HOUSE OF ASSEMBLY

Tuesday 18 February 2003

The SPEAKER (Hon. I.P. Lewis) took the chair at 2 p.m. and read prayers.

ASSENT TO BILLS

Her Excellency the Governor, by message, assented to the following bills:

Controlled Substances (Cannabis) Amendment,

Criminal Law (Forensic Procedures) (Miscellaneous) Amendment,

Education (Charges) Amendment,

Holidays (Adelaide Cup and Volunteers Day) Amendment,

Local Government (Access to Meetings and Documents) Amendment,

Native Vegetation (Miscellaneous No. 1) Amendment,

South Australian Metropolitan Fire Service (Fire Prevention) Amendment,

Statutes Amendment (Environment Protection),

Terrorism (Commonwealth Powers),

Upper South East Dryland Salinity and Flood Management.

IRAQ

The Hon. M.D. RANN (Premier): I seek leave to make a ministerial statement.

Leave granted.

The Hon. M.D. RANN: I can advise the house that government time will be set aside tomorrow to allow members of both houses to debate issues surrounding the threat of war in Iraq. Up to three hours will be provided in the House of Assembly, and time will also be provided in the Legislative Council. The extraordinary turnout at the rally held in Adelaide last Sunday underscores the community's level of concern about the developments in the Middle East. This time will allow members of the South Australian parliament to discuss this critical issue, which is of interest to South Australians.

ONESTEEL

The Hon. M.D. RANN (Premier): I seek leave to make another ministerial statement.

Leave granted.

The Hon. M.D. RANN: I am pleased to inform the parliament of a decision about the future of the Whyalla steelworks operated by OneSteel. OneSteel has today announced its half yearly results for the six months to December 2002 and a major reinvestment program in the Whyalla steelworks. OneSteel recorded an after-tax profit of nearly $55 million. This represents a 178.7 per cent improvement in the company's profit position over the previous six months.

OneSteel will invest $80 million in the relining of its blast furnace. Underlining OneSteel's commitment to the long term, this will extend the life of the blast furnace in Whyalla to about 2020. This is great news for OneSteel's 2 000 South Australian employees, most of whom work at the Whyalla steelworks in the electorate of the member for Giles. It is a major vote of confidence by the company in the future of Whyalla. Because Whyalla produces around 70 per cent of OneSteel's steel requirements, it is central to OneSteel's future operations and future viability.

I met with OneSteel executives two weeks ago. I can inform the house that the refurbishment of the blast furnace will take place over June and July 2004, and will require the employment of 400 people. The plant will close for about 65 days during the relining of the blast furnace, and OneSteel will first build up steel stocks to provide continuity of supply. When BHP as the original owner of the Whyalla steelworks decided to spin out the Whyalla operation into the new OneSteel company, there were many issues to be worked through. There were even some who did not give the new company much chance of survival. There were lots of knockers around at the time. However, today the Whyalla steelworks is producing record volumes of steel at a profit. New investment that will provide for a more secure future is beginning to flow.

One issue at the time of the spin-out of OneSteel from BHP in 2000 was the high level of debt carried by OneSteel. Today's financial results are a very positive sign that OneSteel is well on the way to a strong future, with a significant reduction in its debt and gearing ratios. I remember as opposition leader that the then premier John Olsen and I negotiated with BHP to achieve a bipartisan agreement to support changes to the BHP indenture legislation before this parliament—and if members want to the check they can pick up the phone and call Los Angeles—to give the new company access to the iron ore it needed from the Middleback Ranges. Today OneSteel is much stronger, and its decision to invest $80 million in the relining and modernisation of its blast furnace is an irrefutable answer to those who question OneSteel's long-term commitment to Whyalla.

Of course, challenges lie ahead. The company is working with the local community and with the Environment Protection Authority to cut emissions of pellet dust. The company has had to deal with the high electricity prices caused by privatisation, and while—

An honourable member interjecting:

The Hon. M.D. RANN: Go and talk to them; go and talk to their executives. While there are challenges ahead, there is every sign that OneSteel and the people of Whyalla will be able to meet these challenges and grow a stronger and more prosperous community. I would like to pay tribute to the efforts and success of the management and workers of OneSteel and the people of Whyalla. I would like to make special mention of the efforts of the member for Giles (Lyn Breuer), who was intimately involved in the negotiations with me in Adelaide and Whyalla, and in Melbourne with BHP and OneSteel executives.

PAPERS TABLED

The following papers were laid on the table:

By the Minister for the Arts (Hon. M.D. Rann)—

Public Corporations Act—Ring Corporation Dissolution

By the Treasurer (Hon. K.O. Foley)—

Budget Results 2001-2002

Regulations under the following Acts—

Petroleum Products Regulation—Prescribed Officers

Public Corporations—Economic Development Board

By the Minister for Emergency Services (Hon. P.F. Conlon)—

Emergency Services Administrative Unit—Report 2001-2002

By the Attorney-General (Hon. M.J. Atkinson)—

Election Report for the South Australian Elections—9 February 2002
Regulations under the following Acts—
Criminal Injuries Compensation—Scale of Costs
Legislation Revision and Publication—Environment Protection Act
Listening and Surveillance Devices—Records, Warrants
Victims of Crime—
Application, Costs, Levy
Imposition of Levy

By the Minister for Consumer Affairs (Hon. M.J. Atkinson)—

Regulations under the following Acts—
Liquor Licensing—Dry Areas—
Barmera, Berri, Paringa Renmark
Beaches
Coober Pedy
Port Pirie
Tumby Bay

By the Minister for Education and Children's Services (Hon. P.L. White)—

Regulations under the following Act—
Senior Secondary School Assessment Board of South Australia—Subjects

By the Minister for Environment and Conservation (Hon. J.D. Hill)—

Regulations under the following Acts—
Dog Fence—Variation
Upper South East Dryland Salinity and Flood Management—Protection from Interference

By the Minister for Transport (Hon. M.J. Wright)—

Regulations under the following Acts—
Harbors and Navigation—Time Extension in 2003
Motor Vehicles—Speed Penalties Variation
Road Traffic—
Expiation Penalties
Speed Limit Variation

By the Minister for Tourism (Hon. J.D. Lomax-Smith)—

Alpaca Advisory Group (AAG)—Annual Report 2001-2002
South Australian Goat Advisory Group—Annual Report 2001-2002
South Australian Deer Advisory Group—Annual Report 2001-2002
Regulations under the following Acts—
Fisheries—
Catch Quotas
Delivery of Abalone
Pilchard
Undersized Abalone
Mines and Works Inspections—Approval of Activities
Primary Industry Funding Scheme—Marine Scalefish

By the Minister for Urban Development and Planning (Hon. J.W. Weatherill)—

Regulations under the following Act—
Development—
Fees, Building Work
Significant Trees Variation
Upper South East Act

By the Minister for Gambling (Hon. J.W. Weatherill)—

Rules—
Authorised Betting Operations—Bookmakers Licensing Rules—Display of Odds

By the Minister for Local Government (Hon. R.J. McEwen)—

Local Council By-Laws—
City of Campbelltown
No. 5 Dogs
City of Mount Gambier—General
Coober Pedy—
No. 1—Permits and Penalties
No. 2—Moveable Signs
No. 3—Local Government Land
No. 4—Roads
No. 5—Nuisances
No. 6—Dogs
Copper Coast—
No. 3 Local Government Land
No. 3 Local Government Land—Erratum
No. 4 Roads
No. 5 Moveable Signs
Mid Murray—
No. 1—Permits and Penalties
No. 2—Moveable Signs
No. 3—Roads
No. 4—Local Government Land
No. 5—Dogs and Cats
No. 6—Bird Scarers
Murray Bridge
No. 1—Permits and Penalties
No. 2—Local Government Land
No. 3—Roads
No. 4—Moveable Signs
No. 5—Dogs
No. 6—Lodging Houses
No. 7—Taxis
No. 8—Nuisances caused by Building Sites
Peterborough—
No. 1—Permits and Penalties
No. 2—Moveable Signs
No. 3—Roads
No. 4—Local Government Land
No. 5—Dogs

NATIONAL WINE CENTRE

The Hon. K.O. FOLEY (Deputy Premier): I seek leave to make a ministerial statement.

Leave granted.

The Hon. K.O. FOLEY: As members may now be aware, it was my pleasure today to be able to announce this morning that the state government had secured the future of the National Wine Centre as a national wine centre through a deal negotiated with the University of Adelaide. The university will be taking over the running of the centre on a 40 year lease. It will use the centre to expand its world acclaimed wine research and education courses.

This means that South Australia will have a facility to rival the great wine institutions of France, Italy, Germany and the United States. The university will also aim to collaborate with the University of South Australia and Flinders University. But this will not mean the end of the wine centre as a public facility. The university will continue to operate the wine exhibition and, in fact, plans to cut the admission price from $11 to $8.50 and to make more car parking available for the public from within the existing car parking arrangements. The university will also open the centre for private functions outside of teaching hours, and the centre is now taking bookings beyond 31 March 2003.

But that is just part of the story. The best part, from my point of view as Treasurer, is that the deal will bring substantial savings to taxpayers. The annual maintenance and other costs associated with the wine centre will be met by the university, saving South Australia, on estimate, up to $30 million over 40 years. The university will pay the government initially $1 million up front for its lease.

This deal represents a huge saving for the government. In April 2002, the Department of Treasury and Finance had analysed the business of the wine centre and found that, on

optimistic assumptions, it stood to lose at least $2 million per year if its operations continued as they were.

Mr Brindal interjecting:

The SPEAKER: Order! The member for Unley is out of order!

The Hon. K.O. FOLEY: The operational losses over the forward estimates period, before any depreciation, were $12.5 million on optimistic assumptions and $14.7 million on pessimistic assumptions. Even under the deal secured with the Winemakers Federation last year, the government was still responsible for structural and capital repairs valued at $250 000 per year, for capital initially up to $270 000, and for the ongoing refurbishment of the exhibition. But this deal puts an end to those costs and retains the centre as a focal point for the wine industry's research and learning. Compare this to the appalling mess that this government inherited from members opposite.

Members will recall that in June 2002 I arranged for the operations of the centre to be handed to the Winemakers Federation. They informed me in September that they were unable to run the centre profitably. The government at that stage called in Bruce Carter from Ferrier Hodgson to run the centre and to make recommendations about what could be done with it.

Amounts spent by the state government on the National Wine Centre to June 2002 were: $388 000 for the centre's opening (who could forget Kate Ceberano?); an annual contribution of $253 000 for board expenses; appropriation of $415 000 to cover a period of delayed opening from 1 July to 31 August 2001; and $320 000 for additional items such as a ticketing system, IT hardware and software, post-construction cleaning, etc. On 20 December 2001, additional funding of $1.75 million was approved for the period December 2001 to 31 March 2002. Again, on 31 May 2002 additional appropriation funding of $730 000 was approved for the period to 30 June 2002. From recollection (and I will provide further advice on this), a further $1.4 million was approved by cabinet, of which I understand $700 000 has been drawn down since the latter part of last year. In addition, the state government, of course, contributed $14.6 million in creating the centre, with the commonwealth government contributing $12 million. And, as we know, the wine industry has made various donations to the exhibition.

But, that is the past. Today I have outlined the future—a future in which the National Wine Centre will become what it should have been all along—a prestigious wine institution, providing support and promotion to the wine industry, and a future in which taxpayers will not have to continue facing substantial losses.

In conclusion, I congratulate the University of Adelaide for its wisdom and its vision, and I thank all those involved in putting together the deal, particularly Mr Bruce Carter and Mr Martin Lewis of Ferrier Hodgson.

FIREARMS

The Hon. P.F. CONLON (Minister for Police): I seek leave to make a ministerial statement.

Leave granted.

The Hon. P.F. CONLON: I advise the house that the government will shortly be making amendments to the regulations under the Firearms Act to maintain the status quo for existing class H firearm licence holders and to provide certainty and consistency for future applications. The government believes that it is appropriate in many cases for the issue of hand guns on rural properties. I received advice that, as a result of the Supreme Court decision by His Honour Justice Mullighan in Registrar of Firearms against Gitsham that the Registrar does not have the power to issue class H firearms endorsed with the condition of primary production and any such licence issued is void.

On receipt of the advice from police, I immediately requested that steps be taken to restore the current licences and the ability to obtain these types of licences. There are approximately 146 class H licences issued by police for use in relation to carrying on the business of primary production or in the course of employment by a person who carries on such a business and as approved by the Registrar of Firearms. An applicant must therefore demonstrate a genuine reason for the use of a hand gun.

I am advised by police that the Firearms Branch issued a letter to all appropriate licence holders on 5 February requesting that within 30 days of receipt of the letter the firearm must be disposed of legally or surrendered to a police station. The gazettal of these new regulations will supersede the letter from the Firearms Branch and enable current class H licence holders to retain their licences.

DIRECTOR OF PUBLIC PROSECUTIONS

The Hon. M.J. ATKINSON (Attorney-General): I seek leave to make a ministerial statement.

Leave granted.

The Hon. M.J. ATKINSON: I refer to the on-air admissions (both on television and radio) by the Director of Public Prosecutions, Paul Rofe QC, of—

Members interjecting:

The SPEAKER: Order, the member for West Torrens, for the final time!

The Hon. M.J. ATKINSON: —frequent visits by him during office hours to the Gawler Place TAB and to a newspaper shop for scratchy tickets. I discussed these matters with Mr Rofe QC in the early afternoon yesterday and I have secured his firm undertaking that he will cease all gambling in whatever form and by whatever means during office working hours. Mr Rofe QC has also agreed to undertake appropriate counselling about the nature of his gambling activities.

I inform members that, after disclosure of the nature and extent of the absence from the DPP office of Mr Rofe QC, I sought the advice of the Solicitor-General as to whether such conduct might constitute misbehaviour such as to warrant consideration of termination of the DPP's appointment by the Governor pursuant to section 4(8)(b) of the Director of Public Prosecutions Act 1991.

The Solicitor-General, Mr Chris Kourakis QC, has provided an opinion that, in his view, the conduct admitted by Mr Rofe does not constitute grounds for statutory termination of the DPP's appointment. Members will be aware that, as is common with all DPP's, the South Australian DPP is independent of direction or control by the Crown or any minister or officer of the Crown.

Nevertheless, the government regards the behaviour of Mr Rofe QC as falling below the high standards expected of those persons carrying out public duties in the public eye. Only yesterday the Premier moved for the establishment of a joint committee of the parliament to introduce a code of conduct for all members of parliament. In addition, while Mr Rofe QC as an independent statutory office holder is not subject to the disciplinary powers of the Public Sector

Management Act, he, in common an all statutory office holders, should set the highest standards of personal conduct in accordance with the general public sector aims and standards outlined in part 2, section 6 of the Public Sector Management Act.

In the government's view, the people of South Australia are entitled to rely upon the public and private conduct of public officers, such as Mr Rofe's, being beyond reproach. In the present case, Mr Rofe's conduct was less than desirable and, at worst, may have had the effect of diminishing public confidence, not only in his own performance but in the performance of the DPP office that he leads.

The government, having secured the formal undertaking from Mr Rofe QC, will not tolerate any deviation from the expected standards of behaviour from a person in this position.

WATER METERS

The Hon. J.D. HILL (Minister for Environment and Conservation): I seek leave to make a ministerial statement.

Leave granted.

The Hon. J.D. HILL: Managing the state's supply of water is critical to the environment and to the economy. South Australia, because of its reliance on the Murray River and its dry conditions, must have a model system for the efficient use of our water resources. The State Water Plan, which was introduced under the former government and which continues to enjoy strong bipartisan support, sets the framework for allocations of water to irrigators.

Importantly, the plan highlights the need for a comprehensive water metering system. Today I announce that the government has adopted a new licensed water use metering policy. For the first time, water use by all South Australian irrigators in prescribed areas will be monitored by volume. Irrigators will need to ensure that their meters meet the appropriate standard or purchase new meters where none currently exist. Irrigators with an existing government supplied water meter will be offered ownership of that meter at no cost, in recognition of their past rental fees, which vary from $130 to $400 per year. These fees are similar to the financing costs of a new meter.

To minimise the cost to licensees, the government will facilitate a panel contract of meter suppliers from which licensees may purchase competitively priced meters. Suppliers admitted to the panel will be encouraged to include financing options, for example, leasing. And the local catchment water management boards will be encouraged to recommend effective procurement strategies that reflect local conditions and community needs.

The new policy will mean consistent water metering practices across South Australia's prescribed areas. Currently prescribed areas have their own guidelines for monitoring water use. For example, in the South-East water use is monitored on the basis of irrigation area equivalents, and hence meters have generally not been required. Conversely, water meters have been installed, maintained and read by the government on the Murray River since the mid-1970s. And there is a mixture of private and government owned meters in other prescribed areas.

The policy will provide benefits for the environment and for the irrigation community. The extension of water metering will ensure that total consumption remains within licensed limits. If our water resources are not managed sustainably, the value of water will be progressively eroded. For example, if water use controls did not exist in the Northern Adelaide Plains, ground water quality could deteriorate to the extent that the water would be too saline for high value vegetable crops.

Metering clearly quantifies water use before and after any water saving initiatives are implemented. This provides a real incentive to irrigators who put in place water saving initiatives. It is in the interests of all South Australians that we manage our water resources sustainably and use them efficiently. The new licensed water use metering policy is necessary to ensure a fair and transparent system of allocating water.

RAILWAYS, SALISBURY LEVEL CROSSING

The Hon. M.J. WRIGHT (Minister for Transport): I seek leave to make a ministerial statement.

Leave granted.

The Hon. M.J. WRIGHT: I rise today to provide the house with information arising from investigations into the tragic rail crash at Salisbury when the Alice Springs bound Ghan passenger train hit a car and bus on the Park Terrace level crossing on the afternoon of Thursday 24 October 2002. An investigation by Mr Vincent Graham focused on the transport systems and traffic management at Park Terrace. I have now received Mr Graham's final report, which I released publicly on 7 January 2003. I table that report for the information of members.

Mr Graham has made eight final recommendations, four dealing with the level crossing at Park Terrace Salisbury and four with improved governance arrangements for managing level crossings in South Australia. A two-stage approach for resolving traffic queuing at the Park Terrace level crossing has been recommended, the first of which is a six week trial of traffic management measures. That trial commenced on Monday 17 February and the performance of the measures and motorists' behaviour will be closely monitored using recordable closed-circuit television.

If the trial was considered successful, then capacity enhancement of the Salisbury Highway intersection, emergency escape lanes and permanent access restrictions onto Park Terrace will be constructed and the crossing will remain open. If the results of the trial are considered inconclusive or unsuccessful, Mr Graham has recommended that the Park Terrace level crossing be closed. Mr Graham has specifically recommended against constructing an overpass or underpass at Park Terrace because of significant practical problems and the impact of the 'scar' that would be created on property either side of Park Terrace and on the Salisbury Town Centre.

With regard to other level crossings, the report notes that the most significant contributing factor to rail level crossing fatalities is the intentional or unintentional breach of road rules by motorists. Many motorists erroneously believe that trains can stop quickly to avoid a collision. The report found that South Australia did not have coordinated and effective governance structures for level crossing safety. Mr Graham has made a series of recommendations that will enable South Australia to achieve best practice management of level crossings. Action is under way to implement Mr Graham's recommendations.

The first meeting of the new Level Crossing Strategy Advisory Committee was held on 31 January this year. A small, full-time Level Crossing Unit has been established in the Department of Transport and Urban Planning. The unit has adopted and commenced applying the Queensland model

for risk factor assessment of level crossings as recommended by Mr Graham. TransAdelaide will be undertaking a risk assessment on all pedestrian level crossings on their network and developing risk mitigation strategies.

In closing, I would like to pay tribute to the role played by many parties in the aftermath of this unfortunate incident, particularly the City of Salisbury. I would especially like to put on record my thanks to Mr Vince Graham for his excellent work. I will, of course, keep the house informed of further developments on this matter.

PARLIAMENT, MEMBERS' ACCESS

The SPEAKER: Something has come to my attention since the commencement of proceedings today. Accordingly, I crave the indulgence of both the Premier and the Minister Assisting the Premier in the portfolio of the arts to please be advised that public servants in any context and departments of all contexts should respect the ancient privileges of the parliament and ensure that no member of parliament is impaired in their ability to have access to the parliament under the terms of the agreement which has been made over the time that the parliament has been here with any and all of its neighbours, and that such practices must, I ask them—indeed, I direct them on behalf of all members—cease forthwith. Members will be provided access under the terms of those arrangements without any impediment whatsoever.

Before I conclude, let me say that I do this deliberately so that the parliament is seen by all and anyone to be open and accountable, and if the privileges of access to this place are to be in any way impaired then it shall be in consequence of a determination by all members of this place and not by a servant of any minister or ministers.

QUESTION TIME

LAND TAX

The Hon. R.G. KERIN (Leader of the Opposition): Will the Treasurer advise the house what steps the government is taking to rectify and prevent the high incidence of errors in land tax assessments? Calls to the Liberal land tax hotline report not only massive increases in land tax bills but also a high rate of incorrect assessments, a few of which include: a former valuer-general received a land tax bill for a $63 000 property which he has never owned; a pensioner who has lived in the same home for 14 years has been charged incorrectly for land tax on his home even though it is his principal place of residence; and a Grange resident received an incorrect bill for $17 420, which was subsequently amended after two complaints to $5 742, which again was incorrect. I have been told that some callers who question their bills with Revenue SA are being referred to the Liberal hotline to have their problems sorted out.

The Hon. K.O. FOLEY (Treasurer): As we have seen from the mid-year budget review, which was released yesterday, there has been a significant increase in land tax, particularly stamp duty, as we near the peak of an economic cycle. I was interested to note, however, that a few weeks ago the opposition called for a lift in the threshold of land tax. In their view, the most pressing tax that needed to be adjusted was land tax. I think they cited a home on Hindmarsh Island which had significantly increased in value—double comes to mind but it might not have been that much, I cannot quite recall—

An honourable member: Ten times.

The Hon. K.O. FOLEY: Ten times. Somebody received a huge capital gain and they had to get a land tax bill increase. Land tax on your non-residential home has been with us for a long time. I do not like the fact that from time to time there is some hardship with paying taxes, and we have ways and means of dealing with it. I found it amusing that members of the opposition would identify the most important tax for tax relief—in their opinion—as being land tax which falls largely on a second, investment property. If that is their priority for tax, so be it. They are entitled to have that view.

Mr BRINDAL: I rise on a point of order, Mr Speaker. I draw your attention to the fact that, in answering any question, the minister may not engage in debate. I ask you to rule whether the Treasurer is inciting a debate on this matter.

The SPEAKER: It occurs to me that the minister is taking more latitude than I would have taken in the circumstances and that, notwithstanding the member for Unley's point of order, had it continued in that vein I probably would have told the Deputy Premier to come back to the substance of the question and avoid participating in debate of the matter to which it refers. I tell the Deputy Premier to stick to the answer rather than the pros and cons of why it is so.

The Hon. K.O. FOLEY: Thank you, sir. The issue of the collection and the errors that occur in some land tax bills are obviously matters that any Treasurer would be concerned about and on which advice would obviously be sought from Revenue SA. Unfortunately this type of thing does occur. Errors are made from time to time. Surprise, surprise! This no doubt happened under the last government. if errors are occurring I am happy to get them checked and to find out why they are occurring. I recall that in the last budget we appropriated some money for improved tax collection computer software in Revenue SA. It may well be that in future that will mean this type of error does not occur. However, errors occur even with the best equipment and the best care in the world.

I find the attitude of members of the opposition on land tax interesting. They are advocating a cut in land tax, but what are they not doing? They are not telling us where the money will come from. Which hospital will receive funding cuts? Which school? How are you going to pay for your tax cut? The opposition cannot continually say that it will lift the threshold, cut a tax and spend more money, and not tell us where the money will come from. That is how they left the state's accounts. Shadow treasurer Lucas has no discipline over this rabble. They just come out with all these outlandish promises and commitments with no way of identifying or telling the public how they will pay for their tax cuts.

KYOTO PROTOCOL

Ms BEDFORD (Florey): My question is directed to the Premier. How is the South Australian government progressing its support for Australia's ratifying the Kyoto Protocol?

The Hon. M.D. RANN (Premier): It is very interesting to hear the derision from members opposite when the issue of the Kyoto Protocol and the environment was raised by the honourable member. I guess that just demonstrates the difference in priorities. Our government firmly believes that it is in the best interests of our state, the nation and the world to support the Kyoto Protocol. Climate change is a critical global issue and has the potential to have a major impact on the lives of all South Australians, with increasing risk of change to agricultural production, increased flooding

intensity, bushfire risk, less available water and greater land degradation. It is foolish that, despite refusing to ratify the protocol, the commonwealth government intends to exclude Australia from a partnership with the nearly 100 nations that support the protocol, while it continues developing and investing funding in domestic programs to meet the Kyoto Protocol target. It is within this context that, last year, the South Australian government joined with the New South Wales and Victorian governments to undertake a risk analysis of ratification versus non-ratification of the Kyoto Protocol, together with an assessment of opportunities for the development of low emission technologies.

This work is being undertaken by the New South Wales Kyoto Protocol Ratification Advisory Group, which is chaired by Peter Duncan, formerly Chief Executive of the Shell group of companies in Australia. Other members include: Dr John Hewson, former leader of the Liberal Party and Chair of Global Renewables; Gwen Andrews, former Chief Executive of the Australian Greenhouse Office; Phillip Toyne, former Chief Executive of the Australian Conservation Foundation; and Jon Stanford, Executive Director of the Allen Consulting Group.

On Monday 17 February the advisory group released its report entitled 'Report of the Kyoto Protocol Ratification Advisory Group—A Risk Assessment'. The report also includes detailed economic modelling work undertaken by the Allen Consulting Group. Previous attempts to model the impact of the Kyoto Protocol in Australia have only looked at the impacts of ratification and have not modelled the impact of attempting to reach the Kyoto target without ratification, which is the commonwealth's current position.

It is in the economic and environmental best interests of Australia to sign the Kyoto Protocol. The report has found that, although there is a marginally negative impact on the economy associated with ratification of the protocol—0.11 per cent of GDP annually—the negative effect more than doubles if Australia attempts to reach its emissions reduction target from outside the Kyoto framework. This clearly demonstrates that it is in the national interest to ratify the Kyoto Protocol. The report also found other reasons that it is in Australia's interests to ratify the protocol. Perhaps more importantly, failure to do so will exclude Australia from formal participation in the negotiations on a new agreement and risk Australia becoming irrelevant to the development of protocol targets beyond 2012.

The advisory group will also consider issues related to the potential for enhanced uptake of low emissions technologies, including renewables, and a further report will be released in the coming months.

LAND TAX

The Hon. R.G. KERIN (Leader of the Opposition): My question is directed to the Treasurer. Given that the government expects to receive over $50 million in additional revenue from property taxes and charges this year, will the Treasurer undertake to adjust the threshold levels and/or the rate in the dollar of land tax to protect those who are least able to afford it from the impact of massive increases in taxes? Contrary to what the government will have us believe, the impact of increased land taxes is not being borne by the wealthy: it is being funded by self-funded retirees and private renters—

The Hon. P.F. CONLON: Mr Speaker, I rise on a point of order. This is plainly engaging in comment and opinion rather than giving a factual explanation.

The SPEAKER: I am listening carefully to what the leader has to say, as I will be to the answer provided.

The Hon. R.G. KERIN: Contrary to what the government will have us believe, the impact of increased land taxes is not being borne by the wealthy: it is being shouldered by the self-funded retirees and private renters who are least able to afford it. The example is a self-funded retiree with a rental property who has received a land tax increase of $1 000 in one year. An elderly woman who owns one building and rents part of it to fund her retirement received a land tax bill of $4 100 this year, forcing her to live on an income of just $6 000, which is less than the pension. She is hardly a wealthy person, as claimed by the Treasurer.

The SPEAKER: Can I tell the leader that, whilst the explanation is legitimate in the last part, in the first part it was clearly an expression of opinion and is disorderly. I remind the minister that the latitude he has already enjoyed is, in my judgment, probably greater than that which has been allowed to the leader in the asking of this most recent question. I call the Deputy Premier and Treasurer.

The Hon. K.O. FOLEY (Treasurer): Thank you, sir. I am not saying that there are not some people, because of course there are, who are finding the payment of their land tax bill difficult.

Members interjecting:

The Hon. K.O. FOLEY: Hang on! This is not a recent occurrence, and let me point out the hypocrisy of members opposite. They were in office for eight years. Land tax values have not risen just in the last 12 months. They were rising well before, but we heard nothing about reducing land tax when they were in government. I say to members opposite: how do you intend to pay for a land tax reduction? Explain to me where the offset will be. Which school will you cut? Which hospital will you cut? They cannot get away with their absolute vandalism of the state budget by calling for expenditure—

Mr BRINDAL: I rise on a point of order. Sir, you just instructed the member on the guidelines for answering questions but he appears to be ignoring your advice, engaging in debate and expressing an opinion, which is contrary to your ruling.

The SPEAKER: I uphold the point of order. The Treasurer.

The Hon. K.O. FOLEY: Thank you, sir. I can understand the opposition's sensitivities. The opposition cannot continue to ask for such cuts in taxation or increased spending without telling us how they are going to pay for it. I want to tell the house something about land tax under the Liberal government, because in the 1994-95 state budget the threshold for land tax was $80 000. Guess what? In that budget, the government of the member for Finniss, who wrote to me complaining and who has been talking about land tax here today, reduced the threshold.

The Hon. Dean Brown: Because of the State Bank.

The Hon. K.O. FOLEY: Oh! They reduced the threshold.

Members interjecting:

The Hon. K.O. FOLEY: Deano! We've touched a nerve. The State Bank!

Members interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY: You are as lousy a Deputy Leader of the Opposition as you were a premier because, I tell you what—

The SPEAKER: Order! The Deputy Premier will cease rattling the floorboards to shake out cockroaches and the opposition will cease baiting the Deputy Premier, or the chair will be resumed at a time of the chair's convenience later today when everybody has cooled down.

The Hon. K.O. FOLEY: When it suited the former government they dropped the threshold and captured 23 500 new taxpayers. So, 23 500 people had to start paying land tax because they reduced the threshold. Don't come in here like a bunch of hypocrites on land tax. You reduced the threshold—

The SPEAKER: Order!

The Hon. K.O. FOLEY: You were in government for eight years.

The SPEAKER: Order!

The Hon. K.O. FOLEY: They failed to act.

CLIPSAL 500

Mr KOUTSANTONIS (West Torrens): Will the Deputy Premier please update the house on the assistance provided to charities through the Clipsal 500?

The SPEAKER: Order! Could I once again help the member for West Torrens, or whoever it is he needs to have write his questions for him—

Members interjecting:

The SPEAKER: —and the opposition likewise—to understand that members do not beg ministers for information. It is the duty of ministers to provide it. The word 'please' is demeaning to the office of any member of parliament when asking a question of a minister, either in question time or during debate in the committee stage of a bill. The Deputy Premier.

The Hon. K.O. FOLEY (Deputy Premier): I thank the member for West Torrens for his question. He is a great lover of motor sport in South Australia, as is the shadow minister for tourism. It is good to get a good question asked here today.

The Royal Adelaide Hospital Development Appeal has been appointed as the official charity for the 2003 Clipsal 500 car race to be held in Adelaide. Funds raised from activities to be conducted at the race will go towards funding a new burns unit, including research into the treatment of burns. Based on past experience, it is anticipated that approximately $30 000 could be raised.

The Royal Adelaide Hospital has a long association with motor sport in Adelaide, the most notable being the treatment provided by the staff following Mika Hakkinen's horrific crash in the 1995 Adelaide Grand Prix. The Royal Adelaide Hospital plays an integral part in the Clipsal 500 with selected staff each year playing a role in the medical management of the event.

The Royal Adelaide Hospital also played an important role in the treatment of burns victims from the horrific Bali bombing incident late last year when staff at the hospital were praised by all those involved. With more than 200 000 people expected to attend the 2003 Clipsal 500, we ask all motor sport fans to dig deep for this important cause. The government and the South Australian Motor Sport Board are pleased that such a worthy cause has been selected as the official charity for the 2003 Clipsal 500.

Past charities—and I acknowledge the work of the former government in establishing this—have included the Red Cross, the Variety Club, the Down Syndrome Society of South Australia and the Leukaemia Foundation. In addition to the official charities, the Clipsal 500 supports the *Advertiser-Sunday Mail* Foundation in the staging of the charity lunch in the 500 Club which is held on track each year, and has supported the Royal Society for the Blind in the staging of a drivers' lunch held in association with this event.

As Treasurer and the minister responsible for motor sport, I urge all South Australians, and indeed all members of parliament, if they are at the race—and I am sure the member for Waite, the shadow minister, would be keen to join me—to donate to ensure that such a charity gets the full support of the people attending the Clipsal 500 over four great days in Adelaide.

LAND TAX

The Hon. R.G. KERIN (Leader of the Opposition): Will the Treasurer immediately review the assessment processes for land tax on small businesses so as to encourage development in South Australia and not to hinder it? The Liberal land tax hotline has received a call from a small business operator who plans to build—

Members interjecting:

The SPEAKER: Order! Regardless of whether members sincerely feel amused by any remark made by another member it is demeaning for them, in unison, to break into laughter so audible as to make it impossible for me to hear what the member who has the call may be saying, and in this case it is a question being asked to determine whether or not it is in order or relevant. I would ask all members to remember that. The Leader of the Opposition.

The Hon. R.G. KERIN: We have received a call from a small business operator who plans to build a $1.3 million factory on a vacant block of land at Wingfield. He is now considering not going ahead with the project after calculating his land tax bill at over $1 000 a week. This week another person received a land tax bill for $449 for the past four years. He was advised that the state government said that he had a part-time business registered at his home address, which was purely used as a postal box.

The Hon. K.O. FOLEY (Treasurer): I am happy to get advice from the Tax Commissioner as to what, if any, concerns are being relayed to his office. As I have said, when the opposition is able to tell us where the cuts would have to come from to pay for the reduction, I will be happy to receive that advice.

RADIOACTIVE WASTE

Mrs GERAGHTY (Torrens): Will the Premier inform the house of the Arnold government's attitude to a nuclear waste dump in 1992, as well as the public positions of the federal Liberal Peter McGauran and South Australian Liberal Michael Armitage in that same year?

The Hon. M.D. RANN (Premier): I am delighted to do so. I know the member for Davenport has a great interest in history. Let me enlighten members, including the member for Davenport, about some other historic facts. Let us remember back to 1992. I have a copy of an *Advertiser* article written by Zac Donnovan and Angela Leary—and if the member wants to see it, I can give him a copy—which says that when the Premier Lynn Arnold ruled out South Australia being the

site of a nuclear waste dump the then federal government was considering—

The Hon. I. Evans interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: I know you are interested in dumps, but listen. Premier Arnold said:

> I think South Australians will be very concerned about that and I don't imagine they will support it, and I can tell you the government will not be supporting it.

That decision was made by the then Labor cabinet, and I remember the discussion we had about it. I was in cabinet at the time—and I was, and remain, vehemently opposed to a nuclear waste dump being sited here. It is very interesting that people have a clear choice in this debate. If they want a radioactive waste dump, they can support the Kerin Liberals. If they want to fight a nuclear waste dump they can support this government.

One of the reasons why I was so concerned about a radioactive waste dump was that I had been involved in helping to secure a clean-up of the Maralinga lands. Members will recall—if they can remember back that far—my visit to London over the Maralinga clean-up of the contamination as a result of the americium, plutonium, caesium, strontium and uranium that was dispersed over South Australia following the atom bomb tests of the 1950s and 1960s. The last thing we wanted to see was a recontamination in our Mid North, or anywhere else in this state. Labor considered that we had done our bit for the national interest over Maralinga and not to do it again—it was some other state's turn. However, if you want to have some more history—

The Hon. R.G. Kerin interjecting:

The Hon. M.D. RANN: Okay. We stand up to the federal government on issues that we care about, unlike you. You just roll over; you just do what you are told; you are a branch office. If you want some more history, here it is. In 1992, Lynn Arnold was joined in a bipartisan way by the then Liberal opposition in opposing a low level radioactive waste dump for South Australia. You now support it, but then you opposed it. On the same day that Lynn Arnold ruled out a radioactive waste dump, the opposition health spokesman Michael Armitage—we remember him—on behalf of the South Australian Liberal Party said:

> If they think they can make South Australia into Australia's rubbish dump then they've got another think coming.

Tough words! It gets worse. Let us look at this. The state Liberals in opposition opposed the low level dump idea because it was being proposed by a Labor federal government. Now that a Liberal federal government is proposing the low level dump, members opposite are all in favour of it. Apparently they think that a nuclear waste dump will be a good thing for South Australia. But there is some more history—

Mr BRINDAL: Mr Speaker, I rise on a point of order. The Premier appears to be imputing a motive to the opposition. I believe that is disorderly.

The SPEAKER: No, I do not see that the Premier is doing that. I do not uphold that point of order.

The Hon. M.D. RANN: I am replying to a question about the history. Let us look at what a former Liberal minister and a good friend of ours, John Oswald, did in April 1995. We have a front page article again in the *Advertiser*, an exclusive by Carol Altmann, headed 'Nuclear waste fiasco'. According to this article, John Oswald as a minister in the then Brown Liberal government—this is some months before John Olsen deposed Dean Brown as Premier—endorsed plans for high level radioactive waste to be trucked into South Australia. We are talking about eight truck loads of radioactive waste containing plutonium. The former Liberal government (plenty of members of which are still sitting on that side of the house) said, 'Bring it on in. Come on, bring those plutonium trucks over—not just a low level dump, a high level dump would be good for South Australia'. That is the hypocrisy of what the member was talking about today.

But it gets worse. When this was revealed by Carol Altmann in an exclusive on the front page of the *Advertiser* on 6 April 1995, Dean Brown, the then Premier, said that he knew nothing about it. Wait for it, the minister said, 'He forgot to tell the Premier.' He forgot to tell the Premier that apparently he wanted this plutonium to come across the border! It gets even worse. He said that he had not read the 22 page letter regarding the shipment of radioactive waste. Then he admitted that he did not read every document that he signed. I remember that there was a bit of that in the last election campaign, but that was from the current Leader of the Opposition—he did not know what he was signing, either.

Anyway, it gets even worse than this, because a few weeks ago we had Mr McGauran telling us how hunky-dory it would be to have this low level radioactive waste dump in South Australia. We checked the record about Peter McGauran. In 1992, the same year that Lynn Arnold and Michael Armitage ruled out a nuclear waste dump (it was a few years before apparently that the new government in South Australia wanted to have plutonium come across), Peter McGauran, the Liberal Party's spokesman on science, called for a 'chain' of nuclear waste dumps across Australia. He said that this would be more practical than a single dump, which would become 'a matter for public concern and opposition wherever it was located'.

If any party has been all over the shop on this issue, and hard to pin down, it has been the Liberal Party. We now know that the South Australian Liberal Party agrees with the national low level radioactive waste dump being located in our state. Members sitting opposite may like the idea of our state being known as the nuclear waste dump: we on this side will fight it every step of the way.

Ms Rankine interjecting:

The SPEAKER: Order, the member for Wright!

The Hon. I.F. EVANS (Davenport): Will the Minister for Environment and Conservation advise the house to which South Australian towns and suburbs the horror stories about radioactive waste storage relate? The minister has previously advised the house that the EPA is investigating more than 130 sites to determine whether radioactive waste is being stored safely. The EPA audit is to be completed by 30 June this year. When asked about a particular radioactive waste storage incident on radio recently, the minister said:

> Well I'm not sure of that particular incident but there's no doubt there are some horror stories out there.

In which South Australian towns and suburbs are the horror stories?

The Hon. J.D. HILL (Minister for Environment and Conservation): I think that the member for Davenport is really scraping the bottom of the barrel with that question.

An honourable member interjecting:

The Hon. J.D. HILL: The plutonium barrel, as my colleague says. It is very clear that I made a hypothetical set of comments. I said—

Members interjecting:

The Hon. J.D. HILL: The words came out of the honourable member's own mouth. I was being interviewed on radio about the storage of radioactive waste across South Australia, and I said, 'No doubt there are some horror stories to come'; but I have not been—

Members interjecting:

The Hon. J.D. HILL: I said, 'There are, no doubt, horror stories'; and, in due time, I will get a full report from the EPA—

The Hon. I.F. Evans: So, you know now?

The SPEAKER: Order! I warn the member for Davenport for the second and final time. The minister.

The Hon. J.D. HILL: Thank you, Mr Speaker. The EPA is conducting a thorough audit of all of the waste that is stored in South Australia; and, as the honourable member and all members of this house know, I have reported to this house on a number of occasions that this is the case. This government went to the election on this policy. We said that we would have a thorough audit because no proper audit had been conducted. In fact, in the four years that I was the opposition spokesperson I could not get information out of the former government as to where that waste was stored.

So, as a matter of good policy the Labor Party in opposition said, 'In government we will have a thorough audit of where that waste is stored and have a look at what conditions it is stored under', and that is the process we are going through. I expect the audit to be completed by the middle of this year. A range of sites are to be looked at, and officers of the radiation branch are going through that process at the moment. The point the honourable member makes about horror stories—

An honourable member interjecting:

The Hon. J.D. HILL: Well, if there are horror stories—and it was a prediction of mine in a radio interview—I will certainly let the house know, because it is the intention of this government to be absolutely transparent and open about the condition of waste that is stored in our state. I must say that that contrasts quite markedly with the record of the former government, which was incredibly secretive about this issue.

AQUATIC FUNDING

The Hon. D.C. KOTZ (Newland): Will the Minister for Recreation, Sport and Racing advise the house when he intends to sign the agreement with the Adelaide City Council for $210 000 per annum over three years to subsidise sporting groups and partial operating costs for the Adelaide Aquatic Centre, and when does the minister intend to provide the $210 000 funding to the Adelaide City Council? On 20 August 2002 the minister made an offer of $210 000 to the Adelaide City Council. A proposed agreement setting out the details of the funding was to be prepared by the minister. In December 2002 the Adelaide City Council had not at that stage received the proposed agreement from the minister and commissioned its own agreement, which was sent to the minister on approximately 20 December. Neither the funding nor the agreement has been seen since that time.

The Hon. M.J. WRIGHT (Minister for Recreation, Sport and Racing): Of course, I should remind members, if they need reminding, why this government was left in this situation. The previous government failed to put in place a proposal so that we could be at all confident that there would be a position with regard to the Adelaide Aquatic Centre. So, what this government did (knowing full well that the previous government failed to do that; it did not continue with the indenture agreement that was in place previously) was to sit down with the council and the user groups and negotiate a position. Obviously, in that regard those ongoing discussions are occurring.

As I understand it, discussions with Mr Steve Pendry are continuing. Of course, Mr Pendry represents the coalition of the state aquatic sports. Also, discussions are continuing with the Adelaide City Council. However, the important factor that has been addressed is that there is some certainty for these user groups. The Adelaide City Council also has some certainty with regard to the funding arrangements. What we have in place—unlike what the previous government did—is some certainty for the future about which, of course, both the user groups and the Adelaide City Council are very pleased.

The Hon. D.C. KOTZ: Is the Minister for Recreation, Sport and Racing aware that the government's offer of $210 000 to the Adelaide City Council would negate the requirement for SwimSA to pay an increase in accommodation rent from $26 per annum to $27 000 per annum, and that this reduction would enable SwimSA to reintroduce its youth development programs for children and young people across South Australia who are members of swimming clubs affiliated under SwimSA? The agreement with the Adelaide City Council has not yet been finalised, and the funds offered by the minister in August last year have not been provided to the Adelaide City Council. Swim SA has already incurred increased costs limiting its available funding. Consequently, youth development programs have been cut.

The Hon. M.J. WRIGHT: I reiterate what has been said previously. This government came into office with no certainty for the user groups and no certainty with the Adelaide City Council. Of course, we have been able to put in place a financial arrangement to give some certainty to both those particular groups. Those discussions are continuing. Some matters are outstanding and need to be resolved; and, obviously, we would want to resolve those matters as quickly as possible. However, discussions with Mr Pendry are continuing on behalf of the coalition of state aquatic sports and, as I understand it, some issues are still outstanding and need to be resolved. Of course, the sooner that can be done the better it is for everyone, and we would work to that end as quickly as possible.

The Hon. D.C. KOTZ: Will the Minister for Recreation, Sport and Racing advise the house why representatives of the Aquatic Sports Coalition of South Australia Incorporated (SwimSA) and Mr Stephen Pendry, representing some 10 000 members, have been denied access to the minister since 27 May last year? Will the minister advise the house why the government has also demanded that the Adelaide City Council withdraw from discussions with SwimSA in relation to current and future aquatic facilities? The government's pre-election policy on recreation and sport stated:

> Labor in government will develop a plan in conjunction with SwimSA, local government and user groups in relation to South Australia's current and future aquatic facilities.

Since May last year, SwimSA has sent the minister 11 separate letters requesting a meeting to discuss aquatic facilities all of which have gone unanswered, including the one I recently sent to the Premier (with a copy to the minister) seeking that meeting. A letter written by the Adelaide City Council on 19 August 2002 states:

In the interim council has undertaken to the state government that whilst those negotiations are proceeding it will temporarily suspend its discussion with SwimSA.

The Hon. M.J. WRIGHT: I can only repeat my earlier position. Compare the position that this government has taken with regard to the Adelaide Aquatic Centre and the user groups, including SwimSA, whose representatives, to the best of my memory, I have met with previously. I have also met with Mr Pendry previously. I have met also with the Adelaide City Council on this issue. Could I say to the member for Newland that, perhaps unlike the honourable member, I have great confidence in the Office of Recreation and Sport and in its ability to conduct the business of government in terms of meetings, which have been ongoing. I also have great confidence in my chief of staff, who has had regular contact with some of the various organisations to which the member for Newland has referred. Could I also say that my office has replied to the member for Newland by email; perhaps she has not checked it.

The Hon. D.C. Kotz interjecting:

The SPEAKER: Order!

RADIOACTIVE WASTE

The Hon. I.F. EVANS (Davenport): Is the Minister for Environment and Conservation aware that landfills in South Australia are being used as dumps for radioactive waste and, if so, will he advise the house of which landfills are being used for the dumping of radioactive waste?

The Hon. J.D. HILL (Minister for Environment and Conservation): If the member for Davenport has any information about illegal dumping I suggest that he draw it to the attention of me, the EPA or the police and we will have it investigated.

The Hon. I.F. EVANS: Will the Premier join with me in an act of bipartisanship and sign a letter to the federal Labor leader, Mr Simon Crean, requesting Mr Crean to tell Australians where Labor is going to store the 2 000 cubic metres of radioactive waste that is currently stored in an old hangar at Woomera, having been dumped there by the Keating Labor government in 1994?

An honourable member: Good question.

The SPEAKER: Order!

The Hon. M.D. RANN (Premier): You beauty! Did you not hear the announcement made by federal Labor during the last federal election campaign? Go back to your clippings and do a bit more research; forage around the dump and find the old papers. Let me just tell you this: you can demonstrate an act of bipartisanship by going out today to the front steps of parliament and saying that you will revoke your position in support of a nuclear waste dump and asking your colleagues in the upper house, every single Liberal member of the upper house, to vote with Labor against a nuclear waste dump.

Members interjecting:

The Hon. P.F. Conlon interjecting:

The SPEAKER: Order! The Minister for Government Enterprises!

ELECTRICITY, SNI INTERCONNECTOR

Mr HANNA (Mitchell): My question is directed to the Minister for Energy. Will the state of South Australia intervene in the appeal brought before the Supreme Court of Victoria by MurrayLink in a decision by NEMMCO in favour of SNI as a regulated interconnector? I have been informed that, as the MurrayLink interconnector is now operational, South Australian consumers will indirectly pay more than $50 million in infrastructure costs for very little extra megawatt capacity if the SNI link from Barunga to Robertstown goes ahead.

The Hon. P.F. CONLON (Minister for Energy): Our position has been throughout that we will support the SNI interconnector in every way that we can. I will make some comments.

Mr Williams: Irrespective of the cost.

The Hon. P.F. CONLON: Irrespective of the cost. The member for MacKillop shows his abysmal ignorance in terms of electricity. The fundamental difference is that MurrayLink is a very expensive underground cable link built entrepreneurially, much more expensive than the type of technology used by SNI, which is why it has not been supported in its current form as a regulated interconnector. The people of MurrayLink are pursuing regulated status, but I say this: as the people of South Australia have already endured the Liberals' price increase for electricity, we would have to be very careful about adding very expensive technology by MurrayLink in the amount that they have requested to the capital base of a regulated transmission system, because it would flow directly through to electricity prices.

So, when the member for MacKillop interjects, he really shows how little he knows about these matters. We have supported SNI throughout, and we will continue to do so. I had discussions as recently as two days ago with people from planning and environment about how to facilitate its development. Where people have expressed concern about the benefit of the strong interconnection provided by SNI, I simply refer to the events of 12 December when Victoria and South Australia became islanded by the tripping of the Snowy interconnector from New South Wales with huge increases in ancillary services. Those huge increases would have been avoided if we had another strong interconnection with New South Wales, one which was regulated and had been through the proper processes.

We would have had that if the former government had not turned its back on South Australia's interests in its mad scramble to increase the value of the assets when they sold them. There were some interjections during the Premier's ministerial statement on this matter earlier. I simply refer to OneSteel, whom we have congratulated. While Labor was still in government, OneSteel endured a price increase of 65 per cent in their electricity bill. This is the cost that we have had from privatisation, from their turning their back on the interconnector, and we do not apologise for doing everything that we can to restore the balance in South Australia to get us back on track.

Members interjecting:

The Hon. P.F. Conlon interjecting:

The SPEAKER: Order! The minister has had his go, answered the question and sat down; he will therefore cease interjecting.

AUSTRALIAN SCIENCE AND MATHEMATICS SCHOOL

Mr RAU (Enfield): My question is directed to the Minister for Education and Children's Services. What further information can the minister provide in response to the claims made by the member for Bragg yesterday in relation to the Australian Science and Mathematics School that 80 students

have been forced to return to their own schools because no practical courses are available?

The Hon. P.L. WHITE (Minister for Education and Children's Services): Yesterday, during question time the member for Bragg asked a question about the Australian Science and Mathematics School (ASMS). Her question implied that there had been a delay in the provision of facilities and that, as a consequence, 80 of the 164 students enrolled at the school had been returned to their source school because no practical courses were available. As I thought was the case yesterday, that information is not correct. The honourable member—

An honourable member: Why didn't you say?

The Hon. P.L. WHITE: Well, I did say that, but with an abundance of caution I undertook to the house to quiz the department to make sure, and that is indeed the case, the honourable member's information was quite wrong. The member for Bragg seems to be under a misunderstanding about the publicly available documents that have been distributed by the school which clearly outline that supplementary studies to the curriculum would be offered by alliance schools. As explained in those documents, which have been circulated to parents and others who are interested in the ASMS, supplementary studies enable students to participate in a particular area of interest or expertise in courses that are not offered directly by the ASMS. Currently, 72 students are doing supplementary studies. This is not a temporary arrangement; it is a permanent arrangement which was put in place by the former Liberal government. As outlined—

Members interjecting:

The Hon. P.L. WHITE: The honourable member interjects that that is not the case. I assure her that that is the case. All she has to do is go back to the parliamentary documents: the Public Works Committee reports. The final report, which was tabled in this house on 3 October 2001, states clearly that it was a Liberal government initiative that this be a permanent arrangement for the ASMS. In November 2002 the ASMS invited expressions of interest from potential alliance schools. More than 30 secondary schools from across Adelaide expressed interest in being an alliance school, and nine schools are currently providing courses for ASMS students.

As I indicated in my reply yesterday, under this government there has been no delay in the provision of facilities for the ASMS. However, delays did occur under the previous government. Construction of the ASMS was due to start in July 2000 with the project to be completed in November 2002, but that did not happen. In fact, the first sod was not turned by the former education minister until January 2002, 18 months after construction was supposed to have started. Despite that delay, the current government has kept construction to a tight time frame, and the school was able to commence at the start of 2003. The school opened this year with an enrolment of 174 students. Ten students have since left the school for a variety of reasons, including some who did not take to the school's unique learning style.

In reply to the supplementary question from the member for MacKillop yesterday about special arrangements put in place for country students, I can provide the information that the government has taken steps to assist country students to access education at the ASMS. Eleven country students have received scholarships to attend the ASMS, providing up to 50 per cent of anticipated home stay costs. The ASMS has arranged home stays for four of these students, while the others have made their own arrangements.

JUDICIAL APPOINTMENTS

Mrs REDMOND (Heysen): Does the Attorney-General consider that his consultations regarding proposed judicial and other appointments are confidential? Without breaching confidences, the Hon. Robert Lawson today made a statement in another place disputing the claim made by the Attorney-General in this place yesterday that he had recommended the appointment of Chris Kourakis QC as Solicitor-General.

The Hon. M.J. ATKINSON (Attorney-General): The statement was actually made in my car, and it was witnessed by ministerial staffer Mr Peter Louca. It was noted duly by me. I have the notes.

HEALTH REVIEW

Ms RANKINE (Wright): My question is directed to the Minister for Health.

Members interjecting:

The SPEAKER: Order! The Minister for Government Enterprises should listen carefully. A question is being asked by the member for Wright that I, too, want to hear.

Ms RANKINE: What were the key issues addressed by the Generational Health Review in the progress report released on 5 February 2003, and what further work is being undertaken by the review team in the lead-up to the financial report due at the end of March 2003?

The Hon. L. STEVENS (Minister for Health): I am pleased to answer this question from the honourable member about the important work being undertaken by the Generational Health Review. The Chairman of the review, Mr John Menadue, released a progress report on 5 February 2002 which takes into account 324 submissions and over 60 consultations undertaken throughout the state. The progress report states that there are three clear messages: first, the health system is fragmented and changes are essential. The progress report states that the system is hospital centric to the detriment of community-based services provided by general practitioners and other workers who focus on keeping people healthy in the first place and caring for people in their homes and in the community. Secondly, the progress report states that the focus must be on the health needs of the population rather than on individual institution needs so that we can assure that public funds are directed to the right place. Thirdly, the report states that the South Australian community must be involved in decision making about the health system and the services provided.

A focus on populations and getting governance right are fundamentals for the review. The review team will be undertaking further work in the lead-up to the final report. This will include work on community engagement, reorientation towards a primary health care system, regional structures and funding models, Aboriginal health services, performance management, work force issues, the development of research and capital funding requirements. The progress report may be accessed by anyone on the Generational Health Review web site, and I know it will be of interest to all honourable members.

POLICE NUMBERS

Mr BROKENSHIRE (Mawson): My question is directed to the Minister for Police. Following public statements by police that they are too understaffed to deal with larceny, and breaking and entering crimes, will the minister now join with me and the opposition to call on government to increase police numbers over and above recruitment and attrition? In the past few months, several constituents have contacted me as shadow police minister outlining their concerns about the lack of police on our streets. Recently, a female constituent wrote to advise me of an incident whereby she had gone to her local police station to report stolen property and hoped to make a statement. She had been advised by the police sergeant on duty to 'check out Cash Converters yourself to see if your property has been cashed in'.

The Hon. P.F. CONLON (Minister for Police): I will go through this at some length. If advice from police to go to Cash Converters and check is wrong, then the former minister should be ashamed of himself, for they had been giving that advice for years when he was minister. Let me make it absolutely plain: the police in this state have been afforded a budget commitment by this government the like of which they had not had for nearly a decade—that commitment being that, if a police officer walks out the door, he or she is replaced. I will make a few other factual statements. In the recent report on public services it is apparent that South Australia has the second highest number of police per head of population and, indeed, rates very highly in almost every regard. It also shows what we have said in this house on a number of occasions, namely, that the numbers in 2001-02 per head of population were significantly higher than they were the previous year, because the Liberals did not give the commitment that we gave. They did not recruit against attrition; they recruited only before an election.

I can tell members this: we will not be doing what these cheap hypocrites did. We will not be running down police numbers in between elections and then recruiting before an election. We have restored the balance to our police in this state. We operate from the second highest numbers in Australia, and we will maintain them for the first time in a decade, unlike this tawdry opposition, who have very little to offer.

GAMING MACHINES

Mr HAMILTON-SMITH (Waite): My question is directed to the Premier as Minister for the Arts. Will the Minister for the Arts please explain whether any or part of the half a million dollars to be accrued from poker machines and placed in the Community Development Fund will be allocated to WOMAD, either this year or any future year of the now annual event? On 8 December 2002 the Acting Premier (the Treasurer and member for Hart) responded by letter to the Liberal leader, who had raised concerns about the distribution of the $500 000 to be allocated from poker machine revenue and placed in the Community Development Fund. In his reply, the Deputy Premier indicated that for this government entertainment was not a high priority and that the budget would be framed accordingly. With the predicted cuts to the arts budget, the opposition has been contacted by arts and music groups who were concerned that local and live music might miss out if the $500 000 went to WOMAD and not to local musicians for their development as was intended by the act.

The Hon. M.D. RANN (Premier): I am delighted to be able to inform this house that a large slice of that money will absolutely be committed to something so dear to the member for Hart's heart—live musicians who work for the Adelaide Symphony Orchestra.

Members interjecting:

The SPEAKER: Order! I am disappointed it is not country music, as well.

GRIEVANCE DEBATE

NATIONAL WINE CENTRE

Mr HAMILTON-SMITH (Waite): After a year of prevarication, delay and false starts, the government has finally announced a future for the National Wine Centre. The Labor government is as responsible as anybody for the situation that led to today's announcement—which, by the way, the opposition welcomes. We hope that the Adelaide University will make a good show of the wine centre, as was always intended, and we hope that, this time, Labor will encourage and support the new proprietors in their endeavour—not sledge, abuse and denigrate the centre, thus causing it to fail. We need to revisit some of the facts on this matter, because the Labor government has handled it incompetently and has misrepresented the situation from the outset for base political gain.

The Labor Party, in particular the now Premier and now Treasurer, set out during the election campaign to demolish the wine centre, to destroy the jobs there and to destroy the investment, purely for the purpose of scoring political points during the election campaign. The true facts are that the centre was performing extraordinarily well. Some 140 000 people attended the centre in its first year. In the weeks leading up to the election, the attendance at the wine exhibition exceeded 400 people a day. In fact, Ian Sutton of the Winemakers Federation indicated that it had achieved 72 per cent of its revenue projections by December.

The Treasurer has, instead, tried to portray the final payments for building, for capitalisation and for set-up of the centre as some sort of a bale-out. Instead, the problems were exaggerated so as to satisfy the Labor Party's political objectives. Certainly, there were some things that could have been done better, but the situation was worsened by Treasurer Foley, by Premier Rann and by this government generally. In fact, the cancellations came flooding in, and the Treasurer soon found that he had a massive problem. Documents released to the opposition under FOI have confirmed that the Treasurer got advice on 15 March that he could have got out of the mess for $1.8 million over three years, and that the centre's operating losses could be reduced to $800 000 in 2002-03 and $300 000 in 2003-04 if a suite of proposed actions were taken. Did he take those actions? No, he did not.

Instead, he got up in the house some months later—in fact, on 15 October—and announced that the centre was now a $2 million a year problem—$6 million in the first three years. Treasurer Foley cost the taxpayers $4 million by his incompetent mishandling of the matter, by his failure to make a decision and by dragging the matter on. He also got off to a false start with the winemakers, having got everyone off side.

He then commissioned the Carter report, which has been kept secret from this parliament since October until now. We were going to have a decision in December, then we were going to have a decision in January, and then we were going to have a decision in February. Here we are, almost into March, and we finally get a decision.

We want the Carter report released so that all the facts can be made available to the media and to the public. We want to know what decision-making process led to this decision. We want all the documents released. We want to know about job losses that will result. According to the email that I have in my hand from the Vice Chancellor of the university, the restaurant is to close. What side deals, if any, were done to fund this deal? What options were considered, and did the government change its mind at the last moment from outsourcing and privatisation to the university deal? What are the details of the financial arrangement? What is the fine print? Let us see the agreement.

This matter has been negligently and incompetently handled by the government, which is as much to blame as anybody for the situation. It should have been fixed in March last year. As the FOI documents reveal, it could have been fixed quite quickly. Instead, it was turned into a political football. The opposition supports today's announcement but calls on the government to get on with it. This centre is worth $42 million per year to the Australian economy: how much will it now be worth to the South Australian economy under this new arrangement? Most importantly, I ask the government to be positive, support the centre and not demolish it as it has been doing over the last 12 months.

Time expired.

MEMBER FOR HINDMARSH

Mr KOUTSANTONIS (West Torrens): I rise today on a very serious matter. A constituent of mine was married over 60 years ago to the love of her life, and they were devoted to each other. They had one child whom they lost to cancer, but they were devoted to each other and had each other. Unfortunately, they were separated when the husband died last year. My constituent is on her own and was quite distressed at the death of her soul mate.

He died in December 2002, and in February 2003, to her shock, she received a birthday card for her late husband from the Hon. Chris Gallus, member for Hindmarsh. I will not read the person's name, because I do not want to identify this poor woman to the member for Hindmarsh so that she can badger her again. It is a simple form of birthday card that Miss Gallus has had printed, probably at taxpayers' expense, which says, 'Happy birthday, Chris.'

This card caused a great deal of pain and anguish to my constituent, who was devastated. She realised, even at her age, that all that happened was that a computer program in Miss Gallus's office generated a card for a constituent who had a birthday on that date. A member of her staff has come in, thrown some cards on her desk and said, 'Sign them. This is the guy's name and it's his birthday.' The card would say, for example, 'Dear Fred Bloggs, Happy birthday, Chris Gallus.' If she cared so much about this person's birthday, maybe she would have cared enough to check to see if he had died. If she had cared about him enough, maybe she would have sent the widow some flowers on the day of the funeral. If she had cared enough, maybe instead of using taxpayers' money for some frivolous campaigning exercise she would have noticed that one of her constituents had passed away.

This goes to the core of the beating cockroach which is the heart of Chris Gallus. She has shown my constituents that she does not care about her 'people', as she calls them. She does not care about them at all. As far as she is concerned, they are just statistics in a computer. I was devastated when my constituent told me about the way she had been treated. How cynical this is! How will others feel when they receive their birthday card from the member of Hindmarsh, knowing that she sends them to dead people as well? Is that what she thinks of someone's birthday?

I will not engage in that kind of campaigning. I do not send birthday cards and I do not send flowers. These are personal occasions for people to observe in their own way. If you are sincere about sending out a birthday card, you would think you would check whether the person is still alive. To us here, it might not mean very much but, to this poor widow, all she has left in this world is the memory of her late husband and her late only son, and to receive a birthday card from this callous, uncaring, cynical politician drags our profession into the gutter. I also wonder whether the indigenous Australians in the photograph on this birthday card know that they are being used by Miss Gallus as birthday card greetings.

I am fed up with my local federal member of parliament and I have done everything I can to remove her from that office, but today she has sunk to a new low. She has sunk to a low that makes me feel absolutely sick. To send the widow a birthday card for her late husband is absolutely disgraceful. That is a computer-generated stack that comes before her. In fact, I would not be surprised if she has pre-signed all the cards and her staff just write in the names.

Mr Rau: It might not even be her writing.

Mr KOUTSANTONIS: It might not be her writing. It might be printed on. Who knows? I also feel sorry for the victims of the Bali bombings, because it was Ms Gallus who rang to convey condolences to them on behalf of the government. Was she sincere about that?

Mr Brokenshire: Come on!

Mr KOUTSANTONIS: Come on? You speak to my constituent about her late husband receiving a birthday card. I am outraged. I cannot believe the cynicism of members opposite who endorsed this candidate to run for parliament. She should be immediately disendorsed and criticised by the Prime Minister.

SOUTHSIDE CHRISTIAN CENTRE

Mr BROKENSHIRE (Mawson): I hope that the member for West Torrens keeps his databases accurate, otherwise an interesting grievance debate could come up in parliament in future. I rise to speak about a very important issue, and that is an appreciation of the great work that is being done in my area by a magnificent church known as the Southside Christian Centre, ably led by Pastor Danny Guglielmucci and his pastoral team. Several years ago I had the privilege of being introduced to Pastor Danny when he first came into our district, and he told me about his vision, his goal and his direction from the Lord to create a church in our area that was going to be a real living church and a Christian church that would work with the community and address many of the social and community problems in the district.

A couple of Sunday nights ago I had the privilege of attending a magnificent evening at this church at which there were 1 200 worshippers, and it now has a congregation of over 3 000. That is an outstanding success when one con-

siders that a lot of the mainstream churches, including my own denomination, are struggling, sadly, to increase their numbers. We all know that, particularly in these troubled times, if people have the Christian faith, if they believe in the Ten Commandments and if they work towards better improving peace and better improving the development of our communities and families, the whole world will be a better place.

I highlight a few of the issues that have been addressed by the Southside Christian Centre. Last year the equivalent value to the community of work done by volunteers in the church was $2 million, and thousands of hours of volunteer work were put in. Mechanics, crash repairers, panel beaters and others within the church ably and freely gave their time and a lot of their equipment to provide seven cars for families who could not get to work or to doctors' appointments, who could not go shopping, and who could not take their children on trips because they did not have a vehicle. Many families in emergency situations were shifted by that church free of charge. Further, hundreds of food hampers were given out to the needy and, particularly at Christmas time, presents were provided for the children, as was a decent meal on the Christmas table at lunchtime.

Pastor Danny is tied up with Andrew Evans, one of our colleagues in another place. We know the great work that Andrew has been doing at Paradise church, and these two pastors are a magnificent example of what can happen in a community if you believe, have faith and take that direction.

I want to make my next point without getting too political, but I believe it needs to be put on the public record. I acknowledge that members on the other side, particularly my colleague the member for Reynell, are very supportive of the church and the work it does, and we are not directly political when it comes to any of that. However, we both spoke on the night, and my colleague urged the church to look at a project to build houses for the homeless in our area. Whilst I have no problem with that (and the pastor did say that he would see whether they had capacity to do that), I feel that this church is already delivering so much, and it will be a challenge for the church to continue to grow the projects that it is already providing.

Whilst I agree with the member for Reynell about the general concept, I believe it is the government, the parliament and the taxpayers who have the responsibility, primarily, to address the issue of homelessness in our society, so I call on the government to look seriously at the needy and homeless situation in our area, and I am sure the member for Reynell would agree with me. I am told about people who live temporarily along the banks of the Onkaparinga in tents. I am told by caravan park proprietors about the desperate need of people in our community who do not have the capacity to get a home.

If this government is serious about social inclusion, it should be looking at building more accommodation in the south. We did that when we were office, and more has to be done. The Labor Party is now in government, and I do not believe that the primary responsibility for building capital works should be with the churches: it should be with the government.

HEALTH COMPLAINTS MECHANISM

Mr RAU (Enfield): I rise today in a somewhat excited frame of mind because I had a brainwave this morning—

Members interjecting:

Mr RAU: It scared me and, when I shared my thoughts with a couple of my colleagues, I could tell that they were becoming excited as well. I thought I might share this with you, Mr Speaker, and the other members who are present in the chamber. The exciting thought that came to me this morning was provoked by the excellent legislation that we were looking at last night, which was the health complaints legislation.

Ms Chapman interjecting:

Mr RAU: Indeed. This excellent legislation provides that people who have problems with a medical service will be able to have those dealt with by a health services ombudsman. That is excellent, and I will not repeat everything I said yesterday about relatives who have had problems, and so on. The exciting aspect of this is that, last night, as I often do, I was reading the Ipp report, which is one of the most exciting documents that I have seen in a long time. It is a report prepared, essentially from the federal government, to address the so-called insurance crisis. This is the crisis which, if we are to believe the publicists, is caused by silly judges, greedy plaintiffs, silly lawyers and various other people, but if we look a little deeper we see that it has a great deal to do with mismanagement on a massive scale by the insurance industry itself. We all know that because we thought about that before.

The exciting revelation is that one of the more draconian recommendations in the Ipp report is to have medical negligence claims dealt with by a board of doctors. Ipp says that, if you are injured because of what a doctor does, we are going to ask a group of his mates whether or not he did the right thing. His mates are going to bring a completely impartial mind to this question and they are going to say that he has done the wrong thing! As I make that statement, I see a few pigs flying across the chamber.

The point is that this is a ridiculous solution to a problem that cries out for a practical solution, just like the ombudsman that we debated yesterday, and I have a practical solution, and that is what got me so excited this morning. The practical solution is this: that the ombudsman should be able to refer matters coming to that office that might otherwise wind up in litigation to a pre-litigation procedure whereby notice of a proposed claim for issue between the parties is given and there is discovery and mediation of the claim before any proceedings are issued. In doing so, we are embracing nothing more than existing Supreme Court rules designed to achieve a resolution of disputes between parties, and we are using the new ombudsman system that we dealt with yesterday as a funnel to collect these complaints and direct them towards a mediation process in the first instance. The really exciting aspect of this—and I know that everybody in the chamber is quite excited about this—is that not only will this mean that we have less cases going to trial—

The Hon. M.J. Atkinson: Fewer.

Mr RAU: —I am corrected quite properly by the Attorney-General—but those people who persist with cases where they are told through the mediation process that they have no merit will have serious cost implications visited upon them, and anybody who knows anything about litigation—and the member for Bragg is one of them—would know that the cost issue is always an important one for litigants.

I urge members opposite and everyone else to support it. I can see that everyone is excited about it; I know that everyone is as excited about it as I am. This is a way forward because we can avoid the draconian measures referred to in Ipp and can use our magnificent new ombudsman as a funnel for dispute resolution processes which will save money and

time and will create a less litigious society and lower insurance claims. This will make everyone happy and no-one will have their rights taken away.

CITIZENSHIP

Mr SCALZI (Hartley): Yesterday we attended a special joint sitting in the other place to welcome a new member to the Legislative Council who will replace the Hon. Mike Elliott, who has resigned from the parliament. As an educator—a former schoolteacher—and now working with the University of South Australia, I am sure that he will make a valuable contribution to the education sector. I have not always agreed with the Hon. Mike Elliott, but no-one can question his sincerity and enthusiasm for the environment and education, as was outlined yesterday.

I take this opportunity to welcome Ms Kate Reynolds as a member of the other place; I am sure that she will make a valuable contribution. Given that election to the other place is on a proportional representation basis, I believe that it is appropriate that the party from which the member resigned should nominate another member, and that took place. I wish the Hon. Mike Elliott and the Hon. Ms Kate Reynolds well.

Every time we have a joint sitting it reminds me of the responsibilities and privileges of being a member of the parliament. So, I return to speaking about my favourite hobby horse—that members of parliament should have only Australian citizenship. I know that members opposite do not agree with me, even though the measure was passed conclusively by this chamber; and I know that the Attorney-General is opposed to it. I still call him a friend but say that he was wrong on that occasion. Being a member of this house or the other chamber is indeed an honour and a privilege: it has privileges and responsibilities and puts us in a special place.

So you can imagine how excited I was when, on 29 November last year, I received a letter and was summonsed to be a juror. On 13 January I attended the Sir Samuel Way building in Victoria Square to serve on a jury. When I arrived I was told that, because I am a member of parliament, I could not serve on a jury. I am aware that members of the legal profession also cannot serve on a jury, and I accept that. However, I find it highly inconsistent that a member of parliament, a member of this place, can hold more than one citizenship: that they can be an Australian and at the same time be someone else. If there are restrictions placed on me because I am a member of parliament with regard to serving on a jury, surely my commitment to Australian citizenship should be beyond question.

Ms Breuer: I think you've lost it.

Mr SCALZI: No, I haven't lost it. I will continue with this until there is justice. The honourable member reminds me of article 17 of the Citizenship Act 1948 which now allows members of the public to apply for dual citizenship. I would not apply to become an Italian citizen—I was born in Italy—because, as a member of the parliament, I believe that I should be an Australian citizen. If I was to fill in that application form today then I would be disqualified from serving as a member of this place, and rightly so. But there are members in this place who hold more than one citizenship, and that rule does not apply. If we are all equal then the law should apply to us all, whether or not we are in government or opposition, or were born in Italy, England, Ireland or Pakistan. I believe that this issue has to be addressed.

MIDDLE EAST CIVIL LIBERTIES

Ms BEDFORD (Florey): As I make my first contribution for the New Year, I would like to acknowledge that we meet on Kaurna land. This past weekend South Australia participated in the international protests against war in Iraq. We were a small microcosm of the estimated 10 million people who have marched in around 600 cities in over 150 countries all over the globe. These actions are indicative of world opinion opposing war by what has become known as the 'coalition of the willing'. It is a message that the Australian federal government and the Foreign Affairs Minister, Alexander Downer, needs to heed. Australians spoke up last weekend and the Australian federal government needs to listen to the concerns of Australians and reconsider its willingness to act outside the auspices of the United Nations.

As Hans Blix and Mohammed El Baradei outlined in their most recent report to the UN, Iraq does not possess nuclear weapons and does not pose a threat to the world. Yes, the disarmament of Iraq needs to take place, as does the disarmament of many countries throughout the world, but such action needs to take place by peaceful means and through internationally recognised bodies such as the United Nations and the International Atomic Energy Agency.

The previous gulf war and subsequent conflicts have demonstrated that military might does not guarantee successful targeting of the enemy: rather, it impacts enormously on civilian populations, particularly the most vulnerable. The economic, infrastructural, environmental, social and regional implications of a massive strike will be vast, and the credibility and long-term viability and durability of the United Nations is in question and will be jeopardised.

It is under the umbrella of the so-called war on terrorism that the shift in Australian domestic and foreign policy has emerged. As imperative as it is to fight the perpetrators of the terrorist acts of 11 September and 15 October, it is equally as important to maintain the focus of such events. Instead, we have witnessed a shift away from this important objective. Post 11 September emphasis has been on three major points: first, on the creation of unproven links with terrorist organisations; secondly, on Iraq itself; and, thirdly, on the culturally insensitive and dangerous shift towards divisions between world religions and cultures.

Post Tampa, and particularly post 11 September, there has been a noted rise in the racial and religious discrimination and vilification of the Arabic speaking community, Muslims and many of Middle Eastern appearances. State and federal members of parliament continuously need to condemn such acts within a multicultural and multi-faith country such as ours. Most migrants from the Middle East have enhanced Australia's multiculturalism and have contributed to the foundations of Australia's democracy and economy.

South Australian trade with the Middle East, particularly the Arab world, is significant. In 2002 South Australian trade with the Arab world surpassed exports to the US, contributing $1.8 billion to the economy and South Australian industry. We cannot afford to jeopardise trade relations with these emerging markets or isolate or vilify good citizens within our diverse community.

The weekend's rally demonstrated the ongoing concern with the neo-conservative shift found in Australian domestic and foreign politics. Although we experienced traces of neo-conservatism and neo-McCarthyism during the Tampa crisis, it has become more evident in the past 18 months, with views other than those expressed through the Australian, English

and US governments touted as supporting terrorist groups and anyone who might be associated with them. Such analysis or conclusions cannot be reached so simply.

The tenets of Australia's democracy are built on civil liberties that we, as Australians, have become accustomed to: freedom of speech and thought, freedom of assembly, freedom of political preference, freedom of movement and association, fair trials and freedom of arbitrary arrest. The proposed federal anti-terrorist legislation has attempted to curtail such basic and crucial rights within our young democracy.

I am pleased to inform the house that a public meeting has been called for Monday 24 February at 5.30 p.m. at the Otherway Centre in Pirie Street to re-form a group to protect civil liberties in this state. The curtailment of civil liberties within Australia is best exemplified with the Australian government disassociating itself from two Australian citizens, Mamdouh Habib and David Hicks, who have been incarcerated by the US in harsh and inhumane conditions in Guantanamo Bay, Cuba.

David Hicks is of most significance to the Florey electorate as his two young children reside there. It is the right of every Australian citizen to be free from arbitrary arrest, given access to legal representation, be housed in clean, safe and sanitary living conditions with access to fresh air and exercise, and to be charged with a crime and receive a fair trial. Instead, I am told that David Hicks and Mamdouh Habib were initially kept in Camp X-ray's caged facilities open to the elements, left blindfolded and handcuffed for long periods, and have restricted mail and limited exercise. Neither man has been charged or given prisoner of war status. They and their families have not yet been informed how long they will be detained. Both Australians have been vilified by the Australian media and Australian government officials ranging from the Prime Minister to the Attorney-General to the Foreign Affairs Minister. All have publicly accused David Hicks of being a terrorist, providing no evidence to back such a claim and substantially further incriminating and vilifying him. However, such accusations have yet to be verified in a court of law, which, in turn, denies him access to his entitlement to a fair trial.

Time expired.

HEALTH AND COMMUNITY SERVICES COMPLAINTS BILL

Adjourned debate on second reading.

(Continued from 17 February. Page 2242.)

The Hon. L. STEVENS (Minister for Health): I am very pleased to round up the debate on the second reading of this very important bill. I commend all speakers who have made a contribution to the debate. I will not repeat all the issues that were raised in my second reading explanation, suffice to say that it is has been a long time coming. Certainly from the Labor Party's perspective, we have been trying to get the bill through for about five years. I am very pleased that it is before us tonight. I will pick up a number of points that were raised in the debate by members and, in particular, respond to some issues raised by the shadow minister in his contribution.

First, in the order in which the contributions were made, I acknowledge the contribution of the member for Napier and his particular focus on the quality issues in relation to a bill such as this; that is, the importance of having a transparent and accessible complaints mechanism which enables people to have their concerns dealt with openly so that issues can be resolved and services, procedures and practices improved; and how important it is to ensure that we can improve the quality of patient care and safety and also the quality of all services across both health and community services. The contribution of the member for Napier particularly focused on this aspect and I want to say how important that is, and, yes, it is an absolute fundamental reason for having such a bill.

The member for Colton also made a very good contribution, but he was also focusing on consultation and the extensive consultation process that we the government have gone through in relation to the bill, as well as tackling a number of issues. I thank the member for Heysen for her comments. The member for Heysen raised a number of concerns, but I believe that those concerns have been addressed in the amendments that the government has put forward. I pay tribute to the contribution from the member for Reynell—as usual a very careful analysis of the bill—and also her ability, as always, to relate it to the concerns of ordinary people.

The important thing about this bill is enabling consumers to take up issues of concern and have them dealt with in a way that encourages informal resolutions, conciliation and mediation first, and only, if all those things fail, investigations and heavier processes. There was a large gap between second reading contributions and we took them up again last night with good contributions from the member for West Torrens, the member for Wright, the member for Chaffey, the member for Bragg, the member for Giles and the member for Schubert. I must say that the member for Schubert again waxed lyrical about his own Barossa Health Services and the facilities and the needs of those facilities.

I again say to the member for Schubert that, although it had no direct relation to this bill, we are aware of the capital works needs of his hospitals. However, as I said to him when I visited, there has been a big backlog of capital works and a lack of capital works funding, but unfortunately his own side let him down pretty badly. I will now focus on comments made by the shadow minister in his contribution last year. I am pleased to see that the opposition is supporting the second reading speech and that was made clear by their contributions.

It appears that the opposition is supporting the general direction of the bill. I must say that, first, I do not believe that there is much choice in doing anything else other than that because there is a high level of public support from consumer, community and provider groups for this legislation. Secondly, every over state and territory has had this type of legislation for some time now and we have lagged behind the rest of the country for several years. Finally, the opposition really is responsible for the fact that we do not have this legislation in place already. However, I do appreciate the opposition's support and I look forward to working through the committee stage of the bill.

In closing this portion of the bill's process, I wish to reflect on some specific comments and I will start with the issue of consultation. I have to say that the consultation process undertaken by the government compared with the consultation undertaken by the previous government is a real

study in contrasts. Various versions of this government's bill have been publicly available and have received wide community feedback and endorsement since 30 March 2000, which is when I first introduced this legislation as a private member's bill. Even after introducing this bill in its current form on 15 July last year, I have still been prepared to talk and take on board helpful suggestions from a whole range of interested parties.

A bill with a scope such as this and a whole range of stakeholders on either side of the equation has aroused much interest and we have willingly taken the time to talk through those issues. I am pleased to say that we had a couple of meetings with the opposition and the Independents which lasted several hours. The government certainly has taken up some of the suggestions made to it by the opposition. In contrast I have to say—

The Hon. Dean Brown interjecting:

The Hon. L. STEVENS: I have to say that when the former government was in government it had little commitment to true, fair consultation. During his response to the bill, the member for Finniss tried to rewrite history and claim that he had consulted extensively on his health complaints bill which he introduced into this house in May 2001—

The Hon. Dean Brown interjecting:

The Hon. L. STEVENS: He is saying even now that it was dead right, that is what he did. I find the definition of an extensive consultation from the point of view of the shadow minister interesting. The truth is that the shadow minister released his draft bill between Christmas and new year in the year 2000. He then gave the community only to the end of January 2001 to make comment. I think we would all agree that releasing a draft bill between Christmas and new year, and having the consultation process over the January holiday break, is not exactly commitment to wide consultation. It is hardly the best time of the year to get community comment if you are serious about listening to what people have to say. I well remember this. I was following this very carefully because my own bill was on the table in the house.

I do know that there was a great community outcry at this lack of good faith. I recall that in her comments last night the member for Wright referred to comments published by the Council on the Ageing. It specifically referred to the fact that the previous government's draft bill was released in that holiday period. The council actually referred to the outcry by the community. It also said, interestingly enough, that the former minister had then released a different version that was worse than the draft bill; so, it was an interesting little exercise. Following the outcry, the Deputy Leader of the Opposition reluctantly extended the consultation period for his bill in government for another two weeks to 14 February 2001, St Valentine's Day.

The SPEAKER: I invite both the deputy leader and the Premier to take a seat in the chamber rather than turning their back on the chair. Order! And I invite the Premier to do likewise. I invite the Premier to take a seat in the chamber rather than turning his back on the chair. Minister.

The Hon. L. STEVENS: As I was saying, the Deputy Leader of the Opposition extended his consultation period for another two weeks in 2001 to 14 February. Then, there was nothing—silence—until he introduced his flawed bill in May of that year, 2001. So much for the consultation; so much for the commitment to involving the community and the stakeholders in the bill that really focused so much on the needs of the community and the consumer!

I turn now to the comments of the Deputy Leader of the Opposition about the inclusion of aged-care facilities in this bill. He opposes their inclusion and seeks to move an amendment to remove them from the jurisdiction. I will certainly have more to say about that during committee, but I can inform the house that we will not be accepting this amendment and, I must say, neither does the field nor the community. We have had support. I will make sure that that support is on the record when we reach that part of committee, and I look forward to doing that later today. The government will move its own amendment that clarifies the position of aged-care facilities. This amendment has broad industry and community support.

I would like now to turn to community services and volunteers. The Deputy Leader of the Opposition spent much time in his speech to the house last October deliberately raising unfounded fears amongst the community sector and volunteers. I must say that we have come to see that as a regular habit of the honourable member on a range of issues. However, in this particular case he spoke of the scope of the definitions as being too wide and inclusive. I cannot believe that he could be that unaware of the nature of this bill, so I am left only with an explanation of mischief-making and scaremongering. The bill's scope is deliberately and legitimately broad. This is because the health and community services field is itself broad and complex.

The definitions in the bill will enable the health and community services ombudsman the flexibility to determine jurisdiction and to make a proper assessment in all the prevailing circumstances of a complaint. The definitions relating to 'community service' are broad and clear. The examples provided in the bill are equally clear and provide direction for the types of services to be included. But let me stress: there is nothing to fear from this legislation.

Mrs Redmond interjecting:

The Hon. L. STEVENS: Well, there is nothing to fear from this legislation. Every other place in Australia is doing it and the world has not ended and the sky has not fallen in.

Mrs Redmond interjecting:

The Hon. L. STEVENS: That is right. As the member for Heysen says—

Mrs Redmond interjecting:

The Hon. L. STEVENS: Well, in relation to health services, they have all done it.

Mrs Redmond interjecting:

The Hon. L. STEVENS: We will talk about that later.

An honourable member interjecting:

The Hon. L. STEVENS: Yes, there is. Last October the house was treated to the picture of a typical Saturday morning in the neighbourhood of the Deputy Leader of the Opposition. It seems that, as a result of this legislation, he will be too scared to mow the lawn of his 82 year-old neighbour for fear of her raising a complaint. I do not know about the mowing skills of the deputy leader or the quality of his lawnmower, but I can assure him that he need not cower from the complaints of his 82 year-old neighbour; nor has any generous-hearted neighbour anything to fear. You can mow each other's lawns in peace. You have nothing to fear. In any event, what was the fear that the honourable member was trying to convey—that somehow a complaint might be made to the ombudsman?

Mrs Redmond: That's right.

The Hon. L. STEVENS: Well, what if it was? If your service or organisation is within the jurisdiction of the health and community services ombudsman, what have you to fear?

The honourable member's alarmist comments deliberately misrepresent the entire purpose of the bill. Surely, it cannot be that the honourable member does not understand that the whole purpose of this bill is to seek a resolution of problems. I have said time and again that this bill is about resolution, not persecution or prosecution. Was not the deputy leader listening or did he just not want to hear?

Mrs Redmond: We just do not trust.

The Hon. L. STEVENS: We are having a constant commentary from the member for Heysen. I would ask her to listen. I listened to the honourable member. The honourable member will have plenty of time to make comments.

Mrs Redmond interjecting:

The Hon. L. STEVENS: The honourable member has been interjecting constantly during my contribution. The honourable member will have plenty of time to have her say as the committee process unfolds. Many organisations, groups or individuals providing health or community services would welcome and even seek the involvement of an independent third party; and they have overwhelmingly been saying this to the government. They would welcome the health and community services ombudsman to assist them to resolve problems with their consumers. This ombudsman is there for all who wish to resolve complaints, with the emphasis on 'resolve'.

Community service providers of all types have nothing to fear. Lawnmowing neighbours have nothing to fear. Volunteers have nothing to fear. The deputy leader and the member for Heysen also have nothing to fear. The deputy leader also has problems with the definition of 'health services'. What the honourable member fails to appreciate is that the definitions contained in the bill are consistent with definitions in other acts in other jurisdictions being applied without the problems alluded to by the deputy leader.

The honourable member objected particularly to the words 'a health service means a social, welfare, recreational or leisure service if provided as part of the service referred to in the preceding paragraph'. He insisted that this would also capture sporting clubs and other recreational and leisure clubs. However, that is not so. I do not believe that the deputy leader is incapable of reading legislation. In fact, I am sure that he is not. He should be able to see that for these activities to be within the jurisdiction of the bill they must be provided in conjunction with a health care or treatment service as defined in the bill, and that is the essence of it. It is not and could never encompass the activities of stand-alone sporting clubs, and he knows it.

But perhaps the chief bit of scaremongering last October concerns the honourable member's comments about clause 8L, which provides:

> The Health and Community Services Ombudsman has the following functions—
>
> (1) to perform other functions conferred on the Health and Community Services Ombudsman by the minister or by or under this or other acts.

This is a catch-all clause. I feel compelled to quote the member for Finniss, who said during his contribution last October:

> That is an outrageous provision to put in any legislation. We do not know. There could be new legislation introduced that we have not yet thought of, where the minister could use the. . . powers that he or she would have under this provision, to go off and do all sorts of things and investigations, not even conceived of at present because that act of parliament may not have even been passed yet by this parliament.

The member for Finniss went on to say:

> That is an outrageous provision. . . That is the sort of stuff dictators use.

And he goes on in full rhetorical flight, which members can read in *Hansard* if they so desire. He says that clause 8 is an outrageous provision, the sort of stuff that dictators use. I point out to the deputy leader, the member for Finniss, that clause 12(1)(m) of his own bill of 2001 provides:

> The commissioner has the following functions: to perform functions conferred on the commissioner by the minister or by or under this or other acts.

That is precisely the same wording. Who is the dictator? I can only accept one of four conclusions: the member for Finniss does not understand the bill; he does not even understand his own bill; he is being deliberately mischievous; or was he just running at the mouth. After all, it was after dinner and it had been a long day. He knows this clause is nothing like that which he sought to represent in October last year. I look forward to debating this clause. Much of the member for Finniss's comments last year showed misunderstanding and misrepresentation if not outright mischief.

I shall confine my comments to just a further few. I took exception to the member for Finniss invoking the name of the late governor, Her Excellency Dame Roma Mitchell. We were regaled by the member for Finniss speaking of Dame Roma's constancy in protecting provisions for natural justice. Well she might have—within earshot of the member for Finniss. The house must remember that in his own bill the member for Finniss sought to exclude the health complaints commissioner from the jurisdiction of the state Ombudsman Act thus denying a quick, accessible and easy means for parties to seek fair redress of processes used by that commissioner. This is a denial of natural justice.

The bill before the house, because it establishes a body by statute, ensures that the HCS ombudsman falls within the jurisdiction of the state ombudsman. Who investigates the HCS ombudsman? The state ombudsman. Thus consumers and providers alike who may be aggrieved about processes or determinations of the HCS ombudsman will have a clear and free means of seeking redress.

Whilst I am on the subject of the ombudsman, the member for Finniss wishes the house to believe that he is the protector of the great name and title of ombudsman. He wishes to designate the office in this bill as a commissioner. He would have us believe that he is protecting the title of ombudsman from being devalued by being used for purposes other than those of state ombudsman. Again, I remind the house that, when the member for Finniss was premier, his government established the Office of Employee Ombudsman under the Industrial and Employee Relations Act 1994. He did not seem to be troubled then with using the title of ombudsman for his own purposes.

This is an important piece of legislation which is long overdue. This parliament must and will consider its provisions carefully, and I look forward to debating the clauses with all those who wish to do so and who truly seek to understand and improve them. As for those who seek to spread confusion and fear, I suggest that they rethink their position. I have been prepared to be patient and to explain to all parties who are willing to listen the purposes of this bill, and I have been prepared to spend many hours talking with consumer and professional provider groups to find ways to meaningfully improve the bill.

I would now like to spend a few minutes talking about some of the comments of the member for Bragg. In her

contribution last night, the honourable member suggested that independent schools would be captured by this bill and be the subject of inordinate amounts of red tape and other terrible things. Regarding the matter of independent schools, the opposition (and now the member for Bragg) continues to misunderstand and misrepresent the bill. They appear to be intent on whipping up fear and loathing of the bill rather than trying rationally to understand it. In this respect, I think it is important to refer to my correspondence to the Association of Independent Schools of South Australia. In my reply to the Executive Director, I said:

> Let me offer you clear assurances that education services and education service providers, government or non-government, are not within the framework of the bill. Health and community services are clearly defined in the bill and I draw your attention to its definitions. These definitions do not include educational bodies such as your members. In any event, should there be any aspect of a particular service provided by a school that may resemble a type of service referred to in the legislation, the matter of appropriate jurisdiction would have to be clarified in the first instance.

That is the first thing the ombudsman has to do. My letter continues:

> As you read the bill you will see that its clear intent is to seek resolution of complaints if the parties directly concerned are unable to resolve the matter between them. As such the office established by this bill is there to offer assistance to providers and consumers alike. Thus, should a school seek to offer a health or community service (as defined in this legislation), I can assure you and your members that if a complaint arises which may come to the attention of the. . . ombudsman, it would be dealt with in a way that is fair, independent and balanced, and in a way that would seek a resolution if possible.

The issue is one of what service or function is being provided, not of what type of organisation it is. Schools in themselves are not subject to the jurisdiction of this bill—and this is an important point. However, if in part they may be providing a health or community service as defined in the bill, then that part of their service provision may come within the bill's jurisdiction. What if they are? Remember: the whole purpose of the HCS ombudsman is to help find resolution to complaints when all else has failed. It is there to provide a benefit and assistance to both consumers and providers of services if they are unable to resolve their differences or complaints by any other means.

The member for Bragg raised concerns about duplication. She said that independent schools already have 'extensive accountability requirements and that further requirements as could be imposed by this legislation could lead to duplication and an increase in costs and an administrative burden'. Nonsense! Perhaps the member for Bragg has not read the bill. I will take the time in committee to show her where she might usefully apply herself. To give her a chance to do some homework, I suggest that she acquaint herself with clauses 26(2)(d) and 48 of the bill which provide for the HCS ombudsman to refer a matter to another body to investigate a complaint if it is more appropriate for that other body to deal with the matter. The first step is to work out under which jurisdiction the complaint will be handled. There is no duplication, and I suggest that the member for Bragg knows this, so let us put this mischief aside.

As I said, I have been prepared to spend many hours talking with consumer and professional groups to find ways to meaningfully improve the bill, and I would be very pleased to work with fellow members of this house to develop helpful and clarifying amendments. I thank the member for Fisher, the Minister for Industry, Investment and Trade, the member for Chaffey, the member for Heysen and the shadow minister for some of the work they have done in relation to this bill. I appreciate the fact that we were able to meet and work through a number of issues.

I believe that, with the amendments I have tabled, the bill will now provide the best legislation of its kind in Australia. That will be great, because it is well past time that South Australia had this legislation passed. If this legislation moves through, as I hope it will, we will go from being the last to the first in the country in relation to provisions of this kind. As I said, the time for talking is short. We now must get on and enact the legislation. I thank all members for their contributions, and I urge them to support the second reading of the bill. I look forward to continuing the debate in committee.

Bill read a second time.

The SPEAKER: Before the measure goes into committee, I will contribute briefly my own perceptions about the proposed measure in so far as I believe them to be sufficiently important to warrant my doing so. From memory, they relate to clauses 48 and 50 of the legislation. In part they were covered—if not perhaps completely—by the deputy leader. To my mind it would have been better for us as a society, in the good governance of that society, to minimise the extent to which we duplicate legislation with variations of powers in these offices of inquiry such as have been established with the name ombudsman, and to have incorporated them all under the state ombudsman. I originally thought that the creation of an industrial ombudsman separate from the state ombudsman was unnecessary. I hold the same view in relation to the proposed office of the health and community services ombudsman and believe that the powers provided by the state ombudsman and the administrative services of the office of ombudsman, more efficiently and effectively delegated by that office to each of those officers—the one that is already in existence and the one that this bill proposes—might have been better.

The principal reason for my making that remark is the confusion which will now develop in the public mind as to what the powers of the state ombudsman are as compared to and contrasted with those of the industrial ombudsman and, as proposed in this legislation, the health and community services ombudsman.

The Hon. M.J. Atkinson: The Employee Ombudsman.

The SPEAKER: I stand corrected by the Attorney-General and trust that the house will forgive me for having made that mistake in title. It is the Employee Ombudsman to whom I draw attention. The powers of the state ombudsman are more than adequate—certainly adequate—for the purposes of a health and community services matter to be properly reviewed and, if they were not, an amendment to the state Ombudsman Act requiring an explicit provision for those matters to be dealt with within the purview of the state Ombudsman's office, in my judgment, might have led to less confusion, short and long-term.

Finally, clause 50, which relates to privilege, disturbs me somewhat in that, whereas under the state Ombudsman Act the same provisions do not apply, I think that there may be means by which people who have committed misdemeanours or even crimes may seek to cover them by having those matters in some way or other incorporated into actions which they might get on foot before the health and community services ombudsman begins examination of them, and thereby claim immunity and/or privilege from further investigation of how it came to be that such problems arose. I am not a lawyer. I acknowledge the inadequacy of my

knowledge in that respect. Whilst that may mean that I have in some measure misunderstood the question of privilege, I am sure nonetheless that in the general case I am pretty close to the mark. I thank the house for its indulgence.

In committee.

Clauses 1 and 2 passed.

New clause 2A.

The Hon. L. STEVENS: I move:

New clause, page 5, after line 6—Insert new clause as follows:

Objects

2A. The objects of this act are—

(a) to improve the quality and safety of health and community service in South Australia through the provision of a fair and independent means for the assessment, conciliation, investigation and resolution of complaints; and

(b) to provide effective alternative dispute resolution mechanisms for users and providers of health or community services to resolve complaints;

(c) to promote the development and application of principles and practices of the highest standard in the handling of complaints concerning health or community services; and

(d) to provide a scheme that can be used to monitor trends in complaints concerning health or community services; and

(e) to identify, investigate and report on systemic issues concerning the delivery of health or community services.

This clause inserts a set of objects into the act. The only thing I want to mention is that the objects are fundamental to the act and provide a clear definition of its purpose and what will be achieved when the bill is proclaimed and enacted. I believe that, without my needing to go any further, they are self-explanatory.

New clause inserted.

Clause 3.

The CHAIRMAN: The minister has an amendment in her name which seems to be the same as the amendment of the member for Finniss.

The Hon. DEAN BROWN: Yes. Because my amendment appears first, I will move it.

The Hon. L. STEVENS: But I am the minister.

The Hon. DEAN BROWN: There is no dispute over this but, in the tradition of the earliest amendment, it is my amendment.

The CHAIRMAN: My understanding is that whoever has control of the bill has the prior right, but I do not think we will lose any sleep over it.

The Hon. L. STEVENS: We will not lose any sleep over it, but I remember, when in opposition, that this happened many times. I guess that is the advantage that the government has if it accepts an amendment that was discussed. I acknowledge that this was adopted by the government, and the shadow minister will probably remember that it was agreed that this definition would be placed in the bill because it relates to a later clause in relation to who can complain. I move:

Page 5, after line 9—Insert:

'close relative', in relation to a person, means a spouse, parent, grandparent, child, grandchild, brother or sister of the person;

The Hon. DEAN BROWN: This is, in fact, a Liberal Party amendment which we put up, and it has been agreed with the government that it would adopt our amendment, so I support it.

Mr HANNA: I have a point of clarification. I have an amendment to clause 3 and I want to be clear that the clause is not put to a vote before I have the opportunity to put my amendment.

The CHAIRMAN: We are doing them in order.

Mrs REDMOND: There are, in fact, something like 13 amendments proposed to clause 3, and I suggest that we go through them one at a time.

The CHAIRMAN: I point out to the member for Heysen that we deal with them in the order they appear in the bill. Currently, we are dealing with clause 3, page 5, after line 9, insert the definition of 'close relative', which, to me, appears to be the same amendment as that proposed by the minister and the member for Finniss.

Mrs REDMOND: I am not disputing that, but I think both the member for Mitchell and I became concerned when you suggested that we accept clause 3 as amended, because only one amendment out of 13 proposed amendments to clause 3 had then been considered.

The CHAIRMAN: We are dealing with only the amendment to page 5, after line 9.

Ms THOMPSON: I wish to indicate my reservations about this clause. I am not able to fully comprehend how it is intended to be applicable, but I understand from discussions that it relates to who may make a complaint on behalf of another individual. The provisions in clause 21 are very clear in that the health or community service user may make a complaint 'if the health or community service user has attained the age of 16 years—a person appointed by the user to make the complaint on the user's behalf; or'—and it goes on to list a number of provisions in relation to somebody who is not able to make a complaint.

My reservation about the inclusion of what appears to me to be an automatic right to make a complaint by a close family member—and I express my concern about the definition of 'close relative' as well—is that it has the potential to remove control over making of the complaint from the user of the service. I know we would all like to believe that all families work as one but, unfortunately, it has been my experience that this is not the case, particularly in a time of crisis when a family is under pressure because somebody is unwell and chronically in need of care or when there has been some emotional encounter in the family. It can be that one family member feels aggrieved and decides to take the matter under their own control.

I hasten to say that this has not happened within my family, which is a happy family, but it has happened twice in families very close to me where one member has decided that they do not wish to participate in family decisions about the care of their relative and has expressed views about the adequacy of that care. The processes are very robust, and I acknowledge that the minister has drafted an excellent bill. If I decide that I am aggrieved about what is happening to my dad, it does not matter what he thinks about it because I can run off to the ombudsman to complain about his service, but the ombudsman has the opportunity to consider the substance of the complaint and to decline it. But that adds extra workload in an office that I think is very important.

So, it could be that I have failed to grasp the reason for inserting the definition of 'close relative'. I did some work on it last night, but I express some concern and I ask the minister or the supporter of the amendment to address the reasons for it.

The Hon. L. STEVENS: The effect of the amendment is to specify a close relative, guardian or personal representative of a deceased person as a person who is able to make a complaint. While it is quite true, in relation to what the

member for Reynell said, that the bill allows the health and community services ombudsman discretionary powers as to who may complain, this amendment, without removing that discretion, makes it clear that a person close to a deceased person is able to make a complaint. Whilst scope exists under clause 21(e), (f) and (j) for the health and community services ombudsman to consider a complaint from a close relative, former guardian or personal representative of a deceased person, this amendment makes it clear that those close to the deceased have a right to complain without having to rely on the health and community services ombudsman's discretion.

The Hon. DEAN BROWN: I know from experience that that is a pretty common basis for complaint: invariably, a complaint arises when there has been a death. That is why I think it is so important that we make sure that that right exists.

Amendment carried.

The Hon. DEAN BROWN: I move:

Page 5, after line 9—Insert:

'Commissioner' means the Health and Community Services Complaints Commissioner appointed under Part 2 (and includes a person acting in that office from time to time);

This amendment inserts a definition of 'commissioner', which means the Health and Community Services Complaints Commissioner appointed under clause 2, and includes a person acting in that office from time to time. This is part of a broader series of amendments which specifically deal with the ombudsman being able to act as the Health and Community Services Complaints Commissioner. This is the very point that the Speaker raised in his contribution just before we went into committee, and this is the issue where I believe there is every justification for saying that the role of the health and community services complaints commissioner should be taken up by the ombudsman and done through the office of the ombudsman.

I know from my own experience that, when that is done, the costs would be substantially less because there are many functions which are carried on in the ombudsman's office which will also be carried on in this office and they could be shared, or they would not even be necessary. For example, you would not need to have two different receptions; you could have one reception. You would not need to have two groups of people doing a number of administrative functions because there would be one covering both functions, both the ombudsman and the health and community services complaints ombudsman. The cost savings would be very significant, based on information gathered for me by the department when I was minister.

This will effectively become the test clause for a series of other amendments. I think it is appropriate that we do the test now, and the Speaker referred to clause 49, if I remember rightly, and it is picked up in other areas as well, but this is the place where I will test it.

The Hon. L. STEVENS: The government does not support the amendment, and I would like to outline the reasons for that. It is unfortunate that the Speaker's contribution was after my contribution, because I would have referred to his comments if I had the opportunity, so I will do so now. The title 'ombudsman' was specifically chosen by the opposition when we started this process five years ago because it is well understood and accepted by the public to be an authority to investigate complaints. Therefore, we believe it is an absolutely appropriate title. That is the first point. We already have health commissioners under the South Australian Health Commission Act and we believe that, in order to avoid confusion with this particular office and the health commissioners that currently exist under the South Australian Health Commission Act, there needs to be a different name.

In relation to the shadow minister's point about placing the health and community services ombudsman under the jurisdiction of or together with the state ombudsman, we have no problem in considering a mechanical collocation or shared administrative setting. That is not the issue. The important issue is that, if we were to do this, we would be weakening a very important part of this bill and that is the appeal rights. I referred to this in my speech at the end of the second reading debate. The important and fundamental issue is that we have designed a bill with checks and balances all the way through, even-handedness all the way through, and we have deliberately placed the health and community services ombudsman outside the state ombudsman so that there is an appeal right to the state ombudsman by—

Mrs Redmond: Instead of a court?

The Hon. L. STEVENS: Absolutely instead of a court, and that comment by the member for Heysen shows how much she does not understand the intent of this bill. We have deliberately placed it outside the state ombudsman because we believe that, if there is a problem with or a complaint about the process by the health and community services ombudsman, the appropriate place to go is to the state ombudsman. The government does not support the amendment.

The Hon. DEAN BROWN: So that there is no confusion, I mentioned that the idea was to change the name and then to put that role into the office of the ombudsman. We will come later to the specific amendment about the ombudsman. This amendment is to change the name in preparation for putting it into the office of the ombudsman. I want to separate those two issues because they are slightly different. This is the one that will test whether or not we change the name to commissioner.

The committee divided on the amendment:

AYES (20)

Brindal, M. K.	Brokenshire, R. L.
Brown, D. C. (teller)	Buckby, M. R.
Chapman, V. A.	Evans, I. F.
Goldsworthy, R. M.	Hall, J. L.
Hamilton-Smith, M. L. J.	Kerin, R. G.
Kotz, D. C.	Lewis, I. P.
Matthew, W. A.	McFetridge, D.
Meier, E. J.	Penfold, E. M.
Redmond, I. M. t.)	Scalzi, G.
Venning, I. H.	Williams, M. R.

NOES (25)

Atkinson, M. J.	Bedford, F. E.
Breuer, L. R.	Caica, P.
Ciccarello, V.	Conlon, P. F.
Foley, K. O.	Geraghty, R. K.
Hanna, K.	Hill, J. D.
Key, S. W.	Koutsantonis, T.
Lomax-Smith, J. D.	Maywald, K. A.
McEwen, R. J.	O'Brien, M. F.
Rankine, J. M.	Rann, M. D.
Rau, J. R.	Snelling, J. J.
Stevens, L. (teller)	Thompson, M. G.
Weatherill, J. N.	White, P. L.
Wright, M. J.	

Majority of 5 for the noes.

Amendment thus negatived.

The Hon. DEAN BROWN: I move:

Page 5, after line 21—Insert:
(fa) a service provided by a volunteer; or

Clause 3 provides a definition of 'community service' which includes paragraphs (a), (b), (c), (d) and (e) but does not include paragraphs (f) or (g). This amendment inserts a new paragraph (fa) which provides that the definition does not include 'a service provided by a volunteer; or'. This is a very important amendment on which I spoke at length during the second reading debate. I recognise that the minister, since the second reading debate, has moved a further amendment, but I find it unacceptable. Her amendment—and we will come to it shortly—provides that where the service is delivered by a volunteer it reverts to the organisation, although still capturing volunteer organisations.

Whilst the minister's amendment is a marginal improvement, I have a fundamental objection to a state government appointed ombudsman investigating what is done by a volunteer, particularly where the entire organisation might be volunteers. I highlight the fact that at present in any state government instrumentality the state ombudsman has the power to investigate any service provider, but we are talking here about non-government services—about volunteer community organisations.

For the first time we are giving an ombudsman the right to investigate the actions of volunteers, to see whether or not the services they volunteer are in fact adequate. This could be an investigation of someone who, on a regular basis, provides a volunteer service (it does not even have to be on a regular basis), or it could be someone working in a service club. In fact, we know that the service club itself could be subject to investigation. We are using here the broadest possible definition of 'community service'.

I regard this as probably one of the greatest infringements ever by a government in terms of the role of individuals. I can hear what some of the people who have been champions of the rights of individuals would say about a move such as this. If I decide to help regularly someone such as my neighbour—and we often do help—why should I suddenly be subjected to an investigation about the quality of the service that I am providing or how often I am providing it? It may be someone who simply has fallen out and now wants to do it for reasons of retribution or for some other reason.

There should never be such an investigation. If anything will kill off the volunteer effort, it is this. I have heard members of this house, time and again at public functions and in this house, talk about how great the volunteer effort is in South Australia—as indeed it is. South Australia has a higher volunteer effort than any other state in Australia. Australia has one of the highest volunteer efforts per capita of any country in the world. We have bodies such as Meals on Wheels, the Country Fire Service and thousands of other organisations, right down to very small groups of people, all doing it because they want to make a commitment to the broader wellbeing of our community.

Yet here under this legislation for the first time we are opening up the possibility that these people, who are doing it out of the goodness of their heart and not being paid, can suddenly be subjected to all sorts of requirements, including a penalty if they do not front up and answer questions. This imposition on a volunteer is incredible. For setting out to be a good Samaritan within our community and doing something to help someone else, they find themselves entwined in a web of investigation by a government agency through the health and community services ombudsman and subject to the potential for penalties and everything else. They will not understand what this legislation is about. They will not have a copy of it. In many cases these people are—

The Hon. L. Stevens: Of course they will.

The Hon. DEAN BROWN: They will not have a copy of it. We sit here knowing what the legislation is about. They will be mortified if suddenly they get hauled up and investigated by the health and community services ombudsman.

The Hon. L. STEVENS: The government does not support the amendment and I would like to calmly explain why. First, the comments of outrage by the member for Finniss are not well founded. The government absolutely applauds and supports voluntarism and volunteers in this state. The Premier has jurisdiction and carriage of that particular area of government and is assisted in that role by a parliamentary secretary. This government has a strong commitment to volunteers. However, this is not about attacking volunteers: it is about providing a method of resolution of complaints and concerns about health and community services. It is not about who provides the service: it is about the service itself.

This is a very broad bill and it is done deliberately. Let us talk about health care—and I have made this point time and again in explaining the bill. For most people health care is a continuum of care which is supplied by a whole range of individuals, often professionals, including GPs, specialists, nurses, hospitals, nursing homes, community health services and volunteers. The point is that this bill focuses on the service itself. It is not about singling out volunteers for terrible retribution. The bill is about conciliation, mediation and working things through. We have been supported in this provision. I put it on the record that Volunteering SA wrote to me as minister on 20 August last year. The letter said:

> Volunteering SA supports this initiative and recognises the intention of the bill is for the ombudsman to resolve and remedy complaints promptly. We expect that, with support, education and training organisations and volunteers will be able to comply with the spirit of the legislation.

The shadow minister said that volunteers would not know anything about it. The whole point is that, once the legislation is passed, of course information will be provided to the whole community in relation to this provision and, rather than scaring people and spreading misinformation and fear, that information will explain what this bill is all about.

The government has responded to clarify any issues in relation to this matter, and I draw members' attention to further amendments we have made. First, a definition of a 'volunteer'. Secondly, clause 22(5) in the amendments put forward by the government makes it explicit that, when there are complaints against volunteers, those complaints will not be against the volunteer as an individual but against the body or the organisation for whom that volunteer is working. This makes it perfectly clear. We are about resolving issues.

For instance, I am very close to the Lyell McEwin Health Services volunteers, and I am sure many other members in this house are close to various volunteer organisations. That volunteer organisation has 400 or 500 volunteers working in the health setting, and I know that they are also keen to ensure that, if there are complaints and issues about their volunteers, they are resolved. They understand that this is a very important thing which should happen. I say again that the tone of the comments and the very extreme comments

made by shadow minister concern me. He again loses sight of the objectives and processes of this piece of legislation.

We are about a softly softly approach—conciliation, mediation, resolution—not persecution. We are about getting parties together, working out differences, solving the issues and getting on with the job. It is important that all health and community services, as defined, are covered, and volunteers have nothing to fear in relation to these processes. The government does not support this amendment moved by the opposition. The government will be moving further amendments to clarify the position in relation to volunteers later in the debate.

Mrs REDMOND: I want to add my comments to this particular aspect of the debate because it is the main concern that I have had throughout my dealings with the minister and the negotiations that have taken place over this measure. As we have already indicated, I have not had difficulty with the health complaints aspect, but I have some very significant difficulties with what is obviously a philosophical difference with the minister about whether or not volunteers should be encompassed within this act.

I note that the minister says that it will be the organisation and not the volunteer, but the reality is that, if a complaint is made against the organisation on behalf of a complainant, then the ombudsman will have no recourse but to involve the individuals, that is, the volunteers, in investigating the complaint. What is more, this act imposes an extremely heavy potential fine—$5 000 I think it is—against anyone who does not cooperate. The minister says that she has received a letter from Volunteering SA. I say to the minister that that is all very well, but that is an umbrella organisation: that is not the volunteers on the ground. Everyone to whom I have spoken is universally opposed to its introduction. I have a lot to do with many volunteer organisations and Volunteering SA does nothing to help volunteering in this state.

As the shadow minister has already pointed out, we have the highest rate of volunteering in this state and this country is one of the highest in the world, yet this government seems intent on doing everything it can to make people hesitant about volunteering. Already we have people who are hesitant because of the potential for financial loss. We have people who are becoming angry about the fact that they have to have police checks now to do volunteer jobs that they previously have done for years without any difficulty. We now have Food Act regulations which make it impossible for people to run their sausage sizzles and all the other sorts of things in the community.

Now we are imposing this requirement on someone who is a volunteer, any sort of volunteer. Unless the government is prepared to introduce this specific provision to exempt volunteers, then clearly it will capture volunteers. Even if, as the shadow minister suggested, it is one neighbour doing a favour for another neighbour, that comes within the potential—

The Hon. L. Stevens interjecting:

Mrs REDMOND: Under the legislation, the way in which you have drafted clause 3, that potential exists. All we are saying is that, with this amendment moved by the shadow minister, you have the opportunity specifically to exclude volunteers. Clearly the government wants to include volunteers and damage volunteering even more than it has already done in this state.

Ms RANKINE: Do health and community services ombudsmen in another state have the right to investigate similar volunteer services? I am really concerned about some of the misinformation that has been peddled out in the community in relation to volunteers. We have undertaken something like 25 community consultations in relation to the proposed volunteer compact throughout South Australia, and at only one did a member of parliament take the opportunity to turn it into a cynical political exercise to whip up concern that was not there.

Mrs Redmond interjecting:

Ms RANKINE: Absolutely not. Only one. Other members of the opposition went along and promoted people's involvement in that process. But only one—the member for Heysen—went along and used it as a cynical political exercise to whip up concern that was not there.

The CHAIRMAN: The minister.

Mrs Redmond interjecting:

Ms Rankine: It was not there.

The CHAIRMAN: Order! The minister has the call.

The Hon. L. STEVENS: I would like to answer the question from the member for Wright in relation to other jurisdictions. The Australian Capital Territory and the Northern Territory specifically describe a volunteer in their interpretations of a provider, while Western Australia, Victoria and Tasmania include a broader interpretation. For example, Tasmania's interpretation states:

> Any other service provided by a provider for or purportedly for the care or treatment of another person.

That broader interpretation is consistent with this bill and would encapsulate volunteers. Further, the health and community services ombudsman would respond to a complaint made against a volunteer, that is, make an assessment and conduct a preliminary inquiry if necessary. However, the bill provides that the process would be informal and as comfortable as possible for the complainant, the volunteer and the organisation for which the volunteer works. The bill, I might add, also allows the health and community services ombudsman to provide assistance if he or she believes it is necessary.

So, there is nothing to fear, and it is concerning because I think that both the member for Heysen and the shadow minister have not read this in the context of the whole bill and the objects of the act—

Mrs Redmond interjecting:

The Hon. L. STEVENS: The honourable member does not listen, either. It is concerning that members opposite do not read it in its entirety because there is nothing to fear. This is about resolution of complaints. This is about resolution, not persecution; and the further amendments the government will move will clarify that.

The committee divided on the amendment:

AYES (22)

Brindal, M. K.	Brokenshire, R. L.
Brown, D. C. (teller)	Buckby, M. R.
Chapman, V. A.	Evans, I. F.
Goldsworthy, R. M.	Gunn, G. M.
Hall, J. L.	Hamilton-Smith, M. L. J.
Kerin, R. G.	Kotz, D. C.
Lewis, I. P.	Matthew, W. A.
Maywald, K. A.	McFetridge, D.
Meier, E. J.	Penfold, E. M.
Redmond, I. M.	Scalzi, G.
Venning, I. H.	Williams, M. R.

NOES (24)

Atkinson, M. J.	Bedford, F. E.
Breuer, L. R.	Caica, P.

NOES (cont.)

Ciccarello, V.	Conlon, P. F.
Foley, K. O.	Geraghty, R. K.
Hanna, K.	Hill, J. D.
Key, S. W.	Koutsantonis, T.
Lomax-Smith, J. D.	McEwen, R. J.
O'Brien, M. F.	Rankine, J. M.
Rann, M. D.	Rau, J. R.
Snelling, J. J.	Stevens, L. (teller)
Thompson, M. G.	Weatherill, J. N.
White, P. L.	Wright, M. J.

Majority of 2 for the noes.

Amendment thus negatived.

The Hon. G.M. GUNN: Mr Chairman, I was in the members' lounge and, unfortunately, the bells did not ring, which resulted in my not being present when the division took place. I seek your opinion on how we should deal with this matter, because members rely on the bells and the flashing lights. A number of people were present with whom I was having a discussion. It is not my wont to miss divisions. In the long period of time I have been here I have missed very few.

The CHAIRMAN: The chair accepts the assurance of the member for Stuart that the bells did not ring in the members' lounge. His absence does not alter the outcome of the division, but I think Hansard has recorded the member's explanation, which is accepted by the chair.

The Hon. DEAN BROWN: I move:

Page 7, lines 2 to 8—Leave out paragraphs (a), (b) and (c) and insert:

(a) a registered service provider; or

(b) an audiologist, audiometrist, optical dispenser, dietitian, prosthetist, psychotherapist, radiographer, therapeutic counsellor, social worker or provider of forensic or pathology services; or

(c) any other person who has an occupation that is based on providing health care or treatment to others; or

(d) a person who is training to become a person engaged in an occupation referred to in a preceding paragraph and who, as part of that training, is engaged in the provision of health care or treatment to others,

This is simply a reworking of the original definition in the bill to include all service providers registered under the act and listed in schedule 1, and to acknowledge other providers of health services. When we put the first bill out for consultation, we received a range of feedback from people in terms of a hierarchy of professions that were reflected in our original definitions. We also received complaints from pharmacists that they were left out. So, we rejigged the definition into a much better format in relation to registered providers. As I have just mentioned, it includes all service providers registered under the act and listed in schedule 1 and it acknowledges other providers of health services.

Amendment carried.

Mr SCALZI: I move:

Page 6, after line 26—Insert "'domestic codependent', in relation to a deceased person, means a person who, immediately before the death of the person, had been cohabiting with the person in a genuine domestic relationship and who had so cohabited continuously over the period of five years immediately preceding the death of the person, or for periods aggregating five years over the period of six years immediately preceding the death of the person;"

I believe that my amendment covers people in genuine domestic co-dependent relationships. This is broader than spouses and same-sex couples in a caring relationship. I think this provision should be inserted so that a genuine, caring co-dependent is acknowledged in the bill.

Mr HANNA: I oppose the amendment. The member for Hartley brings this amendment in response to my amendment relating to same-sex partners. I believe that this move by the member for Hartley is based on anti-homosexual prejudice. I believe that his amendment will not genuinely cover a class of people who need to be covered in this legislation. When I move my amendment I will set out the reasons why same-sex couples should be treated in the same manner as de facto spouses of heterosexual partners. This definition is unnecessarily broad, and I encourage the government to oppose it.

Mr MEIER: We are dealing with this amendment before we deal with the member for Mitchell's amendment, which has been before us for much longer. I have potential problems and concerns with the member for Mitchell's amendment. I intended to ask him a question when he moved it as to its implications in the actual bill, but I cannot do that now because the amendment under consideration is that of the member for Hartley. I have sympathy for his amendment, although if I had my own way I would not even accept this one, but—

Mr Hanna interjecting:

Mr MEIER: I could have my own, but I am satisfied with the way things are in the bill without bringing in these extra amendments. I guess there is no way that the committee can get around this now that the member for Hartley has moved his amendment first. Perhaps I could ask the member for Mitchell to explain at this stage the implications of his amendment. I think that would be quite permissible because the wording is almost identical.

Mr Hanna: They are two separate issues.

Mr MEIER: The member for Mitchell says that they are two separate issues.

The CHAIRMAN: The chair is willing to allow the member for Mitchell to outline his amendment if he wishes, but it might be better if we take the break now and suspend the sitting until 7.30.

[Sitting suspended from 5.58 to 7.30 p.m.]

The CHAIRMAN: Prior to the dinner break the member for Goyder asked the member for Mitchell whether he would outline the key elements of his amendment. The committee is willing to hear from the member for Mitchell.

Mr HANNA: I will speak to that later when the amendment comes up.

Mr MEIER: Whilst I understand that, I do not think it helps us pursue this matter. I will see what happens if the member for Hartley seeks to divide on this.

Mrs REDMOND: I will make a comment to assist in the clarification of this matter. In this clause we are talking about simply who will be entitled to bring in a complaint. By and large, complaints would normally be brought by the person who has a grievance. Section 21 of the proposed bill indicates all the other people who could bring a complaint if that person is unable to. It includes powers of attorney, powers of guardianship, anyone nominated by someone over the age of 16 years, a parent or guardian of someone under the age of 16 years, someone nominated by the health complaints ombudsman, and so on. I would envisage that, whether it is the amendment of the member for Mitchell or the member for Hartley, it will come up so rarely as to be almost a non-event.

Mr SCALZI: In summary, as the member for Heysen has said, it would be rare. However, having this amendment and a broader definition deals with this aspect in a more comprehensive way, and does not base on sexuality that entitlement

to make a complaint. There is no question that the member for Mitchell's concerns would be addressed under the broad definition of 'domestic codependent'. So, the question of the ability to make a complaint has been answered by this broader definition and does not restrict it to a sexual definition, which can lead to some problems. I urge members to support this amendment, because it deals with the member for Mitchell's concerns. It does not bring in conflict the other groups that can make a complaint, and it is a comprehensive way to deal with this problem.

The committee divided on the amendment:

AYES (17)

Brokenshire, R. L.	Brown, D. C.
Chapman, V. A.	Goldsworthy, R. M.
Gunn, G. M.	Hall, J. L.
Hamilton-Smith, M. L. J.	Kerin, R. G.
Kotz, D. C.	Lewis, I.P.
Maywald, K. A.	McFetridge, D.
Meier, E. J.	Penfold, E. M.
Scalzi, G. (teller)	Venning, I. H.
Williams, M. R.	

NOES (23)

Atkinson, M. J.	Bedford, F. E.
Breuer, L. R.	Caica, P.
Ciccarello, V.	Conlon, P. F.
Foley, K. O.	Geraghty, R. K.
Hanna, K.	Hill, J. D.
Key, S. W.	Koutsantonis, T.
Lomax-Smith, J. D.	O'Brien, M. F.
Rankine, J. M.	Rann, M. D.
Rau, J. R.	Redmond, I. M.
Snelling, J. J.	Stevens, L. (teller)
Thompson, M. G.	Weatherill, J. N.
White, P. L.	

PAIR(S)

Buckby, M. R.	Wright, M.J.
Brindal, M. K.	McEwen, R.J.

Majority of 6 for the noes.

Amendment thus negatived.

The Hon. DEAN BROWN: I move:

Page 7, line 16—Leave out paragraph (c) and insert:

(c) a diagnostic service; or

(ca) a service provided as part of a preventative health care program, including a screening service and an immunisation program; or

The purpose of this is to change the definition of health service and I believe that it produces greater clarity. I will not seek to divide on the issue, but our amendment seeks to have a separate provision for a diagnostic service and for a service provided as part of a preventative health care program, including a screening service and an immunisation program. Frankly, these two should be separated and it is inappropriate to put them together. Diagnostic services and screening services sit in different areas and, besides, the whole objective of some screening programs is preventative health and picking up health problems at an early stage. I think this is better drafting but I do not feel that strongly about it.

The Hon. L. STEVENS: The government does not accept the amendment, simply because it is not needed. Paragraph (c) already provides for a diagnostic or screening service, and the second part of the amendment is covered by paragraph (e), which refers to a service to treat or prevent illness, injury, disease or disability. It is not required, so the government does not support it.

Amendment negatived.

The Hon. DEAN BROWN: I move:

Page 7, line 25—Leave out 'a social, welfare, recreational or leisure service' and insert:

a social work service or a welfare service

This amendment is significant. Under the definition of a health service, we are including a social, welfare, recreational or leisure service. I do not believe that we ought to be trying to capture what we would describe particularly as recreational or leisure services. The role of this ombudsman is to look at health services and to investigate complaints. Anything could come in under recreational or leisure services, as we know. Even local recreation clubs or walking groups could be classed as a recreational service.

Mr Hanna: It must be done under a health care provider though, musn't it?

The Hon. DEAN BROWN: That's right, but a physio could provide leisure programs, for example, aerobics, and they could be investigated. Alternatively, there could be a physio at a football club, and it might be on a voluntary basis, and that physio service or a number of other professional services that might be provided at a sporting club could be investigated. I stress the fact that the honourable member indicated that it must be professional. It does not specifically have to be professional. It means anything done under those areas. A health service means 'a social, welfare, recreational or leisure service if provided as part of a service referred to in a preceding paragraph'.

Mrs Redmond: There is paragraph (a).

The Hon. DEAN BROWN: Yes, paragraph (a) states that it is a service designed to benefit or promote human health. That does not mean that it has to be a professional in terms of a registered professional. It could be someone doing general fitness classes or aerobics, or anything else, at a football club; or it could be an aged walking group and someone might come along to get them to do warm-up exercises. Therefore, potentially they would be subject to an investigation.

I stress that my amendment relating to volunteerism has already been defeated. This could be on an entirely voluntary basis with a leisure or recreational group of people and be capturing them and have all that investigated, when people are not paying a fee for the service and it is done by volunteers, but it is in such a broad area. I object to that. That is not what I describe as the definition of a health service. I think the very fact that the interjection came from the new member for the Greens—and I welcome him here and I welcome his independence in making that interjection—indicates that he probably now realises that this is an extremely broad definition and one to which I object and to which a number of other people in the broader community object.

The Hon. L. STEVENS: The government does not accept the amendment. It is important to read the whole sentence in paragraph (i), which provides:

[health service means] a social, welfare, recreational or leisure service if provided as part of a service referred to in a preceding paragraph.

That is the important part. Recreational or leisure services are recognised as significant activities as part of a person's rehabilitation process and, therefore, should be included within the definition of health service when they are provided as part of a health service. The bill is specific in that it captures only recreational and leisure when provided in this context, which is quite—

The Hon. Dean Brown: In what context?

The Hon. L. STEVENS: If you were listening, you would hear.

The Hon. Dean Brown interjecting:

The Hon. L. STEVENS: Then why are you asking the question? It was answered in the context of a health service. This bill is consistent with legislation in the ACT, the Northern Territory, Queensland and Tasmania. It does not capture the activities of recreational or sporting clubs in the community. This clause should be read in the context of the whole bill and its intent, including the grounds for which a complaint can be made.

I make one final point. The shadow minister used an example of a physio conducting aerobics, or whatever. The point is that a physio is a registered provider and would be captured by this bill as a registered health provider. The government does not support the amendment.

Mrs REDMOND: The minister said that this does not capture a recreational or sporting club in the community. I would like to know how such a club is not captured by paragraph (a) and, therefore, potentially also by paragraph (i). As the minister herself pointed out, it relates only to the preceding paragraphs, but paragraph (a) is so broad—and it is one of the preceding paragraphs being referred to—that it must capture community sports clubs because they are there to promote human health or are there for the benefit of human health.

The Hon. L. STEVENS: I will repeat what I have already said: it does not capture the activities of recreational or sporting clubs in the community. The clause should be read in the context of the whole bill and its intent, including the grounds for which a complaint is made.

The Hon. DEAN BROWN: I think it is the minister who is failing to look at this in terms of how it is interpreted. That is why I interjected and asked her to read it out. It provides:

> (i) a social, welfare, recreational or leisure service if provided as part of a service referred to in a preceding paragraph.

We go back to the first of the preceding paragraphs, which is 'a service designated to benefit or promote human health'. That could be as broad as you like. It could be your leisure walking groups on a volunteer basis, the small community groups that get together to go for a walk and do a few warm-up exercises beforehand, all on a volunteer basis. I do not know what the minister has done, but I know that I met with groups such as that and we promoted those groups as part of our health promotion program. It captures those groups because they are being conducted in the name of promotion of human health. Therefore, this definition of 'recreation and leisure service' is very broad indeed. I think I have been around this place long enough to understand what legislation means—

The Hon. L. Stevens interjecting:

The Hon. DEAN BROWN: The very fact that the minister was not willing to spell out to the house preceding paragraph (a) highlights the fact that she is trying to hide the fact that this is very broad indeed. Clearly, this net is being thrown as wide as you could possibly throw it at every volunteer health promotion program, whether it involves a professional—

The Hon. L. Stevens: Health promotion, definitely.

The Hon. DEAN BROWN: Yes, any health promotion, including walking. Any little walking group that gets together could be caught by this, particularly if someone comes along and starts doing some aerobics or whatever. I have a concern because that will then start to create expectations about liability and everything else. If we are not careful, before long we will have public liability being dragged into this area because suddenly people realise that they will be able to make complaints and have some action against anyone in these volunteer organisations.

Mr HANNA: My view is that the definition is not quite as wide as that which the shadow minister suggests. I think that the word 'service' brings some confinement to the concept that is being used in 'health service'. I doubt that a community group which sets itself up to walk through Westfield Mall at Marion, for example, would be a service. I am approaching this bill on the basis that it is better to be more broad than more narrow. I would rather allow people to make complaints and have them dealt with by the process being set up than exclude them, because up until now it is that exclusion that has led to the bill.

The health ombudsman—to use the shorthand that will probably be readily adopted—will be able to deal with trivial complaints against very small scale operations in the appropriate way if people are using the complaint mechanism in a frivolous way. I think that safeguards are built into the system which counter the argument being put by the shadow minister. It is a broad definition and I am happy with that broad definition. I put one interesting question to the minister. Given that a number of brothels euphemistically described as 'massage parlours' advertise that they provide massage to relieve anxiety and stress, would they not come under that definition of 'health service'?

The Hon. L. STEVENS: Let me say that my advice is that brothels would not come under the definition of a 'health service'. I think that might be a sexual service—

Ms Thompson: Recreational service.

The Hon. L. STEVENS: —or a recreational service—but not a health service as such. My advice is no. I support the comments made by the member for Mitchell in his very clear interpretation of the act. This is why I was saying that it is better to be broad than narrow and interpret in terms of the whole act, which was the point that the member for Mitchell was making. I have also been advised that our advice from the other complaints bodies that have exactly this definition—that is, the ACT, the Northern Territory, Queensland and Tasmania—is that they have not handled complaints in relation to community recreation or sporting clubs.

Amendment negatived.

The Hon. DEAN BROWN: I move:

Page 7, after line 31—Insert:

> (ka) a service provided by a volunteer;

This comes back to a point that I made earlier, so I will be very quick here. Again, under the health area, I am proposing that we exclude any service that is provided by a volunteer. Already there is an exclusion in there for another area:

> (k) the provision of an opinion or report and the making of a decision for the purposes of a claim under the Workers Rehabilitation and Compensation Act 1986;

I am proposing that we also exclude any service provided by a volunteer.

The Hon. L. STEVENS: The government does not support the amendment, for the same reasons as before.

Amendment negatived.

The Hon. L. STEVENS: I move:

> Page 8, line 3—Leave out 'nursing home' and insert:
> aged care facility

This is a very short amendment in the definition to amend 'nursing home' to 'aged care facility', in relation to the most

current definition of those facilities. It is simply a technical amendment, and it makes the nomenclature the same as that in the Commonwealth Aged Care Act 1997.

Amendment carried.

The Hon. DEAN BROWN: I move:

Page 8, after line 21—Insert:
'public authority' means—
(a) a government agency; or
(b) a body included within the ambit of this definition by the regulations;

This has flow-on consequences elsewhere. I will simply move the amendment here, which is to put in a definition of a public authority, which means a government agency or a body included within the ambit of this definition by the regulations. We actually deal with it later on.

The Hon. L. STEVENS: The government does not support this amendment or the consequential amendment by the opposition. We do not accept the whole tenor of the application of the act in relation to public authorities that the opposition is putting forward.

Amendment negatived.

The Hon. DEAN BROWN: I move to insert the following definition:

'putative spouse', in relation to a deceased person, means a person who, immediately before the death of the person, had been cohabiting with the person as husband or wife defacto of the person and—
(a) who had so cohabited continuously over the period of five years immediately preceding the death of the person, or for periods aggregating five years over the period of six years immediately preceding the death of the person; or
(b) who had sexual relations with the person resulting in the birth of a child;

This amendment forms part of the previous amendment to page 8, after line 21, which was just defeated.

Mrs REDMOND: I want to comment briefly on this. The definition which is there and which is agreed, obviously, by both sides—both sides having put it up—is identical to the definition of 'putative spouse' in the Family Relationships Act, although the wording is slightly different. The outcome and the essence of what it all means is the same. The only word of caution, I would suggest, is that we do contemplate, at least for a moment, that to be declared a putative spouse under the Family Relationships Act involves actually making an application to the court and having a court declaration to that effect, and that generally follows some fairly extensive evidence being provided both by affidavit and usually by evidence-in-chief, cross-examination, and so on. Under the proposed legislation (and I think we should be aware of what we are doing), the health complaints ombudsman effectively will be making a declaration of putative spouse without the need for a declaration by the court.

Mr HANNA: With respect to the member for Heysen, I think it is overstating the matter to say that the health ombudsman effectively is making a declaration that a person is a putative spouse. Again, we need to bear in mind the spirit of the bill, which is to allow various classes of people to make complaints in the case of a person who has died after having received some sort of treatment from a health service, for example. It seems to me that we would not want to restrict people complaining in those circumstances to those who had received from the court a formal declaration that they were a putative spouse.

What might happen in practice is that a form might be developed which has a series of boxes to tick. If you are complaining about a deceased person, you might need to tick which category you come under, either a close relative, spouse or whatever. It is through such a simple bureaucratic process that the ombudsman might simply accept on face value, or perhaps with some questioning, that a person has a sufficient emotional connection to the deceased to warrant their making a complaint on that person's behalf. I think that is what it is about, and I am not at all concerned by the lack of formality implied in that definition.

Amendment carried.

Mr HANNA: I move:

Page 9, after line 7—insert:

'same sex partner', in relation to a deceased person, means a person who, immediately before the death of the person, had been cohabiting with the person as his or her partner in a genuine domestic relationship and who had so cohabited continuously over the period of five years immediately preceding the death of the person, or for periods aggregating five years over the period of six years immediately preceding the death of the person;
'spouse' includes a putative spouse;

To explain this definition I need to refer members to clause 21 of the bill. The committee has just discussed the concept that where a person dies after receiving some treatment, etc., from a health or community service, obviously that person cannot make a complaint. However, it is quite appropriate for a range of people to be able to make complaints about the treatment received by a person before they died. The measure we are trying to define is a sufficient emotional connection to the person who has died. We do not want busybodies stepping in to make complaints on behalf of those who may have died after being treated by a doctor, or in a hospital, and so on. However, we want some sort of close connection to the deceased person to warrant that status.

The definitions upon which there is broad agreement include 'spouses' and 'close relatives', which are defined in the amendments to include various blood relatives, such as grandparents, grandchildren, brothers, sisters and parents. One would expect that, because we have the definition of 'putative spouse', which has just been discussed, it means that de facto couples, as they are commonly known, will be able to have the benefit of this provision. In other words, if a man and woman live together essentially as husband and wife without legal marriage, either having had a child or having lived together for five years, or five out of the last six years, in the event of one of those two people dying, the surviving de facto spouse will be able to make a complaint about the health treatment received by the deceased.

If a gay couple live together, they will share the same emotions for each other. They can be expected to feel the same grief upon the death of their partner as would be the case with a man and a woman living together, and they can expect to feel aggrieved in the same way if they perceive that there has been some fault in the health treatment of their deceased partner. I propose that 'same-sex partner' be defined in the bill so that couples of the same sex, who live together in essentially the same way as de facto spouses live together, should have the same status in respect of this bill.

Obviously, the condition of having sexual relations with a person resulting in the birth of a child is not relevant, so clearly it is not exactly the same definition as in the case of 'putative spouse'. However, the purpose is to remove discrimination, which would otherwise be inherent in the bill, against loving, committed partners in gay relationships. The term which has already been used in proposed legislation in South Australia is 'same-sex partner'. I take the opportunity to pay tribute to Frances Bedford, the member for Florey,

who has brought into this parliament a similar measure to deal with superannuation entitlements.

The definition of 'same-sex partner' has been separated from the definition of 'close relative' and the definition of 'putative spouse'. So, there is absolutely no suggestion that a gay couple living together somehow become close relatives, or somehow become putative spouses as a result of this amendment; it is an entirely separate category. Nonetheless, it needs to be in the bill so that people with the requisite emotional connection with the deceased person can make a proper complaint to the Health Ombudsman in those unfortunate circumstances.

Mr SCALZI: When speaking to other clauses, the member for Mitchell and the minister said that it would be wiser to make those provisions broader and not exclude anyone. Their exact words were that it is better to be more broad than narrow. This amendment refers to an emotional and close connection—I understand that—yet two close friends who are both of the same sex would be excluded from this provision because they are not putative spouses and they are not in a same-sex relationship. As the member for Mitchell rightly points out, this issue must be addressed, and I agree with him that this provision should be broader, but his amendment does not do that in this instance because it excludes two friends of the same sex living in a genuine, domestic, caring, long-term relationship.

I believe that two friends of either the same sex or the opposite sex who do not have a sexual relationship and are not related to each other should not be excluded. As the member for Mitchell pointed out, same-sex partners should not be given preference; we should not make a value judgment that other relationships are not of equal worth and that a person does not care for the deceased in the same way as a same-sex partner or a relative. Relatives, putative spouses and heterosexual relationships are covered, but this provision does not value other types of caring relationships.

Under federal legislation, a carer's pension or allowance is based not on being a relative or on sexuality; it is based simply on whether a person cares for, loves and maintains the other. I would have thought that the member for Mitchell and the minister would accept my broader definition of 'domestic co-dependent' because same-sex partners and friendship would have been covered by that definition. It should not be necessary to go before the district court; if a person did have an emotional, caring connection with the deceased they should be covered under this provision. We are behaving in a prejudicial way in respect of such relationships. Indeed, by addressing such issues in this way we are perpetuating the discrimination which the member for Mitchell seeks to redress.

For these reasons I cannot support such a specific amendment following the rejection of my definition which would have encompassed all groups. I believe that an emotional, caring, close connection is based more on human values that are not excluded because of sexuality. It is important that we address this issue and that we are consistent if we want to give equal value to long-term caring domestic relationships. For those reasons I oppose the amendment.

Mr HANNA: The logic of the argument is that the member for Hartley has indicated that he wants to include in these categories not only same-sex couples but also other categories of people who live together as domestic co-dependents. Through his own amendment, which we dealt with earlier, he is saying that he approves of same-sex couples being included in this provision. So, if he votes against this proposition, which is inherently part of the proposition he put forward earlier, then he is a hypocrite and is displaying anti-homosexual prejudice. That is the only possible reason there can be for knocking back an amendment that was inherently a part of the proposition he put forward earlier.

The Hon. L. STEVENS: The government supports the amendment and the principle of the motion, that is, that close connections to a deceased person be the same as those provided for relatives and de facto partners. We agree that they should apply to same sex partners. In relation to the points made by the member for Hartley, if he looks at clause 21(j), he will see that the health and community services ombudsman in any event has the discretion to recognise any legitimate person and can, in the public interest, accept a complaint from them. We support the amendment.

Amendment carried.

The Hon. DEAN BROWN: I move:

Page 9, after line 7—Insert:
'spouse' includes putative spouse;

Amendment carried.

The Hon. L. STEVENS: I move:

Page 9, after line 8—Insert:
'volunteer' means a person who receives no remuneration for acting in a particular capacity (being a capacity associated with the provision of a health or community service).

This gives the definition of a volunteer. The interpretation is necessary to support the amendment to clause 22, which the government will be putting up later. In that regard, that is where we propose a complaint be directed towards the organisation in which the volunteer works and not directly to the volunteer. It is self explanatory.

Amendment carried.

The Hon. L. STEVENS: I move:

Page 9, after line 8—Insert:
(2) A registration authority will not be taken to be a health or community service provider for the purposes of this Act.

This amendment was put up to reassure the registration authorities that they would not be taken to be the health or community service provided for the purposes of this act. They asked for this and we have gladly put it up.

Amendment carried; clause as amended passed.

New clause 3A.

The Hon. DEAN BROWN: I move:

Page 9, after line 8—Insert new clause as follows:
Application of act
3A. (1) Subject to subsection (2), this act applies to or in relation to a health or community service provided—
(a) by a public authority, whether or not the service is provided for fee or reward; or
(b) by a person or body, other than a public authority, who or that provides that service for a fee or other form of reward that is charged or payable at normal commercial rates.
(2) If—
(a) a service is provided by an approved provider under the Aged Care Act of 1997 of the commonwealth; and
(b) a complaints resolution mechanism has been established under division 56 of part 4.2 of that act in relation to the service, then this act does not apply to or in relation to the service.

Even though the definition of 'public authority' went down, I still move this, although it is linked in with the definition of 'public authority'. This was all part of a broader amendment, that the act applied in relation to a health or community service where it was provided by a public authority whether or not the service is provided for fee or reward (in other words it could be free or paid for by public authority), or (b),

a person or body other than a public authority who or that provides the service for a fee or other form of reward that is charged or payable at normal commercial rates. I am dealing only with subclause (1) at this stage, because the next part relates to something else.

This is part of our exclusion of volunteers, so it relates only to where someone goes along and pays for a service or, if it is a public body, any hospital or anything like that, then it can be free. But the reward part applies only in the non-government sector.

The Hon. L. STEVENS: The government does not support this amendment, which will have the effect of excluding those services that are provided free of charge. In most instances these services are provided to the most disadvantaged groups and individuals. Removing the right to complain by these groups will only further disadvantage them. Just because a service is free is not sufficient argument to justify its exclusion from this bill. Basically, it suggests that you have no right to complain about a bad service, even if it may cause harm. This proposition would alienate the right of a consumer to make a complaint.

The health and community services ombudsman will ensure that the complaints process is as informal and non-intimidating as possible. It is likely that the provider, if they are committed to the service they are providing, would want a quick and informal resolution of the complaint to enable them to improve and/ or continue with what they believe is worthwhile doing.

The Hon. DEAN BROWN: What the minister indicated then is quite wrong. She implied that this meant that people who get a free service would not be able to lodge a complaint, and that is wrong. We all know that you can go into public hospitals free of charge and get a lot of other free public services, and people would be able to complain because they would come under a public authority. So, the claim by the minister is quite wrong. Those people who are using that free public service would be able to lodge a complaint and have it investigated, as they can now, through the ombudsman. There is no difference: they can do that now through the ombudsman and they would be able to do that under the amendment that I have put forward.

The Hon. L. STEVENS: However, in paragraph (b) we are talking about a person or body other than a public authority, and that is the point.

Mrs REDMOND: My understanding of the intention of paragraph (b) was simply that organisations such as Meals on Wheels, which charge a fee but not a commercial fee, would not be captured by this amendment.

The Hon. L. STEVENS: The most important point is that we do not need this; the definitions as they stand now are fine.

New subclause (1) negatived.

The Hon. DEAN BROWN: The second part of the amendment, subclause (2) of new clause 3A, is a significant amendment indeed. The act with which we are dealing allows aged care facilities that come under the commonwealth act to be investigated. I raised this matter during my second reading speech and made the point very strongly indeed that people should not be able to double dip.

The Hon. L. Stevens: They won't be.

The Hon. DEAN BROWN: They will be able to double dip. Even with the minister's amendments, they will still be able to double dip, because it will be the prerogative of the health and community services ombudsman whether he allows a separate and independent investigation to take place. I have argued throughout that there should be no double dipping. Therefore, if a complaint mechanism exists, it should be dealt with by the complaint mechanism under the higher authority, which is the federal act. If there is no complaint authority there, it should be dealt with under this measure. However, there should not be the right to go both ways, and that is what would apply.

The Hon. L. STEVENS: The government does not support this amendment. We also consider this to be a very important point. No-one in this committee would be unaware of the concerns in relation to the treatment and care of people in nursing homes in recent years. That is so despite the fact that we have a complaints process supposedly operating in the commonwealth field. We are saying that those people at aged care facilities are extremely vulnerable, and they, too, should have recourse to a consumer oriented, accessible way of resolving complaints.

The Hon. Dean Brown: They've got that.

The Hon. L. STEVENS: I don't believe that they have, and I think recent events have demonstrated that. As we have stated previously, we expect that protocols will be in place between the health and community services ombudsman and the aged care facility, just as there will be with the ombudsman and the registration authorities. So, when a complaint is received the first discussion point will be, 'Who will handle this complaint?' The same protocols and processes that will need to be put in place in relation to the registration boards will also apply here. So there will not be double dipping for that reason. We have had a lot of support for this from the aged care sector. I will put some of that on—

The Hon. Dean Brown: They prefer our amendment to yours.

The Hon. L. STEVENS: Your amendment is to take them out. This is not what is said in letters to me, and I will put a couple of them on the record. I received a letter from Aged and Community Services, SA and NT Inc., which states:

> ACS, SA and NT, supports protection of the interests of older people and we welcome initiatives which support their dignity, equity and rights in all facets of their lives, including the right to adequate mechanisms for the resolution of complaints or concerns which they may have regarding service provision. [We] therefore welcome the intent of this bill.
>
> Commonwealth-subsidised aged care services are, of course, subject to the complaints resolution scheme under the Aged Care Act 1997 and we are pleased to note that the HCS bill 2002 now recognises the complementary state and commonwealth mechanisms for addressing complaints. This is an important provision which ensures that providers are not required to deal with multiple authorities in resolving a complaint.

That is what the protocols are all about. The letter continues:

> The members of ACS, SA & NT look forward to the implementation of the bill in a manner that ensures the rights of service consumers in a manner that is effective and efficient for all stakeholders to understand and work with.

That letter is signed by the chief executive. The Australian Nursing Homes and Extended Care Association, South Australia Incorporated (ANHECA), also wrote to me and, in part, the letter states:

> I would also like to take this opportunity to express our gratitude for the recent opportunity to meet with your adviser Mr Danny Broderick regarding the Health and Community Services Complaints Bill . . . Danny was most accommodating and we are very pleased that a compromise was reached which will provide a sound approach towards providers under the commonwealth Aged Care Act 1997.

That letter is signed by Michelle Lensink, the Executive Officer. I also have a letter from the ACH group, which states:

> Dear Minister,
>
> [The] ACH group strongly supports protection of the interests of older people. We welcome initiatives that support their dignity, equity and rights in all facets of their lives, including the right to adequate mechanisms for the resolutions of complaints or concerns which they may have regarding the service provision. We acknowledge, as does the bill, that this health and community services complaints mechanism must work with the existing commonwealth resolution scheme under the Aged Care Act 1997. We are keen that the two mechanisms are needed and work together in a complementary way and add our support to the recognition of this in your bill. We look forward to the implementation of the bill in a manner that ensures the rights of service consumers in a manner that is effective and efficient for all stakeholders to understand and work with . . . [Mike] Rungie, Chief Executive Officer.

Again, I have a similar letter from the Helping Hand Aged Care Centre signed by Ian Hardy, Chief Executive Officer. In part, the same things are said, including:

> We therefore welcome the intent of this bill. We look forward to working with the government in achieving a balanced and effective process for ensuring fair outcomes for consumers and providers in the provision of health care and support services.

A letter from Alzheimer's Australia SA, signed by their Executive Director, Mr Alan Nankivell, states:

> It is the view of the Alzheimer's Association that this service is required because the principles underpinning a proposed charter that are listed on page 15 of the bill are not adhered to for a significant number of people with dementia and their families.

The letter contains a range of statements supporting the bill, including the following:

> Several examples can serve to highlight this problem. First, people with dementia have difficulty accessing residential facilities for the following reasons: firstly, the limited number of beds available; secondly, the financial limitations due to the limited funding paid by the commonwealth government; and, thirdly, the difficulty of managing people with challenging behaviours in residential facilities. Thus, they are unattractive to service providers because of the resourcing needed to provide appropriate care.

Mr Nankivell concludes by saying:

> I would be pleased to assist in the further development of this most worthwhile bill.

In our consultations with a wide range of aged care providers we have found that they are not frightened about what we are proposing. This is workable, protocols will be established between aged care providers and the ombudsman in the same way as they are with other bodies, and out of this we can get the best mechanisms to enable complaints to be resolved and dealt with, without the double dipping to which the shadow minister is referring. We do not support the amendment.

The Hon. DEAN BROWN: I acknowledge the fact that, when we had our discussions on this measure, I put a very strong case, supported by my colleague the member for Heysen, in which we argued that the bill as proposed and as originally amended by the government was inadequate in this area. I am willing to acknowledge the fact that there is a subsequent amendment, that the government has amended the original bill, and now it has amended that subsequent amendment, and we will come later to a further amendment to clause 26 on page 20.

I have spoken to members of the aged care sector and asked them whether they are entirely happy with the government's proposal. They indicated to me that the government's proposal is a significant improvement on where they were in the original bill, and they have thanked me for the pressure that we applied to the government in making sure that this amendment was achieved. However, they said that they would still prefer our position compared with the government's. Therefore, I have moved our amendment because they see our provision as better than that of the government, but I acknowledge that the government has moved a significant way, but still not the whole way, to adopting a position where there is no ability to double dip, whereas there is still the ability to double dip under the government's proposal.

The Hon. L. STEVENS: Yes, we did make amendments and we did it because we wanted to ensure that we worked through the issues with groups. I know that the shadow minister thinks it was his pressure on the government that forced us to do this, but I assure him that it had nothing to do with him.

The Hon. Dean Brown: You have amended it twice since the original bill.

The Hon. L. STEVENS: That is fine, but let me assure the honourable member that it had nothing to do with him. It had everything to do with us wanting to have good cooperative relationships with the sectors and our willingness to sit down and work through the issues with them. I can assure the shadow minister that it had nothing to do with his pressure.

New subclause (2) negatived.

Clause 4.

The Hon. DEAN BROWN: I move:

> Leave out subclause (2) and insert:
>
> (2) The office of the HCS ombudsman will be held by the person for the time being holding the office of state Ombudsman.

Members will recall that earlier we dealt with an amendment to call this person a commissioner, and this amendment provides that the office of the health and community services ombudsman will be held by the person for the time being holding the office of the state ombudsman. I will not go back through all the arguments, but there are considerable cost savings to be achieved by having it under the office of the ombudsman. It overcomes the problem that the Speaker himself spoke about earlier, and I was pleased to have his support on this very important issue.

The Hon. L. STEVENS: The government does not support this amendment at all, and the most important reason that we do not support it is that we believe that there needs to be a separate health and community services ombudsman. We believe it is important that this is the final check and balance and that, if there is an issue in relation to the processes and the procedures of the health and community services ombudsman, people have recourse to the state ombudsman to complain about the health and community services ombudsman. That is the reason why we do not support the coalescing of both roles.

Amendment negatived.

Mrs REDMOND: I note that clause 4(2) provides that the ombudsman will be appointed by the Governor. What processes will be gone through to enable that appointment by the Governor?

The Hon. L. STEVENS: My advice is that we will have a process to select a person to that position in the normal way that one appoints to a senior position, through advertisement. Following this, there will be a recommendation to the Governor.

Mrs REDMOND: I will come to the point. Around legal circles it has been widely anticipated that your adviser, who has been closely involved in the preparation of this legislation, intends to be the health and community services ombudsman.

The Hon. L. Stevens: I hope not.

Mrs REDMOND: I am glad to hear you say, 'I hope not,' because I think it would be entirely improper, because of the conflict of interest of someone so closely involved in the preparation of legislation, for that person to apply for and be appointed to that position. I am seeking an assurance from the minister that that will not be the case; that that person will not be appointed the health and community services ombudsman.

The Hon. L. STEVENS: I think your question is very much out of order—absolutely out of order, actually.

Mrs REDMOND: Mr Chairman, I do not accept that the minister has the right to declare questions out of order.

The CHAIRMAN: The minister can make comment. She is not saying that you cannot ask a question, but she disagrees with the content of your comment.

The Hon. L. STEVENS: I will be clear with everyone. This position will be advertised according to the rules that we as a government need to follow. It will be advertised widely because we want to get the very best person we possibly can to fill this position.

An honourable member: It could be Dean.

The Hon. L. STEVENS: Maybe when Dean retires he might consider applying for this position—however, I don't know whether he would get it. It will be a position filled on merit and it will be widely advertised according to the processes that we as a government need to go through. I understand it would be a recommendation from me to the Governor based on the proper processes from the Office of the Commissioner for Public Employment.

The Hon. DEAN BROWN: The minister said that she would be making a recommendation to the Governor. I presume this would be an issue that would go to cabinet and executive council.

The Hon. L. STEVENS: Let me assure the minister and the member for Heysen that we will be following the processes of government that are required through the Office of the Commissioner for Public Employment to appoint this person, and those processes will be completely in line with all the rules of a merit based selection process.

Mrs REDMOND: Does the minister resist the idea that I put forward; that is, it would be inappropriate because of conflict of interest for a person closely involved in the development of the legislation to then apply for the job?

The Hon. L. STEVENS: The minister has no comment to make on your suggestion.

Clause passed.

Clause 5.

The Hon. DEAN BROWN: If I could clarify my position, I was to oppose this clause based on the fact that this was to be rolled into the ombudsman's office. We have lost that previous amendment, so I will not pursue it.

Clause passed.

Clause 6.

The Hon. DEAN BROWN: This again is a subsequent amendment, but because it is linked with the position of the ombudsman I will not now subsequently move it.

Clause passed.

Clause 7.

The Hon. DEAN BROWN: I will not move this amendment because the earlier amendment was defeated.

Clause passed.

Clause 8.

The Hon. L. STEVENS: I move:

Page 11, after line 19—Insert:

(ba) to review and identify the causes of complaints and to—

(i) recommend ways to remove, resolve or minimise those causes; and

(ii) detect and review trends in the delivery of health services; and

This amendment essentially strengthens the health and community services ombudsman's ability to review and identify the causes of complaints and recommend ways to remove, resolve and minimise those causes and address trends in health and community service delivery.

I have to say that I am very pleased that this was something with which we both strongly agreed. These are essential parts of the role. First, causes of complaints, to review and identify; secondly, recommend ways to remove, resolve and minimise those causes; and then thirdly and very importantly, to detect and review trends in the delivery of health services. Perhaps this is one that we have not spoken much about tonight because not only does the ombudsman have a role in individual resolution of complaints, the ombudsman has a very important and powerful role in a whole system of monitoring, reviewing and reporting on overarching trends in health services. I was very pleased that we both agreed with the amendment.

The Hon. DEAN BROWN: I thank the minister for her glowing terms of our original amendment and I am delighted that they are supporting it.

The Hon. L. STEVENS: Let me say that I am pleased that the shadow minister is pleased, and I am sure that we will move happily through the rest of the bill.

Amendment carried.

The Hon. DEAN BROWN: I move:

Page 12, lines 16 and 17—Leave out paragraph (l)

This paragraph provides:

(l) to perform other functions conferred on the Health and Community Services Ombudsman by the minister or by or under this or other acts.

I know that a clause such as this, or similar to this, is often used in legislation. But this is quite different in that, in this case, the ombudsman has very wide powers indeed. So, you are giving powers or functions that are not specified here—I vary between 'functions' and 'powers'. You are giving them functions here for which they have very wide powers and, therefore, you are potentially opening up a significant area of investigation which may not be suitable for the ombudsman but which may, in fact, be directed by the ombudsman. I have looked to the guidance of parliamentary counsel, and I have looked at a couple of other acts where clauses are sometimes used without reference to the minister and sometimes used with reference to the minister. But they are used in cases where there are invariably lesser powers. Certainly, we have already acknowledged from the debate here that we are dealing with very broad circumstances and also very specific powers of investigation—looking at documents and everything else, such as entering premises. I do not believe that power ought to be given to the ombudsman by this clause, and I will oppose it.

The Hon. L. STEVENS: We do not support this amendment. We think this is standard wording for acts. It is identical to the previous government's health complaints bill. I do not think the shadow minister was in the house when I gave my final summing up of the second reading contributions, but he must have had a terrible memory lapse, because his own bill had this clause in it.

The Hon. Dean Brown: This is now much wider.

The Hon. L. STEVENS: The member's own bill was wide.

The Hon. Dean Brown: Our own bill related specifically to paid services.

The Hon. L. STEVENS: No, I do not believe that is the case.

The Hon. Dean Brown: You have wide services, and complete coverage of your public sector, whether it was paid or not, and that power exists there now. But you have now extended that to non-paid services—

The Hon. L. STEVENS: That is right.

The Hon. Dean Brown: —free services—in the very broadest definition of community service.

The Hon. L. STEVENS: I cannot recall—I will go back and look at the member's bill for the next occasion that this bill is debated in the other house. We will see exactly what the member's bill said in relation to this. But this is exactly in the member's bill—

The Hon. Dean Brown: It is in my bill; I am not saying that.

The Hon. L. STEVENS: Yes, the member's previous one.

The Hon. Dean Brown: The minister's bill is much broader than the original bill.

The Hon. L. STEVENS: I think that the member's bill is also broad—that first one. I disagree with the member's argument. It is a standard wording for acts: as I said, it is identical to the member's previous bill, despite the points that the member is just making. It is in many other acts. Essentially, we do not support the amendment.

Amendment negatived.

The Hon. L. STEVENS: I move:

Page 12, after line 17—Insert:

(2) The HCS ombudsman must, in providing information and advice, and in the assessment and consideration of any complaint, take into account, to such extent as may be appropriate, the position of persons within special needs groups.

(3) For the purposes of subsection (2), special needs groups are particular classes of persons who, because of the nature of the classes to which they belong, may suffer disadvantage in the provision of services unless their needs are recognised.

This amendment was suggested by the shadow minister and the government was happy to accept it. Obviously, the shadow minister would like to comment on this amendment. The amendment addresses issues arising out of social disadvantage and the need to ensure that the bill operates fairly. We have provided that the health and community services ombudsman must ensure that the needs of special needs groups are considered in his or her actions. Although the bill is universal in its approach, it recognises that individual circumstances need to be dealt with on the basis of their needs and, under this bill, the HCS ombudsman has the capacity to do this.

This amendment ensures that the ombudsman will make special consideration for people from these groups. I guess that the amendment is premised on the principle of fairness for consumers and service providers alike in addressing complaints. As we know, the ombudsman has an obligation to ensure that all processes in hearing and addressing complaints are fair and reasonable.

The Hon. DEAN BROWN: I appreciate the government's support for this amendment, which we discussed at one of our meetings. I believe it is an important amendment, which deals with groups of people with special needs. It ensures that the ombudsman, in assessing complaints, takes into account the needs of those people and the fact that they may have needs quite different from those of other people and that those special needs must be taken into consideration. I support the amendment and I thank the minister for also supporting it.

Amendment carried; clause as amended passed.

Clauses 9 and 10 passed.

Clause 11.

The Hon. L. STEVENS: I move:

Page 12, lines 29 to 35—Leave out subclauses (1) and (2) and insert:

(1) The HCS ombudsman—

(a) may, after consultation with the minister, establish such committees as the HCS ombudsman considers appropriate; and

(b) must, at the direction of the minister, establish a committee or committees in accordance with that direction,

to assist the HCS ombudsman in the performance of the HCS ombudsman's functions under this act.

This amendment relates to the establishment of committees by the health and community services ombudsman relating to that officer's tasks and role. The government has made this change following representations from a range of community groups who believed that the wording of the initial clause, 'made with the approval of the minister' was possibly restricting the ability of the ombudsman to establish committees as that person saw fit, and perhaps clashed with the independence of the ombudsman in relation to the minister. We have reached a compromise with respect to that.

We have still suggested and put forward, 'after consultation with the minister', because we believe that, in relation to possible costs of such a committee or other issues of a mechanical nature, it is fair enough for 'after consultation with the minister' to be included. We also include, 'Establish such committees as the ombudsman considers appropriate', and paragraph (b) really mirrors the initial paragraph (b); in other words:

. . . must, at the direction of a minister, establish a committee or committees in accordance with that direction.

That may well be in terms of a particular set of circumstances, or health or community service provision which the minister directs that the ombudsman look into or monitor. So, that is why that sentence is there, and the final sentence binds them together. That is the amendment standing in my name.

The Hon. DEAN BROWN: We had amendments, and I am now willing to accept the amendments put forward by the minister. I will highlight an interesting set of circumstances. The original health complaints bill that I introduced had a clause referring to obtaining the approval of the minister, which was very similar to a clause that the current government included in its original bill. When my bill was before the parliament a number of people, including Ian Yates, complained very bitterly and wrote to me about the level of control that this gave to the minister. So, I agreed to an amendment to remove that.

The present government introduced its bill and, in fact, it included 'must have the approval of the minister'. It is rather interesting, because I remember that at one stage the now minister, when in opposition, raised this as an issue of concern when objecting to my original bill.

The Hon. L. Stevens: We never debated your bill.

The Hon. DEAN BROWN: Yes, but I remember your raising a concern. We did not debate it, because I can recall that the night we wanted to debate it you were not ready. So, we could not debate it but we were ready; I think it was November 2001. You asked for it to be deferred.

We have removed the need to get the approval of the minister but have allowed the minister to require a committee to be established if the minister thinks that it is appropriate to do so. I think that is a fair and reasonable balance, and I am happy to accept that. As I said, I had raised this as a concern because of the earlier complaint that had been lodged with me, and I think we have come to a reasonable compromise.

The Hon. L. STEVENS: I thank the shadow minister for his comments and his support of the amendment. I have to make something clear for the record. I cannot let it stand that the previous minister's bill was not debated in the term of the last government because I wanted to have it deferred. The Independents at the time believed that we might be able to sort something out between the two bills. My clear memory is that we had one meeting and no more, and the whole lot lapsed.

The CHAIRMAN: Is the member for Finniss proceeding with his amendment to clause 11, page 13, line 6?

The Hon. DEAN BROWN: No, because effectively we have already dealt with it.

Amendment carried; clause as amended passed.

Clause 12 passed.

Clause 13.

The Hon. L. STEVENS: I move:

Page 13, lines 20 to 22—Leave out subclause (1) and insert:

(1) The HCS Ombudsman's staff consists of—

(a) Public Service employees assigned to work in the office of the HCS Ombudsman under this act; and

(b) any person appointed under subsection (1b).

(1a) The minister may, by notice in the *Gazette*—

(a) exclude Public Service employees who are members of the HCS Ombudsman's staff from specified provisions of the Public Sector Management Act 1995; and

(b) if the minister thinks that certain provisions should apply to such employees instead of those excluded under paragraph (a)—determine that those provisions will apply,

and such a notice will have effect according to its terms.

(1b) The HCS Ombudsman may, with the consent of the minister, appoint staff for the purposes of this act.

(1c) The terms and conditions of employment of a person appointed under subsection (1b) will be determined by the Governor and such a person will not be a Public Service employee.

This amendment is comprised of precisely the same words as in the state Ombudsman Act in relation to staffing for the HCS ombudsman and the issues relating to the exclusion of Public Service employees, and we think this is entirely appropriate. This provision is comparable to similar provisions in the previous government's legislation.

Amendment carried; clause as amended passed.

New clause 13A.

The Hon. L. STEVENS: I move:

Page 13, after line 25—Insert new clause as follows:

Budget

13A. The HCS Ombudsman's proposed budget for a particular financial year is to be submitted for examination by the Economic and Finance Committee of the parliament by the end of the preceding calendar year.

The Hon. DEAN BROWN: We support this amendment. We put forward the same amendment to which the government agreed. Under this amendment, the proposed budget for the ombudsman is sent to the Economic and Finance Committee to be assessed before the end of the preceding calendar year. This is what we did for the water catchment boards and a few other boards. I think everyone agrees that the process has worked pretty well with the water catchment boards and that it should work here.

New clause inserted.

Clauses 14 to 18 passed.

Clause 19.

The Hon. L. STEVENS: I move:

Page 15, line 27—After 'to be provided with' insert 'appropriate'.

This amendment ensures that when considering what a consumer is entitled to, consideration is also given to the reasonableness of expectations that a consumer may have of a service provider and the services that they may provide.

The Hon. DEAN BROWN: I raised this issue during the second reading debate and it revolved around the fact that a person should be entitled to be provided with health or community services in a considered way that takes into account his or her background needs and wishes. I expressed concerns about the words 'needs and wishes' and said that it really becomes very much a subjective thing and that it should be more along the lines of appropriate treatment. The minister has picked up my word 'appropriate' and put it in earlier under 'appropriate health and community services'. This is an improvement, but I do not believe it is as good as the amendment we put forward because, frankly, I do not like the words 'needs and wishes' because they are very subjective in the eyes of the so-called user of the service. I know the medical profession was very concerned. It and others felt very strongly about this issue and raised the matter with me. I will support the minister's amendment, but will still move a subsequent amendment because I believe it is a further improvement on the amendment now being put by the minister.

The Hon. L. STEVENS: The amendment as I have moved it is entirely appropriate. The principle is about services that should be provided in a considerate way that takes into account the needs and wishes of the consumer. It is not about demands for inappropriate services. As such these words are appropriate to the charter. They are also consistent with standard wording in the charters in the ACT, Northern Territory, Queensland and Tasmania. In our view this amendment addresses the opposition's concerns—and the shadow minister has conceded that to a degree—whilst supporting the right to have the right to have the needs and wishes of consumers to be considered, and we think that is entirely appropriate.

Amendment carried.

The Hon. DEAN BROWN: I move:

Page 15, line 28—Leave out ', needs and wishes' and insert:

and any requirements that are reasonably necessary to ensure that he or she receives appropriate treatment (if relevant)

Even though we have put the word 'appropriate' twice in the same clause, I think it is still appropriate and reasonable that it be done. The minister is trying to imply that, if they adopted my amendment, suddenly the overall desires of the patient would not be considered. In fact it would be. If we go back to clause 19(a), it provides that a person should be entitled to participate effectively in decisions about his or her health, well-being and welfare. So, we have already fundamentally established that point. The minister claims that people have a right to have a say: I have given those people the right to have a say under clause 19(a), but it is inappropriate that they have a wish because a wish can be anything.

A classic example would be one who goes into hospital with a stomach-ache. They have seen Prince Alfred Hospital

on television the night before and suddenly they think they need an MRI because they have a stomach-ache. It is not an unrealistic expectation—doctors tell me that all the time. Recently I discussed this issue with doctors. The expectations and wishes of people are much higher now without any real basis or understanding of what they want. I know the medical profession and other professional groups back me up strongly when I say that this amendment should be adopted.

The Hon. L. STEVENS: We do not support this amendment. In relation to the example that the shadow minister has just given of a person wishing to have an MRI for a stomach-ache, the bill provides:

(c) that a person should be entitled to be provided with appropriate health or community services in a considerate way that takes into account his or her background, needs and wishes.

It says not 'accedes to' but 'takes into account'. I do not think there is any necessity for the amendment; what we have there is fine.

Mrs REDMOND: I support the shadow minister on this matter. I think that 'needs' and 'wishes' is far too subjective a terminology. I accept that the minister's earlier amendment inserting the word 'appropriate' has improved things, but if you look at what would then flow from this amendment by the member for Finniss we would have a person entitled to be provided with appropriate health or community services in a considerate way that takes into account his or her background and any requirements that are reasonably necessary to ensure that he or she receives appropriate treatment, if relevant. It seems to me that that is far less subjective and provides sufficient safeguards for the consumer but, at the same time, does not place unrealistic burdens on those who are providing health services.

Amendment negatived; clause as amended passed.

Clause 20 passed.

Clause 21.

The Hon. L. STEVENS: I withdraw my first amendment.

Mr HANNA: I move:

Page 17, after line 21—Insert:

(ga) if the health or community service user has died—a close relative, same sex partner, former guardian or person representative of the deceased person; or

My amendment is consequential upon the definition of 'same sex partner' already agreed to and inserted into the bill. It gives that definition some work to do and therefore supersedes the amendments that stood in the name of the shadow minister and the minister. I need say no more about it, the principle having been already accepted by the house.

Amendment carried.

The Hon. L. STEVENS: I move:

Page 17, line 24—Leave out 'whom the HCS Ombudsman considers' and insert:

, or any body that, in the opinion of the HCS Ombudsman,

The clause itself sets out who may make a complaint about a health or community service. This includes a user of a service, a service provider (if the service is being provided because of the actions of another provider), the minister, the Chief Executive of the department or another person authorised by the ombudsman in the public interest. The clause determines that a user of a health or community service may complain to the HCS ombudsman and is required for the operation of the act. The amendment to this clause is essentially a technical correction. It allows for a body, in addition to a person, to make a complaint if the HCS ombudsman considers they should be able to.

Amendment carried; clause as amended passed.

Clause 22.

The Hon. L. STEVENS: I move:

Page 17, line 33—After 'necessary' insert:

or was inappropriate

This is not contentious: the shadow minister also supports it. The amendment is self-explanatory and clarifies the matter.

Amendment carried.

The Hon. L. STEVENS: I move:

Page 18, line 5—Leave out 'that a health or community service user was not provided' and insert:

that a health or community service provider has acted unreasonably by failing to provide a health or community service user

This amendment was suggested by members of the opposition, and we appreciated the opposition's help in this regard.

Amendment carried.

The Hon. DEAN BROWN: I move:

Page 18, lines 24 to 26—Leave out paragraph (j).

In the discussions we had on this issue the government said that it would look at this. It is an issue that has concerned some of the professional groups considerably, and some of the professional registration bodies were also concerned about it. Under this provision:

A complaint may be made (and may only be made under this act) on one or more of the following grounds:

(j) that a health or community service provider has acted unreasonably by not taking proper action in relation to a complaint made to him or her by the user about a provider's action of a kind referred to in this section.

The concern is that, if someone has made a complaint and you have not acted on that complaint in terms of providing a service, that becomes a ground for a further complaint. In this particular case, the professional person may, in fact, strongly disagree with what the person has asked for in lodging the complaint, but that becomes a ground for a further complaint. Therefore, as I said, the professional groups argue very strongly for this to be deleted and, from my recollection, the registration bodies also argue very strongly for this to be deleted. So, I move that it now be deleted.

The Hon. L. STEVENS: The government does not support this amendment. Essentially, this clause relates to good complaint-handling procedures as part of quality services. I think that, in this day and age, complaint-handling mechanisms and procedures are part of good management and certainly part of quality services.

The second important point relates to the phrase 'that a health or community service provider has acted unreasonably'. That is a further safeguard in that clause. Words such as 'reasonable', 'unreasonable', 'reasonableness' and 'appropriate' are peppered throughout this legislation because it is about being reasonable and appropriate and, therefore, we disagree with the opposition and will not support the amendment.

Mrs REDMOND: Take the case, though, of a person who complains because their Meals on Wheels meal is delivered cold and they are unhappy. They are entitled to go to the ombudsman about that complaint, but they are also entitled to go to Meals on Wheels. If Meals on Wheels simply says, 'We are terribly sorry,' and does nothing further, the complainant is entitled to complain about Meals on Wheels under this provision for not taking action in relation to their complaint.

The Hon. L. STEVENS: The first thing that the ombudsman would do is refer the person back to Meals on Wheels

to deal with it at a local level. But, in relation to not taking proper action about a complaint made to the provider, what is reasonable in terms of how you might handle that complaint? The ombudsman would have to—

Mrs Redmond: Investigate.

The Hon. L. STEVENS: The ombudsman would essentially investigate what was reasonable but, if Meals on Wheels heard the person, gave them a reason and resolved the issue, I put it to you that that is behaving in a reasonable way in terms of handling a complaint.

Mrs REDMOND: If Meals on Wheels heard the person out and simply said, 'Sorry,' and took no further action, my submission is that, under the ordinary reading of this legislation and the way it is drafted, that would capture a further complaint to Meals on Wheels.

The Hon. L. STEVENS: This comes under the provision of grounds on which a complaint can be made. The person goes to the ombudsman and tells their story. The ombudsman says, 'I think that Meals on Wheels acted reasonably and there are no grounds for complaint. Goodbye,' and there is no investigation.

Amendment negatived.

The Hon. DEAN BROWN: I move:

Page 19, after line 4—Insert:

(3a) Subsection (1)(a) does not apply in relation to a decision to discontinue the provision of services to a particular person where the health or community service provider is under no duty to continue to provide those services.

This is an issue that the professional groups feel very strongly about. Particularly in the medical profession, but in other professions as well, there is the right for a practitioner to say, 'I am discontinuing a service.' That is a very fundamental right, and let me explain why.

Ms Thompson: At times there is an obligation to discontinue.

The Hon. DEAN BROWN: To discontinue a service, yes. Let me give an example. Say a female patient of a doctor starts developing what she thinks is a relationship with that doctor. The doctor is required to terminate that relationship immediately because it is in breach of professional conduct to do so. Therefore, the doctor is entitled to say at that stage, 'No, if I continue to provide a service here, I am potentially in breach of professional ethics and therefore I am going to terminate that service,' and so they terminate the service. There should be no penalty whatsoever on the doctor for terminating the service and not providing any further service to the person involved.

Another issue could be that the patient was expecting to be over-serviced according to Medicare guidelines and, again, the doctor is able to say, 'No, I would be in breach of professional conduct in doing so and therefore I will not provide the service.' It is very important that we protect people who provide a professional service so that withdrawing a service for reasons of professional conduct is a fair and reasonable basis on which to do so, and is not and should not be the ground for an investigation. There are plenty of other examples, as well. I know, for instance, that so-called patients harass almost daily particular doctors for services. I am sure it occurs equally with dentists and other professionals.

Mrs Redmond: Especially dentists!

The Hon. DEAN BROWN: It is probably less likely with dentists simply because of the nature of the work dentists perform. I know this is a very real issue in the medical profession, and the AMA is very strong on this point. Other professional groups are also very strong on this issue and they say they must have that right, otherwise they are caught between a rock and a hard place. If they say, 'We will no longer provide a service,' the patient can say, 'If you don't provide this service, I am going to report you to the health ombudsman.' They then subject themselves to a full investigation, and that is unfair. Therefore, I am arguing that this amendment should be supported because it is in the nature of making sure that we have appropriate standards within the professional groups.

The Hon. L. STEVENS: The government does not support the amendment, because we believe it is an unnecessary amendment. Clause 22 provides:

(1) A complaint may be made (and may only be made under this Act) on one or more of the following grounds:

(a) that a health or community service provider has acted unreasonably by not providing a health or community service, or by discontinuing (or proposing to discontinue) a health or community service provided to a particular person.

That word 'unreasonably' moves the balance so that it is fair between the provider and the consumer. In our view, because of that word, the other amendment is not necessary.

The Hon. DEAN BROWN: I do not accept that, and I know that professional groups do not accept that as being adequate. That then brings the ombudsman into questioning immediately the health provider, in this case the doctor, as to why he discontinued the service and his having to justify it. In fact, a person can almost blackmail a doctor and say, 'If you don't continue this service, I'll lodge a complaint.'

The Hon. L. Stevens interjecting:

The Hon. DEAN BROWN: It does. I think the medical profession has a better understanding of this and the relationship with patients than the minister. They understand the circumstances that arise and they are arguing, very strongly indeed, for this amendment being proposed by the opposition—and I support it. It was backed up, as well, by a number of registration boards that also felt strongly this should be included to protect the professional groups.

The Hon. L. STEVENS: The shadow minister has put forward this amendment on behalf of the medical profession and other professional groups. This bill is about fairness to all parties, that is, the professions on one side and the consumers on the other.

The Hon. Dean Brown interjecting:

The Hon. L. STEVENS: I disagree with that. I believe that the opposition's amendment does not have that balance. In fact, clause 22(1)(a) has exactly that balance.

Amendment negatived.

The Hon. L. STEVENS: I move:

Page 19, after subclause (4)—Insert:

(5) If a complaint relates to an act or omission of a volunteer while working for another person or body, the complaint will be taken to be a complaint against the other person or body (as the case may be).

The government proposes this amendment to deal with the issue of volunteers being captured under this legislation. This legislation applies to health or community services being provided by a volunteer. This amendment is self-explanatory. If a complaint relates to an act or omission of a volunteer while working for another person or body, the complaint will be taken to be a complaint against the other person or body. The effect of this amendment ensures that a complaint is directed towards the organisation in which the volunteer works and not directly to the volunteer. It is self-explanatory.

Mrs REDMOND: I will support the minister's amendment to this clause because it goes some way at least to

providing some protection for volunteers. However, in my view it goes nowhere near far enough because it still exposes volunteers once a complaint is made, although pursuant to this clause it will now be made against the organisation and not the individual volunteer. It will still expose the volunteer to the necessity to be investigated and to give evidence, and so on, under the provisions of the act. However, it is better than nothing at all by way of protection. I support the amendment.

The Hon. DEAN BROWN: I, too, support the amendment, as it is a token improvement on the original bill—and very token at that. This does not give protection to the volunteers or to volunteer organisations, and let us be very clear about that. Although this amendment says that it is against the organisation, not against the volunteer, members know what will happen: the volunteer will get hauled up by the organisation and asked to go through the process at any rate, and that is obvious. As I said, this is tokenism only and fails to deal with the real issue in terms of where volunteers stand. Let us understand that it is no more than tokenism, but I will support the tokenism as an improvement on the complete failure of the original bill to give any protection to volunteers.

The Hon. L. STEVENS: Let me say that the shadow minister is quite wrong. This clarifies the situation in relation to volunteers. I go back to the original point that was made, that is, that this whole complaints bill is about resolving complaints about services, regardless of who delivers those services. This amendment puts a buffer between the volunteer and the ombudsman to ensure that the ombudsman's first point of call is to the organisation for whom the volunteer works, and I believe that it is a significant improvement.

Mrs REDMOND: Do I understand the minister correctly? Is she now saying that, if, for instance, a complaint was made about a volunteer and that volunteer works for—take my favourite—Meals on Wheels, and therefore pursuant to this provision it is deemed to be a complaint against Meals on Wheels or a particular branch of Meals on Wheels, that person is not then obliged to cooperate further in investigations, and the organisation will represent that person and they will not be compelled to answer questions put by the ombudsman or respond to the investigation?

The Hon. L. STEVENS: The language of the member for Heysen concerns me—she has litigation on the brain. Coming from a lawyer's perspective, this is a bill—

Mrs Redmond interjecting:

The Hon. L. STEVENS: May I finish, Mr Chair?

Members interjecting:

The ACTING CHAIRMAN (Mr Snelling): Order!

The Hon. L. STEVENS: The bill is about resolution, conciliation and mediation. The bill is loaded with informal conciliation, trying to get people to talk things out and resolve issues around the table, and it only gets heavy with investigations if all else fails. I know that organisations which use volunteers are very keen that, if an issue needs to be resolved in terms of a volunteer, they will want to do that. That has always been my experience of volunteer organisations. Of course, there will be complaints. I mean, this is life.

There will be times when someone will do something that offends someone else. The important thing is to try to get these things resolved at the lowest possible level. I would imagine that if a complaint came to the ombudsman about a volunteer working for a certain organisation, the ombudsman would pick up the telephone and ring the organisation and say, 'I have had this complaint,' and they would work out together how they might deal with it. I am putting my interpretation on how the ombudsman would work in keeping with this act.

The organisation may undertake to sort something out and get back to the ombudsman. Unless there was something quite unusual—if the volunteer walked out or refused to deal with it—I would imagine that the organisation would be pretty concerned about that, and I would think that it would probably take its own action—nothing to do with the ombudsman—in relation to dealing with that volunteer.

The fears being expressed by the member for Heysen and the shadow minister are just not based in reality. It will not happen. The bill is about the public interest; it is about low level resolution of complaints to try to get things sorted out, nip things in the bud and get proper working relationships no matter who provides the service. In terms of this bill, everyone is expected to cooperate with the ombudsman, who is working in the public interest, and that means volunteers, professionals and consumers—everyone.

Mrs REDMOND: I accept that the minister perceives that I am being unduly worried about this, and I also accept that the intention of the legislation is to negotiate. What concerns me is the damage that it will do to our volunteers and the people working in our community. Can the minister clarify whether it is the case that, if a volunteer is working for Meals On Wheels and someone makes a complaint made about them, it is deemed, pursuant to this subclause under the amendment, to become a complaint about the branch of Meals On Wheels or the whole Meals On Wheels organisation? If that person then said, 'Stuff this, I've had being a volunteer. I'm not going to face any more of this,' and walked away, does this clause then allow that person to do that because the organisation is deemed to be the body against whom the complaint is made, and thereby avoid the provisions that appear later in the act that require people to comply with any further action that the ombudsman may take (and I accept that it will not happen all the time) to bring people in or have them give evidence or provide information, and so on, under the subsequent clauses?

An honourable member interjecting:

The ACTING CHAIRMAN: Order!

The Hon. L. STEVENS: Let me just say again: it is not about giving evidence—the top end, the legal court proceedings, which the member for Heysen seems to always revert to. It would seem to me that, if there was a complaint about a volunteer from an agency, the ombudsman contacts the agency and the volunteer throws up their hands and says, 'That's it, I'm not going to have any suggestion that anyone could have said I did something wrong. I'm not even going to talk about it,' and storms off, the Ombudsman and the body would probably say, 'We have been reasonable, we have tried to sort this out with this volunteer, but the volunteer (I cannot believe a person doing this, mind you) has just gone off in a huff and left us.' So be it, that is a pity, but life goes on.

Ms RANKINE: We have heard a lot about Meals On Wheels tonight in relation to this bill. It is a wonderful organisation, and I have a lot to do with it in my electorate. That service could not be provided without the many hundreds of volunteers who contribute. It also has a very competent administration. Has any concern been relayed to the minister from the administration of Meals on Wheels?

The Hon. L. STEVENS: In terms of Meals on Wheels, yes, concerns were raised with us in relation to this particular clause. That organisation's preference is not to have it.

However, we have talked about it with the organisation and we have explained the issues in terms of how we see the operation of this bill. We have certainly explained to the organisation how the same provisions operate in other jurisdictions and work quite happily. I fail to see why things can work in other states and they cannot work here in South Australia. I must say to members that we have received no other complaints. It happens in other jurisdictions. The world has not fallen in. This bill—

The Hon. Dean Brown interjecting:

The Hon. L. STEVENS: Yes. The concerning aspect about this is that we will have the racing out to the media, the stirring up and the mischief-making when, in fact, we are putting in place something that is entirely reasonable and means that people have an opportunity to resolve issues and move on.

The Hon. DEAN BROWN: I must formally record for Hansard the fact that the minister has now acknowledged the very point raised by the member for Heysen. That fear has been, in fact, formally passed on to her by Meals on Wheels, probably the largest volunteer organisation within our state. I can assure the minister that a number of other volunteer organisations that know about the bill have exactly the same concern. The vast majority of them do not know about the contents of this bill, but those that do are concerned about it.

Ms THOMPSON: I point out to members opposite that many volunteer organisations have management committees that pride themselves on developing codes of conduct for their volunteers, and also in developing complaint processes for their consumers. The good services are already doing these things. Unfortunately, because they are managed almost entirely by volunteers, sometimes things go wrong.

A constituent who came to my office recently was very concerned about the fact that a complaint had been made about him in the service that he provided as a volunteer. He had been counselled about it but he did not feel that he had been heard in relation to this. This was done by someone who did not have a lot of skills in dealing with complaints. If the matter goes to the ombudsman, that volunteer has the opportunity to have the complaint discussed—not 'heard by' because that term seems to take on a legalistic connotation as soon as some people hear it—with him by a person skilled in resolving difficulties, and allowing the organisation to go on. In the rare case where someone says, 'That's it. I can't stand this any more if this is the way we are going to behave', I would think that some of the organisations in my area that provide much training, support, guidance and supervision to volunteers would say 'Well, that's really sad but, obviously, we did not do our job in selecting, training and supervising that volunteer well enough because that volunteer was not really understanding what we are trying to provide here.'

Many people in my area volunteer as a way of developing and understanding processes in the workplace in terms of accountability and performance standards, and these organisations have these performance standards. Not everybody does, but this means that users of services provided by the more professional organisations, and of those provided by services that do not yet have those structures, all have the ability to have an issue resolved, often to the benefit of the volunteer as well as to the benefit of the consumer, by somebody skilled in resolving problems. This can only be to the benefit of the volunteer sector.

The Hon. L. STEVENS (Minister for Health): I move:

That the time for moving the adjournment of the house be extended beyond 10 p.m.

The Hon. DEAN BROWN (Deputy Leader of the Opposition): At a quarter to six tonight, I was told by the government that we would adjourn at 10 o'clock. We have just started the year, and we have a long year ahead of us. We have plenty of time to get through the legislation, but we will adjourn the house at 10 o'clock. I have raised this, because I acknowledge that the Government Whip has been courteous enough to discuss this with me, but I need to record the fact that I am finding it very difficult, as manager for the opposition, to know what the position is, because one minute I am told that we will adjourn at 10 p.m. and the next I am told that we will go on and take this bill through its remaining stages.

The Hon. L. Stevens: Now you know what we had to put up with!

The Hon. DEAN BROWN: I can assure you that, when I managed the house for the government you did not have these sorts of inconsistencies.

Motion carried.

The Hon. L. STEVENS: I return to the issue of Meals on Wheels. I want to put on the record that this is an exemplary organisation. On a number of occasions, I have visited my local branch, as I know the member for Wright has, because we have done so together. However, that organisation is funded by government, and it is required to have a complaints system in place under its funding agreement. I have no concerns whatsoever about Meals on Wheels having an appropriate complaints process operating. They have thousands of volunteers. They deliver food, and they have to deal with some of the most disadvantaged and vulnerable people in our community. They need to have exemplary processes in place, and they do. There is nothing to be fearful of in relation to that organisation.

I will explain further the concerns of Meals of Wheels in relation to the bill. Their concerns related to the fact that the branch office bearers and the organisation as a whole had so many other things that they needed to deal with—the Food Act and the Privacy Act, for example, as well as public liability issues and governance related issues. They had a whole lot of issues, and to them it seemed like it was just one more. We have spent time talking with them and we will continue to do so, because for an organisation such as this with the complaints procedures and a large infrastructure in place this will not be a problem.

Amendment carried; clause as amended passed.

Clause 23.

The Hon. DEAN BROWN: I move:

Page 19, lines 9 and 10—Leave out clause 23 and insert new clause as follows:

Form of complaint

23.(1) A person may complain to the HCS Ombudsman orally or in writing.

(2) If the HCS Ombudsman receives an oral complaint, the HCS Ombudsman must require the person to confirm the complaint in writing unless the HCS Ombudsman is satisfied that there is good reason why the complaint should not be made in writing.

(3) The HCS Ombudsman may require a person making a complaint to provide—

(a) his or her name and address; and

(b) reasonable information about the grounds on which the complaint is made; and

(c) details of any action that the complainant has taken to attempt to resolve the matter with the health or community service provider; and

(d) any other details considered by the HCS Ombudsman to be reasonably necessary to enable the complaint to be assessed under division 2.

(4) The HCS Ombudsman may assist a person to make a complaint if the person requests or requires assistance.

This amendment sets out how the complaint is to be made. We discussed this issue in our meetings, and the government said that it would look at it. Quite a few issues arose. First, there is no doubt that the amendment put forward by the opposition more clearly sets out the form of the complaint: how it should be made. At the time of our discussions, the government said that it would look at it and that it may come up with a new amendment. The government has picked up one small part of this issue, and that is contained in a subsequent amendment which I will not touch on here, but I support that amendment as well. I move this amendment because it provides clarity in terms of how a complaint should be lodged and it does not leave parties uncertain, which could otherwise occur.

This amendment replaces the words 'a complaint is to be made in a manner approved or determined by the HCS ombudsman.' That statement is very open and people who pick up this act would not know what it means, whereas our amendment makes it very clear that they need to give their name and address, reasonable information about the grounds on which the complaint is made, details of any action that the complainant has taken in an attempt to resolve the matter, and other details that might reasonably be required by the HCS ombudsman. It also provides that the complaint should be made either in writing or orally. I think what we have put forward is reasonable and will help people when they are putting forward a complaint.

Over the years I have dealt with many people who have made complaints to the ombudsman. They have been reluctant because they were uncertain as to how to go about making their complaint. This will help them because they can be given a photocopy and told that this is the sort of information that they will need to be able to provide.

The Hon. L. STEVENS: The government does not support the amendment.

Ms Thompson: It's silly.

The Hon. L. STEVENS: I agree; I think it's silly. Ordinary complainants will not read the act. Clause 23 provides:

A complaint is to be made in a manner approved or determined by the HCS Ombudsman.

The broad parameters for the ombudsman are set out in this bill and it is worded in such a way to allow for the greatest ease and flexibility in the lodgement of a complaint. It recognises social, literacy or other reasons for disadvantage when making a complaint; it also allows the HCS ombudsman to provide assistance to a person making a complaint, including assistance to put the complaint in writing. So, we have left it open. It provides the greatest flexibility by an ombudsman working within the framework and the objects of this act. We do not support the amendment; we do not think it is necessary.

Amendment negatived.

The Hon. L. STEVENS: I move:

Clause 23, page 19, after line 10—Insert:

(2) A person must, in making a complaint, disclose to the HCS Ombudsman, to the best of the person's abilities, all grounds of complaint on which he or she intends to rely.

This amendment came out of the discussions we had. The Minister for Industry and Trade was concerned that essentially you had a person who, to the best of their ability when making a complaint, had to put the whole lot out in one go rather than coming back in dribs and drabs. It is self explanatory.

Amendment carried; clause as amended passed.

Clause 24.

The Hon. L. STEVENS: I move:

Page 19, lines 12 to 15—Leave out subclause (1) and insert:

(1) Subject to subsection (1a), a complaint must be made within two years from the day on which the complainant first had notice of the circumstances giving rise to the complaint.

(1a) The HCS Ombudsman may extend the period under subsection (1) in a particular case if satisfied that it is appropriate to do so after taking into account—

(a) whether a proper investigation of the complaint should still be possible; and

(b) whether the complaint should still be amenable to resolution under the provisions of this Act; and

(c) whether it would be in the public interest to entertain the complaint; and

(d) any other matter considered relevant by the HCS Ombudsman.

The amendment is to provide criteria. In our discussions there was concern about the length of time a person had to make a complaint, and we wanted to give an adequate amount of time—we always had two years in the bill—for a person to make a complaint. The ombudsman could extend that period, and we made absolutely clear the criteria on which the ombudsman would extend the period that a person had to make a complaint.

I notice the opposition's amendments make it one year instead of two. We believe that two years is appropriate as a basic starting time. It is interesting to look at what they do in other jurisdictions, because it is all different. We regard two years as a reasonable time. Interstate legislation varies from five years to one year to no time specified. We believe that two years is an appropriate balance. With health complaints, people are often unwell and not in a fit state to make the complaints, and often it takes some time for them to recover the will to do such a thing. Essentially, it is two years and the ombudsman can extend it. We have simply expanded and made very specific the criteria that the ombudsman would have to go through to make a decision to extend the time.

Mrs REDMOND: I have no difficulty with the provision except for that time limit. It is my view that one year is the appropriate time because, whilst I accept what the minister says about some people not being well enough within that time to do something about it, on both our proposal and the minister's there was always provision for an extension of time in appropriate circumstances. The difficulty is that, if you make it two years, people will wait two years, and it is very difficult for a health provider then to go back and find out exactly what happened in that time.

The Hon. L. Stevens interjecting:

Mrs REDMOND: They do. If they have three years they will take three years, I can guarantee it, and the longer it is left the harder it is for either party to have an accurate recollection of what was entailed. For that reason, I submit that the amendment that will next be moved by the member for Finniss is the more appropriate one. For that reason I oppose this amendment by the minister, not for the essence of it but for those time limits being imposed.

The Hon. L. STEVENS: I do not believe that it is true at all that, just because it is two years, people will wait two years to do it. I do not think that people work that way, certainly in my experience in dealing with complaints.

Amendment carried.

The ACTING CHAIRMAN (Mr Snelling): The next amendment is actually an amendment to the clause as unamended, but I will take it as an amendment to the amendment.

The Hon. DEAN BROWN: That is how it should now be dealt with. I had two sections amending clause 24. The second part has now effectively been picked up by the minister in her amendment based on the discussions that we had. The first part, however, has not been, so I move to amend the amendment, as follows:

Page 19, line 12—Leave out 'two years' and insert:
One year

I do that for the very reason that the member for Heysen mentioned, that the sooner you bring this on and get the complaint lodged, the better, because you are more likely to get resolution. The longer it drags on, the less likely you are to get resolution. So, it is good in terms of the complainant to get it on as soon as possible, but be quite clear: we are not being absolute in that. If you want to go beyond one year, there are grounds there to go beyond one year. The minister has acknowledged the very ground that we covered, that it was still reasonable to carry out a proper investigation of the complaint, and the minister put in the extra clause that there was some chance of getting a resolution of the complaint.

I accept what the minister has put down as the condition that should now apply but support one year. I know that that is good for the users, but it is also supported by the providers, who would like to see these matters brought on and dealt with as quickly as possible because you will get a better resolution by all parties involved. Time makes it very difficult to investigate these things, and it increases substantially the amount of time to investigate these things as it is so much more difficult to go back, because the memory has dimmed.

The Hon. L. STEVENS: I would like to put on the record the situation in the other jurisdictions. In the ACT and the Northern Territory there is no specified time at all. In Tasmania it is two years. In Queensland and Victoria there is no specified time. In Western Australia it is one year, with the director's discretion. In New South Wales it is up to five years, and longer if sufficient reason is provided. In all of that, we will stick with our two years. We believe that it ensures that complainants are not disadvantaged by their emotional or physical wellbeing at the time of the complaint occurring. We agree that it is better dealt with as soon as possible, but we stick with the two years and do not support the amendment.

Amendment to amendment negatived; amendment carried; clause as amended passed.

Clause 25 passed.

Clause 26.

The Hon. L. STEVENS: I move:

Page 20, after line 6—Insert:

(2a) If a complaint is against or directly involves an approved provider under the Aged Care Act 1997 of the commonwealth, the HCS ombudsman must consult with the relevant complaints resolution bodies under that act about the management of the complaint and, if appropriate, refer the complaint to another authority for resolution under that act.

This is the clause that makes explicit how this act would work in conjunction with the commonwealth Aged Care Act 1997, and it requires the health and community services ombudsman to consult with the commonwealth complaints resolution bodies for complaints against aged care providers. I will provide some more information. The health and community services ombudsman must assess a complaint and make a determination within 45 days or a longer period if necessary. A complaint may proceed only if the complainant has taken reasonable steps to resolve the matter with the relevant health or community service provider.

A complaint may be referred to or referred back from the HCS ombudsman by the state ombudsman, a registration authority or other body. The HCS ombudsman may refer a complaint to another person or body and must consult with the relevant complaints resolution bodies if the complaint is against or directly involves an approved provider under the Aged Care Act 1997. Again, this is about protocols being established so that both bodies can work together so that there can be discussions about in whose jurisdiction the complaint falls and who will handle the complaint, and I am quite confident that those things can be worked out. Certainly, the information and the feedback that I have had from aged care providers is that they do not have any fears in terms of our ability to do just that.

The Hon. DEAN BROWN: I support the amendment, because it is an improvement on what was in the original bill, even though we have had a debate that highlights that this is not as good as what the opposition was proposing. We have dealt with that measure previously. I will support the amendment as it stands, because it is certainly an improvement.

Amendment carried; clause as amended passed.

Clause 27.

The Hon. L. STEVENS: I move:

Page 20, after line 34—Insert:

(5a) However, a person is not obliged to comply with a requirement under subsection (2) if to do so might tend to incriminate the person or make the person liable to a criminal penalty.

This amendment was suggested by the opposition and the government accepts it. It is self-explanatory.

Amendment carried.

Mrs REDMOND: I want to come back to the matter I touched on before. This is one of the clauses that concerns me in relation to that matter. I want the minister to confirm quite explicitly that, in the event that an individual does the unthinkable as a volunteer and just throws up their hands and walks away when a complaint is made, that individual cannot possibly be faced with a potential fine of $10 000 pursuant to this clause if they fail to cooperate and leave the organisation. As I understand what the minister said before on the earlier clauses, if a complaint is about a volunteer, it is actually a complaint against the organisation and not against the individual, and that will let the individual off the hook completely as far as this clause goes.

The Hon. L. STEVENS: I am advised that this clause relates to preliminary inquiries, and here, as in clause 27(2), the HCS ombudsman is working with the provider and not with the volunteer. So, the issue that the member raised in relation to the volunteer does not hold in this clause.

Mrs REDMOND: I want to be clear about that. The effect of the earlier provision that makes the organisation and not the individual accountable to the ombudsman under this act will obviate any possibility of an individual's facing a fine pursuant to clause 27.

The Hon. L. STEVENS: I am advised that the answer is yes.

Amendment carried.

The Hon. DEAN BROWN: I move:

Page 21, after line 16—Insert:

(12) For the purposes of conducting any inquiry or informal mediation under this section, the HCS Ombudsman may obtain the assistance of a professional mentor.

(13) The HCS Ombudsman may discuss any matter relevant to making a determination under section 26 or with respect to the operation of this section with a professional mentor.

This amendment relates to conducting an inquiry or informal mediation under this clause. The ombudsman may obtain the assistance of a professional mediator and may discuss any matter relevant to making a determination under section 26 or with respect to the operation of this section with a professional mediator. Again, this will facilitate the whole process, and I think it is better legislation than we have at present.

The Hon. L. STEVENS: The government does not accept the amendment. Mentors are part of this bill, but we are talking about preliminary inquiries, and this is an unnecessary amendment. Provision already exists for the appointment of professional mentors under clause 12 to assist in the conciliation process, and their role is clear and specified in the bill. The preliminary inquiries are conducted before the point in a conciliation situation where mentors would be required. So, it is most unlikely that the health and community services ombudsman would need the services of a mentor at the preliminary inquiry stage of an investigation. A preliminary inquiry would be the sort of inquiry where there is a phone call to say, 'Do you know this has happened?' 'Yes.' 'Okay.' and it is fixed. That is the quick sort of resolution. The mentors provide support and assistance when the process gets a bit more complicated in the conciliation phase. So we do not support this amendment.

Amendment negatived.

Mrs REDMOND: I notice that there is a typo in this clause. The references to HCS through the rest of the bill have been reversed to HSC in this clause, so before we pass it they should be corrected.

The ACTING CHAIRMAN: The member for Heysen's attention to detail does her credit. I thank her for pointing that out, but it is not necessary to formally move an amendment.

Clause as amended passed.

Clauses 28 and 29 passed.

Clause 30.

The Hon. L. STEVENS: I move:

Page 22, after line 29—Insert:

(ea) the complainant is seeking to act on a ground that should have been disclosed by the complainant at an earlier time in accordance with the requirements of section 23(2); or

This amendment also came out of the discussions between the government, the opposition and the Independents. This enables the HCS ombudsman to take no further action on a complaint when the grounds for the complaint were not fully disclosed initially. It is almost a twin to the one that we dealt with earlier.

Amendment carried; clause as amended passed.

Clause 31.

The Hon. DEAN BROWN: I move:

Page 23, lines 30 to 32—Leave out subclause (2) and insert:

(2) If a complaint is withdrawn—

(a) any investigation under this act in relation to the matter will cease unless the HCS Ombudsman has determined to conduct or continue an investigation under section 40(1)(c); and

(b) the HCS Ombudsman must—

(i) if the health or community service provider has been notified of the receipt of the complaint—notify the provider of the withdrawal within 14 days; and

(ii) the HCS Ombudsman has determined to conduct or continue an investigation under section 40(10(c)—advise the health or community service provider about the effect of the determination despite the withdrawal of the complaint.

This was originally an opposition amendment, it was discussed with the government and it acknowledged it was an improvement, so it has been agreed to by both parties.

Amendment carried; clause as amended passed.

Clauses 32 to 41 passed.

Clause 42.

The Hon. L. STEVENS: I move:

Page 27, after line 32—Insert:

(2) The HCS Ombudsman may, in consulting an investigation under this part, obtain expert advice, or any advice or support, in order to assist the HCS Ombudsman in the investigation.

This is self-explanatory. It enables the ombudsman to seek expert advice or support during the conduct of an investigation, which is entirely appropriate. While the ombudsman is able to use professional mentors in conciliation, this provision strengthens the ombudsman's ability to seek outside assistance to support an investigation when necessary.

Amendment carried; clause as amended passed.

Clause 43.

Mrs REDMOND: I move:

Page 28, lines 2 and 3—Leave out "a person required to appear or to produce documents under this Part" and insert:

the person to whom an investigation relates and any other person who appears or produces documents under this Part (a "party")

I will not go through the technicality of the amendment, but under the current draft I appreciate that the thrust of what is intended is to keep the proceedings informal and, therefore, not always to have solicitors involved. My amendment is intended still to allow that to be the case, but also to ensure there is absolute balance between the parties. It reflects the situation, for instance, in the Magistrates Court (minor jurisdiction). For claims up to $5 000, normally no-one is represented but, if one party is represented, both must be allowed to be represented. This amendment is to ensure that if one party is allowed representation all parties must be allowed representation. Similarly, the reverse would apply, that is, if one party is denied representation, everyone is denied representation. So, by the statute itself, and not by the discretion of the ombudsman, there is absolute balance in the entitlement of the parties to have or not have representation.

The Hon. L. STEVENS: I thank the member for Heysen for her interest and efforts, but we do not support this amendment. We prefer our own amendment to this. It is our belief that this predetermines the discretionary process of the ombudsman.

The committee divided on the amendment:

AYES (22)

Brindal, M. K.	Brokenshire, R. L.
Brown, D. C.	Buckby, M. R.
Chapman, V. A.	Evans, I. F.
Goldsworthy, R. M.	Gunn, G. M.
Hall, J. L.	Hamilton-Smith, M. L. J.
Kerin, R. G.	Kotz, D. C.
Lewis, Hon. I. P.	Matthew, W. A.
Maywald, K. A.	McFetridge, D.
Meier, E. J.	Penfold, E. M.
Redmond, I. M. (teller)	Scalzi, G.
Venning, I. H.	Williams, M. R.

NOES (24)

Atkinson, M. J.	Bedford, F. E.

NOES (cont.)

Breuer, L. R.	Caica, P.
Ciccarello, V.	Conlon, P. F.
Foley, K. O.	Geraghty, R. K.
Hanna, K.	Hill, J. D.
Key, S. W.	Koutsantonis, T.
Lomax-Smith, J. D.	McEwen, R. J.
O'Brien, M. F.	Rankine, J. M.
Rann, M. D.	Rau, J. R.
Snelling, J. J.	Stevens, L. (teller)
Thompson, M. G.	Weatherill, J. N.
White, P. L.	Wright, M. J.

Majority of 2 for the noes.

Amendment thus negatived.

The Hon. L. STEVENS: I move:

Page 28, line 4—Leave out 'a person to whom an investigation relates' and insert:

any person involved in proceedings under this part.

After line 6—Insert:

(3) The HCS Ombudsman must, in making any determination under subsection (2), to such extent as is reasonably practicable, have regard to the need to ensure that representation is balanced between the parties and that any determination is fair to all persons who are involved in proceedings under this part.

I think that the second part of the member for Heysen's amendment is getting at the same thing that ours is, but I think that ours is clearer. This amendment provides principles that the ombudsman must consider in making a determination about representation. In particular, the ombudsman must have regard to procedural fairness and the need for openness in an investigation. He or she must also be able to determine how this will be best achieved to ensure a speedy and fair resolution to complaints. The clause makes it clear what the ombudsman must consider when making a decision about representation. Again, because the intent of the bill is to support the ombudsman's capacity to keep matters non-adversarial, he or she therefore needs the power to control representation and to ensure that there is balanced and fair representation for all parties.

Mrs REDMOND: I will support this provision. I still believe that it is not as good as having a firm direction to the ombudsman that he must keep procedural balance in terms of representation but, given that that has now been lost, this is the next best thing and, therefore, I will support the amendments.

Amendment carried; clause as amended passed.

Clause 44.

The Hon. L. STEVENS: I move:

Page 28, after line 20—Insert:

(3a) A notice under subsection (2) must provide a period of time for compliance with a requirement under that subsection that has been determined by the HCS Ombudsman to be reasonable in the circumstances.

This amendment stipulates that the ombudsman must allow a reasonable time for a provider to provide information. Again, it is quite similar to the amendment proposed by the opposition, but our amendment has some further words and we believe that it is a better way of saying it.

The Hon. DEAN BROWN: I acknowledge that the government has now amended the original bill, based clearly on the issue that we have raised on this point; and I acknowledge that the government's amendment is a step, and probably a significant step, in the right direction. However, there is still a difference between what the government is now proposing and what I proposed in my amendment, namely, that it is still entirely in the hands of the ombudsman, whereas if this got to a court and if it were disputed because the person who had failed to comply had legitimate grounds under which he or she had failed to comply, the court could say,'Well, it was the view of the court that this was an unreasonable sort of compliance time,' and it would be the judgment of the court. I think that is fairer. I am willing to acknowledge, though, that this is an improvement and that some point is being picked up, but I will still move my amendment when we come to it.

The Hon. L. STEVENS: I would like to make another comment in response to the shadow minister's comments. It is true that it is presumed that the health and community services ombudsman will act reasonably in terms of the time requirements for compliance under this clause. Indeed, it would be absolutely counterproductive for the ombudsman to establish unrealistic time lines and still expect full information and cooperation, which, of course, is what this bill is about. I just want to say, too, that the current provision is similar to that in the previous government's bill and to the corresponding legislation in the ACT, the Northern Territory, Tasmania and Queensland. The government will therefore stick with this amendment.

The ACTING CHAIRMAN (Ms Thompson): We do have a procedural difficulty in that the amendment of the member for Finniss is an alternative to the minister's amendment, and that if the minister's amendment were accepted by the committee the honourable member's amendment would need variation to fit within what would then be the bill. I invite the member for Finniss to speak to his amendment now and that gives members the opportunity to support or not support the minister's amendment in the knowledge that if her amendment fails the member for Finniss will be able to move his amendment.

The Hon. DEAN BROWN: I appreciate that, but can I put a counter point of view, because I believe that you can move and pass the minister's amendment (and I will support that because that is an improvement), and then I could try subsequently to amend that amendment further. I will support the minister's amendment because it is an improvement but still move my amendment, which would then subsequently amend the amendment.

The ACTING CHAIRMAN: Is the member for Finniss, effectively, now moving to leave out all words after 'subsection' in the second line of the minister's amendment?

The Hon. DEAN BROWN: Yes, but the committee must accept the minister's amendment first.

The ACTING CHAIRMAN: The committee must?

The Hon. DEAN BROWN: The committee has not yet accepted the minister's amendment.

The ACTING CHAIRMAN: I am advised that the procedures in this place are a little different from what I am used to and possibly what the honourable member is used to. The issue here is to determine in what form the minister's amendment is put. We would therefore, in fact, consider the amendment moved by the member for Finniss first.

The Hon. DEAN BROWN: I am happy to do that to simplify it. I move:

Page 28, after line 25—Insert:

(3a) A notice under subsection (2) must provide a reasonable period of time for compliance with a requirement under that subsection.

The purpose of moving this amendment is that under clause 44 there is a fine of up to $5 000 if the provider fails to comply with the requirements of the ombudsman. One of the

crucial issues is the time in which the person has to comply. The government amendment allows the ombudsman to say what is fair and reasonable. So, if it went to court, the ombudsman would say, 'This was fair and reasonable,' and the court would have to accept that judgment; whereas, under my amendment, the court would be able to decide what was fair and reasonable, and the court would therefore say, 'For extenuating circumstances, yes, we agree that this was unreasonable, and we won't impose a fine.'

Therefore, under the government's amendment, the power of the court in imposing the fine is severely restricted in terms of the judgment it can make; whereas, under my amendment, they have a fair and open chance to get justice, which they would not get under the government's amendment. I urge the committee to support my amendment, because it provides greater justice than that provided by the government, even though I acknowledge that the government's amendment is an improvement on the bill.

The Hon. L. STEVENS: I am sorry, shadow minister, but we do not support your amendment.

The Hon. Dean Brown: You don't support justice.

The Hon. L. STEVENS: I do not think that those two things follow really. I certainly do support justice, but it does not necessarily—

The Hon. Dean Brown interjecting:

The Hon. L. STEVENS: I think the Attorney may just be sitting there.

The Hon. M.J. Atkinson interjecting:

The Hon. L. STEVENS: That's a statement from the Attorney. We do not support the amendment, and we believe that ours is adequate. We believe that the test of reasonableness, which is recurring through this bill, carries through in this clause, so we do not support the opposition's amendment.

The Hon. Dean Brown's amendment negatived; the Hon. L. Stevens' amendment carried.

The Hon. DEAN BROWN: I move:

Page 28, after line 25—Insert:
(6) A requirement under this section cannot be directed to a registration authority.

We are inserting a new subclause (6), involving the use and obtaining of information. We are making very clear the ability to direct and require parties to comply, with a penalty imposed. I will read subclause (5), because I think that it is relevant in this context. It provides:

If a document is produced in accordance with the requirements under this subsection, the ombudsman, or other appropriate person, may take possession of, make copies of, or take extracts from the document.

All those provisions of clause 44 cannot be required of a registration authority. We are talking about the Medical Board and all the other registered boards. This is something that they have asked for very strongly, and I believe it is appropriate because the issue here involves what rights the ombudsman has in terms of requiring a registration authority to act in this way.

The Hon. L. STEVENS: The government does not support this view for the following reason: it is unclear on what basis registration authorities would be reasonably excluded from this provision. Clause 44 sets out for all providers the provisions for the use and obtaining of information by the ombudsman. It would be seen as manifestly unfair that registration authorities should be exempt from these provisions, and it would encourage the view that they are somehow privileged over others in this regard. That is certainly the view of some registration authorities that is held in the community, so I will certainly not countenance this amendment.

Regarding issues relating to registration authorities in general, part 7 of this bill is devoted to the relationship between the ombudsman and registration authorities. This is in the wrong place and it is not fair, so we do not support it.

Amendment negatived.

Mrs REDMOND: I have the same concern about this clause as I had with clause 27. If you take the unusual circumstance that we discussed where a complaint is made against a volunteer and they throw up their hands and walk away and say, 'I'm not going to be a volunteer any more,' because of these provisions which make it the volunteer organisation and not the volunteer against whom the complaint should be made, would the volunteer not face a potential fine if they failed to cooperate with the ombudsman?

The Hon. L. STEVENS: Clause 44(2) states clearly that, if the ombudsman has reason to believe that a person—any person, that is—is capable of providing information or producing a document relevant to an investigation, the ombudsman may require that person to do one or more of the following things, which are outlined. The issue would be in relation to the circumstances, whether it involved a significant issue with professionals, and how the ombudsman would choose to apply that. The powers are sufficiently broad to enable the ombudsman to use them across the whole range of situations. Certainly that power is there for the ombudsman to use appropriately and in the public interest. That is where we return again to the bill as a whole and to what we are trying to achieve in relation to all the players across the broad spectrum of the bill.

Mrs REDMOND: The minister is now saying that in relation to this section, if we have this scenario where a volunteer throws up their hands in disgust because a complaint has been made against them to the ombudsman and says, 'Stuff this, I am never going to be a volunteer again' and walks away, they can face a maximum penalty pursuant to that section of $5 000 if they fail to cooperate with the investigation of the ombudsman.

The Hon. L. STEVENS: In the scenario outlined, effectively we have the resignation of the volunteer. My clear advice is that in this case the resignation of a volunteer would in fact provide an effective remedy of the complaint and there would be no further action by the ombudsman.

Mrs REDMOND: That sounds to me like a decision the ombudsman would make in the particular circumstances.

The Hon. L. STEVENS: It is quite clear. In the theoretical situation of somebody essentially saying, 'I'm not having anything to do with even countenancing this issue; I resign, I'm going,' it is my understanding and advice that effectively that is a resignation of the volunteer and the end of the complaint. We are talking about a volunteer—not a professional or somebody with an ongoing career. The person has gone—it is over.

The Hon. DEAN BROWN: Anyone who reads the clause knows only too well that the volunteer can be required to appear and, if the volunteer does not do so, even though they have resigned, they can be fined up to $5 000. The minister is wrong, and it is so clear when you read it that she is wrong. The ombudsman has the power to require a person who is able to provide information to appear. If that former volunteer was there and the only one who could give information on behalf of the provider, then of course the ombudsman will put that obligation on the individual. Just because the volunteer

has resigned does not resolve the issue at all, and we know it does not.

The minister put up an amendment previously which has now clearly been found to be inadequate: that is the issue. She cannot suddenly try to dodge and weave around this issue. Her proposed amendment has been found to be wanting and therefore the volunteer, who has now resigned, could still be brought in and still, if they do not cooperate, be fined $5 000. Looking at this, it is absolutely black and white.

The Hon. L. STEVENS: It is not black and white. We are talking about clause 44 under part 6, 'Conduct of investigations.' It is difficult to answer this in terms of hypotheticals.

The Hon. Dean Brown: No, it is not.

The Hon. L. STEVENS: 'No, it is not,' says the shadow minister. Of course it is! The bill is broad. It tries to allow maximum flexibility to resolve complaints, and it is difficult when we have a hypothetical situation. It is probably quite silly under these hypothetical circumstances to try to guess at how this would go. It is difficult to answer this in terms of a hypothetical situation when we do not know the detail of what we are looking at. If it is serious enough to require an investigation, my advice is that the cooperation of the volunteer is warranted, but always the outcome that is sought is resolution. We have to look at the whole context of the bill, that the ombudsman is working to resolve complaints and, if we have a situation where someone refuses to resolve a complaint and resigns, it depends on the nature of the complaint.

There could be a whole range of complaints from a simple misunderstanding through to something very serious. I think we have to be reasonable in that the bill is broad enough to allow resolution, and it is the ombudsman's role and function to work in the public interest to be fair to all parties, and to be reasonable and take appropriate action. Those are the words and that is the tenor of the bill right through. Trying to draw hypothetical situations and trying to have definitive answers on hypothetical situations is unhelpful.

Amendment negatived; clause as amended passed.

Clause 45.

The Hon. DEAN BROWN: I move:

Page 28, after line 29—Insert:

(1a) If the HCS Ombudsman or another person acting under section 44(2) examines a person on oath or affirmation ('the witness'), any other person who is a party to the proceedings, or who is a representative of a party to the proceedings, has a right to cross-examine the witness.

This is the power to examine witnesses, and I remind the committee that the ombudsman or a person who is to receive information under 44(2) may administer an oath or affirmation to a person required to attend before him or her under this part and may examine the person on oath or affirmation. I am moving that this new provision be inserted. As honourable members know, cross-examination is a fundamental right under law. If you take someone under oath you have to be able to cross-examine that witness. I am sure the Attorney-General would be first to uphold that principle. It is a fundamental point of law. Therefore, to be able to require someone to give evidence under oath and not be cross-examined under oath just breaks down the whole balance between trying to obtain the truth and not getting the truth. Therefore, this is fundamental, and I support it very strongly.

The Hon. L. STEVENS: The government does not support it. My advice is that the wording I have in the bill is the wording in all the other bills in the other jurisdictions in Australia.

The Hon. Dean Brown: That doesn't make it right.

The Hon. L. STEVENS: That is, everybody else except us and they have been working for several years with these provisions. The purpose of the clause is to allow an investigation of events by the health and community services ombudsman. It is part of his or her inquiry and not related to court or adversarial process which would develop should cross-examination be allowed. It is not appropriate to allow representatives the power to cross-examine witnesses since this is a principle and process related to a court and associated proceedings—

The Hon. Dean Brown interjecting:

The Hon. L. STEVENS: No—and not one related to an investigation conducted by the HCS ombudsman's office. I want to say again that my advice is that the clause as it stands is similar to all other jurisdictions. That is quite clear, and we do not support the amendment.

Mrs REDMOND: I support the amendment for two reasons. The member for Finniss has already touched on this matter. In the area of natural justice—and natural justice depends on procedural fairness—if someone is giving evidence on oath, a person who is affected by the evidence and who has reason to believe that that evidence is not as full and forthcoming as it might otherwise be, should have the ability to test that evidence by cross-examining the person on oath.

The second reason is that, under clause 78(2)(b), a provision says that the tribunal is not bound by the rules of evidence but may inform itself on any matter it considers appropriate. There is a long line of authority in the cases to the effect that, although they are not bound by the rules of evidence, the general meaning of that will be that any tribunal or quasi-judicial function will be carried out in accordance with the normal rules of evidence but subject to the concept that the overall fairness of the proceeding cannot be disrupted by the infringement of a rule of evidence, particularly when you are dealing with unrepresented people. There are two very good reasons why this amendment should be proceeded with and accepted by government, because it is really one of ensuring procedural fairness for those who are likely to be affected by these investigations by the ombudsman.

Amendment negatived; clause passed.

Clause 46.

The Hon. DEAN BROWN: I move:

Page 29, after line 26—Insert:

(5) A warrant cannot relate to the premises of a registration authority.

This clause deals with search powers and warrants. Frankly, this is the part where it all becomes rather scary—to say the least—in terms of protecting the rights of people. On numerous occasions over a number of years I have heard lawyers in this house who have then become eminent judges of this state argue these points and express alarm at the way these powers are sometimes used. In this case I am proposing an amendment that would add a new section that provides that a warrant could not relate to the premises of a registered authority. This is almost cloak and dagger stuff in terms of government agencies. If a minister does not have confidence in his or her own government agencies, the minister should take appropriate action and replace the board.

The Hon. L. Stevens interjecting:

The Hon. DEAN BROWN: No, the minister has the power under those registration authorities to take action against the boards if they are not doing their duty. So, to give one government agency the chance to undertake dawn raids

on another government agency using a warrant is inappropriate, and it is no wonder that the registered authorities expressed the strongest alarm at this when they met with me and asked that this protection be put in the bill.

The Hon. L. STEVENS: We do not support this amendment, for the same reason that it would be manifestly unfair that registration authorities should be exempt from this provision, which would encourage the view that they are somehow privileged in this regard.

Amendment negatived; clause passed.

Clauses 47 to 50 passed.

Clause 51.

The ACTING CHAIRMAN: Member for Finniss, I have some procedural advice. As the minister has indicated an amendment to clause 52, it would be appropriate for you to move your amendment to clause 51 only at this stage, which would have the effect of leaving out clause 51 and inserting new clause 51.

The Hon. DEAN BROWN: Yes, that is all I intended to do. I move:

Page 30, line 25—Leave out clause 51 and insert new clause as follows:

51. (1) The HCS Ombudsman may prepare a report of his or her findings or conclusions at any time during an investigation.

(2) If, at the conclusion of an investigation, the HCS Ombudsman decides that a complaint against a health or community service provider is justified but appears to be incapable of being resolved, the HCS Ombudsman may provide to the service provider a notice of recommended action.

(3) A notice must set out—

(a) the particulars of the complaint; and

(b) the reasons for making the decision referred to in subsection (2); and

(c) any action that the HCS Ombudsman considers the service provider ought to take in order to remedy each unresolved grievance disclosed by the complaint.

(4) If the service provider is a registered service provider, the HCS Ombudsman must provide a copy of the notice to the relevant registration authority.

(5) The HCS Ombudsman must then allow the service provider and, if relevant, a registration authority, at least 28 days to make representations in relation the matter.

(6) A service provider may, in making representations under subsection (5), advise the HCS Ombudsman of what action (if any) the service provider has taken, or intends to take, in response to the matters raised in the notice.

(7) After receipt of representations under subsection (5), or after the expiration of the period allowed under that subsection (5), the HCS Ombudsman may publish a report or reports in relation to the matter in such manner as the HCS Ombudsman thinks fit.

(8) The HCS Ombudsman must, before publishing a report under subsection (7), furnish a draft report to the service provider and then allow the service provider at least 14 days to make representations in relation to the content of the reports.

(9) A report under this section may include such material, comments, commentary, opinions or recommendations as the HCS Commissioner considers appropriate.

(10) However, the HCS Ombudsman must not include in a report under this section—

(a) the name of a complainant, without first obtaining the consent of the complainant; or

(b) unless a draft of the report has already been provided to the service provider under subsection (8), a comment adverse to a service provider named in the report, without first giving the service provider at least 14 days to make representations to the HCS Ombudsman in relation to the proposed comment.

(11) The HCS Ombudsman may provide copies of a report to such persons as the HCS Ombudsman thinks fit.

(12) The HCS Ombudsman must provide a copy of a report to any complainant and service provider that has been a party to the relevant proceedings.

(13) A private service provider named in a report of the HCS Ombudsman may appeal to the Administrative and Disciplinary Division of the District Court (**the Court**) against any part of the contents of the report that relates to the service provider—

(a) on the ground that it is unreasonable to include particular material in the report; or

(b) on the ground that a comment, commentary or opinion is unfair, or a recommendation unreasonable.

(14) An appeal must be made within 14 days after the service provider receives a copy of the report under subsection (12).

(15) The Court may, on an appeal—

(a) determine that the report should stand; or

(b) remit the matter to the HCS Ombudsman for further consideration in accordance with any directions of the Court; or

(c) direct the HCS Ombudsman to take steps specified by the Court (which may include the publication of a new or revised report or other statements or materials).

(16) In this section—

"private service provider" means a health or community service provider other than a public authority.

I think this amendment is contingent on my amendment to clause 52, but at this stage I will talk only on the new clause 51. This is all about making sure that natural justice is done, and this is a very fundamental issue indeed. It is hard to do this just in relation to clause 51 because it also relates to clause 52, and the two sit together and have to be considered together. However, I propose that the ombudsman may prepare a report of his or her findings at any stage during an investigation and if, at the conclusion of an investigation, the ombudsman decides that a complaint against a health or community service provider is justified but appears to be incapable of being resolved, the ombudsman may provide to the service provider a notice of recommended action. A notice must set out particulars about the complaint, the reasons for the complaint and what action is required.

If the service provider is a registered service provider the ombudsman must provide a copy of the notice to the relevant registration authority. The ombudsman must then allow the service provider and, if relevant, a registration authority at least 28 days to make representation in relation to that matter. A service provider may, in making representations under subsection (5), advise the ombudsman of what action, if any, the service provider has taken or intends to take in response to the matter, because it may not have been completed. In other words, this is all logically going through a process of giving the provider a chance to say what they are doing.

A service provider may, in making representation, advise the ombudsman in writing what service the provider intends to take. After receipt of representations, under subsection (5), or after the expiration of a period allowed for under subsection (5), the ombudsman may publish a report or reports into the matter. The ombudsman must, before publishing a report under subsection (7), furnish a draft report to the service provider and then allow the service provider at least 14 days to make representation in relation to the content of the report.

A report under this section may include such material as comments, commentary, opinions, etc. However, the ombudsman must not include in a report under this section the name of a complainant without first obtaining the consent of the complainant, or unless a draft of the report has already been provided to the service provider under subsection (8). The ombudsman may provide copies of a report to such persons as the ombudsman sees fit, and the ombudsman must provide a copy of the report to a complainant and service provider that has been a party to the relevant proceedings.

The service provider named in the report of the ombudsman may appeal to the Administrative and Disciplinary Division of the District Court against any part of the contents of the report that relates to the service provider; and so it goes

through that process as well. The court may, on appeal, determine that the report should stand or remit the matter to the ombudsman for further consideration in accordance with any direction of the court or direct the ombudsman to take steps specified by the court.

In going through that, this came out of the original bill that I prepared, and there were some concerns raised about the process, and the natural justice in particular, for the service provider. I had a very lengthy discussion with Crown Law on this, with the then attorney-general, and we worked through this for a couple of months, back and forth, to make sure that we had a process there that was fair and reasonable and gave natural justice. That is exactly what I am putting forward here in this amendment. I would have to say that the bill as it stands under section 51 is appalling in terms of natural justice, absolutely appalling.

The Hon. L. Stevens interjecting:

The Hon. DEAN BROWN: Well, the minister laughs. But the ombudsman may prepare a report of his and her findings at the conclusion of the investigation. The ombudsman may provide copies of a report to such persons as the ombudsman thinks fit. The report may contain information, comments, opinion and recommendations for action. Then we give a holier than thou protection to the ombudsman in terms of any content of the report. The ombudsman could defame people, with no right for a person even to see the report and be able to comment on it. There is no natural justice in the way the bill has been drafted, and anyone can see that. There is not even a requirement on the ombudsman to make a copy of that report available, under section 51, back to the service provider. So, therefore, it is entirely unsatisfactory indeed, and that is why anyone who reads that and has one ounce of understanding of natural justice would realise that clause 51 is unacceptable, and that is why I have moved this amendment.

The Hon. L. STEVENS: The government does not support the amendment moved by the shadow minister.

The Hon. Dean Brown: You don't support natural justice?

The Hon. L. STEVENS: Well, again, I support natural justice, but it does not necessarily stand up to what you have just argued for your amendment. Essentially, the amendment proposed by the opposition combines existing clause 51 with the report under clause 52 and other related clauses into a single clause. We believe that the provisions are unnecessary. While not as proscriptive, the amendment does not limit or prevent responses by providers, for example, to make representation to the ombudsman or discuss any actions with him or her. In relation to the member's new clause 51, subclauses (13) to (16), the government has a new clause 52A, which will cover the appeal to the administrative and disciplinary division of the District Court. We do not support the member's amendment.

Mrs REDMOND: I support the amendment, primarily for the reason to which the minister just alluded, that is, the right of appeal. Under new subclause (13) of the amendment, the appeal lies to the District Court against any part of the contents of the report. The minister's amendment, with which we are yet to deal, gives a right of appeal that is restricted to appeals on the question of procedural fairness. Combined with the section we have already discussed—and we have lost the argument on the right to cross-examine—we could have a situation where a doctor is made the subject of a complaint. The complainant could give evidence on oath, which is not tested by cross-examination, and the ombudsman could make a finding of fact which is incorrect and which is based on that untested sworn evidence. Pursuant to the minister's proposal there is no right for that doctor to then apply to a court on the basis of those findings of fact, because he is restricted to appeal only on the basis of procedural fairness. Nothing could be further from giving people a fair and balanced hearing and rights under this legislation.

The Hon. DEAN BROWN: If the minister will not comment, I will. I highlight the comments the member for Heysen made very effectively. The only ground on which an appeal can take place is on the process, not the content of the report. Here the ombudsman has quite falsely defamed someone. The ombudsman has protection against any legal action under clause 51 but the poor provider, having been defamed, has no right of appeal at all over the false conclusions.

The Hon. L. STEVENS: I rise on a point of order. I understand the member is now debating my new clause 52A.

The Hon. DEAN BROWN: I am dealing with new clause 51(13).

The Hon. L. Stevens: Which is my new clause 52A.

The Hon. DEAN BROWN: No: I am dealing with my amendment.

The ACTING CHAIRMAN: I am ruling on a point of order. I rule there is no point of order because the honourable member is speaking to his amendment.

The Hon. DEAN BROWN: The important point with new subclause (13) is that it allows appeals on both the process and the substance of the report. I notice that amendments we are yet to deal with allow only a right of appeal on process, not the substance of the report. I am talking about my amendment. The procedure we have put forward provides natural justice. There is no natural justice at all in terms of the amendment with which we have yet to deal. This is a very important point, indeed. I find it disturbing that the adviser to the minister sits there smiling over the fact that someone does not have natural justice in terms of a right of appeal about the content of a report. That is a very fundamental right and one that this parliament should uphold because it comes down to the individual rights of people within our community. I will fight on this issue any day whatsoever, and I have seen this parliament be absolutely adamant in terms of fighting on this issue as well.

The Hon. L. STEVENS: In relation to any adverse comment in terms of the health and community services ombudsman—I note the shadow minister is not even bothering to listen now, which is interesting—I refer the shadow minister to clause 69. If there is an adverse comment in relation to a person covered in this bill, the person must be given reasonable opportunity to make submissions and they must be included in the report. I return to the issue in relation to appealing to the administrative and disciplinary division of the district court. We have been deliberately clear that an appeal to that court is only on process: it is not on content. We are not talking about taking a complaint from this conciliation/investigation arena into a court of law and having the whole thing begin again. That is not what this bill is about. It is on procedure—

The Hon. Dean Brown interjecting:

The Hon. L. STEVENS: No, an appeal can be made on procedure, but certainly not on the content. Clause 69 deals with adverse comments. I refer members opposite to clause 69, which provides:

> The HCS Ombudsman must not include and report under this act a comment adverse to a person. . . except where the person has been

given a reasonable opportunity. . . for the person to make an alternative submission.

The Hon. Dean Brown: There is no right of appeal.

The Hon. L. STEVENS: There is a right of appeal and it exists in my clause 52A, and it is a right of appeal on the process.

The Hon. DEAN BROWN: I find this absolutely astounding. We now have a minister who has acknowledged that the ombudsman can come to a false conclusion. The ombudsman can write a report that defames a provider based on that false conclusion with no right of cross-examination whatsoever, and there is no right of appeal whatsoever on the false conclusion that has been reached within that report. It is only on the process, not on the conclusion that is the substance of the report. Furthermore, we will then say that the ombudsman cannot be sued for defamation afterwards. That is absolutely incredible.

It is getting worse when the minister acknowledges the fact that no natural justice is done and that on this issue we will protect the ombudsman. If the minister will not allow an appeal on the actual substance of the report, I challenge her to remove clause 51(4) which gives the ombudsman protection, because she cannot have it both ways. If the ombudsman is able to defame people, then you have to give the provider the chance to take legal action under natural justice. You cannot have it both ways, that is, giving protection to the ombudsman and giving no right of appeal against the substance of the report.

The Hon. L. STEVENS: Of course there is a right of appeal.

The Hon. DEAN BROWN: Only on the process.

The Hon. L. STEVENS: There is a right of appeal on the process, certainly, to the District Court; but, if the shadow minister remembers, earlier in the debate we talked about why it was so important to have the state ombudsman separate from the health and community services ombudsman, because in the event that there is a major concern by a complainant in relation to any aspects of this whole process, a complaint to the state Ombudsman is absolutely there.

Mrs REDMOND: Does the minister realise that what she is setting up is the potential for a registered health provider to be accused and denied in future their career because of a report by the ombudsman without giving them the right to get a judicial determination of the matters upon which the ombudsman has taken evidence and reached his own conclusion?

The Hon. L. STEVENS: Again, we are into hypotheticals from the member for Heysen; but it is quite clear—

The Hon. D.C. Kotz interjecting:

The Hon. L. STEVENS: The member for Newland has not been here for most of the night, so perhaps she could listen. In relation to registered providers, registration boards have a clear statutory role in terms of disciplinary proceedings, and certainly in relation to withdrawing registration from providers and, in the member for Heysen's terms, finishing their careers.

Mrs Redmond interjecting:

The Hon. L. STEVENS: I have not finished yet. In terms of dealing with a complaint of that nature against a registered provider in relation to the jurisdiction of a registration board and the jurisdiction of the ombudsman, part 7 makes it quite clear that when a complaint falls within the jurisdiction of a registration board—and that is where it would finish; if the honourable member is talking about something as serious as that it would be in the jurisdiction of the registration board—that is where it is dealt with.

The committee divided on the amendment:

AYES (21)

Brindal, M. K.	Brokenshire, R. L.
Brown, D. C. (teller)	Buckby, M. R.
Chapman, V. A.	Evans, I. F.
Goldsworthy, R. M.	Gunn, G. M.
Hall, J. L.	Hamilton-Smith, M. L. J.
Kerin, R. G.	Kotz, D. C.
Matthew, W. A.	Maywald, K.A.
McFetridge, D.	Meier, E. J.
Penfold, E. M.	Redmond, I. M.
Scalzi, G.	Venning, I. H.
Williams, M. R.	

NOES (25)

Atkinson, M. J.	Bedford, F. E.
Breuer, L. R.	Caica, P.
Ciccarello, V.	Conlon, P. F.
Foley, K. O.	Geraghty, R. K.
Hanna, K.	Hill, J. D.
Key, S. W.	Koutsantonis, T.
Lewis, I. P.	Lomax-Smith, J. D.
McEwen, R.J.	O'Brien, M. F.
Rankine, J. M.	Rann, M. D.
Rau, J. R.	Snelling, J. J.
Stevens, L. (teller)	Thompson, M.G.
Weatherill, J. N.	White, P. L.
Wright, M. J.	

Majority of 4 for the noes.

Amendment thus negatived; clause passed.

The Hon. L. STEVENS (Minister for Health): I move:

That standing orders be so far suspended as to enable the house to sit beyond midnight.

Motion carried.

Clause 52.

The Hon. L. STEVENS: I move:

Page 31, after line 21—Insert:

(3a) A notice under subsection (2) must provide a period of time for compliance with a requirement under that subsection that has been determined by the HCS Ombudsman to be reasonable in the circumstances.

This amendment is in response particularly to the Medical Board. Based on the principle of fairness, a provider should be able to see a report that concerns them before it is made public. In addition, under clause 69, to which I referred a few moments ago, the HCS ombudsman must not include any comments adverse to a person who is identifiable in a report unless that person has been given a reasonable opportunity to make a submission to the ombudsman in relation to the comments or a fair summary of them must be included in the report.

Under clause 59, registration authorities may at any time request the HCS ombudsman for a report on the progress or result of a complaint involving a registered service provider. The HCS ombudsman must comply with this request. This also creates opportunities for registration authorities to review and comment on a potential report or decision.

Amendment carried; clause as amended passed.

New clause 52A.

The Hon. L. STEVENS: I move to insert the following new clause:

Right of appeal

52A.(1) A health or community service provider who is named in a report published by the HCS Ombudsman under this division may appeal to the Administrative and Disciplinary Division of the District Court (the court) against any aspect of the procedures of the HCS Ombudsman relating to the preparation of that report that is not procedurally fair.

(2) An appeal must be made within 14 days after the service provider receives a copy of the relevant report from the HCS Ombudsman.

(3) The court may, on an appeal—

(a) determine that the report should stand; or

(b) remit the matter to the HCS Ombudsman for further consideration in accordance with any directions of the court; or

(c) direct the HCS Ombudsman to take steps specified by the court (which may include the publication of a new or revised report or other statements or materials).

This is the right of appeal amendment referred to by me a few minutes ago in relation to the set of amendments put forward by the member for Finniss. It provides for the right of appeal to the administrative and disciplinary division of the District Court on the basis of procedural fairness for a provider named in a report. The amendment gives the service provider the right of appeal on the basis that the ombudsman has acted unfairly in the conduct of an investigation. It supports a principle of fairness in the conduct of an investigation while preserving the integrity of the HCS ombudsman's office. It does not provide for an appeal on the outcome of an HCS ombudsman's investigation or his or her findings, since the court would not be in a position to make such a judgment unless it heard all the evidence itself.

Mrs Redmond interjecting:

The Hon. L. STEVENS: Precisely, and that is where we fundamentally differ. That is, it would be the same as a second investigation on the same matter in a court of law, which is not what this bill is about. In fact, we are trying to keep things out of courts of law. In terms of medical indemnity, the former minister might be interested to know that the need and the ability to have complaints procedures that keep things out of the courts of law, away from lawyers, away from the costs, is one of the things that is being encouraged across all jurisdictions. This is the only jurisdiction remaining not to have such legislation, which is why we are doing this.

The clause does not inhibit the HCS ombudsman from publishing a report, even if it is subject to an appeal. This can potentially still impact negatively on a provider, even though the court may find that the HCS ombudsman has erred. Clause 52A(3) is almost identical to that proposed by the opposition. Under this clause the HCS ombudsman must take the steps specified by the court, including the publication of a new or revised report. If the HCS ombudsman has been informed that a report may be the subject of an appeal, he or she may consider the likely outcome of the appeal as well as the benefits that might flow from the publication of the report. The HCS ombudsman may consider delaying the publication in some circumstances. However, that would be at the ombudsman's discretion.

The HCS ombudsman should not be inhibited from publishing a report simply on the basis of an appeal being possible or mooted by a provider. The right to appeal on the basis of unfair procedures protects a significant right of a provider. The right to appeal the finding of the HCS ombudsman has been opposed by community groups and non-government organisations, who argue that it allows service providers a second opportunity to review a complaint and contest a decision, potentially delaying a resolution and resulting in a long, protracted legal process. This government has a duty to listen to these groups as well as to service providers, and it believes that this amendment provides a balance between the rights of all groups.

The concern is that providers are denied access to a just process under this bill, and this amendment addresses this concern. In addition, all providers are still able to lodge an appeal to the Supreme Court for judicial review or can lodge a complaint with the state Ombudsman, which I said before. The latter also relates to whether proper process was followed by the HCS ombudsman. Further, the Health and Community Services Advisory Council, which we will talk about a little later, is empowered to provide advice to the minister and the HCS ombudsman on the operation of this legislation and the processes of the HCS ombudsman, but not on his or her decisions. To provide an avenue for appealing the decision would set South Australia's legislation apart from nearly all other states and territories complaints officers in this regard.

Again, we are the last in the country. Only the ACT has a specific clause that establishes the right of review to a magistrate's court to review a commissioner's decision. However, this review appears to pertain to a decision made under their Health Records Act, an act to provide for the privacy and integrity of an access to personal health information. It does not relate to complaints relating to the broad provision of services. The government's amendment is fair to both consumers and service provider and ensures that the integrity of the health and community services ombudsman is preserved.

The Hon. DEAN BROWN: The minister has come out with a lot of words there. However, the nub of it is this: there is no natural justice for someone who has been falsely maligned by the ombudsman and who has no ability to get justice anywhere else. The minister herself has said that there is only an appeal on procedure, not on the content of the report. Yet, the minister has said under clause 52(5) that you cannot then go and take legal proceedings against the ombudsman under this section, as you cannot under the previous subclause 2. You cannot have it both ways. Open the ombudsman up to legal action for defamation if the ombudsman has made a mistake, so at least people can get natural justice by some other means. If you are not going to put it into the bill in terms of allowing appeal of both process and substance of a report, then at least do not protect the ombudsman through our forms of natural justice through the courts. You cannot wrap this ombudsman up in a cocoon and let them come out with any statement they like and not have that statement subject to some investigation. I will not go on. I rest my case there. It is clear, indeed, that there is no natural justice whatsoever for a service provider. They can be defamed by the ombudsman with no right of appeal to protect themselves.

Mrs REDMOND: One of the things the minister said in her explanation of this clause was that an appeal to the court would simply allow the same investigation to be carried out again—'the same as a second investigation on the same matter' were the words she used. The very real difference is that we have already established that, under the minister's earlier amendment, there will be no right for cross-examination of witnesses in the ombudsman's original investigation. In a court, that is the very essence of how the court will get to the truth of the matter and, having been denied it in the first instance, it is only fair that there be an opportunity for the person who has had this finding against them be able to

go to the court and get a judicial determination based on a proper hearing of the evidence.

The Hon. L. STEVENS: I am not sure whether members opposite understood that I said before—and I will just repeat it—that all providers are still able to lodge an appeal to the Supreme Court for judicial review, or they can lodge a complaint with the state Ombudsman. I believe that is adequate.

New clause inserted.

The Hon. DEAN BROWN: I move:

New clause.

Page 31—Insert:

DIVISION 5—PROFESSIONAL MENTOR

Professional mentor

52B. (1) The HCS Ombudsman may appoint a professional mentor to advise the HCS Ombudsman or a person acting as an investigator under this part on any matter relevant to an investigation.

(2) The HCS Ombudsman or other person may discuss any relevant matter with the professional mentor.

(3) If a complaint is made against a registered service provider, the relevant registration authority may request the HCS Ombudsman to appoint a professional mentor under this section.

(4) On receiving a request under subsection (3), the HCS Ombudsman must consult with the relevant registration authority and, unless there are compelling reasons for not doing so, must appoint a professional mentor.

(5) If a person who is appointed as a professional mentor under subsection (3) is a member of the relevant registration authority, the person must not take part in any proceedings of the registration authority concerning the registered service provider that are related to the subject matter of the investigation under this part.

This is all professional mentors, and there is no need to go into detail on this. It is very obvious why we are doing this. We want to see the differences resolved.

The Hon. L. STEVENS: The government does not support this provision. We are now talking about investigations. Mentors are part of the conciliation phase, and this clause proposed by the shadow minister is now superseded by the previous amendment to clause 42(2) which was passed and which provides for the ombudsman to obtain expert advice under part 6, investigations.

New clause negatived.

Clauses 53 to 55 passed.

Clause 56.

The Hon. L. STEVENS: I move:

Page 33, line 11—Leave out 'a copy of the complaint' and insert:
relevant details of the complaint

I remember discussion on this quite well. The Medical Board, I think, and certainly a number of the registration boards, wanted this, and we are very happy to provide it. Simply, rather than having to provide a copy of the complaint, which was explained to us could sometimes run into several large folders, only the relevant details of the complaint need be provided to make it more workable and practical.

Amendment carried.

The Hon. L. STEVENS: I move:

Page 33, line 14—Leave out 'may' and insert:
must

This amendment requires that a registration authority must provide to the ombudsman copies of any documents in its possession that relate to the complaint. The clause that was tabled stated that the registration authority may choose to provide the health and community services ombudsman with copies of any documents in its possession that relate to the complaint. The amendment strengthens the role of the ombudsman and will ensure that the ombudsman will have all the information available to him or her when deciding who should deal with the complaint.

Amendment carried.

The Hon. L. STEVENS: I move:

Page 33, line 16—After 'complaint' insert:
and that are requested by the HCS Ombudsman

The third amendment also relates to clause 56(2) and further strengthens the role of the health and community services ombudsman to ensure that, if the ombudsman requests information relating to a complaint from a registration authority, the registration authority must provide it.

Amendment carried; clause as amended passed.

Clause 57.

The Hon. L. STEVENS: I move:

Page 34, line 17—Leave out 'may report the matter to the minister' and insert:
or the registration authority (or both of them together) may provide a report on the matter to the minister.

The effect of this amendment is to provide for natural justice for registration authorities to have right of reply to the minister. The registration authority must, in writing, inform the HCS ombudsman whether action is to be taken on a matter raised in a report referred to the authority by the ombudsman as soon as practicable after the performance of the function according to the recommendation. The registration authority must advise the ombudsman of the results, any findings and any other action taken or proposed. If the ombudsman is dissatisfied with the failure of a registration authority to perform a function, or the time taken to perform a function, the ombudsman or the registration authority, or both, may provide a report to the minister.

The rationale for this is that it provides for additional checks and balances in the system to ensure that complaints are handled effectively and efficiently. Under clause 59, registration authorities are also empowered to request the HCS ombudsman for a report on the progress or result of an investigation at any time, to which the ombudsman must comply. The clause strengthens the firm intent of the act to establish a partnership approach between the ombudsman and registration authorities and ensures that there is a transparent investigative service.

Amendment carried; clause as amended passed.

Clauses 58 to 62 passed.

Clause 63.

The Hon. DEAN BROWN: I move:

Page 36, lines 17 and 18—Leave out paragraph (f).

The Hon. L. STEVENS: We agree with the amendment.

Amendment carried; clause as amended passed.

Clauses 64 to 68 passed.

Clause 69.

The Hon. L. STEVENS: I move:

Page 39—
Line 20—After 'a person' insert:
or body
Line 20—After 'the person' insert:
or body
Line 24—After 'a person' insert:
or body
Line 26—After 'a person' insert:
or body

These are simply to ensure that the provisions apply to a body as well as a person. It is important that a person or a body about whom an adverse comment has been made in a report has the opportunity to respond.

Amendments carried; clause as amended passed.

Clauses 70 and 71 passed.

Clause 72.

The Hon. L. STEVENS: I move:

Page 41, lines 2 to 19—Leave out subclauses (1) and (2) and insert:

(1) A designated health or community service provider must, from time to time as determined by the HCS ombudsman, lodge with the HCS ombudsman a return that sets out the prescribed particulars concerning—

(a) specified classes of complaints received by the health or community service provider during a period determined by the HCS ombudsman; and

(b) action taken during that period in response to, or as a result of the receipt of, those complaints, or similar complaints received during a preceding period.

Maximum penalty: $5 000.

This amendment applies to the role and function of the ombudsman to report on the system-wide trends and issues and, in order to do that, the ombudsman needs to get system-wide information. Having spoken to registration authorities and other providers, we have taken on board some of their concerns about not overburdening them to the greatest extent possible, so that we could still get the information required for the ombudsman to assume that overarching system-wide responsibility on which both sides of the debate agreed earlier, without overburdening the providers.

The designated health or community service providers will be required to lodge a return when requested by the ombudsman and it will contain specified information about complaints. The amendment allows the returns to be developed in consultation with providers and be varied as may be required by the ombudsman, according to whatever particular issue the ombudsman is investigating and monitoring. Users, health and community service providers and the public need a transparent system for monitoring complaints received and the action taken. The provision of this information to the ombudsman will support the ongoing monitoring of health and community services complaints in South Australia. This information can be used to facilitate improvements in the health and community services sector and, as I said earlier, a major role of the ombudsman is to get those improvements. We believe that the amendment will provide a balance between these requirements and the administrative requirements placed on the prescribed providers.

The Hon. DEAN BROWN: The original draft of clause 72 was a hopeless draft, to say the least. This allowed the ombudsman to insist that every complaint was logged for any class of provider, and any complaint brought in could be logged under instruction of the ombudsman. The ombudsman could set out and require these returns to be submitted to him. All complaints received by the health and community services provider and any action taken in relation to each response for that financial year could be required to be logged. Small medical practitioners would have to employ significant staff to carry out this bureaucratic role. I find the minister's amendment unacceptable, and certainly we will oppose it. It is a marginal improvement on what is there, but that is the best one could say. It would still place an unreasonable obligation on small service providers. We will not go into the detail of it. It is a hopeless clause, indeed, and we will oppose it. It will be interesting, because service providers are horrified at this sort of potential requirement.

I am glad the Premier has come into the house to hear this because he should look at clause 72—and also clauses 51 and 52. I urge him to look at those clauses, because clauses 51 and 52 are hopeless. Clause 72 is equally hopeless, as well. I ask the Premier to look at it to see how hopeless it is. We will oppose it. This is an unfair obligation on service providers. The ombudsman is not there to investigate complaints. The ombudsman is demanding that all information concerning complaints be referred to him. It is just incredible. I thought this was about resolving complaints between two parties, but, no, it has now developed to the point where the ombudsman is the policeman, and even a minor complaint to the service provider that the person does not wish to take any further can now suddenly end up in the hands of the ombudsman and be investigated. I object to this clause very strongly.

The Hon. L. STEVENS: Thank you very much; what a big speech! I ask members to cast their mind back several hours ago when the shadow minister moved an amendment to clause 8 which he said was very important and which I agreed was very important. Clause 8 relates to the role of the health and community services ombudsman. His amendment to clause 8, page 11, after line 19 was to insert the following:

to review and identify the causes of complaints and to—

this is the important bit—

(ii) detect and review trends in the delivery of health services.

When we were talking about clause 8, the shadow minister thought that this was a great idea—in fact, he had the same amendment. How does the shadow minister expect the ombudsman to undertake this role without having access on a system wide basis to the information that exists in the system on complaints to enable the ombudsman to do the job? This is the shadow minister telling me how hopeless this is. It shows that he has not even thought through any of this. It is all words to him. It is just not followed through in any way to enable the ombudsman to undertake the role that we have prescribed earlier in the bill.

I am pleased that we have made the changes. We responded to the concerns in the field. That is the way we do business here. We talk to people and discuss changes and, if they improve the bill, we include them. We responded to concerns from providers and, as I said before, we have made changes to ensure that there is consultation and that the ombudsman takes into account what can be done to assist with the ease of the collection of information and administrative efficiencies.

Essentially, we have tried to make it as easy as possible for the people who have to provide the information, but also bearing in mind that we all agreed earlier that the ombudsman would have this role. Give us a break. I think that we have the best balance that we could achieve in the interests of both the providers and the ombudsman.

Mrs REDMOND: I am puzzled by the minister's assertion a moment ago that she set in place mechanisms by which there will be ease for the collection of information. There is nothing in the amendments as proposed by the minister that does anything except impose an obligation on providers. It does not provide for any ease at all. I would like an explanation from the minister as to how she says this amendment provides for ease of information and collection of information from providers.

The Hon. L. STEVENS: It seems to me that it is fairly clear, if the honourable member will just read—

Mrs Redmond interjecting:

The Hon. L. STEVENS: Maybe the honourable member is a little tired.

Mrs Redmond interjecting:

The Hon. L. STEVENS: Well, let me just read it:

'designated health or community service provider'

A designated one. So, it is not all of them. It depends on what the ombudsman decides he needs to look at—the particular issue. It might relate to public hospitals, it might be whatever.

Mrs Redmond interjecting:

The Hon. L. STEVENS: No, not everyone. It would be ridiculous to do everyone. The clause provides, 'a designated health or community service provider'. The honourable member always takes the extreme. From time to time as determined, depending on what the ombudsman is looking at, the service provider must lodge a return to set out the information on which the ombudsman will undertake his monitoring as he is supposed to do. If the honourable member reads through the clause it is clear. It provides for specified classes of complaints received by the health or community services provider in the period determined; the action taken; and in a form that is determined after consultation.

Mrs Redmond: Where does it say consultation, minister?

The Hon. L. STEVENS: The consultation is contained in subclause 2(b). We have done the best we can. I could suggest that, perhaps, the member for Heysen could have put up an alternative herself instead of just complaining.

Mrs REDMOND: The member for Heysen's alternative is to delete it altogether and to allow the ombudsman to publish a report as to whatever information he has had by way of complaints and how they have been resolved during the year and put no imposition whatsoever on the providers to provide him with that sort of information.

The committee divided on the amendment:

AYES (25)

Atkinson, M. J.	Bedford, F. E.
Breuer, L. R.	Caica, P.
Ciccarello, V.	Conlon, P. F.
Foley, K. O.	Geraghty, R. K.
Hanna, K.	Hill, J. D.
Key, S. W.	Koutsantonis, T.
Lewis, I. P.	Lomax-Smith, J. D.
McEwen, R.J.	O'Brien, M. F.
Rankine, J. M.	Rann, M. D.
Rau, J. R.	Snelling, J. J.
Stevens, L. (teller)	Thompson, M. G.
Weatherill, J. N.	White, P. L.
Wright, M. J.	

NOES (20)

Brindal, M. K.	Brokenshire, R. L.
Brown, D. C. (teller)	Buckby, M. R.
Chapman, V. A.	Evans, I. F.
Goldsworthy, R. M.	Gunn, G. M.
Hall, J. L.	Hamilton-Smith, M. L. J.
Kerin, R. G.	Kotz, D. C.
Matthew, W. A.	Maywald, K. A.
McFetridge, D.	Meier, E. J.
Penfold, E. M.	Redmond, I. M.
Venning, I. H.	Williams, M. R.

Majority of 5 for the ayes.

Amendment thus carried; clause as amended passed.

Clause 73 passed.

Clause 74.

The Hon. DEAN BROWN: I move:

Page 42, after line 17—Insert:

(4) Subsection (1) does not apply in relation to a decision to discontinue the provision of services to a particular person where the health or community service provider is under no duty to continue to provide those services.

New clause, page 42, after line 32—Insert:

Protection of certain information

76A. Nothing in this Act requires the production or provision of information held under section 64D of the *South Australian Health Commission Act 1976.*

This refers to an issue that we dealt with earlier, where a service provider decides to discontinue a service. Under clause 74(4), a new section is inserted, subsection (1) of which provides that a fine of up to $10 000 can be imposed on the service provider. Under this provision that will not apply in relation to a decision to discontinue the provision of a service to a particular person where the health or community service provider is under no duty to continue to provide those services. It comes back to the same point about professional ethics that I made before where a doctor, in particular, perhaps because a patient is trying to develop a personal relationship with the service provider, might want to say that that is inappropriate and that, therefore, they will not provide the service any longer.

The Hon. L. STEVENS: The government does not support the amendment. How do you know that a decision to discontinue a service is not a reprisal against someone? That is the issue. To suggest that a service provider is under no duty to continue to provide a service and that such actions do not constitute a reprisal would be prejudicial to the complainant. In some circumstances, the discontinuation of a service, even where there is no duty to continue, may also be considered a form of reprisal. Removing this from consideration as an offence may therefore be prejudicial to the complainant, so the government does not support the amendment.

Amendment negatived; clause passed.

Clauses 75 and 76 passed.

New clause 76A.

The Hon. DEAN BROWN: I move:

Page 42, after line 32—Insert:

Protection of certain information

76A. Nothing in this act requires the production or provision of information held under section 64D of the South Australian Health Commission Act 1976.

Various registration authorities were adamant about this. They were very concerned that information provided under section 64D of the South Australian Health Commission Act should not be produced under this provision. It is a matter of trust. Very confidential information is provided to which the minister can have access but the ombudsman should not. If the minister does not accept this, she is putting at risk the whole collection of this information, because I think some service providers would seriously wonder whether they ought to provide this information if it is going to fall into inappropriate hands.

The Hon. L. STEVENS: The government does not support the amendment. My clear advice is that an additional clause is not required to protect the confidentiality of information provided under section 64D of the South Australian Health Commission Act. Such provisions do not exist in the Ombudsman Act 1972 and the Coroners Act 1975, and both—

The Hon. Dean Brown interjecting:

The Hon. L. STEVENS: Just listen. Both of these bodies cannot access records that are privileged under section 64D of the South Australian Health Commission Act. In addition, clause 50(2), which provides that a person is not obliged to provide information that is privileged on the ground of legal professional privilege, also protects information provided under section 64D of the South Australian Health Commission Act. I received a letter from the South Australian

Perioperative Mortality Committee to which I replied in those terms. That is my clear advice.

The Hon. DEAN BROWN: Is the minister saying that the ombudsman will not be able to get access to any information provided under section 64D?

The Hon. L. STEVENS: I am saying that we do not need an additional clause to protect the confidentiality of information provided under section 64D in relation to how it would be affected by the act in question.

The Hon. DEAN BROWN: That is not my question. My question is: is the minister saying that information collected under section 64D will not be able to be provided to the health ombudsman?

The Hon. L. STEVENS: Yes.

New clause negatived.

Clause 77.

The Hon. DEAN BROWN: I move:

Page 43, after line 13—Insert:

(2) A person who does anything in accordance with this act, or as required by or under this act, cannot, by so doing, be held to have breached any code of professional etiquette or ethics, or to have departed from any acceptable form of professional conduct.

This protects the professional ethics of the service providers and ensures that health providers have some protection.

The Hon. L. STEVENS: The government does not support the amendment, simply because we believe that clause 77 already provides sufficient protection to actions under this act. It is important that providers are assured that they will not be subject to any professional or other sanctions should they act according to this act. The intent of the proposed amendment is to ensure that a person who acts or is required to act under this act is not in breach of any professional or ethical conduct. This may not always be possible. A person must act according to the law, and a question must be raised about the appropriateness of the ethics or professional etiquette of an organisation if they place a person in conflict with the law. It is not appropriate for the bill to address this.

Mrs REDMOND: How, then, does that address a situation whereby a general practitioner is confronted with a complaint and as part of answering that complaint he has to disclose some details about the medical condition of the person who has made the complaint, which may be entirely relevant to understanding how and why the complaint came about and, therefore, entirely proper for the practitioner to disclose in terms of the complaint and answering the ombudsman but not proper in terms of the professional ethics of maintaining the confidentiality of the patient?

The Hon. L. STEVENS: My advice is that ultimately they have to obey the law. I do not understand the honourable member's concern.

Mrs REDMOND: My concern is that if you had that situation where a GP is confronted with a complaint by a person who had, for instance, some sort of mental disability or something relevant in terms of their medical history, known to the GP but confidential to the GP, the thrust of the amendment being put forward by the member for Finniss is to ensure that, if it is disclosed to the ombudsman in the course of trying to explain the practitioner's conduct, in answer to the complaint lodged by the patient, the practitioner deserves the protection offered by the clause being put up by the honourable member.

The Hon. L. STEVENS: All I can say is that, if this bill becomes law, people have to obey the law. If there is an issue with a registered professional of a serious nature in relation to a patient, it is very likely that it will go before the Registration Board anyway. It acts according to its own statutes. You could say the same thing in regard to it. If this becomes law, people have to obey the law regardless of what their professional ethics say. They have to obey the law and this will become the law. I would imagine that a clash in medical diagnoses would probably stray right into the area covered by the registration board, and that is where it would go.

Amendment negatived; clause passed.

Clauses 78 and 79 passed.

New clause 79A.

The Hon. DEAN BROWN: I move:

Page 43, after line 30—Insert:

Consideration of available resources

79A. (1) A recommendation of the HCS Ombudsman under this act in relation to a service must be made in a way that to give effect to it—

(a) would not be beyond the resources appropriate for the provision or delivery of services of the relevant kind; and

We have been dealing with a piece of legislation where the ombudsman has the right to give a direction to the provider about what should be done to resolve a dispute. It is inappropriate that in giving that the ombudsman goes beyond the resources the provider has. In other words, you cannot have the ombudsman there giving instructions about extra service or whatever which may send the provider bankrupt or broke, or which are beyond the reasonable resources of the provider. Again, this is to make sure that you have a fair and reasonable balance. I move this because it both covers the resources of the provider, as well as being consistent with the resources that have been allocated by the minister, the Chief Executive or administrative unit according to government policy. What if cabinet allocated its funds to a particular area and the ombudsman then said, 'It needs more money?' Does this give the person the right to override cabinet or this parliament?

The Hon. L. Stevens: Of course not. You haven't read the bill.

The Hon. DEAN BROWN: Yes I have.

The Hon. L. Stevens: The ombudsman can make a report, and that report stands.

The Hon. DEAN BROWN: And makes recommendations.

The Hon. L. Stevens: Yes.

The Hon. DEAN BROWN: In making those recommendations, I stress the fact that he should not be able to make recommendations in terms of additional services that have to be required by a service provider beyond their means.

The Hon. L. STEVENS: The government does not accept the amendment. It is quite amazing that the former minister could suggest such a thing. I want to refer back to—

Ms Thompson interjecting:

The Hon. L. STEVENS: That's true. Nothing really surprises me any more. Clause 10 provides:

In performing and exercising his or her functions and powers under this act, the health and community services ombudsman must act independently, impartially and in the public interest.

That is what the restrictions are in terms of the way the health and community services ombudsman should act. Those are the three things: fairness, impartiality and public interest. That relates particularly to paragraph (b). Is it being said that, if a government of any persuasion decided to put its funding somewhere and the ombudsman came across huge needs in another area, they could not make recommendations in relation to it? That is ridiculous. The person is there to handle complaints, monitor the system and make recommendations

for improvements, without fear or favour, in the public interest. So, the government does not accept that amendment.

New clause negatived.

Clause 80.

The Hon. DEAN BROWN: I move:

Page 44, lines 1 to 5—Leave out paragraph (b).

This amendment effectively deletes clause 80(2)(b). This is a significant issue. Should there be the ability to impose a levy on the service providers through their registration boards or registration authorities? My view is that the answer is no. I know that this was in the original bill that I put up—

The Hon. L. Stevens: Yes, it was.

The Hon. DEAN BROWN: But it was also one of the amendments I was going to move to remove. I had a series of amendments, including all that stuff we have dealt with under clauses 51 and 52. It is no accident that I have all these amendments here because they were drafted for the previous bill. Of course, the minister has done a couple of things. First, the legislation was previously about health providers. Now, it is a much broader thing and it is about community services as well. So, we are asking health providers to pay for the cost of people complaining about community services, not just in the health area. Secondly, it was our intention to roll it into the office of the ombudsman, so the costs would be substantially less than they are now. The minister has decided, 'No, we will go for the most expensive model possible and we will impose that on the professions.' This is totally unfair. The professional associations understand that it is totally unfair. Here is a government that is now about to impose a new levy on the community. That is what it is, a new levy on a section of the community.

Mrs Redmond interjecting:

The Hon. DEAN BROWN: They promised not to, I know. It was part of their election promise. Here is yet another election promise that is about to tumble in a significant way indeed by imposing a levy.

Members interjecting:

The CHAIRMAN: Order!

The Hon. DEAN BROWN: Well, I find that they laugh. I am glad they have laughed, because I am sure the various professions will be interested in the fact that the Labor Party sat here at almost 1 o'clock in the morning laughing as they imposed another levy on professions within this state, and that they have done so to require those people to pay for a service, not even related to health but to community services, and, in fact, on the most expensive model that you could possibly put up, and certainly we will oppose this.

The Hon. L. STEVENS: Let me make it quite clear: I think the laughter on this side was about the hypocrisy of the shadow minister. We sometimes cannot believe what we are hearing, and that was certainly what the laughter was about. The first point I want to make is that the original clause in the bill came exactly out of the shadow minister's own bill, when he was minister. How things change when all of a sudden you become the opposition and you start being the wrecker and the spoiler. How things change. Anyway, the initial amendment came straight out of his bill and, of course, tonight he stands up and says that he had it in his bill but he was actually going to take it out. I mean, come on, where is your credibility? He says anything. Anything that comes into his head will do.

The second point is that providers, through the registration boards, are already paying for investigations by boards through their registration fees. That is what they pay. They pay fees and the boards run on the fees of all their registered providers. The health and community services ombudsman will undertake some of the investigations, some in total or some in part, currently undertaken by the boards.

This provision simply provides for funds to follow the investigation. So some of the work is currently already being paid for by providers, and you will note that in the amendments we have made it quite clear that the fees to providers are not to be increased to cover this mechanism. We have made it quite clear, and boards have agreed with us in discussion with them, that the health and community services ombudsman will take a considerable number of complaints from the boards back. So, again, we are saying that the funds from the registered providers should follow the investigations. It is the same investigations; they will be done by another body; the funds should follow that investigation.

I notice that the former minister said that we were choosing the most expensive option. Well, we are not choosing the most expensive option. We are choosing the option that is going to do the best job in terms of independent, fair resolution of complaints, and that has been the whole aim of this exercise. I must just comment, of course, that I do know that the former minister in the previous government had his own bill, but, of course, he did not have any money set aside for it at all. That is something we know now that we are in government and have looked at the books. Lots of things were not funded. But certainly there was no funding set aside for the former minister's scheme at all. Nothing in the budget at all. So, how much commitment did he ever have to this? You set up a scheme but do not fund it. You double or triple the workload of all the private providers but you do not give any money for it. So, his credibility in this whole area is pretty low.

Mrs REDMOND: Like the member for Finniss, I oppose the provision, but my main concern is the words in brackets, namely, 'prescribe a fee (which may be a differential fee)'. I have a great concern about the fact that we are going to enable the prescribing of differential fees so that different people and different classes of people will be asked to pay a different new levy. The minister said that they have made it quite clear that fees to providers are not to be increased to cover this mechanism. Where has the minister made that quite clear?

The Hon. L. STEVENS: In relation to the differential fees, we do not think it is fair for, say, a medical specialist and an enrolled nurse to pay the same amount.

Mrs Redmond interjecting:

The Hon. L. STEVENS: I am flabbergasted at that comment. I am not sure of the salary of an enrolled nurse. It is probably $50 000 or less, perhaps $40 000 or $30 000, but I know that some medical specialists earn as much as 10 times that amount. It is an issue of fairness. It is part of the regulations. There is another process as part of the regulations that we need to go through. That is why we have the possibility of differential fees, so it could be fair to the different classes of providers.

I ask the member for Heysen to look at my amendment. Page 44, after line 5, clause 80 provides:

(ba) prescribe a scheme under which a registration authority will, in a particular financial year, pay to the minister an amount, determined under the scheme, towards costs associated with the administration of this Act;

Page 44, after line 20, clause 80 provides:

(3) If a registration authority is liable to pay an amount under a scheme prescribed under subsection (2)(ba). . . then the service

providers registered by the relevant registration authority will not be liable for any fee prescribed under subsection (2)(b)—

that is, in the original bill—

that is payable with respect to the same financial year.

They cannot pay twice. Nothing in subsection (2) or (3) limits or affects any other power authority to set or collect any other fee under any other act.

Mrs REDMOND: With respect, that is not what the minister said. The minister has made it quite clear that the fees to providers—

Members interjecting:

The CHAIRMAN: Order! The member for Heysen has the call.

Mrs REDMOND: The minister has made it quite clear that the fees to providers are not to be increased to cover this mechanism. There is no guarantee whatsoever that they will not be increased, merely that they cannot be double-dipped in a single year.

The Hon. L. STEVENS: It is true that they cannot be double-dipped in a single year, but I go back to what I said originally. Clearly the argument for doing this from our point of view is that the ombudsman will be doing work that has already been paid for by the registered providers and the funds should follow the investigation.

The Hon. DEAN BROWN: It is quite clear now that the minister in answering a question from the member for Heysen made a statement earlier which factually is not correct. The service providers will be required to pay for this. Sure, they cannot double-dip in one year, but they will be required to pay for this: it will come out of their pockets. What it says is, 'You can have one hand out asking for the money, but you cannot have two in the one financial year', but they will pay for it.

The minister said quite clearly in this committee a moment ago that they would not be charged for this increase. They will be charged for this increase because these boards have to pay for it. It will not happen part way through a financial year—they cannot be double-dipped—but the payments to go across eventually will come out of the pockets of the service providers, and we all know that.

The Hon. L. STEVENS: It is true, and I would like to be clear about this. The hour is late—

Mr Venning: That's true.

The Hon. L. STEVENS: It is. We have been debating this for several hours and I would like to be clear. We are saying that it is reasonable to expect that registration boards should contribute some funding to this scheme because this scheme will deal with work that they would do now but will no longer do because this work will shift from them to the ombudsman. The provision says that the funding should follow the investigation and, if the investigation moves from one body to the other, so should some of the funds. It is quite true that that means the boards will have to pay that, but it is also true that when registration boards receive increases in their funds they certainly have to make submissions. It is not an automatic thing—it has come to the government to be approved.

I say again that I am aware that boards are not happy about this. However, I definitely believe that it is a fair thing. People know that another process needs to be gone through and that fees are payable by any prescribed service provider and, although the minister can determine the fees, the health and community services ombudsman would advise the minister on the fee and the fee structure based on further discussions with the boards once the bill is enacted. It is reasonable to allow some time and thought to be given to the appropriate fee structure rather than establish them immediately at the time of the office.

We are simply leaving that in as another process through the regulations. Members of this committee will know that there is potential for regulations to be disallowed, and another whole process of scrutiny can be gone through once the draft regulations are tabled in this house and open to the scrutiny of the parliament. As I said, the details will be worked out by regulation and in consultation with the boards and will be looked at a second time through the regulation process.

The committee divided on the amendment:

AYES (16)

Brindal, M. K.	Brown, D. C. (teller)
Chapman, V. A.	Evans, I. F.
Goldsworthy, R. M.	Hall, J. L.
Hamilton-Smith, M. L. J.	Kerin, R. G.
Lewis, I. P.	McFetridge, D.
Meier, E. J.	Penfold, E. M.
Redmond, I. M.	Scalzi, G.
Venning, I. H.	Williams, M. R.

NOES (18)

Atkinson, M. J.	Bedford, F. E.
Breuer, L. R.	Caica, P.
Ciccarello, V. t.)	Foley, K. O.
Geraghty, R. K.	Key, S. W.
Koutsantonis, T.	McEwen, R. J.
O'Brien, M. F.	Rankine, J. M.
Rau, J. R.	Snelling, J. J.
Stevens, L. (teller)	Thompson, M. G.
Weatherill, J. N.	Wright, M. J.

PAIR(S)

Brokenshire, R. L.	Rann, M. D.
Buckby, M. R.	Lomax-Smith, J. D.
Gunn, G. M.	Conlon, P. F.
Kotz, D. C.	White, P. L.
Matthew, W. A.	Hill, J. D.
Maywald, K. A.	Hanna, K.

Majority of 2 for the noes.

Amendment thus negatived.

The Hon. L. STEVENS: I move:

Page 44—

After line 5—Insert:

(ba) prescribe a scheme under which a registration authority will, in a particular financial year, pay to the Minister an amount, determined under the scheme, towards costs associated with the administration of this Act; and

After line 20—Insert:

(3) If a registration authority is liable to pay an amount under a scheme prescribed under subsection (2)(ba) with respect to a particular financial year, then the service providers registered by the relevant registration authority will not be liable for any fee prescribed under subsection (2)(b) that is payable with respect to the same financial year.

(4) Nothing in subsection (2) or (3) limits or affects any other power or authority to set or collect any other fee under act.

I put on the record again that it is true that it is within one financial year, and there cannot be double dipping. I want to make sure that that is clear. I repeat that this process needs to be worked out via the regulations. In relation to the fees overall charged by a registration authority, of course they come through cabinet in the usual process.

Amendments carried; clause as amended passed.

New clause 80A.

The Hon. L. STEVENS: I move:

Page 44, after line 20—Insert new clause as follows:

Review of Act

80A. (1) The Minister must, as soon as practicable after the third anniversary of the commencement of this Act, appoint a person to prepare a report on—

(a) the operation of this Act over its first three years and the extent to which the objects of this Act have been attained; and

(b) other matters determined by the Minister to be relevant to a review of this Act.

(2) The person must report to the Minister within six months after his or her appointment.

(3) The Minister must, within 12 sitting days after receiving the report under this section, have copies of the report laid before both Houses of Parliament.

The shadow minister supports the government's amendment, which refers to a review of the act after three years.

The Hon. DEAN BROWN: The original amendment was ours, but we had proposed two years, and the minister has introduced a second amendment which provides three years, and we are willing to accept that. So, this act will be reviewed after three years. I think that is a fair and reasonable period.

New clause inserted.

Clause 81.

The Hon. DEAN BROWN: I move:

Page 44, line 24—Leave out 'two years' and insert 'one year'.

Clause 81 provides:

A complaint may be made and dealt with under this act even though the circumstances that give rise to the complaint occurred before the commencement of this act if the complainant became aware of those circumstances not earlier than two years before the commencement of this act.

I believe that we should not look back more than one year. I think this is very important, otherwise we will find all sorts of old issues dragged up. The new act contains new powers and new requirements, and the last thing we should do is allow a whole heap of other cases to be dragged up when this act did not even apply at the time. Effectively, this is retrospectivity. I am never in favour of retrospectivity. I think that even allowing one year is being very generous.

The Hon. L. STEVENS: The government does not support the amendment. We prefer the clause in the bill. We argue that two years is consistent with a two-year time limit under which an ombudsman can hear a complaint. Just out of interest, the Northern Territory has two years, Western Australia and Queensland one year, and others have not even been prescribed. We prefer our own amendment.

Amendment negatived; clause passed.

Schedule and title passed.

Bill read a third time and passed.

DIVISION, MEMBER'S ABSENCE

Mr SCALZI (Hartley): I seek leave to make a personal explanation.

Leave granted.

Mr SCALZI: I missed the division before the last one as I was downstairs in the basement and I did not hear the bells. When I arrived the doors were locked and I therefore missed the division. This is not something that I like to do in this place because I think it is my responsibility to be here. I apologise.

JOINT PARLIAMENTARY SERVICE COMMITTEE

The Legislative Council informed the House of Assembly that it had appointed the Hon. J.S.L. Dawkins in place of the Hon. Caroline Schaefer (resigned) on the committee, pursuant to section 5 of the Parliament (Joint Services) Act 1985, and had appointed the Hon. T.J. Stephens to be the alternate member to the Hon. J.S.L. Dawkins.

HEALTH AND COMMUNITY SERVICES COMPLAINTS BILL

The Hon. L. STEVENS (Minister for Health): I want to thank all members for their participation in this debate. It has been a long debate. There were many amendments, I agree with the Chair of Committees, and I want to thank him and the other people who—

The SPEAKER: Order! The opportunity for a third reading contribution on the Health and Community Services Complaints Bill is past. Does the minister wish to proceed to the next item on the *Notice Paper*?

The Hon. L. STEVENS: No, sir.

ADJOURNMENT

At 1.22 a.m. the house adjourned until Wednesday 19 February at 2 p.m.