertaken in respect of the River Murray.

If, in the opinion of the Minister, it is necessary to take urgent action to safeguard public health or protect the aquatic resources of the State, the Minister, or a fisheries officer authorised by the Minister, may direct a person or persons of

a specified class to not engage in a fishing activity of a specified class during a specified period.

It is an offence for a person to engage in a fishing activity in contravention of a declaration or direction under this clause. The maximum penalty is $5 000 for a first offence, $10 000 for a second offence and $20 000 for a third or subsequent offence.

**Part 8—Enforcement**

**Division 1—Authorised persons**

**Subdivision 1—Appointment of authorised persons**

**79—Appointment of fisheries officers, scientific observers and sea rangers**

This clause empowers the Minister to appoint suitable persons to be fisheries officers, sea rangers or scientific observers. A fisheries officer is not eligible for appointment as a scientific observer.

**Subdivision 2—Fisheries officers**

**80—General powers of fisheries officers**

This clause sets out the powers of fisheries officers that may be exercised as reasonably required for the administration and enforcement of the measure.

The powers to enter and search premises can only be exercised on the authority of a warrant issued by a magistrate or justice. However, a warrant is not required for non-residential premises if they are used by a fish processor for, or in connection with, processing, storing or dealing with aquatic resources, or if the fisheries officer has reason to believe that urgent action is required in the circumstances.

**81—Power of fisheries officer to search persons for evidence of certain offences**

This clause empowers a fisheries officer to search a person if he or she reasonably suspects the person has on or about his or her body evidence of a prescribed offence. The search must be conducted by a person of the same sex as the person being searched unless it is not reasonable or practicable to do so in the circumstances of the search. The fisheries officer who conducts the search must make a written record of the search setting out certain details relating to the search.

**82—Powers of fisheries officers relating to exotic organisms and aquaculture fish**

This clause empowers the Minister to authorise a fisheries officer to take whatever action is necessary or desirable in the Minister's opinion to—

(a) search for and destroy exotic organisms or aquaculture fish;

(b) and limit the consequences of the presence of the exotic organisms or aquaculture fish,

despite the fact that the action may constitute a trespass or cause loss or damage to property.

If a fisheries officer reasonably suspects that an offence has been committed in relation to an exotic organism or aquaculture fish, the fisheries officer may—

(a) search for and destroy the exotic organism or aquaculture fish and, for that purpose, may take whatever action is, in the opinion of the Minister, necessary or desirable; and

(b) take whatever action is, in the opinion of the Minister, necessary or desirable to limit the consequences of the offence or to ameliorate the damage caused by the offence,

despite the fact that the action may constitute a trespass or cause loss or damage to property.

**83—Power of fisheries officer to arrest persons without warrant**

This clause empowers a fisheries officer to arrest a person without warrant if—

(a) the person hinders or assaults an authorised person, a person accompanying or assisting a fisheries officer or any other person engaged in the administration or execution of this measure; or

(b) the fisheries officer reasonably suspects that the person has committed an offence against this measure or a corresponding law and—

(i) when required to do so under clause 80—

(A) the person failed to state truthfully his or her name or usual place of residence; or

(B) the person failed to produce true evidence of his or her identity; or

(ii) the fisheries officer has reasonable grounds for believing that the person would, if not arrested—

(A) fail to attend court in answer to a summons issued in respect of the offence; or

(B) continue the offence or repeat the offence; or

(C) alter, destroy, conceal or fabricate evidence relating to the offence; or

(D) intimidate, harass, threaten or interfere with a person who may provide or produce evidence of the offence.

A fisheries officer must, on arresting a person, immediately convey the person, or cause the person to be conveyed, to the nearest police station.

It is an offence for a person to resist arrest or, having been arrested, escape from lawful custody. The maximum penalty is $10 000 or imprisonment for 2 years.

**84—Corresponding laws may confer powers and functions**

This clause provides that a corresponding law may confer powers or functions on fisheries officers.

**85—Fisheries officer may be assisted in exercise of powers etc**

This clause provides that a fisheries officer may, while acting in the exercise of powers or discharge of duties under this measure, be accompanied by any person and, if he or she reasonably believes that it is necessary in the circumstances, request a suitable person to assist him or her in the exercise or discharge of those powers or duties. A person, while assisting a fisheries officer in response to a request for assistance, has and may exercise all such powers of a fisheries officer as are reasonably necessary for the purpose.

A fisheries officer may, if he or she believes that it is necessary for the purpose of enforcing the provisions of this measure, request the person in charge of a boat or vehicle to make the boat or vehicle available for his or her use. If a fisheries officer makes such use of a boat or vehicle, the Minister may pay to the person who would otherwise have been entitled to the use of the boat or vehicle at that time such compensation as the Minister considers proper for any loss incurred as a result of the boat or vehicle being made available for use by the fisheries officer.

**Subdivision 3—Scientific observers**

**86—Functions of scientific observer**

This clause provides that a scientific observer has such functions as may be assigned to the scientific observer by the Minister. These are:

· to collect data about a fishery, fish habitat or aquatic resource;

· to conduct scientific research in relation to a fishery, fish habitat or aquatic resource.

**87—Placement of scientific observer on registered boat**

This clause requires the Minister to give the holder of a fishery authority written notice of the Minister's intention to place a scientific observer on a registered boat used under the fishery authority.

A registered boat to which the notice relates must not, during the period specified in the notice, be used under a fishery authority unless a scientific observer is aboard the boat at all times while it is being so used. If this prohibition is contravened, the registered owner of the boat and the registered master of the boat are each guilty of an offence. The maximum penalty is $20 000.

**Subdivision 4—Sea rangers**

**88—Functions of sea ranger**

This clause provides that a sea ranger has such functions as may be assigned to the sea ranger by the Minister.

**Subdivision 5—Miscellaneous**

**89—Provisions relating to things seized**

This clause provides that if a thing is seized under this Part it must be held pending proceedings for an offence related to the thing seized, unless the Minister authorises its release or orders that it be forfeited to the Crown.

If the defendant is found guilty of the offence, the court must consider the question of forfeiture and has a power to order that the thing be forfeited to the Crown. If the thing has already been forfeited by order of the Minister, the court must either confirm or quash the forfeiture order.

If proceedings are not commenced within a certain time, or the defendant is found not guilty of the offence, or the

defendant is found guilty but no order for forfeiture is made, the person from whom the thing was seized or a person who had legal title to the thing at the time of its seizure is entitled to compensation.

If a perishable item is seized in relation to an expiable offence and the offence is expiated, the thing is forfeited to the Crown and no compensation can be recovered in respect of it. If the thing is forfeited to the Crown, it may be disposed of by sale, destruction or in some other way directed by the Minister.

If a fisheries officer finds a fishing device unattended and seizes the device and fish caught or trapped by the device, and the owner of the device is unknown, the Minister can order that the fish be forfeited to the Crown, notice must be given of the seizure, and, after a certain time, if the owner remains unknown and the Minister determines there is reason to believe that the device was used, or was intended to be used, in contravention of this measure, the Minister can order the device to be forfeited to the Crown and disposed of.

Proceeds of forfeited items sold must be paid into the Fisheries Research and Development Fund.

**90—Offence to hinder etc authorised persons**

This clause makes it an offence to hinder or use abusive, threatening or insulting language to a person engaged in the administration of this measure, to fail to comply with requirements made by authorised persons under this measure, or to falsely represent that a person is an authorised person. The maximum penalty is $5 000. It is also an offence to assault a person engaged in the administration of this measure. The maximum penalty is $10 000 or imprisonment for 2 years.

**Division 2—Orders made by Minister**

**91—Protection orders**

This clause empowers the Minister to issue a protection order to secure compliance with this measure. A fisheries officer can issue an emergency protection order if of the opinion that urgent action is required to protect a fish habitat. A person to whom a protection order is issued must comply with the order. The maximum penalty for a failure to comply is $10 000.

**92—Action on non-compliance with protection order**

This clause empowers the Minister to take any action required by a protection order that is not complied with. Action may be taken on the Minister's behalf by a fisheries officer or other person authorised by the Minister. The reasonable costs and expenses in doing so can be recovered by the Minister from the person who failed to comply with the order, and if the amount is unpaid, the Minister can impose interest on the amount unpaid. The amount unpaid, together with interest, is a charge in favour of the Minister on any land owned by the person.

**93—Reparation orders**

This clause empowers the Minister to issue a reparation order if satisfied a person has caused harm to a fish habitat by a contravention of this measure. The order may require the person to take specified action to remedy the damage and to pay money into an approved account to enable action to be taken to address the damage.

A fisheries officer can issue an emergency reparation order requiring a person to take specified action if of the opinion that urgent action is required to prevent or mitigate further harm.

A person to whom a reparation order is issued must comply with the order. The maximum penalty for failure to comply is $5 000.

**94—Action on non-compliance with reparation order**

This clause empowers the Minister to take any action required by a reparation order that is not complied with. Action may be taken on the Minister's behalf by a fisheries officer or other person authorised by the Minister. The reasonable costs and expenses in doing so can be recovered by the Minister from the person who failed to comply with the order, and if the amount is unpaid, the Minister can impose interest on the amount unpaid. The amount unpaid, together with interest, is a charge in favour of the Minister on any land owned by the person.

**95—Reparation authorisations**

If satisfied that a person has caused harm to a fish habitat by a contravention of this measure, the Minister can issue a reparation authorisation under which fisheries officers or other persons authorised by the Minister may take specified action on the Minister's behalf to remedy the damage to the fish habitat. The reasonable costs and expenses in taking action can be recovered by the Minister from the person who caused the harm, and if the amount is unpaid, the Minister can impose interest on the amount unpaid. The amount unpaid, together with interest, is a charge in favour of the Minister on any land owned by the person.

**96—Related matters**

This clause requires the Minister to consult, as far as is reasonably practicable, with other public authorities that may also have power to act before the Minister issues a protection order, reparation order or reparation authorisation. However this does not apply if action is being taken as a matter of urgency or in other circumstances of a prescribed kind.

A person cannot claim compensation from the Minister, the Crown, a fisheries officer, or a person acting under the authority of the Minister or a fisheries officer, in respect of a requirement imposed under this Division or on account of any act or omission undertaken or made in the exercise (or purported exercise) of a power under this Division.

**97—Registration of orders or authorisations by Registrar-General**

This clause allows the Minister to have the Registrar-General register an order or authorisation issued under this Division relating to an activity carried out on land, or requiring a person to take action on or in relation to land. Such an order or authorisation is binding on each owner and occupier from time to time of the land. The Registrar-General must, on application by the Minister, cancel the registration of such an order or authorisation and make appropriate endorsements to that effect.

**98—Effect of charge**

This clause sets out the priority of a charge imposed on land under this Division.

**Division 3—Court orders**

**99—Additional orders court can make on conviction**

This clause sets out the orders a court that convicts a person of an offence against this measure can make in addition to imposing any other penalty.

The orders include—

- imposing conditions on an authority held by the person;
- varying the conditions of an authority held by the person;
- suspending an authority held by the person;
- disqualifying the person from holding or obtaining an authority;
- disqualifying the person from being the director of a body corporate that holds an authority;
- prohibiting the person from being in, on, or in the vicinity of, specified waters without a lawful purpose;
- prohibiting the person from engaging in fishing activities;
- prohibiting the person from being in or on specified boats;
- prohibiting the person from being in or on specified premises connected with the processing of aquatic resources;
- prohibiting the person from having possession of specified devices;
- prohibiting the person from having possession of specified aquatic resources.

An order can be made either on the court's own initiative or on application by the prosecution.

**100—Orders ERD Court may make on application by Minister**

This clause empowers the Environment, Resources and Development Court to make an order of a kind referred to in clause 99 if satisfied an order of that kind has been made against the person under a corresponding law and the making of the order is justified in the circumstances of the case. An order can be made on the application of the Minister.

**101—Provisions relating to orders under this Division**

This clause empowers a court to stipulate that a suspension, disqualification or prohibition order made by the court under this Division is to apply permanently, for a specified period or until further order. If a person contravenes an order, they

are not only liable for contempt, but are also guilty of an offence for which the maximum penalty is $100 000.

**Division 4—Demerit points scheme**

**102—Interpretation**

This clause contains definitions of terms used in this Division and includes other interpretation provisions.

**103—Demerit points for certain offences**

This clause provides that a person who is convicted of, or expiates, an offence against this measure of a kind prescribed by the regulations incurs the number of demerit points prescribed by the regulations in relation to that offence. Demerit points incurred or recorded by or in relation to a person under a corresponding law will be taken to have been incurred by the person under this Division.

Demerit points incurred by a person must be recorded against a fishery authority if the person who incurred the points is the holder of the authority or a registered master of a boat registered for use under the authority and the demerit points were incurred in relation to an offence committed by the person against clause 119(4).

**104—Consequences of certain number of demerit points being incurred by person or recorded against authority**

This clause provides that if a natural person incurs 200 or more demerit points within 5 years the person or body is liable to be disqualified from holding or obtaining an authority, from being a director of a body corporate that holds an authority and from being registered as the master of a boat used pursuant to an authority. The disqualifications operate for a period of 10 years. If a body corporate incurs 200 or more demerit points, the body corporate and each director of the body corporate is liable to be disqualified from holding or obtaining an authority. If 200 or more demerit points are recorded against a fishery authority within 5 years, the Minister must cancel the authority unless the authority is transferrable and the authority is either transferred to an eligible transferee or is compulsorily acquired by the Minister.

**105—Notices to be sent by Minister when certain number of demerit points are incurred or recorded**

The clause requires the Minister to notify a person when—

(a) the person has incurred a number of demerit points equal to or exceeding one-half of the number that results in liability to be disqualified; or

(b) a number of demerit points equal to or exceeding one-half of the number that results in an fishery authority held by the person becoming liable to cancellation are recorded against the authority.

**106—Notices to be sent by Minister when person becomes liable to disqualification or authority is to be cancelled**

This clause provides that if a person is liable to be disqualified, the Minister must give the person notice of the disqualification. If an authority is liable to cancellation, the Minister must give the holder of the authority notice of the cancellation. If a person is liable to disqualification and the person holds an authority, the notice of disqualification must also inform the holder that any non-transferable authority held by the person is cancelled and that any transferable authority held by the person must be transferred to an eligible transferee, is suspended until the transfer takes effect and, if not transferred, will be compulsorily acquired by the Minister.

**107—Disqualification etc and discounting of demerit points**

This clause specifies that a notice of disqualification or cancellation takes effect on the day specified in the notice.

If a transferable authority is not transferred as required by a notice of disqualification, the Minister must acquire it compulsorily in accordance with the regulations. An authority that is compulsorily acquired cannot subsequently be issued to the person from whom it was so acquired or an associate of that person. If a person is disqualified, any transferable authority held by the person is suspended until transferred and any non-transferable authority held by the person is cancelled.

If a disqualification takes effect, all demerit points in respect of the offence that brought the aggregate of points to 200 or more are discounted, as are all demerit points in respect of offences committed prior to the time that the person committed that offence. If an authority is transferred, all demerit points recorded against the authority are discounted.

**108—Court not to take into account demerit points in determining penalty**

The clause provides that in determining the penalty to be imposed on a person convicted of an offence against this measure, the court must not take into account the fact that, in consequence of the conviction, demerit points will be incurred by the person.

**Division 5—Miscellaneous**

**109—Additional penalty based on value of aquatic resources**

This clause provides that if a person is convicted of an offence involving the taking, sale or purchase, or possession or control, of aquatic resources, the court must, in addition to imposing any other penalty prescribed by this measure, impose a penalty equal to 5 times the wholesale value of the aquatic resources at the time at which the offence was committed, or $100 000, whichever is the lesser.

**Part 9—Review and appeals**

**Division 1—Internal review**

**110—Review of certain decisions of Minister**

This clause gives a person aggrieved by a decision of the Minister—

(a) to refuse an application for the issue or renewal of an authority; or

(b) to refuse an application for consent to transfer an authority; or

(c) to impose conditions on an authority or vary a condition of an authority,

the right to apply to the Minister for a review of the decision. On a review, the Minister may confirm or vary the decision under review or set aside the decision and substitute a new decision.

**Division 2—Appeals**

**111—Appeal to District Court against decision of Minister**

This clause provides that if an applicant for a review is not satisfied with the decision of the Minister on the review, the person may appeal to the Administrative and Disciplinary Division of the District Court against the decision.

**112—Appeals to ERD Court against protection or reparation order**

This clause gives a person to whom a protection order or reparation order has been issued the right to appeal to the Environment, Resources and Development Court against the order.

**113—Constitution of ERD Court**

This clause sets out how the ERD Court is to be constituted when exercising jurisdiction under this measure.

**Part 10—Miscellaneous**

**Division 1—General**

**114—Exemptions**

This clause empowers the Minister to exempt persons and classes of persons from specified provisions of this measure by notice in the Gazette. An exemption may be made subject to conditions. Contravention of a condition constitutes an offence punishable by a maximum fine of $10 000. Before making an exemption that relates to, or is to apply in respect of, the Adelaide Dolphin Sanctuary, the Minister must consult with the Minister for the Adelaide Dolphin Sanctuary. Before making an exemption that relates to, or is to apply in respect of, the River Murray, the Minister must consult with the Minister for the River Murray.

**115—Registers**

This clause specifies the registers that the Minister must keep. The registers must be kept available for inspection, without fee, by members of the public at a public office and on a web site. On payment of the fee fixed by regulation, a member of the public may obtain a copy of any part of a register kept under this measure.

**116—Recovery of fees, levies and other amounts**

This clause provides that fees, levies and other amounts payable under this measure are recoverable by court action as debts due to the Minister.

**117—Statutory declarations**

This clause provides that if a person is required under this measure to provide information to the Minister, the Director or a prescribed authority, the Minister, Director or prescribed authority (as the case may be) may require that the information be verified by statutory declaration and, in that

event, the person will not be taken to have provided the information as required unless it has been verified in accordance with the requirements of the Minister, Director or prescribed authority.

**118—False or misleading statement or information**

This clause makes it an offence for a person to make a statement, or provide information, that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided under this measure. The maximum penalty if the offence relates to a statement or information relating to a quota entitlement under a fishery authority is $300 000 if the offender is a body corporate or $60 000 if the offender is a natural person. In any other case the maximum penalty is $100 000 if the offender is a body corporate or $20 000 if the offender is a natural person.

**119—Offences committed by bodies corporate or agents, or involving registered boats**

Subclause (1) provides that if a body corporate is guilty of an offence against this measure, each director of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless he or she proves that he or she exercised all reasonable diligence to prevent the commission of the offence.

Subclause (2) provides that if a person is guilty of an offence against this measure committed while he or she was acting as the agent of another person, that other person is guilty of an offence and liable to the same penalty as is prescribed for the principal offence.

Subclause (3) provides that if a registered boat is used in or in connection with the commission of an offence against this measure, the registered owner of the boat is guilty of an offence and liable to the same penalty as is prescribed for the principal offence.

Subclause (4) provides that—

(a) if the registered master of a registered boat is not the registered owner and—

(i) the registered master, while on the boat, does or omits to do an act or thing the doing or omission of which constitutes an offence against this measure or that would, if done or omitted to be done by the registered owner, constitute an offence against this measure; or

(ii) the registered master does or omits to do, in relation to a fishing activity conducted by use of the boat, an act or thing the doing or omission of which constitutes an offence against this measure or that would, if done or omitted to be done by the registered owner, constitute an offence against this measure,

the registered owner is guilty of an offence and liable to the same penalty as is prescribed for the principal offence or to the penalty to which the registered owner would be liable if the act or thing, if done or omitted to be done by him or her, constituted an offence against this measure;

(b) if—

(i) an employee or other agent of the registered owner or the registered master, while on the boat, does or omits to do an act or thing the doing or omission of which constitutes an offence against this measure or that would, if done or omitted to be done by the registered owner, constitute an offence against this measure; or

(ii) an employee or other agent of the registered owner or the registered master does or omits to do, in relation to a fishing activity conducted by use of the boat, an act or thing the doing or omission of which constitutes an offence against this measure or that would, if done or omitted to be done by the registered owner, constitute an offence against this measure,

then—

(iii) the registered owner is guilty of an offence and liable to the same penalty as is prescribed for the principal offence or to the penalty to which the registered owner would be liable if the act or thing, if done or omitted to be done by him or her, constituted an offence against this measure; or

(iv) if the registered owner is not the registered master, the registered owner and the registered master are each guilty of an offence and liable to the same penalty as is prescribed for the principal offence or to the penalty to which the registered owner would be liable if the act or thing, if done or omitted to be done by him or her, constituted an offence against this measure.

**120—Commencement of prosecutions**

This clause requires prosecutions for expiable offences against this measure to be commenced within the time limited prescribed for expiable offences by the *Summary Procedure Act 1921*. Prosecutions for non-expiable offences must be commenced within 3 years after the date of the alleged offence or, with the authorisation of the Director of Public Prosecutions, at any later time within 5 years after the date of the alleged offence.

**121—Self-incrimination**

This clause provides that if a natural person is required to give information, answer a question or produce, or provide a copy of, a document or record under Part 8 and the information, answer, document or record would tend to incriminate the person or make the person liable to a penalty, the person must nevertheless give the information, answer the question or produce, or provide a copy of, the document or record, but the information, answer, document or record will not be admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty other than proceedings in respect of the making of a false or misleading statement or declaration.

**122—Rewards**

This clause empowers the Minister to pay a reward not exceeding the prescribed amount to a person who provides information leading to the conviction of a person for an offence against this measure.

**123—Confidentiality**

Subclause (1) makes it an offence for a person engaged or formerly engaged in the administration of this measure or the repealed Act to divulge or communicate personal information obtained (whether by that person or otherwise) in the course of official duties except—

(a) as required or authorised by or under this measure or any other Act or law; or

(b) with the consent of the person to whom the information relates; or

(c) in connection with the administration of this measure, the repealed Act or a corresponding law; or

(d) to a law enforcement, prosecution or administrative authority of a place outside this State, where the information is required for the proper administration or enforcement of a law of that place relating to fishing; or

(e) for the purposes of any legal proceedings arising out of the administration of this measure, the repealed Act or a corresponding law.

Subclause (2) provides that the subclause (1) does not prevent the disclosure of statistical or other data that could not reasonably be expected to lead to the identification of any person.

Subclause (3) provides that information that has been disclosed under subclause (1) for a particular purpose must not be used for any other purpose by—

(a) the person to whom the information was disclosed; or

(b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure.

The maximum penalty for an offence against this clause is $10 000.

Subclause (4) provides that the Minister, the Chief Executive or any other person to whom a return is provided under this measure by the holder of a fishery licence or other authority cannot be required by subpoena or otherwise to produce to a court any information contained in such a return.

**124—Service**

This clause provides for the service of documents.

**125—Evidentiary provisions**

This clause contains evidentiary provisions which may be used to facilitate proof of various matters in proceedings for offences against this measure.

**Division 2—Regulations**

**126—General**

This clause empowers the Governor to make such regulations as are contemplated by this measure or as are necessary or expedient for the purposes of this measure.

**127—Regulations relating to conservation and management of aquatic resources, management of fisheries and aquatic reserves and regulation of fishing**

This clause empowers the Governor to make regulations for the conservation and management of the aquatic resources of the State, the management of fisheries and aquatic reserves and the regulation of fishing. Regulations for the management of a fishery or relating to aboriginal traditional fishing can only be made on the recommendation of the Minister. The Minister may recommend the making of regulations for the management of a fishery if satisfied that the regulations are necessary or desirable for the purpose of giving effect to a management plan for the fishery. The Minister may recommend the making of regulations relating to aboriginal traditional fishing if—

(a) the Minister is satisfied that the regulations are necessary or desirable for the purpose of giving effect to an aboriginal traditional fishing management plan made with a native title group under Part 6 Division 2; and

(b) the regulations are, in the opinion of the Minister, consistent with the plan and the indigenous land use agreement under which the plan was made; and

(c) the Minister has consulted the native title group and given due consideration to any comments made by the group in relation to the regulations.

**128—Regulations relating to processing of aquatic resources**

This clause empowers the Governor to make regulations for the regulation of processing of aquatic resources and matters ancillary or incidental to or connected with such processing.

**129—Regulations relating to control of exotic aquatic organisms and disease**

This clause empowers the Governor to make regulations for the control of exotic aquatic organisms and the prevention, control and eradication of disease in aquatic resources.

**Division 3—Review of Act**

**130—Review of Act by Minister**

This clause requires the Minister to cause a review of the operation of this measure to be conducted and a report on the results of the review to be submitted to him or her. The review must be undertaken after the tenth anniversary of the commencement of this measure and must be submitted to the Minister before the twelfth anniversary of that commencement. The Minister must table copies of the report in both Houses of Parliament.

**Schedule 1—Repeal and transitional provisions**

This Schedule repeals the *Fisheries Act 1982* and the *Fisheries (Gulf St. Vincent Prawn Fishery Rationalisation) Act 1987* and makes transitional provisions with respect to various matters.

**Schedule 2—Related amendments**

This Schedule makes related amendments of a consequential nature to a number of other Acts.

**The Hon. R.I. LUCAS** secured the adjournment of the debate.

## LIQUOR LICENSING (AUTHORISED PERSONS) AMENDMENT BILL

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

**The Hon. G.E. GAGO (Minister for Environment and Conservation):** I move:

That this bill be now read a second time.

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

Leave granted.

The purpose of this Bill is to amend sections 111 and 112 of the *Liquor Licensing Act 1997* (the "Act") to restrict the categories of persons permitted to use force in the removal of minors from licensed premises, and to ensure consistency with sections 116, 124 and 127 of the Act.

The *Statutes Amendment (Liquor, Gambling and Security Industries) Act 2005* introduced a package of amendments to the *Liquor Licensing Act 1997*, *Gaming Machines Act 1992* and *Security and Investigations Agents Act 1995*.

Those amendments were intended to deal with the infiltration of organised crime into the security and hospitality industries; as well as violent and aggressive behaviour by crowd controllers working in licensed premises or at licensed events. Licensed crowd controllers working on licensed premises are now required to be approved by the Liquor and Gambling Commissioner.

The *Statutes Amendment (Liquor, Gambling and Security Industries) Act 2005* amended sections 116, 124 and 127 of the Act to allow only "authorised persons" to use force to remove minors, persons guilty of offensive behaviour or persons who have been barred from licensed premises. The definition of "authorised person" is limited to the licensee, responsible person, police officer and "approved crowd controller".

Section 111 of the Act relates to "areas of licensed premises declared out of bounds to minors" and section 112 relates to "minors not to enter or remain in certain licensed premises". These two sections were not part of the amendment package introduced by the *Statutes Amendment (Liquor, Gambling and Security Industries) Act 2005* and as a result under sections 111 and 112 an agent or employee of the licensee is permitted to use force to remove minors from licensed premises.

This is inconsistent with the recent amendments which restrict the category of persons who may use force to remove or prevent the entry of persons onto licensed premises. In order to ensure consistency throughout the Act, sections 111 and 112 have been amended to include the requirement that only an "authorised person" as defined by the Act may use force to remove minors from the licensed premises.

The Bill also inserts the definition of "authorised person" into the interpretation section of the Act, therefore the definition will apply to the Act as a whole.

The Bill also includes minor administrative amendments to improve the lay out of the Act but have no impact on the substance of the sections.

I commend the Bill to Members.

**EXPLANATION OF CLAUSES**

**Part 1—Preliminary**

**1—Short title**

This clause is formal.

**2—Commencement**

This clause provides that operation of the measure will commence on 1 February 2007.

**3—Amendment provisions**

This clause is formal.

**Part 2—Amendment of *Liquor Licensing Act 1997***

**4—Amendment of section 4—Interpretation**

The *Liquor Licensing Act 1997* currently includes a number of definitions of ***authorised person***. The term is defined differently for the purposes of different sections of the Act. This clause inserts a new definition of the term into the interpretation provision of the Act. As a consequence of this amendment, the meaning of "authorised person" will be consistent throughout the Act.

An ***authorised person***, in relation to licensed premises, is—

- the licensee of the premises; or
- a responsible person for the premises; or
- a police officer; or
- an approved crowd controller.

**5—Amendment of section 111—Areas of licensed premises may be declared out of bounds to minors**

Section 111(3) provides that a minor who enters a part of licensed premises that has been declared to be out of bounds to minors may be required to leave by the licensee, a police officer or an agent or employee of the licensee. If the minor does not leave, the licensee, police officer, agent or employee may exercise reasonable force to remove the minor.

This clause amends the section so that an authorised person, as defined in section 4, may require a minor to leave and may use force if the minor fails to do so.

**6—Amendment of section 112—Minors not to enter or remain in certain licensed premises**

Under section 112(2), if a minor enters or remains in licensed premises in contravention of the section, or in contravention of a condition of the licence, the licensee, an employee of the licensee or a police officer may require the minor to leave. If the minor fails to do so, those persons are authorised to use reasonable force to remove the minor.

This clause amends the section so that an authorised person, as defined in section 4, may require a minor to leave and may use force if the minor fails to do so.

**7—Amendment of section 115—Evidence of age may be required**

Section 115 currently provides that an authorised person may require a suspected minor to produce evidence of his or her age. For the purposes of the section, an authorised person is an inspector, a police officer, the occupier or manager of regulated premises or an agent or employee of the occupier.

The amendments made to section 115 by this clause change the term "authorised person" to "prescribed person" but do not otherwise alter the provision. This amendment is necessary because the group of persons authorised to require a minor to produce evidence of age under the section is not the same as the group that falls within the definition of ***authorised person*** to be inserted into section 4.

**8—Amendment of section 116—Power to require minors to leave licensed premises**

Under this section, authorised persons may require a person reasonably believed to be a minor to leave licensed premises and, if the person fails to comply with the requirement, may use reasonable force to remove the person.

Section 116 currently includes a definition of ***authorised person*** that applies only for the purposes of the section. That definition is deleted by this clause so that the new definition inserted into section 4 applies.

Under section 116(3a) and (3b), procedures to be observed by authorised persons in or in connection with the removal of minors from licensed premises may be prescribed. Those subsections are removed by this clause because new section 137B, to be inserted by clause 12, will provide for the making of such regulations.

**9—Amendment of section 124—Power to refuse entry or remove persons guilty of offensive behaviour**

Under section 124, authorised persons may remove, or prevent the entry of, persons who are intoxicated or behaving in an offensive or disorderly manner. The section currently includes a definition of ***authorised person*** that applies only for the purposes of the section. That definition is deleted by this clause so that the new definition inserted into section 4 applies.

Under section 124(1a) and (1b), procedures to be observed by authorised persons in or in connection with the prevention of persons from entering, and the removal of persons from, licensed premises may be prescribed. Those subsections are removed by this clause because new section 137B, to be inserted by clause 12, will include provision for the making of such regulations.

**10—Amendment of section 127—Power to remove person who is barred**

Section 127 provides that if a person is on premises from which the person is barred, an authorised person may require the person to leave the premises. If a person who is barred seeks to enter the premises or refuses or fails to comply with a requirement to leave the premises, he or she may be prevented from entering, or removed from, the premises by an authorised person using the force reasonably necessary for the purpose.

The section currently includes a definition of ***authorised person*** that applies only for the purposes of the section. That definition is deleted by this clause so that the new definition inserted into section 4 applies.

Under subsections (2a) and (2b) of section 127, procedures to be observed by authorised persons in or in connection with the prevention of persons from entering, and the removal of persons from, licensed premises may be prescribed. Those subsections are removed by this clause because new section 137B, to be inserted by clause 12, will include provision for the making of such regulations.

**11—Amendment of section 131A—Failing to leave licensed premises on request**

Section 131A, under which it is an offence to fail to leave licensed premises on the request of an authorised person, is amended by the removal of the definition of ***authorised person*** so that the new definition of that term inserted into section 4 applies.

**12—Insertion of section 137B**

Under new section 137B, the regulations may prescribe procedures to be observed by authorised persons in or in connection with the prevention of persons from entering, or the removal of persons from, licensed premises or a part of licensed premises. The regulations may also prescribe procedures to be observed by authorised persons in or in connection with the removal of minors from licensed premises or a part of licensed premises.

An authorised person is required to comply with any procedures prescribed under section 137B.

**The Hon. R.I. LUCAS** secured the adjournment of the debate.

*[Sitting suspended from 6.02 to 7.45 p.m.]*

## STATUTES AMENDMENT (JUSTICE PORTFOLIO) BILL

In committee.

Clauses 1 to 3 passed.

Clause 4.

**The Hon. R.D. LAWSON:** This clause deals with an amendment to the Acts Interpretation Act to include the words ‘or time’ after the word ‘day’. My question to the minister is: was there any particular occasion or circumstance when the absence of this new provision has caused any problems? Are there any issues that the government wishes to address specifically with this amendment?

**The Hon. P. HOLLOWAY:** My advice is that there is no specific issue in this. The amendment has come about as a result of parliamentary counsel believing that this could be a matter that might be required in the future.

**The Hon. R.D. LAWSON:** Does the government envisage any circumstances in which acts of parliament will be specified to commence not at the beginning of a day but during the course of a day?

**The Hon. P. HOLLOWAY:** The example we could provide is regarding uniform legislation. If there is uniform legislation, which appears to be the case—and with the recent decision by the High Court, who knows how much more there might be—the desire might be that this uniform legislation will come into effect at a specified time. I imagine that it is mainly for that eventuality.

**The Hon. R.D. LAWSON:** I thank the minister for those intimations.

Clause passed.

Clause 5.

**The Hon. R.D. LAWSON:** This clause deals with an amendment to the Associations Incorporation Act and, in effect, it will require board members of incorporated associations to comply with similar duties to those imposed upon directors under the Corporations Law. The explanation in the second reading explanation does not suggest that this amendment was proposed by any particular body or that any particular circumstance arose to prompt this change. Will the minister place on the record whether there is any problem or difficulty which has arisen in practice so as to require this amendment?

**The Hon. P. HOLLOWAY:** My advice is that the request for this measure has largely come from the Office for Volunteers which I gather is having difficulty attracting quality volunteers because of the fear of liability in relation to board members. The objective of this is to give some sense of security to volunteers who might otherwise serve on boards just to ensure that there is no misunderstanding in relation to their liability.

**The Hon. R.D. LAWSON:** I thank the minister for that intimation and have no further questions on this matter.

Clause passed.

Clause 6 passed.

Clause 7.

**The Hon. R.D. LAWSON:** This clause will amend the Business Names Act by making the offence of trading under an unregistered business name an expiable offence and the expiation fee will be $315. The second reading explanation does not indicate the number or prevalence of these offences in South Australia. Could the minister indicate or provide some details on whether or not this is a common offence and, if so, what is presently being done and what sort of penalties are imposed by the courts if there are prosecutions?

**The Hon. P. HOLLOWAY:** I understand the recommendation for this change comes from the Office of Consumer and Business Affairs. The advice I have is that this offence is virtually never prosecuted, even though there is a belief that it might be a much more common offence. The reasoning behind the change is that with the offence now being made expiable it will hopefully mean that, where there are breaches of this act, action can be more readily taken.

**The Hon. R.D. LAWSON:** Will the minister indicate what advertising or publicity campaigns the Office of Consumer and Business Affairs undertakes to educate the community about the requirement to maintain a registered business name and, if no such campaign is presently conducted, is any such campaign contemplated to ensure people are made aware of this offence?

**The Hon. P. HOLLOWAY:** Unfortunately, we do not have anyone from OCBA here, so we are not aware of any intention to have a publicity campaign. Nevertheless, I would be happy to refer the suggestion the honourable member has made back to OCBA as something it might consider. We do not have any advice to the effect that it is the intention at this stage to have such a campaign.

**The Hon. R.D. LAWSON:** The opposition is rather suspicious of measures of this kind, which look like revenue raising rather than enforcement, where you have an offence which is apparently according to the minister rarely prosecuted and the government introduces a proposal to have an expiation fee of $315. A cynic might believe that this is simply a question of easy revenue raising rather than not undertaking the more onerous tasks of proper enforcement by prosecution through the courts. Notwithstanding those reservations, we will support the proposal.

Clause passed.

Clause 8.

**The Hon. R.D. LAWSON:** I indicate that the Liberal opposition will support the proposal to increase the payment for solatium from the current level of $3 000 for parents or a maximum of $4 200 for spouses. These figures have remained unchanged for 30 years. These provisions are virtually unique to South Australia. In other states similar statutory amounts are not fixed for solatium. In the debates on solatium over the years the point has always been put that the amount is not keeping up with the times, against which is put the contrary point that any allowance of this kind for solatium for the death of a child or spouse is only a token payment. By and large the law of compensation is to compensate the living to enable them to pay medical expenses and compensate them for the loss of income and similar losses. Solatium has therefore been somewhat of an anomaly in the South Australian law.

There are some others, like the Hon. Mr Xenophon, who propose that solatium be markedly increased. We still believe that any increase for solatium is really only a token payment. Money can never salve the hurt that the family of a deceased child or spouse experiences. We acknowledge that the government's proposal to increase that amount by $10 000 is, in a sense, only a token payment. Whilst we give consideration to those arguments which have been advanced in other fora that solatium be done away with entirely in South Australia, the Liberal Party does not support that. We think the measure of increasing solatium to $10 000 strikes a reasonable balance between the fact that on the one hand the existing provisions have been in place for 30 years and on the other the recognition, with regret, that this form of compensation will never be adequate. We will be supporting this clause, as well as clauses 9 and 10.

Clause passed.

Clauses 9 to 14 passed.

Clause 15.

**The Hon. R.D. LAWSON:** This clause, as well as clause 16, contains amendments to the Criminal Law Consolidation Act. Clause 15 will amend section 49(3) which presently provides:

> A person who has sexual intercourse with a person of or above the age of 14 years and under the age of seventeen years is guilty of an offence.

The effect of the amendment will be that the words 'of or above the age of 14 years' will be deleted, so the provision will read:

> A person who has sexual intercourse with a person under the age of seventeen years is guilty of an offence.

Although the second reading explanation indicates that this amendment is at the suggestion of the Office of the Director of Public Prosecutions, can the minister indicate whether there has been any specific case where the existing language of the section has caused difficulties or has led to the acquittal of a person charged by reason of any doubt about the language of the section?

**The Hon. P. HOLLOWAY:** The request for this amendment came from the Office of the Director of Public Prosecutions, but I am advised that no specific cases were mentioned in relation to that request. So, we are not aware of any cases.

Clause passed.

Clauses 16 to 21 passed.

Clause 22.

**The Hon. R.D. LAWSON:** This and the following clause deal with changing the forum for appeals within the Metropolitan Fire Service. Presently they go to the District Court, and these amendments propose that they go to the Industrial Relations Commission. The second reading explanation states that this amendment is made at the request of the Chief Judge. Can the minister indicate whether there have been any appeals which have gone to the District Court, and what particular difficulties have been encountered in relation to any such appeals that warrant this change of venue?

**The Hon. P. HOLLOWAY:** The origin of this amendment is that the Chief Judge wrote to the Attorney-General indicating that there was a recent matter in which 57 appellants challenged the nomination of 38 persons as station officers under section 29 of the Fire and Emergency Services Act 2005. This act currently provides that nominations for appointment for positions within the MFS are to be notified to all officers of equal or lower rank to that of the position in

question, and that any person so notified may appeal against the nomination in the District Court of South Australia.

The Chief Judge of the District Court thinks that the Industrial Relations Commission is the most appropriate forum for these appeals. Both the Metropolitan Fire Service and SAFECOM (South Australian Fire and Emergency Services Commission) note that they agree. The current appeals process can be protracted and is not cost-effective for the MFS. The time frame for appeals to be heard in the District Court is often lengthy, which can cause further anxiety for the appellants. The Industrial Relations Commission's principal spheres of activity and jurisdiction deal with the prevention and resolution of disputes between employers and employees and appears, therefore, to be better placed to hear these sort of appeals more expeditiously. The government agrees that these appeals are clearly industrial in nature and should be heard by the Industrial Relations Commission.

Clause passed.

Clause 23 passed.

Clause 24.

**The Hon. R.D. LAWSON:** In relation to clause 24, specifically, will the minister explain the intended operation of this amendment in relation to the appointment of assessors? Will any assessors or other persons hear these appeals when they are transferred to the Industrial Relations Commission, or will the appeals be heard by a single commissioner?

**The Hon. P. HOLLOWAY:** My advice is that there are two types of action to which this part of the bill applies. The first is disciplinary actions, which, I am advised, the District Court will continue to hear. The second type of action is appeals which will, under the amendments we have just passed, go to the Industrial Relations Commission. I am advised that both types of actions (disciplinary actions and appeals) will have assessors but that the same panel of assessors will apply for both types of actions.

Clause passed.

Clauses 25 and 26 passed.

Clause 27.

**The Hon. R.D. LAWSON:** This clause will allow the appointment of judicial auxiliaries from persons who are not South Australian judges but judges of the Federal Court, or from some other state or territory of the commonwealth or New Zealand, or who have served as a magistrate. The second reading explanation suggests that the need for appointing an officer from outside the state may arise where, for example, a judge of the state is involved in litigation. Will the minister indicate whether there has been any particular circumstance in which the need for such an appointment has arisen?

**The Hon. P. HOLLOWAY:** My advice is that there was a case where proceedings were commenced against the Chief Justice. Obviously, there would be a perception of bias if one of his colleagues were to hear that case. That might be a possible example.

**The Hon. R.D. LAWSON:** The new clause provides that an auxiliary cannot be appointed to our court except with the concurrence of the judicial head of the court of the other jurisdiction. Is there any requirement that the judicial head of the court of our own jurisdiction has to consent to the appointment of a judicial auxiliary, or could, for example, the Attorney-General of the day appoint, as an auxiliary judge of the Supreme Court of South Australia, a retired South Australian magistrate?

**The Hon. P. HOLLOWAY:** My advice is that this is under the Judicial Administration (Auxiliary Appointments and Powers) Act 1998. Clause 3(1) provides:

> The Governor may, with the concurrence of the Chief Justice, appoint a person to act in a specified judicial office or in specified judicial offices on an auxiliary basis.

That would appear to suggest that the concurrence of the Chief Justice would be necessary.

**The Hon. R.D. LAWSON:** Is that clause unaltered by these amendments?

**The Hon. P. HOLLOWAY:** That is my advice, yes.

Clause passed.

Clauses 28 to 36 passed.

Clause 37.

**The Hon. R.D. LAWSON:** These amendments to the Prisoners (Interstate Transfer) Act insert criteria to which the minister may have regard in exercising discretion about the transfer of prisoners. Can the minister indicate whether there has been any case or example in which the existing provisions have given rise to any difficulty in administration such as to warrant an amendment of this kind?

**The Hon. P. HOLLOWAY:** My advice is that the bill amends the Prisoners (Interstate Transfer) Act 1982. That act forms part of a national cooperative legislative scheme that permits inmates to be transferred between participating jurisdictions. Following a Federal Court decision in 2002, there has been some concern about the factors that the relevant minister must consider when making a decision to refuse the transfer of a prisoner. The Standing Committee of Attorneys-General considered the decision and agreed that the minister should be able to consider factors other than the welfare of a prisoner—for example, the protection of the public and the administration of justice. The national Parliamentary Counsels' Committee drafted a uniform amendment, and the bill includes this amendment.

**The Hon. R.D. LAWSON:** Will the minister indicate whether any other jurisdiction has passed comparable legislation and whether there is any material difference between the legislation which we are being asked to pass and the legislation in other places?

**The Hon. P. HOLLOWAY:** My advice (and I guess we can correct this if it is not the case) is that at least New South Wales and perhaps other jurisdictions have implemented such an amendment. As I said earlier, this was a uniform amendment drafted by the national Parliamentary Counsels' Committee, so one can assume that the amendments are virtually identical in other jurisdictions.

Clause passed.

Clauses 38 to 40 passed.

Clause 41.

**The Hon. R.D. LAWSON:** This amendment, and the following amendments, are to the Professional Standards Act. This act was passed in 2004 but has not yet commenced operation. Can the minister indicate two items: first, when is it proposed that the Professional Standards Act will come into operation in South Australia; and, secondly, have the amendments proposed to the Professional Standards Act been the subject of any consultation between the government and any organisation or association, such as the Law Society or other professional body, which has expressed an interest in participating in the Professional Standards Scheme?

**The Hon. P. HOLLOWAY:** My advice is that the Law Society has been consulted and supports the amendments in relation to when the Professional Standards Act will be brought into operation. We are seeking that information. My

advice is that we believe that the act has come into operation fairly recently. If there is any change to that, we will let the member know. The other advice I can provide him with is that these amendments have come through the Parliamentary Counsels Committee to draft these as uniform standards. I am advised that the act has been in place in New South Wales and Victoria, at least, for some time, but these particular amendments have come about as a result of some concerns relating to insurance schemes.

Clause passed.

Clauses 42 to 48 passed.

Clause 49.

**The Hon. R.D. LAWSON:** This is an amendment to the Residential Tenancies Act which will give the tenancies tribunal the power to force a landlord to remove a tenant. The explanation given by the Attorney-General in the other place is as follows:

> What has happened in the suburb of Prospect is that a man has been evicted by an order of the tribunal for driving the neighbourhood crazy, but the landlords are his parents. They have issued him with a new lease. So we would be moving to allow orders of the tribunal to be effective in that the same tenant will not be able to lease the same premises until such time as the tribunal permits it.

The Attorney-General says that he has been thinking about this since 1995. My questions are:

1. Have there been any other cases which have come to the attention of the government which prompt this rather draconian amendment to the Residential Tenancies Act?

2. Has the Residential Tenancies Tribunal, or anyone else, requested the enactment of this provision?

**The Hon. P. HOLLOWAY:** I was just having a conversation with the Chair, who, of course, chaired a select committee that looked at some of the problems that involved tenants. When I was first elected to this parliament I was a member of the other place and I had an electorate with a significant number of Housing Trust tenancies, and also private tenancies, a few of which had what one could perhaps call slum landlords—I do not think that would be stressing the point too much. So I am well aware of some of the enormous problems you have when neighbourhoods are driven mad by particular tenants.

In relation to specific cases, apart from that one, I cannot cite any more now, but I certainly know—as I am sure, Mr Chairman, your select committee would have been made well aware—of many cases where there are problems in terms of where landlords are quite happy to take money from tenants who create all sorts of havoc within the community.

**The Hon. R.D. LAWSON:** In the case cited by the Attorney-General, could not the parents of this disruptive tenant allow him to occupy the premises without creating any tenancy and thereby avoid this provision? The example provided is not one of the sort mentioned by the minister, where he said landlords are prepared to accept money from unruly tenants. This may be a domestic or family situation which is not driven by monetary considerations at all.

**The Hon. P. HOLLOWAY:** I think we have to concede that the point made by the honourable member is correct, that they could do that but, nonetheless, there may be other things one can do, depending on the type of nuisance that the tenant is creating for neighbours. Certainly, in that case, I guess that does provide one way around it, but presumably the landlords would not be guaranteed any income in that situation.

Clause passed.

Clause 50.

**The Hon. R.D. LAWSON:** I move:

Page 17—
After line 5—
Insert:
(1a) Section 8B—after subsection (1) insert:
(1a) However, if the Commissioner or the Commissioner of Police is able to obtain a satisfactory record of fingerprints previously taken from a person referred to in subsection (1)(a) or (b), a request need not be made under subsection (1) in relation to that person.
After line 6—
Insert:
(3) Section 8B(5)—after 'under this section,' insert:
or have been otherwise obtained for the purposes of this section.

The amendments are moved at the request of the member for Flinders, Ms Liz Penfold, who has a constituent who wrote to her in the following terms:

> The government are tightening up the security industry in South Australia, which I have no problems with. One of the things that is now required is that all holders of a security licence are to have their fingerprints taken and recorded on a national database. No problems. I have just received my notification to have mine taken, yet I had to pay $100 to have them taken in Darwin less than three months ago, as I have a security business in the Northern Territory as well as Port Lincoln. When I contacted the Licensing Enforcement Branch of the South Australia Police they advised that the legislation states that the fingerprints must be taken in South Australia.
>
> What a joke, when this is a national database. Also, the costs of the security licence jumped from $140 to $210 each year and, when OCBA was questioned by the security industry, we were advised that this was to cover the cost of fingerprinting. Yet they also advised that the fee will stay at this higher rate. The award states any licence fees above $120 are to be paid by the employer. We employee 50 staff in Port Lincoln and Whyalla, most of whom have a licence. That is an additional $3 500 per annum.

Accordingly, and on the understanding that these fingerprints are on a national database and that one would have thought that if they are on a national database that database could be accessed by police wherever they are rather than going through the process of re-fingerprinting, I have moved the amendments which provide that, if the commissioner or the Commissioner of Police is able to obtain a satisfactory record of fingerprints previously taken in relation to a person, a request need not be made under this subsection in relation to that person. The basis, I suppose, is obvious. Why should fingerprinting be duplicated if it is recorded on a national database, as Mrs Penfold's constituent suggests?

In a response to the second reading before the adjournment, the minister indicated, as I heard him, that, contrary to the claims of the constituent, there is no fee payable for fingerprinting. I wonder whether the minister could enlarge upon that, because over the adjournment the constituent was contacted and he said that the reason given for the $70 increase in the fee was to cover fingerprinting. However, he has already had his fingerprints taken for the national database for $100 in the Northern Territory and should not need to have them done again. If they are done again in South Australia, it should not be a $70 ongoing cost.

**The Hon. P. HOLLOWAY:** The most important part here, and I addressed it before the dinner adjournment, is that, if a person comes to SAPOL and claims to have had fingerprints taken in the Northern Territory, how do SAPOL officers satisfy themselves that the person who stands before them is the same person who was fingerprinted in the Northern Territory? The very reason we have fingerprints is for unambiguous identification of people and, if you are not using those fingerprints to do that, it becomes problematic.

The administrative costs to SAPOL of obtaining the relevant documentation from the Northern Territory and checking that it matches the person in question—in other words, corroborating identification other than the fingerprints—would far outweigh the minor inconvenience of attending for a second set of fingerprints.

Again, I can only repeat the advice that we have, and that is that the requirement to have fingerprints taken in this state does not cost applicants any money and reduces the risk of identity fraud. I am advised that both the Office of Consumer and Business Affairs and the Police Commissioner oppose the amendments—certainly in the case of the Police Commissioner, I understand particularly because of the problem of identity fraud and the difficulty in establishing that.

**The Hon. R.D. LAWSON:** Can the minister indicate whether the constituent is mistaken when he makes the claim that these fingerprints are recorded on a national database? If they are recorded on a national database, one would have thought the police would not necessarily go to Darwin or anywhere else but to the national database to access the necessary material.

**The Hon. P. HOLLOWAY:** It is my understanding that, in fact, they are on a national database. The advice I have is that the only satisfactory means, though, by which a person could satisfy the Commissioner of Police that they have had their fingerprints taken in another jurisdiction would be for their fingerprints to be taken again in South Australia and compared with the national fingerprint database. That, I think, is the point. Someone can say they are Fred Smith and they can bring up Fred Smith's fingerprints on the national database, but how do they know that the person who presents is, in fact, Fred Smith unless they actually take his fingerprints and compare them?

**The Hon. R.D. LAWSON:** Does the minister suggest that it is necessary for an applicant for a security licence to have fingerprints taken on every occasion on which the licence is renewed, or simply on the first occasion when the licence is granted?

**The Hon. P. HOLLOWAY:** I am advised it is just on the first occasion, but presumably they would have other photographic identification and it would be rather different, perhaps, than someone moving interstate where there is not necessarily any other corroborating identification.

**The Hon. R.D. LAWSON:** I indicate that I will proceed with the amendments. I am not satisfied, and I do not believe the constituent would be satisfied, with the explanation provided by the government. If there is a national database, if an expensive process is undertaken in one part of the country—

**The Hon. T.J. Stephens:** What about the cost to small business? Do you have any idea?

**The Hon. P. Holloway:** There is no cost.

**The Hon. R.D. LAWSON:** Well, the minister says there is no cost of fingerprinting, but what the constituent said is that the fee is increased by $70 and the reason stated for the increase in the fee was to cover the cost of fingerprinting. So, I am accepting the constituent at his word on that. It may not be the case, but certainly the industry was told, 'The reason your fees are going up by $70 is that you're going to have to be fingerprinted.'

**The Hon. P. HOLLOWAY:** My advice is that a fee increase was introduced at the time the fingerprinting was introduced, but there were other changes as well, and a number of other measures were introduced. The fingerprinting may have been some contributor to the cost, but my advice is that there were a number of other factors as well. Perhaps a more important point is that the same licence fee applies regardless of whether or not fingerprints are taken. It is also worth pointing out that the note on this, which I assume originates from SAPOL, is that some jurisdictions do not place their security agent fingerprints on the national database, and others may have differing destruction protocols. In other words, they might be removed for different conditions, and that is also a further complication with the system.

The Leader of the Opposition and I saw one of these new machines that take these fingerprints at the opening of the Mount Barker Police Station. As I have said, taking fingerprints with these modern machines is a very simple procedure; it is all digitised and stored. Taking that into consideration, I would suggest that, if someone presents for their licence, it is much preferable in terms of reducing the risk of identity fraud to have those fingerprints taken again. Certainly, it is not costly to the jurisdiction, and it should not be any more costly to the individual, because the same fee applies.

**The Hon. R.D. LAWSON:** The minister rightly says that there may be some jurisdictions that have different conventions relating to fingerprints. That is why the amendment I have moved is fashioned in the way it is. It does not impose anything on the Commissioner of Police. It says that, if he is satisfied that he is able to obtain a satisfactory record of fingerprints, he can avoid taking further fingerprints. If he is not satisfied, it is always up to the Police Commissioner and he will be able to say, 'I'm not satisfied because of the Darwin fingerprinting or the destruction regime in Victoria or whatever, so you have yours done again.' However, if he is satisfied that he has a satisfactory record of fingerprints previously taken, he need not make that request. So, we have not taken away anything from the Police Commissioner: we have just given him the capacity, in the circumstances described, to waive that requirement.

I would remind the minister that the fee has increased from $140 to $210, which is an additional $70. The minister has said that the fingerprinting occurs only when the licence is initially granted. The industrial award under which these officers are retained provides that any fees above $120 are to be paid by the employer. That means that when the fee was $140 the employer was paying $20. Now he is paying $90 in respect of every employee. This particular business in country South Australia, at Port Lincoln and Whyalla, employs 50 staff, which means an additional $3 500 is imposed on that business. So, this is no minor imposition.

**The Hon. P. HOLLOWAY:** I really do not think there is much more I can add. As I have said, there was an increase made, but a number of other changes were made to the act that have obviously contributed to the cost to government in administering it. I think we will just have to disagree on this issue.

The committee divided on the amendments:

AYES (10)

| | |
|---|---|
| Bressington, A. | Dawkins, J. S. L. |
| Kanck, S. M. | Lawson, R. D. (teller) |
| Lensink, J. M. A. | Lucas, R. I. |
| Parnell, M. | Ridgway, D. W. |
| Stephens, T. J. | Xenophon, N. |

NOES (6)

| | |
|---|---|
| Finnigan, B. V. | Gazzola, J. M. |
| Hood, D. | Hunter, I. |
| Wortley, R. | Zollo, C. (teller) |

PAIR(S)

| | |
|---|---|
| Schaefer, C. V. | Holloway, P. |

PAIR(S) (cont.)

Wade, S. G. Gago, G. E.

Majority of 4 for the ayes.

Amendments thus carried; clause as amended passed.

Clause 51.

**The Hon. R.D. LAWSON:** I move:

Page 17, after line 10—

Insert:

(3) Section 11AB—after subsection (2) insert:

(3) The Commissioner may, if the Commissioner is satisfied that a satisfactory record of fingerprints previously taken from a person referred to in subsection (1)(a) or (b) exists, request the Commissioner of Police to make available to the Commissioner such information to which the Commissioner of Police has access about the identity, antecedents and criminal history of the person as the Commissioner of Police considers relevant.

This amendment is to precisely the same effect as that previously carried by the committee.

**The Hon. CARMEL ZOLLO:** We are not in a position to accept this amendment. It is exactly the same as the one we have just voted on. The same reasons for not accepting it stand.

Amendment carried; clause as amended passed.

Clauses 52 to 57 passed.

Clause 58.

**The Hon. R.D. LAWSON:** I move:

Page 18—

After line 12—

Insert:

(1a) Schedule 2, clause 3—after subclause (1) insert:

(1a) However, if the Commissioner or the Commissioner of Police is able to obtain a satisfactory record of fingerprints previously taken from a person referred to in subclause (1)(a) or (b), the person need not be required to provide fingerprints under subclause (1).

After line 13—

Insert:

(3) Schedule 2, clause 3(2)—after 'under subclause (1),' insert:

or have been otherwise obtained for the purposes of this clause,

These amendments are to the same effect as the original amendments to clause 50. The same considerations apply and the same arguments.

**The Hon. CARMEL ZOLLO:** The government does not accept these amendments as they have the same effect as the two previous ones, which we voted against.

Amendments carried; clause as amended passed.

Remaining clauses (59 to 70) and title passed.

Bill reported with amendments; committee's report adopted.

Bill read a third time and passed.

## CRIMINAL LAW CONSOLIDATION (DRINK SPIKING) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 21 November. Page 1081.)

**The Hon. SANDRA KANCK:** This is yet another populist piece of legislation introduced by this government and will probably not achieve a thing, but it is one that you cannot be seen to vote against. The Hon. Mr Lawson in his contribution commented that current general endangerment offences are sufficient, and I agree with him. As with many such laws, it relies on the offences being policed and reported and, unless that is happening, a reduction in offences is unlikely to occur. In response to a question I asked about drink spiking back in 2004, I was advised 'that SAPOL thoroughly investigates drink spiking incidents, even if it is not officially reported by the victim, to ascertain if any offence has occurred, the nature and extent of the problem. Where no specific offence is identified, a problem solving approach is taken, involving the local DAT (Drug Action Team) network including licensees, along with other SAPOL members.'

I was also advised at that time that a Sentinel monitoring system would be established where information would be collected from those presenting with drug-related toxicity at accident and emergency departments and that from that information specific prevention and intervention strategies may be developed. I am unaware if this has been implemented. In his second reading reply I would be very interested to hear from the minister if that system has indeed been implemented and, if so, what it has revealed.

In relation to the answers I was given two years ago, the minister advised that 14 different substances can be screened for if drink spiking is suspected, but that the results take one or two weeks to be finalised. Again, I would be most interested in an update on the science in the minister's second reading reply. Intoxication varies from person to person, depending on a range of factors—genetics, body mass and other drugs in the system—but one factor that was newly identified and published in *The American Journal of Medicine* earlier this year was the effect of diet drinks used as mixers with alcohol.

The study was conducted by a team at the Royal Adelaide Hospital, led by Dr Chris Rayner. Although it was a small sample and it only looked at male subjects, the results were compelling. Basically, they showed that diet drink mixers increase blood alcohol concentration. The men registered 0.03 per cent with a regular mixer and a 0.05 per cent blood alcohol concentration with a diet mixer, which anyone would realise is a very significant increase. Dr Rayner has called for product labelling to include information on the intoxicating qualities of artificially sweetened alcoholic drinks.

While the presence of a diet mixer may be known to consumers, its effect on intoxication is not mentioned in any of the warnings on bottles presently. I would like to see this research extended to include women, because clearly education is important in preventing this crime. We already know that sexual assault is under-reported in our community. Of those incidents of stranger rape reported to SAPOL between 2001 and 2004, somewhere between 30 to 40 per cent were associated with alcohol or drug use. Figures that have been mentioned in this debate by a number of members suggest that one in three drink spikings are related to sexual assault.

According to the answers to my questions two years ago, the number of suspected drink spiking cases in South Australia was only 20 to 30 per year, which I found to be a very surprising figure. However, one person emailed me about this and suggested that part of the reason for a lack of reporting of sexual assaults in relation to drink spiking is the usual situation that faces women in sexual assault cases where they become, in many ways, as far as the questioning is concerned, the perpetrator, whereas the person who has committed the assault is the person who is presented as the

victim, and under those circumstances many women will be reluctant to report the crime of drink spiking.

I query those figures given to me two years ago that it is only 20 to 30 per year. At that time I raised the question because two friends of mine had been taken to hospital after collapsing at a party, and neither of them are irresponsible drinkers. It must have been three months ago that I visited the RAH as a guest and spent almost five hours in the emergency department. On that night alone I think at least five people were being observed because of drink spiking, which does not seem to compute with a figure I was given two years ago of there being only 20 to 30 per year for the whole of South Australia.

In one particular case three women presented to the hospital. Two of them were quite competent but the third one was very sick, vomiting and nauseated and hardly able to stand up. According to the other two women they all regularly went out together and drank together, and they knew what each other was drinking, yet while they were handling it well the third woman in the group was not and they were quite convinced that drink spiking had occurred.

In a community in which alcohol is the most acceptable, most visible and most widespread drug in use it is important to stress that most drink spiking events involve alcohol, rather than drugs, being added to drinks. It is cheap and easy to obtain, and can be purchased as a clear liquid, enabling it to be invisible when added to an alcoholic or non-alcoholic beverage. This is a crime that will be difficult to police—it is not illegal to have alcohol in your possession in a venue that serves alcohol. Despite the regulations under which they operate, the licensed venues of this state bear minimal responsibility for the harm their product causes. We know that intoxicated patrons are not supposed to be served, but in our culture what constitutes intoxicated and who decides what is an intoxicated patron?

Other cultures which embrace alcohol as part of their heritage and a source of economic benefit do not accept the level of public drunkenness now commonplace in Australia. If you think of terms like blotto, shit-faced, sloshed, blind, pissed as a newt, drunk as a skunk, legless and so on in our vernacular, it is clear that our society gives a tacit blessing to drinking in excess and sends out the message that it is pretty well essential to have a drink to really enjoy life. The current generation, with its delay in child-bearing years, is not partying for three to five years and then settling down to responsible parenthood, as in the past; rather, many of them are drinking to excess on a regular basis for a decade or more—and this includes young women.

This bill concentrates on a very small area of a very large problem. How we inform and educate the community about the negative health effects of alcohol, and the measures we need to enact to prevent underage drinking, is a story for another day. The real effort needs to be put into education and intervention before the crime is committed. It will be interesting to see if there is any alteration in the patterns of drink spiking in this state and, although I doubt there will be, I indicate Democrat support for the second reading.

**The Hon. J.M.A. LENSINK** secured the adjournment of the debate.

## PUBLIC FINANCE AND AUDIT (AUDITOR-GENERAL RETIREMENT AGE) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 21 November. Page 1084.

**The Hon. SANDRA KANCK:** I was briefed on this bill on Tuesday, and at that briefing I asked why this extension of the Auditor-General's term was being sought. I was informed that this has occurred because the matter was raised by the current Auditor-General, given that he is on the verge of turning 65—which I found a little surprising because I am sure the Auditor-General has known for a while that he would be turning 65 at around this time and he has had a contract for 16 years.

This legislation is very clearly person-specific. The Premier's media release about it was person-specific: he named Ken MacPherson, he did not talk about a principle. He said, 'The Auditor-General Ken MacPherson will not be forced to retire when he turns 65.' I have to say I think it was a bit presumptuous of the Premier to say that. He went on to say that '. . . our current Auditor-General Ken MacPherson is still doing an outstanding job. . . and is still very enthusiastic about his role.' He also said that, 'He shows no sign of slowing down' and 'We will be delighted if he makes a decision to stay on.'

In terms of the principle of having a compulsory retirement age for whoever holds the position of Auditor-General, I am more inclined to think that 65 might be an appropriate age. While Ken MacPherson may still be firing on all cylinders at almost 65 years of age—and it is clear that he is—will he, or any other Auditor-General, still be the same at 69 years of age, approaching 70? It is not news to any of us that as human beings age they slow down, yet this is a job that requires a great deal of assiduousness and mental acuity, and there is a lot of evidence that deterioration in brain activity can happen quickly. I am not suggesting that this will happen to the current Auditor-General; I am trying to talk about this issue without being person-specific.

If the intellectual capacities of the person holding the position of Auditor-General start to erode it would be difficult to remove that person from such a high position. Even though the law envisages that it can be done, it is rarely done—and, when it is, it is difficult and often controversial. In 1993 I was responsible for a petition of 11 000 signatures asking for the dismissal of Justice Derek Bollen from the Supreme Court of South Australia. This was in response to his comments about a rape in marriage case and his stated belief that a husband is entitled to mete out 'rougher than usual handling' during sexual activity with his wife. Admittedly, Justice Bollen was over 70 years of age at that time but I believe that was an illustration of the inappropriateness of actions and statements that can come with age and also of the unwillingness of the government to sack someone from such a position because, despite the huge public outcry (as I said, 11 000 signatures on a petition), the government of the day would not take any action against him.

I am not comfortable with legislation such as this which is person specific. Had this legislation appeared as a move to not discriminate on the basis of age and had it dealt with similar positions, such as the Valuer-General and the Solicitor-General, it might have been more credible. With the government having now produced a bill that is person specific, it means a degree of personalisation must occur in

my response to this bill. So, let me recognise in the first instance that Ken McPherson was appointed for a 16-year term, and I think 16 years is an adequate term. Given that he is approaching 65, Mr McPherson will be able to retire on a very comfortable sum, and use his energies in the service of the community. Or, if he feels impelled to do so, he can seek another job, which I am certain he would be able to find.

In terms of Ken McPherson, he is a man of high principles holding the position of Auditor-General. I have said on a number of occasions that I believe we are very lucky to have him. I have met with him on a number of occasions, on a number of issues, and I always found him to be helpful. I have agreed with him on a lot of issues and on a few I have not but, regardless of all his positive contributions and the high respect which I hold for him, I remain uncomfortable with legislation that is designed to meet the needs of one person. I think the principle of a retirement age of 65 years is important for positions such as this. Indeed, I would look sympathetically at a bill to lower the retirement age of Supreme Court judges to 65. I indicate that, regardless of whatever amendments the opposition might be successful in achieving, the Democrats will be opposing this legislation.

**The Hon. R.D. LAWSON:** I have known the South Australian Auditor-General, Ken McPherson, for as long as I have been in parliament and, indeed, from before the time I came into parliament. I have high regard for Mr McPherson. He has done a good job. I respect his integrity. I have not always agreed with some of the conclusions that he has reached, but that is only to be expected—for example, the report handed in today by the Auditor-General suggests that the Auditor-General's Office ought have some oversight role in relation to the Director of Public Prosecutions. That is a matter about which I think there can be legitimate disagreement. Mr McPherson has clearly articulated a particular view; at this moment I am not convinced by it.

This legislation is not about the attributes of a particular individual. The Hon. Sandra Kanck just read the rather arrogant press statement of the Premier, stating that Mr McPherson's appointment would be extended because cabinet had so decided. It is clear that the government has made this person specific, and I think that is highly unfortunate because this legislation should not be passed on the basis of the attributes of a particular officer holder at a particular time.

By extending the retirement age of the Auditor-General we would be hampering future governments in the appointment of the Auditor-General. It is generally considered that people can hold high office for a certain number of years—15 years is a reasonable time for most people to hold the reins of high office. There are some exceptions—people always talk about Winston Churchill and whatever—but, by and large, at the top executive level 15 years is more than adequate.

If you extend the retirement age of the Auditor-General to 70 years and make South Australia the stand-out in this area, future governments will be limited in their capacity to appoint people at an appropriate age. Bearing in mind that a future government would not want to have somebody in this particular office for more than 15 years, it would say that the Auditor-General has to be 55 years of age when he is appointed, so that he can serve 15 years.That would mean that there are many other people at the height of their powers (in their late 40s or early 50s) who would be excluded from having this appointment. The government would have its hands tied. The Hon. Sandra Kanck, I think, is on the money when she says that we ought not assume that, because judges are appointed to 70 years, that is the appropriate retiring age for senior independent officers.

Judges are appointed to 70 years by what is basically an historical accident. They were originally appointed for life. There were judges on the bench at 85 and beyond. Some of them were virtually incapable of performing their functions but could not be removed because of the difficulty of removing officers and, as a result of a constitutional amendment in relation to federal judges, the retirement age of 70 years was struck. The reason it was 70 years was that many of them were appointed at a fairly late age, after great experience, and it was reasonable to let them stay in office until 70 years. It is very interesting (and highly relevant to this current debate) that, when the law was changed in relation to judges, it did not apply to those judges who were already in office. They could continue to stay in office. The law was not changed to accommodate existing office holders; it did not apply to them. Those who were in office then continued to be in office for the rest of their lives.

For example, Justice Kemeri Murray, of the Family Court of Australia, was appointed at a time before the compulsory retirement age came in. She has been in office well beyond her 70th birthday and is retiring later this year. So, the principle was there established—an entirely appropriate principle—that changes of this kind do not apply to those who are already in office.

I do not want to detain the committee terribly long because a number of points have been made by others, and I do not want to repeat those at any length; however, I think that there are some I should repeat. Auditors-general in other jurisdictions are not appointed until 70 years. In fact, in the commonwealth, in the Australian Capital Territory, in New South Wales, in the Northern Territory, in Queensland, and in Victoria they are all appointed for seven years.

**The Hon. T.J. Stephens:** Maximum, and no right of—

**The Hon. R.D. LAWSON:** Well, eligibility for reappointment does apply in Victoria but, in the other places I mentioned, it is seven years and they are not eligible for reappointment. So, that means that the people who are appointed to these important positions are senior at the time. It is not a position one takes at the end of one's professional career. South Australia alone is until 65 years. In Tasmania, it is rather more complex, but there it is an appointment for not less than five years or until retirement. Originally, in Tasmania there was legislation which provided that the Auditor-General should retire on attaining the age specified for the retirement of heads of agencies.

The notion that we should have compulsory retirement ages for any officers is somewhat of an anomaly these days, when age discrimination legislation provides that it is not possible to stipulate, except by statute, a compulsory retirement date. So, in every other jurisdiction, this important public officer holds office for a fixed period. Whilst it is true that somebody could be appointed at the age of 93 for seven years, to retire at 100, it is fairly plain that appointments elsewhere are not treated in the same way as judicial appointments. The Premier seeks to make the argument that the Auditor-General should be treated the same as a Supreme Court judge or a District Court judge. That argument is spurious. They are a special case that has arisen for historical reasons.

If you look at the other statutory officers in South Australia, every other officer who reports to the parliament is required to retire at 65. Section 10 of the Ombudsman Act

provides, 'The Ombudsman shall be appointed for a term expiring on the day on which he or she attains the age of 65 years'—the same as the Auditor-General. The Solicitor-General, the government's senior legal adviser appointed under an act of parliament (he does not report directly to parliament, but he is a comparable officer), must retire at the age of 65. That provision is contained in section 82(2) of the Solicitor-General Act. Section 7 of the Electoral Act provides that the Electoral Commissioner must retire at 65 years. Under their legislation, magistrates and industrial commissioners in the Industrial Commission are required to retire at 65. No-one is suggesting that the independence of magistrates, the Solicitor-General, the Ombudsman, etc., is compromised by reason of the fact that they have to retire at the age of 65 years.

Somewhat disingenuously, in his press statement and in the estimates committees, the Premier said, 'It was just an oversight that the legislation was not amended when compulsory retirement was outlawed in South Australia in 1993.' That is what the Premier told the estimates committee—it was just an oversight—and he also stated that in his press statement. However, the fact is that it was not an oversight. The very point was considered by the parliament in the parliamentary debate at the time of what was the Statutes Amendment (Abolition of Compulsory Retirement) Bill. On 4 August 1993, in the Legislative Council, it was said:

> It should be noted that even with these amendments a number of people will still be subject to compulsory retirement ages in South Australia. . . in accordance with the recommendations of the working party, compulsory retirement ages will be retained for judges and masters appointed under the Supreme Court Act and the District Court Act, magistrates employed under the Magistrates Act, the President and the President, Deputy President and Industrial Relations Commissioners employed under the Industrial Relations Act.

The minister continued:

> With respect to the positions of the Valuer-General, Solicitor-General, Auditor-General, Electoral Commissioner, Deputy Electoral Commissioner and Ombudsman the working party has recommended a review.

So, for the Premier to say that this was an oversight, it was no oversight. They thought about it at the time, and they talked about a review, but no review was undertaken. What parliament did at that time was to make a decision that it would retain the compulsory retirement age of 65 for all statutory office-holders, except judges, and it would retain 70 years for them.

In my opinion, it is wrong in principle to extend the term of an incumbent. Law should be based upon the principle that it applies irrespective of the person who might hold the office at a particular time. However good he is, Mr MacPherson's qualities are not a consideration here. He is not getting an extension of term for good behaviour or because the government wants him there. Parliament passes laws for all time, irrespective of the incumbent. This law will apply to auditors-general in the future, good or bad. If parliament is to pick and choose and say, 'We are going to appoint this particular Auditor-General because the government of the day wants us to,' there is clearly a perception in the public mind that any incumbent who has had his wish fulfilled for an extension will be favourably disposed towards the government that facilitated that extension. I do not suggest for a moment that Mr McPherson personally would favour this particular government because of the favour done, but the impression would be indelibly created in the public mind.

I think it is also important to realise that Mr MacPherson has been in this office for a number of years. He has done a good job, but there are another 111 full-time equivalent persons working in the office of the Auditor-General. There are very experienced people there, and by extending incumbents one can very easily block promotional opportunities for people who might have been there for 20 years waiting their turn to take up the baton. There may well be other people in the public or private sector who could very capably fulfil the function of the Auditor-General and who are waiting for an opportunity to arise. I do not believe we should exclude them—by this means—from consideration.

Mr MacPherson, it is said, is fighting fit and wanting to go on. That may well be the case. I am sure that if he is fighting fit and willing to serve the community other positions will arise. After his 65th birthday he will be commissioned by governments and others to undertake all sorts of valuable community tasks. His experience, wisdom, knowledge, and all the rest of it, will not be lost to the people of South Australia; but I think we are foolish if we believe that because he has done a good job that means there is no-one else in the community who can fulfil this important function.

Someone else has said in this debate, what of a future Auditor-General, what if someone else is appointed, is there for 25 years, and over the age of 65 gets into his or her dotage and parliament cannot easily get rid of the Auditor-General? I think it is a sound principle for a job of this kind that 65 is a reasonable retiring age. When one looks at the statutory office holders, the people who are holding executive positions in major businesses and the like, most of them, especially those who have been in office for 15 years or so, are well and truly retired by the age of 65.

*The Hon. R.P. Wortley interjecting:*

**The ACTING PRESIDENT (Hon. J.S.L. Dawkins):** Order!

**The Hon. R.D. LAWSON:** For those reasons I will not support this bill.

**The Hon. J. GAZZOLA** secured the adjournment of the debate.

## STATUTES AMENDMENT (PUBLIC SECTOR EMPLOYMENT) BILL

Adjourned debate on second reading.

(Continued from 16 November. Page 1024.)

**The Hon. R.I. LUCAS (Leader of the Opposition):** I rise on behalf of Liberal members to put the position of the Liberal Party in relation to the legislation. Our shadow minister in the other place, the Member for MacKillop (Mitch Williams), summarised our position as being that we would not oppose the passage of the legislation through the parliament. The Member for MacKillop indicated that in the party's view there was significant doubt about the need for the legislation before the parliament. He expressed some concerns about some aspects of it but, nevertheless, indicated, as I said, that the Liberal Party will not oppose the passage of the legislation through the parliament.

The first point that I make in relation to the issue as it relates to industrial relations legislation is that—and this is a personal view, not necessarily a view of the party—I have always been a strong supporter, from South Australia's viewpoint, of retaining a South Australian Industrial Rela-

tions Commission system. I think we have had precious few advantages over the years, but one of those advantages has been our competitive wage structure, as it compares to other states. Allied, of course, with that has been a competitive cost structure, and of particular importance is land costs, which traditionally have been lower.

We have enjoyed under Labor and Liberal administrations over 40 years or so a significantly better industrial relations record than, in particular, the Eastern States. I hasten to say that I suspect that is not all to do with having a South Australian industrial relations system. In part, perhaps, some of the more recalcitrant unions and union leaders have lived in Melbourne and Sydney and the Eastern States but, as I have said, we in South Australia have enjoyed for a long period of time a significantly better industrial relations record than the Eastern States, in particular. I repeat—I see some mirth on the faces of some members opposite—that that has been under Liberal administrations as much as Labor administrations over the last 30 or 40 years.

That is, as I said, my personal view, my preferred position. The brutal reality is that we have now not only federal legislation but also a High Court decision confirming the commonwealth's powers in this particular area. Again this is my personal view, I think there are many on my side of politics who are delighted with all that. The reality, of course, is that—heaven forbid for the country and its people—at some stage in the future the Labor Party (federally) may well be elected and may well have someone like Mark Latham leading it. Or, heaven forbid, it could be Kevin Rudd or Julia Gillard, and that is an even more horrifying prospect.

I think that is a cautionary note in relation to all this. A federal Labor government led by Latham, Gillard or 'Krudd' (Kevin Rudd) would be a horrifying prospect for the nation, its people and economic and job growth prospects. I will not go far down that path. As I said, these are personal views of mine and I think the reality is, as we speak today (and I have not seen the news tonight), the leader of the federal Labor opposition has indicated that it is his view, anyway, that there will be no return to state-based industrial systems. A federal Labor government in the future would use the full force of the powers that have now been confirmed by the High Court, albeit in a different and Labor way.

So, as I said at the outset, whilst my personal preference would have been to retain a state-based system and, I believe, the competitive advantages that that has for our state in terms of growth prospects, I do not see how that is ever likely to be achieved in the foreseeable future, and we now have to live with the reality of the federal parliament's legislation and the High Court decision. The state government has gone down this particular path. I think there is a good amount of hyperbole in its second reading explanation and the press releases that have accompanied the legislation in terms of what the legislation will achieve. However, as I said, and in particular as the member for MacKillop has said officially on the party's behalf, we do not oppose the legislation.

I now turn to some specific aspects of the approach. There is a fair bit of hyperbole and politics in the state Labor government's approach to this and, given that the government is led by Mr Rann, that is perhaps not surprising. However, I believe there are significant unforeseen dangers in the approach that has been adopted by the government. If I can summarise it, the government, in terms of a number of sections of public administrations in South Australia (departments, agencies and bodies), has basically said, 'The way we will get around this is by introducing a new concept, something called an employing authority' and, in most cases, it has designated the employing authority as the chief executive officer of a particular department or agency.

Through that device it believes (on its advice) that it has got around the corporations power aspects of the High Court decision because some ministers are corporations in and of themselves in terms of their office and some bodies are corporations. So the government's legal team has devised a scheme which, as I said, uses this device of an employing authority. We have over 20 acts being amended in a broadly similar way to try to ensure that the legislation, backed up by the High Court decision, does not apply to these particular sectors of the Public Service.

First, there is the PR stunt value of this, which was important to the government, bearing in mind, of course, that the first PR stunt which went sadly and badly awry was the High Court challenge at great public expense. Let us just dismiss as a furphy the state government's estimate of the cost of just over $50 000, because that does not include the costs of government solicitors' time, from the Solicitor-General downwards, I understand, in terms of hours spent. I think that is certainly one figure that will need to be pursued to determine the true cost of the appeal to the High Court.

For example, when members of parliament seek information under FOI, it is very easy for governments and FOI officers to work out how many legal officer hours will be expended in looking at that FOI application to give to the government the cost of meeting that particular FOI request. Crown law works on the basis of hours worked on particular projects and cases and, clearly, that figure is capable of being calculated. It will certainly mean that the cost to the taxpayers will be significantly greater than the approximate $50 000 estimate that has been put around by the Premier. So that was the first part of the PR stunt.

The second part of the PR stunt is this particular legislation. Because it was important to the Premier and to the government to proceed quickly down this path (as I said, they have used this device of the employing authority and they are amending over 20 acts and have done this very quickly), in my view, they have not properly consulted with all who will be impacted by the legislation. I am happy to place on the record now that, in my view, there will be a number of unforeseen circumstances arising from this PR stunt of legislation, and in relation to some of the provisions of the act there will be significant problems caused by this device of the employing authority that has been used. Over the coming years, the government of the day, either this government or any future government, will probably have to rush through amending legislation to correct unforeseen consequences as a result of this device and drafting and the fact that there has not been proper consultation and proper consideration of all the impacts of the legislation.

Out of due deference to my colleagues, I will not go through all 25 pieces of legislation. I guess there are a number I have had past experience with, but there is one in particular I have had some past experience with both as a shadow minister and as a minister, that is, the provisions of the Education Act and how the education department operates. I want to raise some of the general questions that need to be answered. Under the Education Act, the minister for education has significant powers in a number of important areas and, because of the needs of the device the Rann government has chosen, in essence, in most of those areas, in terms of employment arrangements, the minister has to be written out of the act and replaced by the employing authority

(which, in most cases, will be the chief executive). It therefore means that there is a significant watering down of ministerial authority in relation to the education system in some of the areas and it is replaced by the senior bureaucrat within the department. The senior bureaucrats may well be delighted about that but, as a former minister and shadow minister of education, I think there are significant dangers in heading down this path without proper consideration of the implications of these changes.

I have a general question that does not just relate to education but to the whole of the legislation. When the minister replies to the second reading, will he provide an explanation in relation to the minister generally delegating his or her powers to officers? What changes will there be in relation to the general powers of delegation from minister to officers as a result of the legislation we see before us? There are some specific powers as it relates to the employment arrangements of officers within departments, but I am seeking an answer to a more general question in relation to the general power of delegation. In many of these agencies, the minister will no longer be the employing authority, if I can use that phrase; the executive will be the employing authority. Where does that leave the general powers of delegation, in particular, as they relate to requirements under, for example, a significant number of Treasurer's Instructions that relate to delegation powers?

There is another general question about which I seek clarification. As a result of this legislation, in these affected agencies, is there any diminution of the power of the minister of those departments and agencies to be the person who signs the contracts and agreements that might be entered into by the department or the government? If I use the specific example of the minister for education, many of the agreements and contracts that were signed were ultimately required to be signed off by minister for education. I would like clarification as to whether this legislation will see any change in that arrangement. Would it be the chief executive officer, for example, who will be signing off on contracts and agreements? As I have said, not being a lawyer and only being able to ask these questions from a non-legal viewpoint but, nevertheless, from the practical experience of being a former minister, I can certainly attest to the fact that a significant number of contracts and agreements are required to be signed by the minister for education. Those are the general questions.

Turning now to the Education Act, the first provision I want to look at is the amendment of section 5, which inserts a new definition of 'employing authority'. The point I want to make in relation to this definition (and it will become more apparent later on) is that it provides that the employing authority will be whomever the Governor proclaims it to be from time to time; so, in essence, a definition by proclamation of the government of the day. By and large, it is expected to be the Director-General, who is the CEO of the department. However, what this provision provides for is that, in certain provisions of the act under the old arrangements, there were references from the chief executive officer to the minister, or there might have been appeals in respect of a decision from the chief executive to the minister. So, you had two different levels of authority.

What this new definition is saying is that, where that occurs in these new arrangements, where you have the Director-General at one level and the employing authority (which is the Director-General) at another level, they are one and the same, that is, there is no second level of authority. So, whereas under the existing legislation a decision of the chief executive might have to go to the minister, under the new arrangements a legal device is used to say, 'Well, it's one and the same body. Whatever the chief executive decides is the final decision.' The chief executive's decision does not go to a minister or anybody else. It does not require any further approval. As I said, it is important to bear in mind the definitional change under section 5 of the Education Act which, therefore, impacts significantly on other aspects of the legislation. If we turn to section 9(4), it provides:

> The Minister may appoint such officers and employees (in addition to the employees and officers of the Department and the teaching service) as he considers necessary for the proper administration of this Act or for the welfare of the students of any school.

My question to the minister—and this will obviously need to come from the Minister for Education and Children's Services—is that over the past 10 years or so what types of persons have been appointed by either this minister or past ministers during that period under section 9(4) of the Education Act within the education department? I ask this because, under the new arrangements, the minister loses that power and, under subsequent provisions, that potential power is given to the chief executive officer.

The next section I want to discuss is section 15 of the Education Act which refers to appointments to the teaching service. Section 15(1) provides:

> Subject to this Act, the Minister may appoint such teachers to be officers of the teaching service as he thinks fit.

Under the new act, that has changed to the employing authority which is likely to be the Director-General. There are subsequent changes through the various appointment provisions of section 15; for example, section 15(6) provides:

> An officer appointed on a temporary basis shall hold office at the pleasure of the Minister.

That makes it clear that temporary appointments can be withheld by the power with the power of the minister. The minister's authority under the new legislation is removed and given to the Director-General. Under section 15B there are similar amendments.

I now turn to section 16—Retrenchment of officers of the teaching service. Again, I direct this question through the minister handling the bill to the Minister for Education and Children's Services. Currently, section 16(1) of the Education Act provides:

> Where the Minister is satisfied that—
>
> (a) the volume of work in any section of the teaching service has diminished; and
>
> (b) in consequence a reduction in staff of the teaching service has become necessary in the interest of economy; and
>
> (c) an officer should be retrenched for that purpose,
>
> the Minister may, by a written determination under his hand, retrench that officer as from a date specified in the determination.

Can the minister confirm that that power is a much broader retrenchment power for the minister for education than exists for normal public servants in all other government departments and agencies? All members in this chamber will know that forced redundancy or retrenchment is an issue that the PSA raises with political parties prior to every election or enterprise agreement and, at this stage, the government has locked itself into a position of confirming that there will be no forced redundancies even to the extent of rejecting an Economic Development Board recommendation to remove that provision.

I want the minister to confirm that section 16(1) of the Education Act actually gives the minister for education that

retrenchment power which does not exist in the public sector more generally. Section 16(2) outlines the retrenchment provision of 'at least 12 weeks in writing' amongst others. The legislative provisions there are much less generous than the usual targeted voluntary separation package schemes which have been offered by this government and previous governments in recent years. That is my first question in relation to the retrenchment provision.

In this bill the government is proposing that that power be removed from the minister and that the chief executive of the department be given the power to retrench officers of the teaching service. As I said, this is not a disciplinary issue. In this case, it would be as follows:

> Where the Director-General is satisfied that—
>
> (a) the volume of work in any section of the teaching service has diminished; and
>
> (b) in consequence a reduction in staff has become necessary in the interest of economy;

Let me give examples. First, if we have 10 000 fewer students in the public school system in South Australia, that is clearly an indication that the volume of work has diminished. Secondly, as to 'in consequence a reduction in staff has become necessary in the interest of economy', that requirement will be met. As I read it, the chief executive would be given the authority to retrench teachers in those circumstances. Under the previous arrangements, as I said, it was the minister's requirement and, generally, the approach that has been adopted has been that the use of targeted voluntary separation packages has been offered for what has been euphemistically referred to as surplus teachers.

I think that the new government has a different term for them—I forget what that term is—nevertheless, they are teachers surplus to requirements on the basis of the normal staffing formula. This is a significant shift and I seek advice from the government as to how it sees this provision with the chief executive having the authority being utilised. In the interests of having a sensible debate about this, I caution the minister from sending down a trite response in relation to this issue. This is an important issue.

There are at this stage only four sitting days left if the government does not utilise the optional sitting week, and certainly we do not want to be in a position where critical legislation like this is not properly considered, in the interests of teachers and other staff working within the Education Department. This would be assisted if a considered response was to come back from the minister and her advisers in relation to the current powers of 16(1) and the implications of the change envisaged by the government.

Section 17, relating to incapacity of members of the teaching service, is a significant power of the minister that is being removed. In the past or currently, if the Director-General is satisfied that an officer is, by reason of mental or physical illness or disability, incapable of performing satisfactorily, they may do one or more of a number of things, one being to recommend to the minister that the officer be transferred to some other employment in the government of the state. Another option is to recommend to the minister that the officer be retired from the teaching service. I note the use of the word 'retired' as opposed to 'retrenched' and to all intents and purposes it could be interpreted in the same way.

In the case where the Director-General believes that by reason of mental or physical illness or disability there is a problem with a teacher, in a couple of cases there are recommendations to the minister for action to be taken. When I was minister there were one or two examples of very significant problems the department had with the mental capacity of one or two teachers. There was a notable difficulty for the system in handling these issues. The current legislation in a couple of those circumstances makes clear that it is a recommendation through to the minister ultimately in these difficult issues (and they could be quite controversial), and that the buck stopped at the minister's desk.

In these amendments the recommendation is that 'the minister' is to be deleted. Where it says 'the Director-General is satisfied that there is a problem in relation to mental disability or illness' the current law provides 'recommend to the minister that the officer be retired from the teaching service'. However, this bill now provides 'the Director-General will recommend to the employing authority that the officer be retired from the teaching service'. This is a perfect example of what I pointed out before, namely, that the Director-General and the employing authority are one and the same person. The bill is proposing that, where the Director-General thinks that someone has a mental problem and should be retired, instead of recommending to the minister the Director-General will recommend to himself or herself that this person should be retired. You recommend to yourself that the person should be retired.

This is the issue I highlighted earlier, because this device the government is using in changing over 20 acts is creating an extraordinarily complicated and difficult situation, and I am absolutely confident it has not looked through all of the potential consequences of what it has done. I am absolutely confident that we will see significant problems from unforeseen consequences. Drafting that says that one person recommends to himself that someone should be retired from the teaching service is sloppy in concept and fraught with difficulty. There are many other examples where the device has now meant that the Director-General is recommending to himself or herself what action should be taken. It is not going to anyone else, as it used to, but it provides that I recommend to myself that I should take this action in relation to this officer.

There are other questions as it relates to the payment in lieu of long service leave, where the minister's powers are removed, and interruption of service in relation to long service leave. Previously it was the minister's decision as to whether somebody had a gap in service, or whatever else it might happen to be, and whether it would count for continuity. That power is now being given back to the chief executive. I refer to the rights of persons transferred to the teaching service; again, the minister's authority is being changed.

The next big area that is important is that of discipline—section 26 of the legislation. This is a critical issue in a department as big as the Education Department and, to give an example, it must have been for two years that we fought the case of trying to dismiss a tech studies teacher who was deemed to be so incompetent that it was unsafe to leave the teacher alone in a tech studies classroom with the tech studies students. That school had to employ another person to sit in the tech studies workshop with the teacher to ensure the safety and protection of students within the tech studies workshop. For approximately two years the system, and I as minister, sought to use the full powers under the Education Act to dismiss that officer from the school system in the interests of the safety and welfare of the students. For two years the teachers' union and a number of others fought against the decision for that person to be retired.

In the end all the appeals had been worked through and the person was about to be dismissed, and I had the extraordinary experience of the president (I think it was) and the officers of the Institute of Teachers coming to me asking whether I would withdraw my dismissal order so that the teacher could retire and get all the benefits associated with that rather than being dismissed. A quick summary of my response was 'No', although it was more detailed than that. That is a perfect example of where the blind opposition of the teachers' union to the then Liberal government, and its defence of this particular teacher, were not in the interests of the students of that school or the system. No-one was well served by that particular example of representation.

I give that as an example, under the current act, where the minister is ultimately the person with whom the buck stops; it stops at the minister's desk. It is the minister's responsibility to make the difficult decisions to fight the union all the way through regarding someone who is not competent to teach, someone who should not be allowed to teach and who was, in that particular case, actually deemed by the system to be a danger to the students in that school.

This legislation will see that power being removed from the minister and being given to the chief executive officer. Under section 26(2)(b) 'the minister' is deleted and 'the Director-General' is substituted. Again, we have this device which provides, 'Where the Director-General finds there is sufficient cause for disciplinary action under this section' and there are a variety of options listed. Eventually, under 26(2)(b), it provides that the Director-General 'may recommend to the minister that the officer be dismissed from the teaching service'. This bill will provide that the Director-General will then recommend to himself or herself that the officer be dismissed from the teaching service. That is the change to the act that we are being asked to approve—that the Director-General, having found that there is sufficient cause, will recommend to himself or herself that the particular teacher should be dismissed from the system.

There are provisions under the suspension clause of section 27 and there are also provisions under appeals in respect of appointments to promotion level positions. I will not go through those in detail but, again, considerable powers are removed from the minister and replaced by the employing authority.

I now turn to the last clause in the education section, which is the insertion of clause 101B. I guess I am seeking clarification from the government as to what the impact of 101B will be, because clause 101B(2) provides:

> The employing authority is, in acting under this section, subject to direction by the minister.

As I read this, it appears to be referring to part 10, which includes the miscellaneous provisions of the Education Act, and I seek clarification from the government's advisers as to what enacting under this section specifically refers to in terms of the Education Act. I also seek clarification, because clause 101B(3) provides:

> However, no ministerial direction may be given by the minister relating to the appointment, transfer, remuneration, discipline or termination of a particular person.

Now, all the provisions I have been speaking to earlier obviously relate to appointment, transfer, remuneration, discipline or termination. Proposed new section 101B seems to refer to the fact that the minister will have the power to direct the employing authority when it acts under this section (whatever that section is); however, no ministerial direction can be given by the minister relating to the appointment. I seek clarification of subsections (2) and (3) as to what is the overall impact of those particular provisions.

As I said, there are 25 acts like this which I or someone could have gone through in detail raising those sorts of questions. In the interests of members and not to delay the proceedings unduly, I have not gone through all of them; I have just looked at the education one. The Technical and Further Education Act, with which I am also reasonably familiar, also has many similar provisions, and, equally there are a number of other acts which have similar provisions and which raise similar questions as well.

I thought I would raise many of these questions, which are committee style questions, in the second reading debate so that the minister—in particular, in this case the Minister for Education and Children's Services—hopefully can provide a considered response. There are some general questions, as I said. I asked about the powers to sign agreements and contracts, etc. and the delegation making powers under Treasurer's Instructions which apply generally. I look forward to the minister's response to the second reading, because that may assist in shortening somewhat what might otherwise be a lengthy committee stage.

**The Hon. R.P. WORTLEY** secured the adjournment of the debate.

## ADJOURNMENT

At 10.07 p.m. the council adjourned until Thursday 23 November at 2.15 p.m.