HOUSE OF ASSEMBLY

Tuesday 18 October 2011

The SPEAKER (Hon. L.R. Breuer) took the chair at 11:01 and read prayers.

The SPEAKER: Honourable members, I respectfully acknowledge the traditional owners of this land upon which this parliament is assembled and the custodians of the sacred lands of our state.

SUMMARY OFFENCES (PRESCRIBED MOTOR VEHICLES) AMENDMENT BILL

The Hon. A. KOUTSANTONIS (West Torrens—Minister for Mineral Resources Development, Minister for Industry and Trade, Minister for Small Business, Minister for Correctional Services) (11:03): I move:

That the sitting of the house be continued during the conference with the Legislative Council on the bill.

Motion carried.

CORRECTIONAL SERVICES (MISCELLANEOUS) AMENDMENT BILL

In committee.

(Continued from 27 September 2011.)

Clause 7.

The Hon. I.F. EVANS: I move:

Page 4, lines 26 and 27—Delete the lines and substitute:

Section 9(1)—delete subsection (1) and substitute:

(1) The CE must, not later than 31 October in each year, submit to the Minister a report on—

(a) the operation of this Act and the work of the Department for the financial year ending on the preceding 30 June; and

(b) any other matter as the Minister may direct.

In moving this amendment, I wish to explain it, and others that follow, because the others are consequential and it will make it easier for the committee to understand what we are moving. The committee might recall that I have previously had legislation before the house attempting to introduce a system whereby, if prisoners receive a compensation payment from the government for an injury that occurred whilst in prison, that money should be quarantined and the victim of that prisoner's crime outside the prison should have access to that money by way of, essentially, a victims of crime type payment.

It has taken three years to get to this point. All the amendments standing in my name go to introducing this particular scheme. There are schemes operating in Victoria and New South Wales that are very similar to this. My understanding is that the government will be accepting the amendments, and I congratulate the minister and thank him for taking them on and agreeing to them. I really do not have a lot more to say. In essence, the scheme is very simple, and I think the principle is a good one.

This shows the benefit of parliamentary travel. I picked this idea up while in New South Wales, meeting some people over there, and I thought that it was a good scheme to bring back to the state. The issue, to me, is very simple: why should the victim of crime miss out on the money if the money is available through the system? It seems to me a good principle to put into the legislation, and I am hoping that the committee will support this amendment and, ultimately, the principle.

The Hon. A. KOUTSANTONIS: It is the government's intention to support these amendments, and I wish to put on the record my thanks to the member for Davenport for moving them. This is very much the house at its best, when the opposition puts up amendments that the government accepts. I could quite easily have drafted these amendments myself and taken credit for them, as both sides of politics in the past have done.

I believe the parliament works best when you get ideas from other people; the member for Davenport has been such a member and has brought up ideas that have been very successful. I want to thank him for his cooperative approach in the way we have done this. He has waited very patiently to get this through. I think it is fair to say he feels probably a little frustrated with the process, and I would not blame him. I would like to thank the member for Davenport for his patience and for drafting these amendments.

Amendment carried; clause as amended passed.

Clauses 8 to 13 passed.

Clause 14.

Ms CHAPMAN: I move:

Page 5, line 29 [clause 14(2), inserted subsection (4)(b)]—

After 'suspected' insert 'on reasonable grounds'

I have traversed a number of these amendments during the course of the second reading contribution and so, in some attempt to expedite the process, I do not propose to speak at length to them, except the more recent amendment, which I have tabled, and I foreshadow that there will be some contribution on it.

Essentially, this is an amendment to add the qualification that the police need to have a threshold requirement of having reasonable grounds for suspicion before they are entitled to have a prisoner released into their custody for questioning. It is a qualification; it is a reasonable threshold. We consider that it is necessary to potentially prevent any abuse, and we would hope that the government is supportive of this amendment.

The Hon. A. KOUTSANTONIS: The government does not support this amendment. We believe our police are the very best in the country. We do not believe that they abuse it. We already expect police to interview prisoners only on reasonable grounds. This provision merely allows prisoners to be taken off site, and that is for their protection. Obviously, when prisoners are interviewed in the criminal justice system within the perimeter of a prison, it is often difficult for those discussions to be discreet. It is much better for us that that they be done off site. That is a recommendation of the police commissioner, and I ask members of the house to support the government.

Amendment negatived; clause passed.

Clauses 15 to 20 passed.

Clause 21.

Ms CHAPMAN: I move:

Page 9—

Line 25 [clause 21(5), inserted subsection (4)(d)]—Delete '16' and substitute: 18

Line 28 [clause 21(5) inserted subsection (4)(d)]—Delete 'a child sexual offence' and substitute:

(a) a child sexual offence; or

(b) an offence involving domestic violence where the person was a victim of the offence.

Amendments Nos 2 and 3 standing in my name seek to amend clause 21. This is to facilitate an amendment in age of the restrictions when there is a visiting service. Clause 21 proposes that correctional service visitation arrangements have flexibility in identification processes to allow for cultural factors, also to restrict persons under the age of 18 from visiting convicted child sex offenders, and to restrict victims of domestic abuse under the age of 18 from visiting a prisoner where that prisoner has been convicted of a domestic violence related offence against the visitor.

The opposition's consultation on this, to expand the number of victims by age from 16 to 18 years, comes after consultation and advice also from Ms Nelson QC, who is the chairman of the Parole Board of SA, and otherwise for reasons I have outlined in my second reading speech, I move the amendments in my name.

The Hon. A. KOUTSANTONIS: The government will accept amendment No. 2 but not No. 3. It is the government's intention to accept the amendment to lift the age from 16 to 18. We

think this is a good amendment, and it refers to the proposed government amendment to prevent under-age visitors from currently visiting child sex offenders.

The opposition then goes a step further to attempt to further restrict visits from child sex offenders to include victims of domestic violence offenders visiting a perpetrator. I accept that the intentions of member are well intentioned, but implementing the proposal will be entirely dependent upon the relevant information being provided to the Department for Correctional Services.

Currently, such information about domestic violence victims, or existing domestic violence victims, is not consistently provided to the Department for Correctional Services. In cases where the Department for Correctional Services has such information about domestic violence offences and restraining orders, such visitors can already be banned from visiting. So, we already have the power to deal with it if we know about it.

Under section 34(3) of the Correctional Services Act, the general manager of a prison may ban someone visiting if special reasons exist for doing so. Of course, we are completely committed to protecting victims, but it is completely dependent upon the information being made available to us. In this regard, we maintain a victims' register for those wishing to register with the department in order to be fully informed of a prisoner's progress throughout the prison system, placements, applications for release, etc. However, in some cases, information and details of the victim are not always known to the department. Given that it is not currently feasible to appropriately implement such a requirement due to the unavailability or inconsistency of the relevant information we are provided, we cannot support the second amendment.

Ms Chapman's amendment to line 25 carried; Ms Chapman's amendment to line 28 negatived; clause as amended passed.

Clause 22.

Ms CHAPMAN: I move:

Page 9—

Line 35 [clause 22, inserted section 35A(2)]—Delete 'at' and substitute: 'before'

Line 39 [clause 22, inserted section 35A(3)(a)]—

Delete 'who represents the prisoner' and substitute:

'acting in his or her professional capacity'

Page 10, after line 2 [clause 22, inserted section 35A(3)]—After paragraph (c) insert:

(ca) a Member of Parliament; or

(cb) a Visiting Tribunal; or

(cc) an inspector of the correctional institution in which the prisoner is detained; or

Prisoner communication can be monitored only with prior notice. Essentially, this would replace the word 'at' with the words 'prior to'. A letter sent by a prisoner cannot be monitored if it relates to communication with the entities listed under section 33(7), being exempt, together with the Health and Community Services Complaints clause (clause 19(3)), or a person acting in the capacity of a legal representative. Again, I traversed this at length during the second reading, and I urge the committee, and the government in particular, to support these amendments.

The Hon. A. KOUTSANTONIS: In relation to the amendment the member for Bragg has moved, while I understand her intention, her amendment seeks to alter the draft amendment proposal of a new section 35A, which provides that the CE 'may monitor or record a communication between a prisoner and another person' and provide for a procedural way for the monitoring or recording of communications of the section. In my view, changing the wording does not alter it, so I do not see the amendment as necessary.

Amendment No. 5 is a little different. This amendment seeks to alter the draft wording of the bill in regard to a prisoner's legal representative when referring to the proposed new section that provides for the monitoring of a prisoner's telephone calls. What I am concerned about is that the initial intention of this is to make sure that we protect legal professional privilege between a prisoner and their lawyer. However, inserting 'acting in his or her professional capacity' raises concerns about what may be transpiring in those meetings.

What the government is specifically concerned about is outlawed illegal organisations having representatives who might not be engaged as their lawyer giving them instructions on what

to do with other witnesses, what to say in a criminal hearing and giving instructions that may be asking them to commit further crimes. I have no problem with a prisoner and their lawyer having confidential discussions. The government supports that. I do have a concern with someone who is not engaged as that prisoner's legal representative having privileged conversations with an inmate. Therefore, the government cannot and will not support this amendment.

The government supports amendment No. 6. I support the member for Bragg's initiative that conversations by members of parliament with their constituents should be privileged, absolutely. It is a fundamental tradition of this house that, if a member of parliament wishes to discuss any matter with a constituent, it should be done in private. We will be supporting this amendment and, I think, passing it on to a visiting tribunal and a visiting inspector is also a good thing. They are people who have been trusted by the department with a range of issues regarding investigating accusations and charges. Prisoners should feel they have the right to speak to a member of parliament freely without it being recorded or there being any retribution by the department—not that the department would, of course. So I accept amendment No. 6 but not amendments 4 and 5.

Ms CHAPMAN: In response, goodness, in that last speech, minister, I thought the Hon. Ivan Peter Lewis had returned. Anyway, I welcome the minister's support of amendment No. 6, the right to speak to a parliamentarian.

What I do want to say is that I am disappointed that the minister is not indicating support for amendment No. 5. If ever there was a 'reds under the bed' phobia, it would be the period between when a lawyer takes instructions and establishes the relationship, which I outlined in the second reading speech clearly should be covered.

I am most disappointed that the minister should attempt to frustrate that early part of the relationship without protection and suggest that it would be abused in some way by members of the legal profession who would use it to transfer information—which sounds to me like conspiring to commit an offence, at least, but also to breach the prison regulations in respect of tampering with, interfering with or conveying information to a witness or another prisoner. I find it an extraordinary allegation that such a move would facilitate that kind of conduct by members of the legal profession.

There may be certain examples of which the minister might be apprised where such a practice has been undertaken, or even one example of that, and where the government has referred that matter to the Law Society or, indeed, the police for some reform in relation to that. There is the disciplinary tribunal, and the Supreme Court, ultimately, can be an arbiter on that. But if any such conduct has been identified as a problem, we would expect the government to have acted on it and be prepared to provide some demonstrative example of that for the purposes of denying this amendment. I note the minister's position with disappointment.

The Hon. A. KOUTSANTONIS: As I said before, I am not impugning the legal profession, and I listened with interest to the member's remarks, yet she was quite happy to impugn motives on our South Australia Police in a few earlier amendments about taking prisoners out for questioning. However, I will say this: legal professional privilege does not exist between a lawyer and someone who is not their client.

Ms Chapman interjecting:

The Hon. A. KOUTSANTONIS: All they have to do to have privilege is to sign up. If the member for Bragg thinks that someone being interviewed by a lawyer and information that client may give that lawyer in that interview somehow—

Ms Chapman interjecting:

The Hon. A. KOUTSANTONIS: The member for Bragg interjects that it is usually about guilt or innocence. If a lawyer is shopping around for guilt or innocence then I suspect—

Ms Chapman interjecting:

The Hon. A. KOUTSANTONIS: That is what you just said. You said that the conversations pre engaging are about guilt or innocence.

Ms Chapman: No; fees agreement.

The Hon. A. KOUTSANTONIS: Fees agreement. Well, that is a different matter. I am not sure why fees agreements would want to be privileged. So, professional privilege does not apply to

anyone else who has not got a lawyer, but apparently should apply to a prisoner. I do not think that is fair.

Ms Chapman's amendments to lines 35 and 39 negatived; Ms Chapman's amendment to page 10 carried; clause as amended passed.

Clauses 23 to 38 passed.

Clause 39.

The Hon. A. KOUTSANTONIS: I move:

Page 13, after line 34—After subclause (2) insert:

(3) Section 51(2)—delete subsection (2)

The current wording of subsection (2) enables a defence for introducing a prohibited item into prison. It is felt that this subsection is unnecessary and not in keeping with the intention of the section.

Amendment carried; clause as amended passed.

Clause 40 passed.

Clause 41.

Ms CHAPMAN: I move:

Page 14, lines 12 and 13 [clause 41(2)]—Delete subclause (2)

The question of Executive Council's role in the release and/or prevention of a prisoner on parole has reached an extraordinary rate of application in the life of this government and attracted considerable comment—and sometimes criticism—from the legal and academic world. Certainly, from the government's perspective, it has been a policy it has presented to the public as the great warrior of protection against the evils of prisoners whom it has determined should never be released. It is interesting to note that since coming into government there have been multiple decisions of Executive Council to refuse a parolee's application or grant them parole, yet prior to 2002, on the opposition's investigation, no government has actually exercised the power to deny parole to an inmate.

Executive Council has had some interesting historical areas of responsibility, including the responsibility for keeping a person in custody who may be mentally deficient, for example—what used to be described as 'at the Governor's pleasure'. It is interesting that the history of that aspect of the responsibility of Executive Council has changed a little over the years. Not surprisingly, the number of occasions on which the plea of insanity was utilised when capital punishment applied in Australia—in particular in South Australia—and the application for determination to be dealt with as someone who is not of sound mind suddenly dropped. Some would say that was because the defendant thought it was a better option for them to be determined of unsound mind, and not hanged, than face capital punishment. With the abolition of capital punishment, it seemed that there was a corresponding reduction in defendants relying upon, or attempting to rely upon, that determination—probably not surprisingly.

So Executive Council has retained a role in the criminal law and the custody and sentencing of criminals in this state, and it is a very important role. The Executive Council has a responsibility, in certain circumstances, even to go against all the advice which parliament and the government set in place to be accessible and relied on—for example, the Parole Board and the advice it gives—and it still retains a residual power, as the Executive Council, in this instance, to deny parole to a prisoner.

We are informed, as the Parole Board has reported, that since 2002 the Rann Labor government has refused to approve parole to more than 50 per cent of otherwise eligible parolees granted parole by the Executive Council. Arguably, the government would say that it has had good reason to do that at least in some of these cases, and it may be right. The problem with the current law is that nobody would ever know unless, of course, one were privy to the conversations that transpired in the cabinet, resulting in the message going across to the Governor to refuse or deny the parole.

Perhaps the huge number of refusals has some explanation—again, we do not know the answer to that. It is interesting to note that on the occasions when this occurs it usually coincides with a press release which is full of grandiose statements about the government being tough on law

and order matters. To bolster its credentials in this area it equates its efforts, in terms of this very large increase in refusing prisoners parole, as something that may be populist—they may be right; it may get them a good run on morning radio—but it raises a number of questions for the opposition, and a number of independent members of parliament have certainly raised concerns from time to time about what has become a practice of this government, that is, to use the Executive Council power.

In opening this bill the opposition wishes to move an amendment to essentially require, if this amendment were passed, that there be some publication of reasons for refusal. There are a number of reasons why we have gone down this line, having heard other proposals and ideas from others. In fact, recent media stories on members of parliament have suggested other alternatives such as whether this is a matter which should have an appeal process to the Supreme Court and the like. The opposition has considered those and does not consider, on balance, that those other models would best address the situation.

It is the opposition's view that the Executive Council should retain the power to reject parole—no question about that. We are quite clear about that. We say it is important to ensure that a number of things, which I will refer to in a moment, follow as a result of that rejection occurring; and it can only be of benefit, ultimately, if there is some reason for that rejection.

One of the difficulties that arises as a result of these rejections—if prisoners, for reasons unknown, are kept in custody—is that the services that are applied and the very significant taxpayer funds that are allocated (not only to accommodation but also to rehabilitation of prisoners) come into question. In particular, the direct result is that the Department for Correctional Services clearly will not be encouraging—reluctantly, perhaps—prisoners to participate in rehabilitation programs or pre-release activities, which they promote as important, such as for work, family leave, etc., even if they foreshadow that they would expect, having completed these courses and programs, that the Parole Board is likely to recommend parole, because they will be aware that it will be wasted if the Executive Council will ultimately refuse anyway. What is the point of wasting money on prisoners to prepare them for release and to hopefully have a successful rehabilitation to ensure that they do not repeat the conduct for which they have been convicted if there is not a hope in hell of them ever getting out?

The application of resources is one thing. The lack of consistency on parole decisions and currently not disclosing the reasons also undermines the parole system, for both the prisoners and the Parole Board. Firstly, the prisoners are completely left in the dark about what they are expected to do to be able to convince the relevant authorities that they should be released. They have heard the judgement of the sentencing judge about what was wrong with them, what they failed to do, that their actions and conduct needs to be punished and the assessment that was made at that stage, which may have been years before. They have taken the advice of the correctional services agency or members of the department who have recommended certain programs, and they have done those, and they have tried to diligently undertake reform themselves and address their own personal deficiencies, yet they are completely left in the dark about what else they have to do to be eligible for what has been identified as necessary for them to have that reform.

Another aspect of this is the effect it will have on not just the parole system but also the management of prisoners while they are in prison. One of the incentives that prisoners have to behave, act in a civil manner towards fellow prisoners, maintain a respectful relationship with the members of the department and correctional services officers, and generally restore some reputation as being a civilised human being who is able to live back in the community is the incentive of early release. There is a powerful incentive to strive to achieve early release post the nonparole period expiration time, if they do behave and participate in the programs, such as domestic violence training, a drug rehabilitation program or a program to understand about the serious impact on victims as a result of their callous, reckless, unacceptable and certainly unlawful behaviour that they have previously undertaken. I think this gives the prisoner some hope that, if they do these things and not only participate but pass, there will be some eligibility for early release.

As members would know, there are a number of offences relating to a life sentence, but one is the offence of murder, which is a most foul fact on anyone's assessment and is condemned by the public. However, we have a justice system of sentencing in relation to that which imposes a life sentence and most often requires identification of a non-parole period. The severity of the circumstances of the crime or the antecedents of the prisoner in previous conduct are clearly factors which can relate. We have prisoners in the system in South Australia who have over

30 years in nonparole periods, and I think that most members in the house would agree, for good reason, that the judicial system, supported by the laws that we pass in this parliament, is clearly there to send a very direct message to the offender in those circumstances that their conduct was not only unlawful but it was just disgraceful.

Often those circumstances involved a victim being a minor or someone in a vulnerable circumstance, they may be aged or disabled, multiple victims, or they died in a most gruesome and callous way. Doubtless, these are all aspects which are taken into account in the sentencing at the time the offence is dealt with, and the prisoner understands that when they are taken out to Yatala or any other correctional service facility in South Australia. They have a pretty clear indication in the sentence they have as to what they are to serve for their behaviour, and what they need to do if they are going to satisfy the parole system—including the board, ultimately—that they should be eligible for parole after the date that has been set.

If, of course, it was the intention of parliament that anyone who committed a murder or who was guilty of an aggravated murder—I hate to use the words 'aggravated murder' but we have used 'aggravated offence' in our criminal system to identify extra circumstances where there should be a higher penalty, for example, multiple deaths if we are dealing with murder, gruesome circumstances, the victim being of vulnerable age—should never be released, that is something that we need to canvass here. That is the responsibility we have to debate that issue and to be able to make it a termination here in the parliament if that is what we consider appropriate for someone who has acted in such a way.

The third aspect of the government's action, without providing any reason or direct consequence, is that it completely wastes the time of the Parole Board. We, as a parliament, have established the Parole Board, and we have required it to account to the parliament in an annual report. Having provided this statutory body, the government is obliged to allocate funds and make appointments of personnel to it to ensure that the board carries out its function as we have directed it to do in the parliament.

All these parts of the process actually cost money, quite a lot of money, to employ senior legal people to undertake this responsibility, and we commend them for it. It just seems bizarre that the parliament would still expect—particularly the government by virtue of its decision in Executive Council—that money would continue to be spent, and time and expertise, leaving aside all of the time for the correctional department, the prison authorities and all these agencies to deal with these matters, if Executive Council simply dismisses it—and no-one cares about what the prisoner thinks.

The final aspect which the opposition considers involves this practice of undermining the parole system is that, potentially, it undermines the safety of the prison environment; that is not just other prisoners but also prison staff, correctional services officers, and those who are responsible to supervise in the accommodation of the prison of those prisoners.

The logical interpretation of that is that, if a prisoner thinks they have no hope of ever being released, notwithstanding what a judge might have said some years before when they were given a nonparole period and after which an application can be made for parole—not automatic release, of course, but they can at least apply—if that is extinguished as an option to a prisoner, it raises the question of what incentive there is for the prisoner's behaviour in relation to other prisoners and staff. I think the safety of others also needs to be taken into account, and the opposition has considerable concerns about this.

The academic and legal commentary on this has expressed concern about whether this is just a political issue, and whether the release of prisoners serving life sentences simply becomes a political issue, rather than questions of public safety or undermining community confidence in the criminal justice system's having some objectivity, independence and the like. It is the same reason that we as a parliament do not usually make laws for one person, one company, or one small group in the community that is going to have a direct benefit from parliament that is individually focused. When we do, we largely call it a 'hybrid bill', and we have to have a select committee.

One such bill that is anticipated to come into the parliament shortly, of course, is the Roxby Downs Indenture Approval Bill because, in that instance, it relates only to the approval of an indenture—a contract between the government and one company—which is for the benefit of securing certain resources for them and protection against increases in royalties, etc. I do not want to go into the bill, but I use it as an illustration of when we, as a parliament, consider legislation which directly affects one person or party, as distinct from the general community in all having similar application of the law under our rule of law principles, we have a select committee process

to inquire into it and make sure that there is no abuse by executive governments who may have the control of the numbers in a parliament; that is the reason we have that process.

In this instance, we have a situation where, instead of coming back to the parliament, having a debate and making a decision about whether those who commit cruel and obscene crimes should ever be released from prison, there is the use of the Executive Council power without any scrutiny, review, or hope—not just for the prisoner, but with no protection for those who are vested with the responsibility to provide for them.

One prisoner, James Watson, was eligible for release eight years ago, in January 2002, that is, before the Rann Labor government came to office. Mr Watson appealed, to the Supreme Court and the High Court, the government's sixth refusal of the Parole Board recommendation to release him. The Chief Justice of the Supreme Court stated in that case:

> As things stand, Mr Watson has no idea why the Governor has refused to release him on parole, and he is left contemplating a blank wall.

There have been other cases, not just that one, which have had some popular press coverage. Also, as I said, we have seen various ministers and the Premier beating their chests about their law and order credentials when they dismiss these parole recommendations and use their Executive Council power. However, others have not just been in judgements but comment by the judiciary which have been directly taken up to the government. It is not as though the judiciary has sat out on some island on this and made statements in judgements but they have actually put direct representations to this government to try to see their way forward, at least, to try to remedy the impasse on this because the current situation is untenable and clearly unjust. Certainly, from their point of view, it raises some aspects of unworkability which I have highlighted is the expression from the opposition.

One such representation was presented in correspondence to the Hon. Carmel Zollo (the then minister for correctional services) on 28 March 2006. It was written by Justice Debelle, a judge of the Supreme Court at that time, who had been the trial judge in a case where two parties were jointly charged with murder. Justice Debelle wrote a letter dated 28 March 2006 to the then minister for correctional services—and I bring to the parliament's attention that this was five years ago—which stated:

> Dear Minister,
>
> MICHAEL PETER WEBB
>
> I was the trial judge in *R v Webb & Hay*. That is probably why I received the attached letter from Mr Webb.
>
> Mr Webb and Ms Hay were jointly charged with the murder of Mr L E Patrick at Mount Gambier in 1991. Both pleaded not guilty. Both were convicted of the crime of murder after trial by jury. Both were equally culpable. Ms Hay was sentenced to a non-parole period of 20 years' imprisonment. Mr Webb was sentenced to a non-parole period of 19 years and 9 months. The difference of three months resulted from the fact that Mr Webb had already been in custody for a longer period of time than Ms Hay.
>
> As you can see from this letter, Mr Webb is aggrieved by that fact that his co-accused Ms Hay has been released on parole but he has not. The circumstances of this murder do not provide any basis for discriminating between the culpability of Mr Webb and his co-accused.
>
> I have asked the Parole Board whether there was any reason for the discrimination between Mr Webb and Ms Hay. Ms Nelson QC, the Presiding Member of the Parole Board, has informed me by letter dated 9 March 2006 that the Board had recommended the release of Mr Webb on parole but Executive Council had not accepted its recommendation. In her letter, Ms Nelson describes the situation as 'completely unfair'. I enclose a copy of her letter.

The letter goes on to state:

> I respectfully suggest that the situation is not only unfair but it is also unjust. I repeat that the circumstances of this crime provide no basis for discriminating between the culpability of Mr Webb and Ms Hay. It certainly does not justify releasing Ms Hay before Mr Webb. The fact that Ms Hay was ordered to serve a slightly longer term than Mr Webb only serves to emphasise the unjustness to Mr Webb.
>
> I ask that you consider the matter urgently and recommend to Executive Council that it revoke its decision and release Mr Webb at the earliest possible date. If that is not possible, I ask that you recommend that Executive Council release Mr Webb on parole should he apply for release on or after 31 May 2006.
>
> Yours faithfully, Justice Debelle.

Obviously, this letter went unheeded.

The government continues to act in this arbitrary way, without explanation or reasons, without any report back to the Parole Board as to what aspects it would want considered if there

were to be a favourable consideration of an application for parole, without any hint of what it is doing, and this type of injustice prevails. We have the same crime, two offenders, the same sentences; one gets out and one does not, and the Labor Executive Council does not intervene. That is exactly what happens. We end up with a situation where everyone is in the dark. Justice is certainly not served, and the inequity of this application in the chamber of Executive Council, which is clothed with confidentiality, is the one that translates.

That is what the opposition is keen to ensure is remedied, but not with the removal of Executive Council's power. We would not want to do that, but we do want to make this a workable arrangement so that we can balance the circumstance which may occur, where Executive Government is privy to information that may not be in the public arena, to which not even the Parole Board or the Department for Correctional Services is privy. If Executive Council becomes privy to information, it is reasonable that it should act in a manner to overturn recommendations put to it. That can happen from time to time.

Obviously, we have agencies in South Australia and Australia which can provide very confidential information to a premier or to ministers which, for reasons of public safety, need to be kept confidential, and we accept that. We accept that that is a responsibility, a reserve power that is necessarily retained by governments; however, it cannot be allowed to be abused to the extent where we have injustices which undermine the very system of rehabilitation and safe custody of prisoners in this state.

These are the reasons why it is important to identify that, for the first time in the history of this state, we have a government which has exercised its Executive Council power not just once or twice but many times, and repeatedly for some prisoners, without one shred of information being reported back as to why or how that might better be remedied to give prisoners the opportunity to carry out their sentence as was originally intended.

We do not want this issue politicised. This government—the first government in the history of this state—has actually politicised it and, I would go so far as to say, abused it, because cases such as the Webb case illustrate to us in a very profound way how injustice is a direct consequence of this type of arbitrary conduct. It is not just one or two cases; we are talking about multiple cases of Executive Council exercising its power, all to make it look like the government is tough on law and order out in the real world.

We will be asking the government to give serious consideration to this amendment and to appreciate that, whilst it comes late in the debate on this, I hasten to add that, on the last occasion we debated this bill, a number of amendments had been tabled which had not related to this particular aspect. Other amendments have been foreshadowed in another place and it was responsible for us to consider and be able to present to the parliament, and particularly to the minister, a model which we see as important, workable, achievable and the best way to manage the future of this practice and, in particular, the maintenance of the reserve power, with conditions.

As I say, the opposition has looked very carefully at other models that are being presented, including questions of whether there should be judicial review of Executive Council's determination. That does cloud issues, I might say. I think that the chief justice in Watson's case, which I referred to earlier, made an obiter statement in which he had acknowledged that it was never intended that Executive Council would give reasons, which is the model that we are proposing. We agree with that, it was not, but never in the history of our state have we seen it abused in such a manner as under this regime, which would raise the question about whether it should be. If it should be, obviously judges cannot make that determination. That has to be something that is determined in the parliament.

Others, of course, have suggested to us that the Executive Council's discretion should be removed altogether. We do not agree with that, but it does need to be structured in a way that we rein in the abuse by this government of the use of this power but ensure that it remains there for the protection of people in South Australia, for those who, we hope in a short time, have a responsible government—I do not mean Friday morning: I mean in 2014 when there is an opportunity for some government that will act responsibly in this area.

I present the amendment for consideration. Although this is late, for the reasons I have explained, we would hope at least that the minister would give it consideration between the houses. As he would no doubt know, there are other models awaiting his consideration, ultimately, that will be presented in another place. We consider this as one which will provide the greatest overall

safeguard for the people of South Australia and protect justice for those in the prison system who are awaiting parole. I commend the amendment.

The CHAIR: Have you finished, member for Bragg?

The Hon. A. KOUTSANTONIS: My God! I think it is fair to say that the government made this a point of contention during the last election campaign. The government went to the election with its credentials and its credibility and put forward to the people of South Australia its views on Executive Council and how Executive Council acts in matters of parole. I think it is fair to say that the opposition put its point of view about the way Executive Council would operate had it been elected. The people have spoken and, in a majority of seats, the government received a majority of votes.

I heard the member for Bragg say they want to retain the power to have Executive Council refuse parole but would like it to give reasons. What she is really saying is, 'We want you to give reasons to make it justiciable so a judge can review the decisions you have used and then overturn your decision.' That is what she is really saying. So, if she was really honest, she would say, 'I do not want you to have the power to do this.' Well, the government makes absolutely no apology for this position. We will not withdraw even an inch from this position.

It amazes me that the Liberal Party and the opposition spend so much time on fighting for the rights of convicted murderers, because that is what the member for Bragg has just done. She has spent the time of the house arguing for the rights and privileges of people convicted of terrible murders, and I wish that every single citizen of South Australia had been here to see the member for Bragg's contribution. But have no fear, as we speak, I imagine the headquarters on Wright Street will be drafting up the appropriate material to inform the people of South Australia of the opposition's views.

Ms Chapman: Great.

The Hon. A. KOUTSANTONIS: Great, yes. I am sure your view goes down very well at Burnside Village. I am not sure it goes down very well everywhere else. But we will have that contest of ideas, and I look forward to that contest of ideas in 2014, and I hope that the member for Bragg is articulating that point in 2014, and we will let the people decide whether Executive Council should give reasons why convicted murderers are not granted parole. With all due respect to Frances Nelson QC, who I have a great deal of admiration and respect for, who I think is an outstanding public servant, a fantastic lawyer—

Ms Chapman interjecting:

The Hon. A. KOUTSANTONIS: I did. I am allowed to disagree with her. I am not sure what world you live in. I know that no-one is allowed to disagree with you; I know that is how it works in 'Vickie World' but in the real world I am allowed a different point of view from you.

What I say to the member is that, if she is serious about her intention, at least be honest and get up and move an amendment taking away the right of Executive Council to refuse parole; that is what she really wants. If Frances Nelson QC is so offended by what Executive Council does, she has an option: she can resign. The government stands firm in making sure we put the safety of the people of South Australia and the consideration of the victims of heinous crimes first, not murderers.

The CHAIR: Before we continue, member for Bragg, can I ascertain that the amendment that you present to clause 41 on No. 114(4) supersedes your suggested amendment on clause 41 schedule 3, which was to delete subclause (2), and now of course you are inserting on subclause (2)?

Ms Chapman: That is a good question. I think we want to keep it.

The CHAIR: It's additional.

Ms CHAPMAN: I am happy to briefly speak on that. I have covered it—

The CHAIR: When you say 'briefly', is it briefly?

Mr Pederick: It'll be brief.

The CHAIR: Thank you for that, member for Hammond.

Ms CHAPMAN: This is a clause, which read with amendments 8, 9 and 10—I do not want to confuse this but it is actually a slightly different issue. It relates to—and I will be very brief—the

reason we say it will have the effect of retaining community corrections officers having a direct reporting relationship to the Parole Board. The bill currently will say that they report to their chief executive and the chief executive gives a summary position to the Parole Board. For all the reasons I outlined in my second reading contribution, we think these people are on the ground, they know what the issue is, they are close to it and they should have the direct relationship. That is what the rest of those relate to.

The Hon. A. KOUTSANTONIS: On those amendments, I understand exactly why the member for Bragg is moving them, and I have a lot of sympathy for her argument. However, people on the ground move and change around and we need consistency of reporting to the Parole Board, and it is best that this all be channelled through the chief executive. The reason I say that is because a chief executive can determine the appropriate advice as based on the appropriate people. If you have one community corrections officer who has been dealing with someone for a period of time who then moves, it is not in the purview of the Parole Board to know that they had moved.

The chief executive may choose to take the advice of the person who dealt with the offender longer rather than the actual current community corrections officer who had only a short period of time with the offender. It is about giving them maximum flexibility to make sure that the right people are giving the right advice to the Parole Board, and the best way to arbitrate that is through our very good chief executive, Peter Severin.

Amendment negatived.

Ms CHAPMAN: I move:

Page 14, after line 13—After subclause (2) insert:

(3) Section 67—after subsection (7) insert:

(7a) The Governor must, not more than 30 days after refusing to order that a prisoner be released from prison on parole, notify the prisoner in writing of—

(a) the refusal; and

(b) the reasons for the refusal; and

(c) any matters that might assist the prisoner in making any further application for parole.

(7b) Despite subsection (7a)(b) and (c), the Governor is not required to disclose to the prisoner any reason or matter if any such disclosure is likely to give rise to a significant risk to public safety.

Amendment negatived; clause passed.

The CHAIR: Member for Bragg, do I then understand that, looking at schedule 3, amendments Nos 8 and 9 cannot be included because they were consequential on amendment No. 7?

Ms CHAPMAN: Yes, that is right, and No. 11 is also in that category, I think. I formally withdraw amendment Nos 8, 9 and 11.

Clauses 42 to 45 passed.

Clause 46.

Ms CHAPMAN: I move:

Page 16—Lines 12 to 15 [clause 46(1), inserted subsection (1)]—

Delete 'the balance of the sentence, or sentences, of imprisonment in respect of which the person was on parole, being the balance unexpired as at the day on which the breach was committed' and substitute:

the sentence, or sentences, of imprisonment in respect of which the person was on parole for such period as the Board thinks appropriate, but not exceeding—

(a) the period between the day on which the breach occurred and the date of expiry of the parole; or

(b) such lesser period as the Board thinks fit.

Again, for the reasons I outlined in my contribution, we want the Parole Board to maintain the discretion over the length of custody following a breach of parole. I covered this at some length in the second reading, and I think that the minister is very clear about this.

The Hon. A. KOUTSANTONIS: We are not accepting that amendment.

Amendment negatived; clause passed.

Clauses 47 to 48 passed.

Clause 49.

Ms CHAPMAN: I move:

Page 18, lines 1 to 41 [clause 49, inserted sections 76A and 76B]—Delete sections 76A and 76B and substitute:

76A—Apprehension etc of parolees on application of CE or police officer

(1) If the CE or a police officer suspects on reasonable grounds that a person who has been released on parole may have breached a condition of parole, the CE or police officer may apply to—

(a) the presiding member or deputy presiding member of the Board; or

(b) if, after making reasonable efforts to contact the presiding member and deputy presiding member, neither is available—to a magistrate,

for the issue of a warrant for the arrest of the person.

(2) A warrant issued under this section authorises the detention of the person in custody pending appearance before the Board.

(3) A magistrate must, on application under this section, issue a warrant for the arrest of a person or for the arrest and return to prison of a person (as the case may require) unless it is apparent, on the face of the application, that no reasonable grounds exist for the issue of the warrant.

(4) If a warrant is issued by a magistrate under this section—

(a) the CE or police officer (as the case requires) must, within 1 working day of the warrant being issued, provide the Board with a written report on the matter; and

(b) the warrant will expire at the end of the period of 2 working days after the day on which the report is provided to the Board; and

(c) the presiding member or deputy presiding member of the Board must consider the report within 2 working days after receipt and—

(i) issue a fresh warrant for the continued detention of the person pending appearance before the Board; or

(ii) cancel the warrant, order that the person be released from custody and, if appearance before the Board is required, issue a summons for the person to appear before the Board.

(5) If a warrant expires under subsection (4)(b) or a fresh warrant is not issued under subsection (4)(c)(i), the person must be released from detention.

(6) The Board may, if it thinks there is good reason to do so, by order, cancel a warrant issued under this section that has not been executed.

It might surprise the minister on this occasion that I am not going to repeat the—I thought—rather brief submissions I made on this. Perhaps that would be misleading the parliament if I were to suggest that. This is, I think, what the government would describe as a 'core initiative'. It is going to introduce a reform which gives chief executives and/or senior police powers which they have not had in the past.

It is the opposition's clear and unequivocal view (and we think that we are on the side of the angels on this) that this is a role that should remain exclusively with the court system or the Parole Board. One of the things that the government failed repeatedly to have some understanding of is the importance of keeping responsibilities separate and not placing what potentially are responsibilities in conflict in one body or person. The correctional services chief executive has a very important role—no question about that—and the management and supervision of people the community have determined should be in custody is a very serious job. But they are not law enforcement agencies—

The Hon. A. Koutsantonis: Police?

Ms CHAPMAN: I am talking about the chief executive at this point. The chief executive's role is to undertake the administration, clearly as we have defined in the legislation, in respect of the security of prisoners and hopefully their rehabilitation and, in some instances, parole, and the responsibility for those jobs under the legislation is very important. The police have a law enforcement role. They are also mandated by this parliament and funded by the government, effectively the taxpayer, to undertake that law enforcement role. The Parole Board has a different role and it also has that responsibility.

Let me say this: the Robinson case, which I referred to at length, would not be resolved by dealing with this proposal of the government. It would not be resolved because, in that instance, a prisoner having been put out on parole, the agencies that were responsible to actually act when there was a reported breach of parole, failed.

The Hon. A. Koutsantonis: Why?

Ms CHAPMAN: We don't know. The minister asks why. Isn't it interesting that he should ask why? I would be very interested to hear it because repeatedly in this parliament we have asked what happened, what went wrong. Of course. we heard from previous ministers, including attorney-general Atkinson with his grandstanding statements, about what happened. We heard, of course, minister Koutsantonis's assertion that he would find out what was happening in this case, what went wrong, and that he actually would be able to tell us, hopefully, but have we ever had a report back to this parliament? Have we ever heard what went wrong, have we ever heard why the police did not act for over two weeks, and why we had that disgraceful incident in the Mid North of South Australia? Did we ever hear? Never! Silence from the government about what it did, how it remedied it and how it will ensure it will never happen again.

This proposed reform by the government will not resolve it. You do not just bring in extra people and give them extra power. It would not have resolved the situation or kept that poor lady in the Mid North safe from the parolee, in that instance, who had breached the terms of his parole and should have been back in custody. This will not change it. We say that it is important that, if a circumstance were to arise in a different scenario that, when it comes to the attention of the chief executive or a police officer that there has been a potential breach of parole, and they are unable to obtain a determination by the Presiding Member or Deputy Presiding Member of the Parole Board, they can apply to a magistrate for a warrant for arrest.

Under our proposal, the chief executive or the police officer would need to provide a report ultimately to the Parole Board by the next day, with the Parole Board having some time to respond. It is important here that the situation could arise where the chair of the Parole Board, the Presiding Member (as we call them these days) is overseas, unavailable, sick, or dead, and the Presiding Member is not available. I have not ever been given any example in this parliament where both have been unavailable at any one time.

The minister may be aware of situations where neither of them may be available and where there needs to be some urgent action. If that is the case, then we say that the warrant process is one which is very important, but it needs to be supervised by those who have responsibility for it, namely the judicial system, and that the application of the chief executive or the senior police officer should go through that process.

For all the other reasons I have stated in our second reading, that situation should be maintained and if circumstances were to arise, then the chief executive or police officer can apply for that warrant through what I would describe as the usual processes, with a reporting process back. With that, I am proud to move amendment No. 12 standing in my name. If the government is not prepared to agree to this, and goes down the line of granting this responsibility to other personnel, including the chief executive or police officers, then that will taint and stain irreparably the separation of powers and place these people, we suggest, in a potential conflict of interest situation in the future.

The Hon. A. KOUTSANTONIS: I am simply stunned that the Liberal Party of South Australia would say to me that they do not want to give a police officer or the chief executive of the correctional department of South Australia the ability to issue a warrant for the arrest of an offender who is on parole, who has breached those conditions. We are not talking about someone who is not on parole, who has no community order against them. We are talking about someone who has been let out of gaol early.

I will give you an example, so we understand my thinking, the department's thinking and the government's thinking about why we want to do this. Community corrections officers have drug testing kits. A parolee gives an indicative positive test—not a conclusive, but an indicative test—of a positive drug sample or breath test showing alcohol in the system, or they are in breach of a condition of not being at home or being with a victim. The officers then are able to inform the chief executive or attending police that the offender is beginning to slide into behaviour that has led to crime in the past. We can intervene early. If we know an offender has a history of violence fuelled by alcohol and drugs, and they give us an early indicative test through our spot inspections, we can act early.

As Minister for Correctional Services I have found it difficult to get in contact with the Parole Board and the delegated officers, because they are in court, or busy, or unavailable. All these decisions are reviewable by the Parole Board and the judiciary. So what is the issue? The issue is that the member for Bragg does not like police officers to have the right to issue warrants. Within 12 hours it is reviewed—12 hours. It is a parolee. Anyway, if we did not have the member for Bragg, we would have to invent her, so I suppose I should be grateful. We oppose her amendment.

Amendment negatived; clause passed.

Clause 50 passed.

New clause 50A.

The Hon. I.F. EVANS: I move:

Page 19, after line 11 [clause 50A]—After clause 50 insert:

50A—Insertion of Part 7

After section 77 insert:

Part 7—Prisoner compensation quarantine funds

Division 1—Preliminary

78—Interpretation

(1) In this Part—

agreement includes compromise and acceptance of an offer of compromise;

award of damages means damages—

(a) awarded pursuant to a judgment of a court; or

(b) paid or payable in accordance with an agreement between the parties to the agreement;

civil wrong means an act or omission of the State that—

(a) gives rise to a claim by a prisoner against the State; and

(b) occurred while the claimant was a prisoner; and

(c) arose out of and in connection with his or her detention in a correctional institution;

claim means a claim brought in tort, in contract or under a statute or otherwise;

criminal act—see subsections (2) and (3);

damages includes any form of monetary compensation;

initial quarantine period, in relation to a prisoner compensation quarantine fund, means the period of 12 months from the date on which the notice in respect of the fund under section 81E is published;

prisoner includes a former prisoner, but does not include a remand prisoner;

prisoner compensation quarantine fund—see section 81B(4);

quarantine period, in relation to a prisoner compensation quarantine fund relating to a prisoner, means—

(a) the initial quarantine period; and

(b) the period ending on the final determination of all legal proceedings by victims against the prisoner that are commenced within the initial quarantine period and notified to the CE under section 81J(1);

State includes—

(a) the CE; and

(b) an officer of the Department;

victim includes a member of a victim's immediate family.

(2) In this Part, a *criminal act* means conduct that, on the balance of probabilities, would constitute an offence.

(3) The definition of criminal act applies whether or not a prisoner whose conduct is alleged to constitute an offence has been, will be, or is capable of being, proceeded against or convicted of the offence.

79—Application

(1) This Part applies to any award of damages to a prisoner in respect of a claim made by or on behalf of the prisoner against the State for a civil wrong.

(2) This Part does not apply to an award of damages to a prisoner in respect of a claim of false imprisonment.

(3) This Part does not affect (and is subject to) any obligation imposed on the State or the CE by or under an enactment of the State or the Commonwealth to pay some other person money owed or due to or held on account of the prisoner.

Division 2—Award of damages to prisoners

80—Agreements must be approved by court

An agreement between the State and a prisoner for the payment of damages for a civil wrong is of no effect until it has been approved by a court of competent jurisdiction.

81—Determination of amounts for medical and legal costs

(1) An award of damages for a civil wrong must specify the amounts (if any) awarded or agreed in respect of—

(a) existing and future medical costs; and

(b) legal costs.

(2) If the parties to an agreement between the State and a prisoner for the payment of damages for a civil wrong are unable to agree on an amount to be specified under subsection (1), the court must determine the amounts to be specified in the agreement for the purposes of that subsection, and the agreement is varied accordingly.

81A—Matters to be considered by court

(1) This section applies to—

(a) an award of damages by a court for a civil wrong; and

(b) an agreement between the State and a prisoner for the payment of damages for a civil wrong.

(2) The court must not make the award, or approve the agreement, unless the court is satisfied—

(a) that section 81(1) has been complied with; and

(b) that, in all the circumstances, the amounts specified for the purposes of section 81(1) are appropriate portions of the total amount payable under the award or agreement having regard to—

(i) the claim; and

(ii) the loss or damage suffered by the prisoner; and

(iii) the need to ensure as far as possible that victims are not deprived of an opportunity to enforce a successful claim for damages against a prisoner.

(3) If legal costs are to be assessed and paid under an order made on taxation, the legal costs are taken under this Part to be specified in the award of damages.

Division 3—Payment of money to prisoner compensation quarantine fund

81B—Damages awarded to prisoner to be paid to prisoner compensation quarantine fund

(1) The amount of any award of damages to a prisoner in respect of a civil wrong must be paid by the State to the CE immediately after the damages are awarded.

(2) The amount to be paid under subsection (1) does not include any amount specified in the award of damages made or approved by the court as attributable to—

(a) existing and future medical costs; and

(b) legal costs.

(3) An amount paid to the CE under subsection (1)—

(a) must be held in trust for the prisoner by the CE during the quarantine period and until the final payment is made out of the prisoner compensation quarantine fund in accordance with this Part; and

(b) may be paid out of the prisoner compensation quarantine fund only as authorised by this Part.

(4) Money held by the CE in trust for a prisoner under this Part constitutes a *prisoner compensation quarantine fund*.

(5) This section does not apply if the amount that would, but for this subsection, be required to be paid to the CE under subsection (1) does not exceed $10,000.

81C—Prisoner compensation quarantine funds

(1) A prisoner compensation quarantine fund consists of—

(a) an amount held by the CE in trust for a prisoner under this Part; and

(b) any interest earned on that money.

(2) The CE must deposit all money in a prisoner compensation quarantine fund into an interest-bearing account with an ADI.

(3) The following may be paid out of the prisoner compensation quarantine fund:

(a) amounts required to be paid out to a person in accordance with section 81L or 81M;

(b) amounts required to be paid out in accordance with section 81O in respect of the prisoner;

(c) the costs of administration of the fund (including any taxes payable in respect of the fund).

(4) The CE may only pay out of a prisoner compensation quarantine fund the costs of administration of the fund if that payment would not decrease the level of the fund below the amount of damages paid into the fund.

(5) The CE is responsible for the administration of the prisoner compensation quarantine fund.

Division 4—Notice of prisoner compensation quarantine fund

81D—Victim may ask to be notified of award of damages to prisoner

(1) A victim in relation to a criminal act by a prisoner may apply to the CE to be notified of an award of damages to the prisoner.

(2) An application must be in writing.

81E—Notice to victims to be published

(1) The CE must publish a notice advising of an award of damages to a prisoner as soon as practicable after the amount of damages is paid to the CE under section 81B.

(2) The notice must—

(a) state that the award of damages has been made to the prisoner in a claim against the State (but must not state the amount of the award of damages); and

(b) state the name of the prisoner and any other name by which the prisoner is known; and

(c) state that money in that award has been paid to a prisoner compensation quarantine fund; and

(d) state the initial quarantine period for that fund; and

(e) invite victims in relation to criminal acts of the prisoner to seek further information from the CE about the fund; and

(f) contain contact details for seeking the further information.

(3) The notice must be published in—

(a) the Gazette; and

(b) a daily newspaper circulating generally in South Australia; and

(c) a daily newspaper circulating generally in Australia.

(4) The CE may also—

(a) publish the notice on the Internet; and

(b) forward a copy of the notice to any victim who has applied to the CE under section 81D to be notified of an award of damages in respect of the prisoner.

81F—Applications for information

(1) A victim in relation to a criminal act by a prisoner may apply to the CE for information about a prisoner compensation quarantine fund with respect to that prisoner within the initial quarantine period in respect of that fund.

(2) The CE may, if satisfied that the applicant is a victim in relation to a criminal act of a prisoner, disclose, by written notice, the following information to the applicant:

(a) the amount of the award paid into the prisoner compensation quarantine fund in respect of the prisoner;

(b) the start of the initial quarantine period;

(c) when the initial quarantine period will end if no legal proceedings are notified under section 81J(1);

(d) whether the CE has been notified of any other claim in respect of the prisoner and, if so, the number of other such claims;

(e) any other information that the CE believes, from time to time, will assist the applicant to make an informed decision as to whether to bring proceedings against the prisoner.

(3) The notice must include a statement advising the applicant—

(a) that the information is disclosed solely for use by the applicant in deciding whether or not to bring legal proceedings; and

(b) that the applicant should consider seeking independent legal advice; and

(c) that the information does not constitute legal advice or a recommendation to bring or not to bring legal proceedings; and

(d) of the effect of sections 81H and 81I.

81G—Disclosure of information by CE authorised

The provision of information by the CE under section 81E or 81F—

(a) is authorised despite any agreement to which the CE or the State is a party that would otherwise prohibit or restrict the disclosure of information concerning an award of damages; and

(b) does not constitute a contravention of such an agreement.

81H—Confidentiality of information

A person to whom information is provided under section 81E or 81F by the CE must treat the information in an appropriate manner that respects the confidentiality of the information.

81I—Offence to disclose information

(1) A person to whom information is disclosed under section 81E or 81F must not disclose the information to any other person except for the purposes of, or in connection with, the taking and determination of legal proceedings by the person against the prisoner concerned.

Maximum penalty: $10,000.

(2) A person (other than a person to whom information is disclosed under section 81E or 81F) who becomes aware of any information disclosed to a person under either of those sections must not use that information or disclose it to any person.

Maximum penalty: $10,000.

(3) Nothing in subsection (1) prevents a person from disclosing information to a lawyer in the course of consulting the lawyer for legal advice.

(4) Subsections (1) and (2) do not apply to information that is in the public domain.

81J—Notice to CE by victim

(1) A victim who, within the initial quarantine period for a prisoner compensation quarantine fund relating to a prisoner, commences legal proceedings for the recovery of damages against the prisoner in respect of a criminal act by the prisoner may give written notice to the CE of that fact.

(2) A victim may, within 14 days after the final determination of legal proceedings notified by the victim under subsection (1), give the CE written notice of the final determination of, and any amount (including any legal costs) awarded to the victim in, those proceedings.

81K—Notice to CE by creditors

(1) A person who has a judgment debt against the prisoner, or is entitled under any enactment to payment of an amount by the prisoner, and who has not recovered that judgment debt, or been paid that amount, may give notice to the CE of that fact.

(2) A notice under subsection (1) must—

(a) be in writing; and

(b) be accompanied by a copy of any relevant document that substantiates the facts set out in the notice; and

(c) be given during the quarantine period.

(3) The CE may require a person who has given a notice under this section to provide any further information that the CE reasonably requires to substantiate the facts set out in the notice.

Division 5—Payments out of prisoner compensation quarantine fund

81L—Payments out of fund where legal proceedings notified

(1) This section applies if the CE has received a notice under section 81J(1) in respect of legal proceedings against a prisoner to whom a prisoner compensation quarantine fund relates.

(2) The CE must not pay any money out of the prisoner compensation quarantine fund to any person until the end of the quarantine period for the fund.

(3) The CE must, within 45 days after the end of the quarantine period, pay out of the prisoner compensation quarantine fund to the persons entitled to payment any amounts required to satisfy—

(a) any award (including any legal costs) against the prisoner that was notified to the CE under section 81J(2); and

(b) any judgment debt against, or entitlement to be paid by, the prisoner that was notified to the CE under section 81K,

that the CE is satisfied is a valid claim on the prisoner.

(4) If the amount in the prisoner compensation quarantine fund is not sufficient to pay the amounts required to be paid out under subsection (3), the CE must make payments from the fund under that subsection on a proportionate basis having regard to any priority of payment required by law.

Example—

The law may require priority to be given to payment of (for example) child support.

(5) If any amount remains in the prisoner compensation quarantine fund after all amounts are paid out under subsection (3), the CE must, within or as soon as practicable after the end of the period of 45 days after the end of the quarantine period—

(a) credit to the prisoner the remaining amount to an account kept in the prisoner's name in accordance with section 31; or

(b) if the prisoner has been discharged from prison—credit to the former prisoner the remaining amount to an account nominated by the former prisoner.

81M—Payments out of fund where notice from creditor received

(1) This section applies if the CE has been given notice by a person under section 81K and has not been notified under section 81J(1) of legal proceedings against that prisoner.

(2) The CE must not pay any money out of the prisoner compensation quarantine fund to any person until the end of the initial quarantine period for the fund.

(3) The CE must, within 45 days after the end of the initial quarantine period, pay out of the prisoner compensation quarantine fund to the persons entitled to payment any amounts

required to satisfy any judgment debt against, or entitlement to be paid by, the prisoner—

(a) that was notified to the CE under section 81K during the initial quarantine period; and

(b) that the CE is satisfied is a valid claim on the prisoner.

(4) If the amount in the prisoner compensation quarantine fund is not sufficient to pay the amounts required to be paid out under subsection (3), the CE must make payments from the fund under that subsection on a proportionate basis having regard to any priority of payment required by law.

Example—

The law may require priority to be given to payment of (for example) child support.

(5) If any amount remains in the prisoner compensation quarantine fund after all amounts are paid out under subsection (3), the CE must, within or as soon as practicable after the end of the period of 45 days after the end of the initial quarantine period—

(a) credit to the prisoner the remaining amount to an account kept in the prisoner's name in accordance with section 31; or

(b) if the prisoner has been discharged from prison—credit to the former prisoner the remaining amount to an account nominated by the former prisoner.

81N—Restriction not to affect payment of administration costs

Sections 81L and 81M do not prevent the payment out of a prisoner compensation quarantine fund of any amount for the costs of administering the fund (including payment of taxes in respect of the fund) authorised under section 81C (and those costs are payable out of the fund before payment of any other amount under section 81L or 81M).

81O—Payments out of fund where no notice given

(1) This section applies if no notice is given to the CE under section 81J(1) or 81K in relation to the prisoner to whom a prisoner compensation quarantine fund relates within the initial quarantine period.

(2) The CE must, within or as soon as practicable after the end of the period of 45 days after the end of the initial quarantine period—

(a) credit to the prisoner the remaining amount to an account kept in the prisoner's name in accordance with section 31; or

(b) if the prisoner has been discharged from prison—credit to the former prisoner the remaining amount to an account nominated by the former prisoner.

81P—Payments taken to be payments at direction of prisoner

The payment by the CE of an amount out of a prisoner compensation quarantine fund in accordance with this Part is taken to be a payment at the direction of the prisoner and operates as a discharge, to the extent of the payment, of any liability of the State or the CE to pay the amount to the prisoner as damages.

81Q—When are legal proceedings finally determined?

(1) For the purposes of this Part, legal proceedings are not finally determined if—

(a) a period for bringing an appeal in respect of the proceedings has not expired (ignoring any period that may be available by way of extension of time to appeal); or

(b) an appeal in respect of the legal proceedings is pending.

(2) However, if legal proceedings are settled or discontinued, they will be taken to be finally determined for the purposes of this Part.

Division 6—Miscellaneous

81R—Offence to provide false or misleading information

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided to the CE under this Part.

Maximum penalty:

(a) if the person made the statement knowing that it was false or misleading—$10,000;

(b) in any other case—$2,500.

Page 22, after line 36 [clause 63]—After subclause (2) insert:

(2a) Section 89(2)—after paragraph (ja) insert:

(jb) prescribing matters to be included in applications and notices under Part 7; and

Page 23—

Line 1 [schedule 1, heading]—Delete 'amendments' and substitute:

amendment and transitional provision

After line 9 [schedule 1, new Part]—After Part 1 insert:

Part 2—Transitional provision

2—Transitional provision

(1) Part 7 of the *Correctional Services Act 1982* (as inserted by section 51A of this Act) applies to an award of damages to a prisoner on or after the commencement of this clause in respect of a claim made by or on behalf of the prisoner against the State for a civil wrong regardless of when legal proceedings in respect of the civil wrong commenced.

(2) Words used in subclause (1) have the same meaning as in Part 7 of the *Correctional Services Act 1982*.

My amendment inserts a new, complete part entitled Part 7 as new clause 50A in the bill. I mentioned earlier the principle behind the amendments. This particular provision sets out all of the mechanics of the scheme that will allow the prisoner's funds to be quarantined and, ultimately, claimed through a process by victims of their crime outside of the prison. I do not intend to go through the mechanism clause by clause.

In my earlier contribution I forgot to thank the minister and his staff for the meeting about the bill. Three years ago I introduced a bill of a different scheme, but to the same principle, met with the then attorney-general (who indicated support for the principle but a different model), agreed to make changes to the different model, and then nothing happened.

To this minister's credit, we then had another meeting with this minister and his staff member, and the amendments were made following consultation with the chief executive of the department. I thank Mr Severin for his good advice in relation to the principle. I also want to thank parliamentary counsel for their excellent work through a number of different variations to originally my bill and then these amendments to get it into a form that was acceptable to the government and the opposition.

This particular provision sets out the mechanics of the scheme. Essentially, it deals with the awarding of damages to prisoners, matters that can be considered by the court. The payment of damages awarded to the prisoner are being put into a prisoner compensation fund. How that quarantining of the funds would work, how the victim is to be notified and be published, how their applications for the information (there are provisions about confidentiality) and how the payments out of the fund where legal proceedings are notified are dealt with. All those provisions are set out in this particular clause. Again, I look forward to the support of the house.

The Hon. A. KOUTSANTONIS: The government supports this amendment.

New clause inserted.

Progress reported; committee to sit again.

OLYMPIC DAM

The Hon. M.D. RANN (Ramsay—Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts, Minister for Sustainability and Climate Change) (12:32): I seek leave to make a ministerial statement.

Leave granted.

The Hon. M.D. RANN: Legislation will be introduced into both houses of parliament today to ratify the amended Olympic Dam indenture to enable the multibillion-dollar Olympic Dam expansion project to proceed. The amended indenture was agreed to and signed last Wednesday by Marius Kloppers, Chief Executive of BHP Billiton, and me on behalf of the government of South

Australia. It is the product of years of hard-fought negotiations between the company and the government, particularly the minister assisting in the Olympic Dam negotiations.

The signing of the indenture is a significant milestone in the life of this project, which is a game changer for the South Australian economy. This is a project like no other. The scale of the investment and the longevity of the mine put Olympic Dam into a league of its own. Olympic Dam is the world's largest uranium deposit and the fourth largest gold resource on the planet. It is also the world's fourth largest copper deposit, currently producing around 180,000 tonnes of copper each year. Under the proposed expansion, that would increase more than fourfold to around 750,000 tonnes per annum. It is likely that production would extend beyond this in decades to come, but this would require approval after a subsequent EIS process. So, a fourfold expansion in copper production and, of course, it could go much, much more than that.

The ore body is valued at more than $1 trillion. By 2050, the size of the pit would grow to be about 4.1 kilometres long, 3.5 kilometres wide and one kilometre deep, and the entire mine site would eventually stretch the equivalent distance of Gepps Cross to Flagstaff Hill. The expansion would see an unprecedented fleet of giant earthmovers and trucks take five years of daily digging to reach the ore body, allowing real mining to begin. So, we are talking about five years of shifting a million tonnes of rock a day before they get to this giant ore body.

Olympic Dam is already a significant contributor to South Australia's economy, contributing $1.7 billion a year to the gross state product and 12 per cent of the state's exports. More than half a billion dollars a year is spent by BHP Billiton directly on contracts with South Australian businesses and services. The expansion would see this contribution to the state's economy increase significantly, bringing Olympic Dam's total annual contribution to South Australia's GSP from $1.7 billion a year to $8.6 billion a year at full operating capacity.

BHP Billiton estimates that the expansion would generate up to 6,000 new jobs during construction, a further 4,000 full-time positions at the expanded open pit mine, and an estimated 15,000 new indirect jobs. This could include approximately 6,500 jobs in Whyalla, Port Augusta, Port Pirie and Roxby Downs itself, which is expected to double in size.

These figures show just how important this project is to all of us but particularly to regional South Australia. But the sheer size of the project would not have justified the government agreeing to terms which did not maximise the benefits to all South Australians. The government needed to ensure that the amended indenture protected the state's interests and locked in the gains from this project. I can assure the house that we did not discount South Australia's future to get this agreement signed. The ore body was not going to disappear—it is going to be there for ever—and that is why we were determined to get the best possible deal.

Indeed, BHP Billiton will pay the same royalty rates as other mining companies pay under the Mining Act. We have agreed to lock in these rates for 45 years in recognition of the high capital costs faced by the company for the first phases of the project. The company will also pay the same rate for water from the Great Artesian Basin as others do, for the first time paying for water that under the previous indenture was totally free.

The new indenture sees more comprehensive environmental management and compliance regimes for Olympic Dam, bringing the legislative framework for the mine into line with our Mining Act. BHP must develop a stringent program for the protection, management and rehabilitation of the environment that is subject to a strong compliance and enforcement regime. Under the indenture, the Olympic Dam mine will be subject to the Environment Protection Act for environmental authorisations for the project, ensuring the independence of the Environment Protection Authority for environmental approvals, licensing and necessary compliance action.

In addition, BHP Billiton is obliged to produce a greenhouse gas and energy management plan, which will detail its commitments to greenhouse reduction. This includes using renewable energy to totally power the desalination plant and the water pipeline, pumping hundreds of kilometres, and installing solar hot water systems or equivalent at Hiltaba village.

Under the indenture, the company has made commitments to using South Australian suppliers, manufacturers and contractors where economically practicable. The company will report annually on their use of local suppliers and local workers, including opportunities for Aboriginal workers. BHP Billiton will work with the government to ensure expanded opportunities for local businesses. A series of supplier forums has already begun, outlining the opportunities available for South Australian businesses to become involved in the expansion.

Most crucially for the minister and myself, the indenture contains a 12-month sunset clause which ensures that, if the BHP Billiton board has not made a decision within 12 months of the revised indenture passing through the parliament, then the entire agreement will lapse. Under the sunset clause, they have 12 months and that is going to be a ticking clock on a decision by the board to commit to the immediate expansion. It should encourage a decision by the board in early to mid-2012, and I am very confident that will happen.

Last Wednesday, BHP Billiton announced approval for $US1.2 billion in precommitment capital for the first phase of the Olympic Dam project. So we have front-ended and back-ended. We have bookended that, first, before we would sign the indenture, there had to be a precommitment of spending money right now and then the ticking clock starts, and then they have 12 months to get the thing started. Of course, this $1.2 billion commitment will facilitate the procurement of long-lead items, such as trucks and accommodation, infrastructure development and early site works for the phase of the Olympic Dam project. This will be the biggest order of trucks in world history.

The signing of the indenture and the precommitment funding decision followed the approval of the project on Monday last week by the South Australian, commonwealth and Northern Territory governments after an exhaustive six-year-long environmental impact process. Last week saw many significant milestones in the life of this project, from environmental approval to the signing of the indenture. Today, the introduction of the ratification bill into parliament marks another important milestone.

I would like to thank all the people whose efforts have led to this point. First, I would like to particularly thank the minister assisting with the Olympic Dam expansion, Kevin Foley, whose tireless persistence on behalf of South Australians in the indenture negotiations was simply outstanding.

I would also like to thank the members of the Olympic Dam task force, currently under the leadership of Dr Paul Heithersay as chief executive, who builds on the work done by former chief executive Paul Case. Bruce Carter, former chair of the Economic Development Board but as chair of the Olympic Dam task force, has also played a critical role in reaching this point. I would like to warmly thank Marius Kloppers, his deputy Andrew McKenzie, and Dean Dalla Valle from BHP Billiton for their commitment to this project and to South Australia.

I also recognise that this was a project which began under Western Mining Corporation and was taken on by BHP Billiton under the stewardship of Chip Goodyear and Roger Higgins. Graeme Hunt also made a valuable contribution to the development of this project.

The Olympic Dam expansion is a project of state, national and global significance which will bring enormous benefits to the state for generations to come. I urge all members to put South Australia first and ratify the amended indenture before the end of the year so that this project can proceed without delay, employing thousands of South Australians and eventually lifting its contribution to the gross state product from $1.7 billion a year to $8.6 billion a year.

STANDING ORDERS SUSPENSION

The Hon. K.O. FOLEY (Port Adelaide—Minister for Defence Industries, Minister for Police, Minister for Emergency Services, Minister for Motor Sport, Minister Assisting the Premier with the Olympic Dam Expansion Project) (12:44): I move:

That standing orders be so far suspended as to enable the introduction forthwith and passage of a bill through all stages without delay.

The SPEAKER: I have counted the house and, as an absolute majority of the whole number of members of the house is present, I accept the motion. Is it seconded?

An honourable member: Yes, ma'am.

Motion carried.

ROXBY DOWNS (INDENTURE RATIFICATION) (AMENDMENT OF INDENTURE) AMENDMENT BILL

The Hon. K.O. FOLEY (Port Adelaide—Minister for Defence Industries, Minister for Police, Minister for Emergency Services, Minister for Motor Sport, Minister Assisting the Premier with the Olympic Dam Expansion Project) (12:45): Obtained leave and introduced a bill for an act to amend the Roxby Downs (Indenture Ratification) Act 1982. Read a first time.

The Hon. K.O. FOLEY (Port Adelaide—Minister for Defence Industries, Minister for Police, Minister for Emergency Services, Minister for Motor Sport, Minister Assisting the Premier with the Olympic Dam Expansion Project) (12:46): I move:

That this bill be now read a second time.

Today is a momentous occasion for the state of South Australia. Just as mining projects at Broken Hill, Mount Isa and Kalgoorlie at the turn of the last century helped transform the economic future of their respective states, so will the Olympic Dam expansion. It will transform South Australia by bringing unprecedented wealth and economic opportunity to the state well into the next century.

Olympic Dam is certainly no ordinary project. It is a highly significant project for the state, being the world's fourth largest copper resource, the fourth largest gold resource and by far the largest known uranium source anywhere in the world, some would say in excess of 35 per cent of the world's known deposits of uranium.

In March 1982, the state and project proponents of the time entered into an indenture to provide for the establishment and development of the initial Olympic Dam project. The indenture was first ratified by parliament through the Roxby Downs (Indenture Ratification) Act 1982. The ratification act, incorporating the indenture, regulates the operations of the mine, associated treatment plant and transport facilities, related infrastructure and the municipality of Roxby Downs.

In response to the proposed expansion of Olympic Dam by BHP, the state agreed to amend the indenture on the basis of the benefits which are expected to accrue to the South Australian economy and community, including royalty payments, increased workforce participation and development, local supplier participation, Aboriginal economic development and, importantly, regional development.

As a result, the Roxby Downs (Indenture Ratification) (Amendment of Indenture) Amendment Bill 2011 (the bill) proposes enhancements to the Roxby Downs (Indenture Ratification) Act 1982 to provide for expanded project components that were not envisaged under the original agreement. The revisions also change the way in which certain other acts of the parliament of the state of South Australia apply to the revised indenture to ensure its currency with relevant legislation.

The project expansion proposed by BHP Billiton will develop an open pit mine, processing facilities and supporting infrastructure that will operate simultaneously to the existing underground mining operations at Olympic Dam.

This is certainly no ordinary project. Its size and scale for a singular mining project is unprecedented in Australian history, some would say in world history. Over a 40-year development period, the open pit is anticipated to extend more than four kilometres long, three kilometres wide and at least one kilometre deep, far in excess of the world's largest open cut mine at Escondida in Chile in the Andes. It will have annual production volumes expected to be more than three times current capacity once at full production.

Without doubt the project will deliver considerable economic wealth to the state's economy, with BHP Billiton estimating, in its EIS (environmental impact statement), that the project will contribute an incredible $45.7 billion in net present value terms to the South Australian gross state product (GSP) to our economy over a 30-year time frame from the start of the expansion. It is important that that be repeated: $45.7 billion in net present value terms to our state's economy over the next 30 years.

Furthermore, the expansion will generate considerable employment opportunities for the state. In its EIS, BHP Billiton estimates that the Olympic Dam expansion will generate up to 6,000 new jobs during construction, a further 4,000 full-time positions at the expanded open pit mine, and an estimated 15,000 indirect jobs.

The broadscale benefits achieved through the expansion of Olympic Dam will also substantially contribute to our latest government strategic plan priorities, including Our Community, Our Prosperity and Our Environment, particularly through targets on total exports, minerals production, processing, regional population levels and local jobs, to name just a few.

Such an expansion does not happen overnight, and it is not without inherent complexity and considerable investment risk. In progressing with this project, BHP Billiton is subject to enormous upfront costs and a long-term return on investment. It must be noted that the payback period for BHP on its substantial capital outlay is many, many years; I cannot provide the house

with an exact figure, but some suggest somewhere between 18 and 25 years. Very few companies—if any—globally would have either the balance sheet or the courage to undertake this project.

The state recognises that certainty is of key importance to BHP Billiton in light of the high risk of investment. In this context the state's objective has been to maximise the benefits to South Australia, and for Australia, through this bill, whilst applying effective and efficient regulation of the project and, importantly, providing certainty to BHP Billiton, wherever possible, to secure the long-term investment viability of the project.

Regional development is a key outcome of expansion. The project touches many regional areas in the state from Roxby Downs, Andamooka and Woomera to the Upper Spencer Gulf and the Eyre Peninsula, and will therefore generate considerable development opportunities in these regional areas, particularly through wealth generation, increased employment opportunities and the use of local services and companies.

The expansion includes a doubling of Olympic Dam's current smelting capacity, and the bill provides for BHP Billiton to process ore from other mine sites. This will not only generate value-adding opportunities to existing and future mines in the region but also increase the total volume of minerals processed in this state.

Without doubt increased employment opportunities are a win for the South Australian people, and particularly for our regional communities. To facilitate these opportunities BHP Billiton will develop an industry and workforce participation plan that outlines initiatives to maximise opportunities for local industry, for the workforce and for the use of local service providers. Particular emphasis will be placed on opportunities for employment and workforce development of Indigenous people, and support for Aboriginal and regional economic development, which is of key importance to the state.

The bill delivers several key outcomes that maximise economic benefits for the state while ensuring that the project is subject to our best practice regulations and environmental compliance regulations and regimes. Whilst BHP Billiton may apply to the indentured minister of the day for all other approvals, BHP Billiton will now be subject to the Environment Protection Act for environmental authorisations for the project. That was not the case previously, as the earlier indenture preceded the introduction of the EPA act, although it should be acknowledged that BHP operated as if it were under the EPA act and in accordance with its requirements. In this way the bill recognises the full independence of the Environment Protection Authority for environmental approvals, licensing and necessary compliance action for Olympic Dam.

Another important revision to the bill is the enhancement of compliance and enforcement provisions to ensure that the project achieves approved environmental outcomes and brings the existing act into line with current legislation in the Mining Act and the Environment Protection Act. As part of this, BHP Billiton will develop a program for the protection, management and rehabilitation of the environment and will be subject to a strong compliance and enforcement regime. BHP Billiton will also incorporate a greenhouse gas and energy management plan into this program as a commitment to reducing its greenhouse gas emissions.

Furthermore, BHP will provide the state with rehabilitation security in the form of a performance bond to secure the performance of its rehabilitation obligations. This is a cornerstone agreement for the state, providing the state with guaranteed financial security against rehabilitation requirements at any time with the Olympic Dam project.

Water continues to be a key concern for the state. In recognition of the value of this scarce resource, BHP Billiton will pay the Arid Lands Natural Resources Management Board for water extracted from the Great Artesian Basin and the saline well fields for the purposes of its operations. This is a new agreement that we have reached; previously no such charge was levied on BHP. Charges are based on the current levy rate but are capped at a maximum amount for 30 years to provide certainty of the charging regime in the medium term to the BHP Billiton company. My understanding is that the rate at present is about 3.18¢ (give or take a point or two) and we have provided a cap of 10¢ fixed for 30 years.

The project will also transition the township of Roxby Downs to a major regional centre, with BHP Billiton anticipating in its environmental impact statement a doubling of the residential population to approximately 10,000 people. This brings increased commercial opportunities for local and regional businesses both directly and indirectly related to the project. In addition to BHP's commitment to the provision of certain infrastructure and support, the state will continue to provide

infrastructure support to Roxby Downs up to a township population of 9,000 to facilitate development of the long-term sustainability of the township.

The state will provide BHP Billiton with an expanded special mining lease of approximately 60,000 hectares. This will provide certainty in the face of the long lead times and the high investment risk. The SML will be secured with an initial term of 70 years, with the ability to renew for a further 50 years. To facilitate further investment in the Olympic Dam area, the state has provided BHP Billiton with the opportunity to develop another project under the indenture. The state will also facilitate the provision of infrastructure and infrastructure corridors required for BHP Billiton's operations, including granting freehold title for certain project elements.

As I said, BHP Billiton will have the opportunity to apply the indenture to a further deposit that is within 30 kilometres of the mine site—effectively, a satellite deposit of world-class resource—and that is a further indication of the extraordinary wealth that we have within our borders in South Australia. That development will not occur for quite some time but it will be for the long-term benefit of the state.

[Sitting extended beyond 13:00 on motion of Hon. P.F. Conlon]

The Hon. K.O. FOLEY: The royalty rates of the Mining Act will be applied to this project. BHP Billiton will not receive a concession on royalty rates payable and will pay the same rates as other existing mining operations. The house should be reminded that of course the government has increased royalties in recent budgets: 3.5 per cent for processed copper and 5 per cent now for concentrate that is exported from the state. That is consistent with the charge in Western Australia.

For a very quick moment, can I remind the house that, whilst this mine when in full production could be producing in excess of $350 million worth of royalties, under horizontal fiscal equalisation (HFE)—the Grants Commission distribution of royalties—the state keeps our population share—let's say, for argument's sake, about $20 million—and the balance is redistributed to the other states. That is the way that HFE works. Colin Barnett in Western Australia shares 90 per cent of their royalties and keeps 10 per cent. If we, as a member opposite has mentioned, charge a higher rate, that would be illogical, given that it would be hard to explain how one should be charged a higher royalty rate than for any other similar mining operation. That would be somewhat of a deal killer in negotiations, of that I can assure you.

However, in recognition of the long lead times for the development and the need for certainty, the indenture provides that the current rates will be held for a term of 45 years. South Australia will be the price setter on royalties, given the sheer volume that we have, and we believe that that is an appropriate trade-off for a company that was initially seeking the new mine royalty rate of 2 per cent. Had we agreed to that, the state would have received significant leakage of revenue from our GST grants.

The Olympic Dam expansion is one of the most significant development projects not just in South Australia but within Australia and, arguably, the most significant multimineral open-cut mine the world has ever seen. The provisions of this bill strengthen the state's commitment to effective and efficient regulation of mining projects, whilst seeking to facilitate long-term investment viability of the project for BHP Billiton and its shareholders and maximising the benefits that this project can bring to the state over the next century.

In conclusion, can I say that this has been a difficult and long road. We established the Olympic Dam task force under Paul Case and its chair, Bruce Carter, about six to 6½ years ago. The Premier and I had our initial meeting with Marius Kloppers about five years or so ago. We saw great progress early and then in 2008, as the global financial crisis descended on the globe and on Australia, we realised that mining and resources companies can turn the tap off very quickly with these projects as they re-evaluate the uncertainty. That is why, in the view of the company and of the government, the necessity for this legislation to pass both houses of parliament by the end of this sitting is crucial.

The risk that we as a parliament would be putting on this project should it be not be approved and roll into the first quarter of next year I think is a risk too great. I welcome the cooperation and the cooperative spirit of members opposite and the Leader of the Opposition. However, the view of the government and BHP itself is that the time frames that we are working to are critical for the project, and the board has indicated its preparedness to spend $1.2 billion up-front. We think a further approval for the project will follow within a reasonably short space of time,

and I think it would be both negligent and an unacceptable risk for a state parliament not to agree to these time lines.

The negotiations have been drawn out, and I can remember at the very beginning of the EIS when BHP had in excess of 270 people working on it. It has been a torturous path, a long path, an incredibly detailed analysis. Clearly, not all will be happy. There will be those who believe that they should have had a decision in certain areas, but no-one can argue that they have not been consulted significantly and over a very long extended period of time. The government, BHP and the commonwealth have relied on the best advice available from government officers, independent statutory officers, commonwealth officers and, of course, independent consultants.

Dean Dalla Valle, the President of BHP Uranium Division, Bruce Carter and I met at the beginning of this year, I think in February, when we mapped out with Kym Winter-Dewhurst a time frame for when we needed to conclude these negotiations; we are about two weeks past when we hoped to have concluded them. We always knew that we needed to give the house as much time as possible, and there were a few hiccups with the EIS in terms of the time that it took, particularly at the commonwealth level to get that resolved—and that is no criticism, just a fact—and that has seen us slip a couple of weeks, but we are still within acceptable time frames.

It was an extraordinary negotiation process, and it took hundreds and hundreds of hours. Dean Dalla Valle, Bruce Carter and I conducted the negotiations—Dean for BHP and myself for the government—but the real tireless workers were Paul Heithersay and all of his team, all of the government officers involved in the EIS process from a myriad of government departments and, particularly, an outstanding servant of the state, Bruce Carter, who ensured that we had strong commercial acumen for the government all the way through. That was of vital importance to us. At one stage during the negotiations (I am not quite sure where they are now, they may be No. 3), the BHP share and market capitalisation made them the largest company on the planet, in excess of Exxon, but I think they may have come back one or two notches. So, it was important that we had the commercial acumen and I thank Bruce Carter very much for that.

I thank my parliamentary colleagues, particularly the Premier, who gave me unwavering support right through this process, and assisted me when needed and ensured that we had the full backing of the cabinet. I thank the incoming premier, Jay Weatherill, who has been briefed and was a part of negotiations and a part of the cabinet sub-committee that was authorising my negotiating position. I also thank all of my colleagues, my staff, and of course Dean Dalla Valle, whom I have grown to respect enormously. We had a lot of tense moments. Surprisingly enough, many times I was the cool head in the room—true story—I might share a couple of those later. Dean and I were the cool heads—

An honourable member interjecting:

The Hon. K.O. FOLEY: There were plenty of witnesses. Isn't that correct, Paul? Even Paul is saying that I was the cool head. It was an enjoyable experience, I guess. I thank Marius Kloppers, an outstanding corporate leader, and somebody who has shown enormous support. I conclude by saying that no other company in the world would have had the balance sheet, the available cash and the appetite for risk that BHP Billiton has. I doubt that any other mining company would have that. I also say equal to that is a chief executive officer who is at the point in his career where he can bank and make a decision of such enormity. These are not decisions that new CEOs make. These are not decisions that conservative, cautious leaders make. This is a leader, Marius Kloppers, who has taken an enormous challenge and risen to it, as has the board. It is our duty now as a parliament and as a state to back the board of BHP in.

We will be having a select committee. We have made available any officers who are needed by the opposition at any time, and we have been doing that now for nearly two weeks. To all members of parliament: if you have any questions, or if you are seeking any advice, please come to us. It must be noted, though, that the environmental impact statement is approved by the state, BHP and the government, and cannot and will not be altered.

As the indenture itself is a negotiated and contractual agreement between a sovereign government and the company, it is not up for renegotiation at all, and that is the position of the government and the position of BHP. However, it is only appropriate that the government make the parliament and all its members aware of all of the reasoning and rationale that went into our decisions.

I will conclude by saying that there is no question that, as you look through all the individual items—of which there are probably in excess of 300—there are some items to which a casual or

interested observer would ask, 'Why did they agree to that? Why didn't they try and get something better?' Well, Madam Speaker, it was a negotiation, and in any negotiation there has to be give and take. I believe that our team negotiated an outstanding deal for the state, and Dean Dalla Valle believes he has negotiated an outstanding deal for BHP Billiton.

But there is no question that, in a perfect world, there are always things you might like to have done a little differently, but the spirit of negotiation is that you have to compromise, you have to give, and you have to support the other negotiating partner with a flexibility that is required. The indenture needs to be looked at in its total, as a complete package, and not as an individual assessment on each item, because it was a collective agreement that took hundreds and hundreds of hours, and I think the state is well served.

I commend this bill to members, and I seek leave to have the explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

3—Interpretation

This clause sets out definitions for the purposes of the amendment Bill.

4—Amendment provisions

This clause is formal.

Part 2—Amendment of *Roxby Downs (Indenture Ratification) Act 1982*

5—Amendment of section 4—Interpretation

This clause proposes the insertion of certain definitions into the Act.

6—Amendment of section 7—Modification of State law

The proposed amendment to section 7(2)(a) revises the names of the Acts listed in subsection (2). Other amendments are made to section 7 related to the modification of State law for the purposes of the Indenture.

7—Amendment of section 8—Licences etc required in respect of the mining and milling of radioactive ores

The proposed amendments to section 8 substitute references to 'Joint Venturers' with 'Company'.

8—Amendment of section 9—Application of Aboriginal Heritage Act to the Stuart Shelf Area and the Olympic Dam Area

Some amendments in this clause delete obsolete provisions. Other amendments are consequential or related, or update the scheme to conform with current provisions of the *Development Act 1993*.

9—Substitution of section 12

This clause inserts proposed section 12:

12—Special provisions in relation to local government

This section contains special provisions concerning local government related to the administration of the municipality.

10—Insertion of Parts 4, 5 and 6

This clause inserts proposed Parts 4, 5 and 6:

Part 4—Special provisions relating to Projects

13—Unlawful abstraction, removal or diversion of water

This section provides for an offence of unlawfully abstracting, removing or diverting water.

14—Protection of infrastructure and equipment

This section provides for offences relating to the protection of Desal Infrastructure and equipment.

15—Access to desalination plant land

This section provides for an offence for a person to access desalination plant land without authorisation from the Company.

16—Access to SML1 land

This section provides that the holder of a licence under the *Petroleum and Geothermal Energy Act 2000* will not be entitled to access any part of the area of a Special Mining Lease (or to be granted any such access) unless a statement of environmental objectives is in place in accordance with clause 19(13) of the Indenture.

17—Application of *Land Acquisition Act 1969*

The Minister may acquire land in accordance with the *Land Acquisition Act 1969*.

18—Approvals and declarations

Subsection (1) of this section relates to the validity of certain Project Approvals. Subsection (2) extends subsection (1) to project approvals given before the Ratification Date. Subsection (3) is a provision concerning the declaration made under section 46 of the *Development Act 1993* in relation to the Indenture on 21 August 2008.

Part 5—Authorised investigations

19—Appointment of authorised officers

The Minister may appoint persons to be authorised officers.

20—Authorised investigation

This section sets out the scope of an authorised investigation.

21—Powers of entry and inspection

An authorised officer may, for the purposes of an authorised investigation, enter and inspect land.

Part 6—Other matters

22—Water requirements

This section provides that any charges for the distribution of potable water or the provision of sewerage services within the town must comply with the requirements of clause 13(22) of the Indenture.

23—Supply of electricity

This section provides that any tariffs imposed by a power distribution authority must not, in respect of electricity supplied to consumers within the town, exceed the rates that apply under clause 18(16) of the Indenture.

Part 3—Variation of Indenture and SML1

11—Variation of Indenture

This clause provides that the amendments to the Indenture are ratified and approved.

12—Variation of SML1

This clause provides that the amendments to SML1 are ratified and approved.

13—Variation Date

This clause makes provision for the Variation Date, and prescribes procedures related to the extension of the Variation Date.

Schedule 1—Variation Deed

The Schedule contains the Variation Deed.

The Hon. K.O. FOLEY (Port Adelaide—Minister for Defence Industries, Minister for Police, Minister for Emergency Services, Minister for Motor Sport, Minister Assisting the Premier with the Olympic Dam Expansion Project) (13:13): I move:

That standing and sessional orders be and remain so far suspended as to enable the Roxby Downs (Indenture Ratification) (Amendment of Indenture) Amendment Bill to be taken through to the completion of the second reading forthwith.

The SPEAKER: I have counted the house, and as there is an absolute majority I accept the motion. Is that seconded?

An honourable member: Yes, ma'am.

Motion carried.

The Hon. K.O. FOLEY (Port Adelaide—Minister for Defence Industries, Minister for Police, Minister for Emergency Services, Minister for Motor Sport, Minister Assisting the Premier with the Olympic Dam Expansion Project) (13:14): The government acknowledges and appreciates the cooperation of members opposite to enable both the Premier and I to read our contributions to the parliament as, come Friday morning, we will no longer be members of the

executive. The opposition has allowed us to do that, and for that I thank the deputy leader and the leader.

Also, we will be establishing a select committee that will enable members opposite to be fully briefed in further extent to what they have to date, and what is also planned for the members of their caucus.

We will give an absolute commitment that all members of this house will be given the opportunity to make a 20-minute contribution, should they wish to do so, in response to the select committee report prior to the bill going to the third reading. Then, the bill will be moved to the upper house, where the upper house will do what the upper house does. Whatever it is they do, I hope they do it in a speedy time frame.

I will be a member of the select committee, which we will move to shortly. I will be an adviser to the government in the upper house on this, and an adviser—should it come back or when it comes back—to the lower house, to be received by the new Premier, Jay Weatherill.

Bill read a second time.

The SPEAKER: I indicate that this is a hybrid bill within the meaning of the joint standing order (private bills) No. 2.

The Hon. K.O. FOLEY (Port Adelaide—Minister for Defence Industries, Minister for Police, Minister for Emergency Services, Minister for Motor Sport, Minister Assisting the Premier with the Olympic Dam Expansion Project) (13:14): I move:

That the bill be referred to a select committee pursuant to joint standing order (private bills) No. 2.

Motion carried.

The Hon. K.O. FOLEY: I move:

That a committee be appointed consisting of the member for Heysen, the member for MacKillop, the member for Davenport, the Minister for Mineral Resources Development, the Treasurer, the Minister for Transport and the mover.

I am 'the mover'—I just could not see my name. You would reckon after 18 years and seven years as a key adviser I would get that!

Motion carried.

The Hon. K.O. FOLEY: I move:

That the committee have power to send for persons, papers and records and to adjourn from place to place and to report on 1 November 2011.

Motion carried.

The Hon. K.O. FOLEY: I move:

That standing order 339 be and remain so far suspended as to enable the select committee to authorise the disclosure or publication, as it sees fit, of any evidence presented to the committee prior to such evidence being reported to the house.

The SPEAKER: There being an absolute majority I accept the motion.

Motion carried.

The Hon. K.O. FOLEY: I move:

That standing and sessional orders be so far suspended as to enable the report of the Select Committee on the Roxby Downs (Indenture Ratification) (Amendment of Indenture) Amendment Bill on being adopted by the committee may be presented to the Speaker prior to the next sitting day along with minutes of proceedings and evidence and the Speaker be authorised to publish the report within one business day; further, should the report be published pursuant to this order, that it be deemed to be taken into consideration pursuant to standing order 346 as an order of the day for 8 November 2011.

Motion carried.

[Sitting suspended from13:19 to 14:00]

SUMMARY OFFENCES (TATTOOING, BODY PIERCING AND BODY MODIFICATION) AMENDMENT BILL

His Excellency the Governor assented to the bill.

LEGAL SERVICES COMMISSION (CHARGES ON LAND) AMENDMENT BILL

His Excellency the Governor assented to the bill.

DUNSTAN, SIR DONALD

The Hon. M.D. RANN (Ramsay—Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts, Minister for Sustainability and Climate Change) (14:02): I move:

That the House of Assembly expresses its deep regret at the death of the late Sir Donald Beaumont Dunstan AC KBE CB, former governor of this state, and places on record its appreciation of his distinguished service to our state and, as a mark of respect to his memory, that the sitting of the house be suspended until the ringing of the bells.

Donald Beaumont Dunstan was born at Murray Bridge on 18 February 1923. He graduated from the Royal Military College, Duntroon, in 1942, during the Second World War. He then served in infantry regimental appointments and as a junior staff officer in New Guinea, Bougainville and New Britain during World War II. He was second-in-command of the 1st Battalion, the Royal Australian Regiment in Korea in the 1950s, twice a member of the staff of the Royal Military College and a member of the directing staff at the Australian Staff College and the British Army Staff College, Camberley.

In 1964, Donald Dunstan commanded 1 RAR and then the 1st Recruit Training Battalion. In 1968, he was appointed Deputy Commander of the Australian Task Force in South Vietnam and, subsequently, he commanded the 10th Task Force. In 1970, he attended the Imperial Defence College in London. He returned to South Vietnam in 1971 as a major general and commander of the Australian forces there. On his return to Australia he was appointed Chief of Defence Materiel, followed by his appointment as General Officer commanding Field Force Command.

Major General Dunstan was promoted to Lieutenant-General and served as Chief of General Staff for five years from 1977 to 1982; so he rose to be head of the Army and, of course, the head of all of Australia's armed forces. General Dunstan was during his career mentioned in dispatches for patrol action in Bougainville in the Second World War. He became a Member of the Order of the British Empire in 1954. He was made a Commander of the British Empire in 1969 for services in South Vietnam. He was made a Companion of the Order of the Bath in 1972, again for service in South Vietnam. He was made a Knight of the Order of the British Empire in 1980 and a Companion of the Order of Australia in 1991, our nation's highest honour.

On his retirement from the army in 1982, Sir Don Dunstan was appointed governor of South Australia, in which capacity he served with great distinction until 1991. He was appointed by the Liberal government led by David Tonkin, and the appointment was greeted with bipartisan support—rightly so for a man who had served his nation so well, but was incredibly proud of his South Australian origins. Indeed, I remember him telling me, as a young minister, the story of his ancestors, who came to the Barossa Valley—I think they came from Silesia—and that story was very important to him. I think he also had Cornish ancestors.

I remember getting the news as an adviser to John Bannon that Sir Donald Dunstan had been appointed governor. I went over and spoke to several members of the upper house, several Labor members, one of whom, a minister, asked me, 'Who have they appointed as Governor?' I said, 'Don Dunstan'. This caused a great deal of astonishment, and then I said, 'By the way it's now Sir Don Dunstan', which caused even more astonishment.

I not only attended on Executive Council but also was able to spend time with him at those wonderful Executive Council cabinet dinners at Government House. Of course, with Sir Donald and Lady Dunstan a military band was in attendance and there was also a great deal of storytelling. I know that while Sir Donald was appointed by David Tonkin's government, his period as governor was actually extended by John Bannon as premier of South Australia, as a mark, I think, not just of respect for the great work that he was doing, but also of that very important bipartisanship support for a non-partisan role.

Sir Donald and Lady Dunstan's visits to rural, country and outback areas and to Aboriginal communities were very greatly appreciated. I remember him telling me one story about the use of

the Rolls Royce on a particular Aboriginal community by a particular Aboriginal leader, which apparently that leader was very proud of.

Former premier John Bannon said yesterday of Sir Donald as governor that he was very much a military man trained in the protocols and the right way to do things, but a very humane man as well, a really shrewd judge of character. He did not take any nonsense, was very diligent and certainly gave terrific advice.

I remember the last time I saw Sir Donald was at the unveiling of the Vietnam War Memorial at the Torrens Parade Ground in the city. Fittingly, the memorial depicts an Australian soldier standing alongside a South Vietnamese comrade, not defiantly, but really in a stance of reflection. I know that Sir Donald's attendance at the unveiling meant a great deal to the veterans who attended the service and to the families of those who lost their life in that conflict.

On behalf of the people of South Australia, I want to extend my deepest condolences to Lady Dunstan and Sir Donald's family. I know that his time as governor in South Australia and Their Excellencies' great commitment was greatly appreciated by all who had the privilege to meet them.

Mrs REDMOND (Heysen—Leader of the Opposition) (14:11): I rise to second the motion. It was a curious twist of fate that the Tonkin Liberal government should choose a man named Don Dunstan as Governor for South Australia. However, in spite of the potential for confusion, it turned out to be an excellent choice indeed. Known for his good humour, Sir Donald Dunstan once said of his namesake:

> I suppose our lives have been so different there is no way they could have confused us—but I had the name first.

Lieutenant-General Sir Donald Beaumont Dunstan was born in Murray Bridge on 18 February 1923. A local boy, he went to Murray Bridge High School before heading to the big smoke (if you can call Adelaide the big smoke) to attend Prince Alfred College. He was selected to enter Duntroon Military College but because of the war his time in Duntroon was cut short, and he graduated at just 19 years of age in 1942. Despite the hastened education, Sir Donald went on to have a highly decorated military career.

Always modest, he said he never had any other ambition than to be a soldier and serve his country. After he graduated, Donald was posted as a platoon commander to the 27th Infantry Battalion (SA Scottish Regiment), which was in Darwin at the time. Except for a period in brigade headquarters as a liaison officer, he served with this unit for the remainder of the war in the south-west Pacific, fulfilling infantry regimental appointments in New Guinea, Bougainville and New Britain. He was mentioned in dispatches for patrol actions in Bougainville in 1945.

After the war he went to Japan with the occupation force. In 1948 Donald married Beryl Dunningham. Lady Dunstan, as she was to become, was an integral part of Donald's success throughout his career, providing him with invaluable support within the prism of a deeply loving relationship. In 1949 they moved to Adelaide where he served for nearly four years at Keswick Barracks. In 1954 he was made a Member of the Order of the British Empire for his services here.

Donald was second-in-command of the 1st Battalion, the Royal Australian Regiment in Korea in 1955. He was twice a member of the staff of the Royal Military College and member of the directing staff at the Australian Staff College and the British Army Staff College, Camberley. In 1964 he commanded the 1 RAR and then the 1st Recruit Training Battalion.

In 1968 Donald was appointed Deputy Commander of the Australian Task Force in South Vietnam, subsequently commanding the 10th Task Force. That same year he assumed command of the Australian Task Force at Fire Support Bases Coral and Balmoral, covering enemy approaches to Saigon. This operation has been described as the fiercest fighting experienced by Australian troops in the Vietnam War. For this service he was made a Commander of the British Empire in 1969.

In 1970 he attended the Imperial Defence College in London before, scarcely two years after leaving Vietnam, he returned as a Major-General, Commander of the Australian force. It was during this period that he planned and executed the withdrawal of the Australians from Vietnam. He was awarded a Companion of the Order of the Bath in 1972 for this tour of duty.

On his return to Australia he was appointed Chief of Materiel in Canberra, followed by the appointment as General Officer Commanding Field Force in Sydney. Then Major-General Dunstan,

he was promoted to Lieutenant-General and served as Chief of General Staff for five years from 1977 to 1982. Sir Donald was knighted in the New Year's Honours List of 1980. In the course of his various military duties he was stationed in many locations across the country and internationally, but he always remained a true South Aussie, saying:

> I have always regarded myself as a South Australian. The ties with one's home state are always strong.

But Sir Donald's life is not just the story of a successful military career—his success did not stop there. On his retirement from the army he was appointed Governor of South Australia and served in this position with aplomb; so, too, did Lady Dunstan. When she moved into Government House—typical of army wives everywhere—she was moving into her 34th home in 30 years of marriage, only the accommodation was somewhat grander than anything the army had offered up until then. Her support and dedication to Donald's role was unwavering, and she also shared his love of Adelaide and South Australia. She was known as a positive and charming woman; he to be warm and genuine. Unsurprisingly, the pair won the hearts of all South Australians.

Sir Donald always conducted himself with honour and afforded the respect of all those with whom he came into contact. He and his wife were hard workers, tirelessly attending functions and meeting new people as they criss-crossed the state. This was particularly the case during South Australia's 150 anniversary year. His strong work ethic and determination was played out even in his daily morning walks. He was not shy to admit that he walked properly, saying, 'I don't just stroll,' and such was his approach to life—purposeful, direct and dedicated.

Upon his retirement as Governor in 1991 he was made a Companion of the Order of Australia. Like all the great names we remember in this parliament, Sir Donald was not a one-dimensional man. He loved his family, adoring his wife and two sons. He was an avid trout fisherman, he played golf and liked cross-country skiing. He also had an active role with a charity dear to my own heart, Operation Flinders, serving as one of its vice-patrons—a tradition carried on by our current Governor.

My most sincere condolences and those of the Liberal Party go to Sir Donald's family and friends. With his death at age 88 our state has lost a man of great integrity and honour. I commend the motion to the house.

Mr HAMILTON-SMITH (Waite) (14:16): I rise to commend the motion to the house, not only as the member for Waite and on behalf of my constituents but also as a member of the Royal Australian Regiment Association, having served in 6th Battalion Royal Australian Regiment (with the general having commanded the first), and also as a graduate of the Royal Military College, him having been part of the class of '42 and me the class of '75.

Members may be interested to know that, during the Second World War, the four-year period for cadets at Duntroon was abbreviated, of course, given the war to one year, and as many young officers as possible were sent into the field.

It is interesting to reflect on General Dunstan's life and career. We have had a few condolence motions over the years. I remember Norm Foster—and I remember others—who marked the passage of a very special generation, one that will never be seen again. It was the generation of South Australians who fought for us during the Second World War, and who then served on. They are a very unique group of people, and, sadly, we are seeing the last of them now go. It is very fitting that this motion be moved, because General Dunstan was one of the leaders of that generation.

Having just returned a few weeks ago from having walked the Kokoda Track, can I just say that the achievements of these soldiers were absolutely remarkable. It took us nine days to walk the journey that these men took in about twice the time but carrying about three or four times the weight in the most awful conditions with someone trying to kill them, and in weather conditions and circumstances that most of us could only think of in shock and horror.

General Dunstan arrived in New Guinea after the worst of the fighting along Kokoda—most of it was in 1942, with the northern beaches wrapping up most of the Japanese force at Buna and Gona in early 1943; but he would have been there for some of the more sustained operations that followed.

It is interesting, too, to reflect on these young men who first saw action in World War II and who then went to Japan as part of the occupation forces. They then found themselves in Korea in the freezing cold—a campaign and a battle which should be remembered by all Australians. At the time it was a matter of life and death, and these were very difficult times for the world. But then they

found themselves serving in Malaysia during the emergency, then in Indonesia and Malaysia (again, during confrontation) and then that wrapped into Vietnam.

General Dunstan, and those who served with him, virtually were at war almost constantly from 1942 through until 1972, in some cases with only a year or two's break. It is difficult for Australians to think of that now, even though our young men and women are serving for us right now in Afghanistan and other places. That was a particularly difficult time for this country and for soldiers like General Dunstan and their wives and families.

Can I say about the Battle of Coral/Balmoral, in which General Dunstan was involved, that this was very nearly a case of the total annihilation of the Australian force. The Battle of Coral/Balmoral was like Khe Sanh, a case of the fire support base having been almost completely surrounded by the enemy, to the point that during the heat of the battle the guns of the artillery were captured by the Viet Cong and had to be recaptured through counter-attack. Had it not gone as well as it did, partly through General Dunstan's command and experience, it could well have been that we lost the entire force and the casualties would have been counted in the hundreds, not in the dozens. It is a credit to this fine soldier that he and others served us so proudly.

I served under him as chief of the general staff when I was in field force command, 3rd Task Force, SAS and in training command. He was a great general to serve under, part of a generation of commanders that are now gone. My condolences go to his family. He was a fantastic South Australian, a wonderful governor, and a great example for us all to follow.

Mr PENGILLY (Finniss) (14:21): I join with the Premier and other speakers in relation to Sir Donald Dunstan. My connection was somewhat closer, given that his mother lived out the last years of her life in the town of Kingscote, cared for in large part by his sister and her husband. Sir Donald was a visitor to the island unannounced on a number of occasions, coming over to see his mother. If my memory serves me correctly, his mother is indeed buried in the Kingscote cemetery.

As the member for Waite said, we are drawing towards the conclusion of an incredible generation of people, that is, those who served in those wars. For Sir Donald to have served in World War II, then Korea and Vietnam is, quite simply, something that takes your breath away these days.

There was something about Sir Donald. I met him on a number of occasions, even during the 150th celebrations. He was a wonderful human being with a very deliberately targeted sense of humour. He had that bearing which drew people to him, and I guess that came out again, as the Premier mentioned, at the unveiling of the Vietnam memorial. He was there then.

I have hundreds of veterans from both World War II, and Vietnam in particular, and other conflicts, in my electorate, and I see the veterans, particularly the South Coast veterans (the Vietnam boys) pretty regularly, and they loved him. They absolutely loved him. They had a passion for the man and, when they saw him, whether at the Torrens Parade Ground or, indeed, the unveiling of the memorial, they were just in awe of him.

I do not want to go through everything that has been spoken about, but the people of Kangaroo Island knew Sir Donald and they knew his mother and Pat and Bob well. I pass on my condolences to the family.

Mr WILLIAMS (MacKillop—Deputy Leader of the Opposition) (14:23): I will not go over the ground that has already been covered by other speakers but I want to add a couple of comments to recognise a very distinguished career by a great South Australian.

I had the great pleasure many years ago of spending a day with Sir Donald and Lady Dunstan when I was the chairman of the then Beachport council and there was a vice-regal visit to Beachport. As the chairman, I used my authority to instruct the district clerk then that the visit would include a visit to the Mount Burr Primary School. I do not think too many governors have visited the Mount Burr Primary School, but it is the school that I attended as a small boy and I thought it would be a special treat for the staff and students of that school. I do not think a governor has been before or since to the Mount Burr Primary School.

My memory was jogged when the Premier mentioned the Governor's Rolls Royce, because in those days the governors drove around in Rolls Royces. We did a tour of the district with Sir Donald and Lady Dunstan in his Rolls Royce. Eventually we got to Mount Burr and there was a little formal ceremony when the head girl of the primary school presented to Lady Dunstan a large bouquet of flowers. The head boy gave a copy of a book celebrating 50 years of the Mount Burr

Primary School to Sir Donald Dunstan, but much to the embarrassment of this small boy he called Sir Donald Dunstan 'Sir Donald Bradman'.

I will never forget it, because he was very impressive. I was impressed; I was a relatively young man at the time. He very quickly said to the children, 'Well, that's that. Who wants to come and see the Roller?' He led the 50 or 60 students out to the front of the school and threw open the doors to the Roller, with these very eager young children milling around. Again, it is not very often you see a Rolls Royce in Mount Burr either, so that's my memory.

Members interjecting:

Mr WILLIAMS: I have a very fond memory of that day, and it is a day that I will cherish for all of my life. I am sure that there is an adult—probably still around the South-East of South Australia—who cringes every time he hears the name Sir Donald Dunstan. I offer my condolences and those of the people of my electorate to Lady Dunstan and their family.

The SPEAKER (14:26): Honourable members, I ask that the motion be carried in silence in the usual way.

Motion carried by members standing in their places in silence.

[Sitting suspended from 14:27 to 14:37]

VISITORS

The SPEAKER: I note the presence in the gallery of a former speaker of the house, Hon. Graham Gunn, and former grandfather of the house. It is good to see you here today. I also note the presence in the house of Sir Eric and Lady Neal, and it is such a pleasure to see you here.

JACOBS, MR S.J.

The Hon. M.D. RANN (Ramsay—Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts, Minister for Sustainability and Climate Change) (14:38): I move:

That the House of Assembly expresses its deep regret of the death of the Hon. Samuel Joshua Jacobs AO QC, former Supreme Court judge, royal commissioner and very strong supporter of education in South Australia, and that we place on record our appreciation of his meritorious service to our state's legal and justice system and to education and, as a mark of respect to his memory, that the sitting of the house be suspended until the ringing of the bells.

It was with great sadness that I learned last week of the passing of Sam Jacobs, who died after a lengthy illness on 11 October, aged 90. Sam Jacobs made a very significant contribution to South Australia as a lawyer, as a judge, as a royal commissioner, and as a voluntary worker in support of education, particularly the University of Adelaide. Praised for his combination of legal learning, intellectual acumen and practical wisdom coupled with a keen sense of humour, Sam Jacobs gave long and diligent service to some of our most important institutions, including 17 years as a justice of the Supreme Court of South Australia and 32 years as a member of the University of Adelaide Council.

Samuel Joshua Jacobs was born in 1920 and educated at Scotch College here in Adelaide. He began his law studies in 1939, but like so many of his generation his tertiary education was interrupted by the Second World War. He enlisted in the 2nd/27th Battalion in 1940 and served with distinction in various theatres of war for the following four years. His family, and perhaps others, heard him recount that the most significant and fortuitous element of his war service was that, at the insistence of prime minister John Curtin, he was not required to serve in Burma.

After his discharge from the Army in 1944, he resumed his studies in law and was admitted as a practitioner of the Supreme Court in 1946. It was not until the following year that he gained his Bachelor of Laws, an unusual chronology brought about by the disruption of the war.

Sam Jacobs' outstanding legal skills were quickly recognised. He served as a judge's associate with Sir George Ligertwood, who was to become his long-standing mentor, as well as then Chief Justice Sir Mellis Napier, before joining the legal firm which became known as Browne, Rymill, Stevens and Jacobs. He practised with distinction in a range of legal areas and, as former

Chief Justice the late Len King noted on Sam Jacobs' retirement, his name was associated with some of the most important and difficult cases of his time.

From the early stages of his career he began voluntary work in support of education at all levels, although the University of Adelaide was the most significant beneficiary of his time, energy and wisdom. This voluntary involvement with education began with like-minded members of his local community, as they pushed for, and subsequently developed, a local kindergarten.

He served on the university council for an astonishing 32 years and was deputy chancellor of the university from 1984 until 1993. For some period of that time I was minister for further education, during the making of the University of South Australia and other additions to the University of Adelaide, and I knew how well regarded he was by the university.

He played an enormous role in the story and development of the University of Adelaide. His professional service was also extensive. He was president of the Law Society from 1971 until his appointment to the Supreme Court in 1973 by the Dunstan government.

Sam Jacobs served our judicial system with distinction, retiring in 1990 having reached the compulsory retirement age. On his retirement, Len King praised his contribution, saying:

> From the beginning, His Honour proved to be an outstanding judge. His tolerance and perceptiveness quickly won the support and respect of the profession. He has brought us strength and stability to the work of the court in all its jurisdictions.

Sam Jacobs was only briefly retired before he was called on to take the demanding role of Royal Commissioner into the State Bank of South Australia. This was a particularly wrenching time in the history of this state. He produced two reports, in 1992 and 1993.

Sam Jacobs' contribution to our state and to our nation has been recognised widely, with two honorary doctorates and an Order of Australia for services to law and education. He is the fourth highly respected legal figure that South Australia has lost this year, following the passing of Len King, Ted Mullighan and Elliott Johnston. No doubt there are many and varied connections between these men, all giants in their own individual ways and all men of great integrity.

In fact, I am reminded that Sam Jacobs, like so many prominent South Australians, was also formerly an editor of *On Dit*, the University of Adelaide's student newspaper. However, he resigned his editorship in protest when he was refused permission to print articles on pacifism that had been submitted by Elliott Johnston.

In his retirement speech, Sam Jacobs showed that the commitment to free speech and fair play that he nurtured as a student had bloomed into a strong and wide-ranging commitment to integrity and compassion in the judicial system. He also showed a degree of prescience, predicting that the era of the computer would transform our working lives. He said in that speech:

> The microchip can do many marvellous things. It can even play bridge and chess better than I can, which is no mean achievement. But I confess to some concern if we allow it to think for us and to solve the problems that we ought to solve for ourselves, ... for the microchip lacks the compassion of the human spirit.

Sam Jacobs will be remembered as a fair and impartial judge, a loyal and loved family man—and I know that he lost his wife of many years, Mary, in 2007—a devoted father and a South Australian dedicated to serving his community. On behalf of all members of this side of the house, and on behalf of the people of South Australia, I extend my deep condolences to Sam Jacobs' immediate family—his sisters, children, grandchildren and great-grandchildren—to his wider family and his friends, colleagues and admirers.

Mrs REDMOND (Heysen—Leader of the Opposition) (14:46): I rise to second the motion. Justice Samuel Jacobs AO QC wore many hats: he was a man of the law, a strong advocate for education, a volunteer and a great donor of his personal time to worthy causes, as well as being a veteran, a freemason and, of course, a family man.

It seems that in recent months we have been farewelling many great men of Justice Jacobs' era and his legacy, too, is certainly one worth noting. Justice Jacobs died last week aged 90 after a decorated career and decades of service to this state. Born in Adelaide in 1920, Sam Jacobs finished high school at Scotch College in 1938 as head prefect and captain of the first XI. The very next year he started studying law at Adelaide University and, during his time there as the Premier has mentioned, he was editor of the university student publication *On Dit* and a member of the intervarsity golf and debating teams.

That, of course, was 1939 and war was looming. He passed the first year of his studies and began the second before heading to war in the middle of 1940 with some second year subjects yet to be completed. He enlisted in the AIF in World War II serving in the Middle East and achieved the rank of captain in the 2nd Australian Imperial Force Movement Control.

After the war, Sam resumed his studies and completed what was then known as his certificate so that he could go straight into practice as he had married his wife, Mary, in 1946 and was keen to join the workforce and start earning some money. In 1947, he finished his degree. Because of the fused professions of barrister and solicitor in this state, Sam was able to take silk in 1965 while still working for his long-time legal firm—a practice no longer allowed. He served as president of the Law Society from 1971 to 1973 before standing down from that role when he was appointed a Supreme Court justice.

In spite of there having been some years of overlap when I was a practitioner and he a Supreme Court judge, I only had one appearance before Justice Jacobs (as instructing solicitor to a barrister who himself is now a judge) and that appearance was singularly unsuccessful, with Sam Jacobs not letting us get to first base in the argument before shutting us down and sitting us down. That said, however, it was clear he had a sharp intellect and a fine legal mind. As the Chief Justice said:

> Through his work as a judge of the Supreme Court, Mr Jacobs made a substantial contribution to the administration of justice in South Australia. His judicial work was highly regarded by his fellow judges and by the legal profession. In his time as a legal practitioner he was an undoubted leader of the legal profession.

Justice Jacobs served with distinction in the role of Supreme Court judge until 1990 when he reached the statutory retirement age of 70 and was forced to stand down.

Most of us would imagine that by the time we were 70 we would be ready for retirement, but not Sam. In 1991 he was asked to head the royal commission into the State Bank disaster. As commissioner, he investigated how the Bannon Labor government had managed to let the state debt peak at $11.6 billion in 1993 at the height of the crisis. South Australia was led into a staggering $3.15 billion debt. He produced two reports of his findings in 1992 and 1993.

Unfortunately, the economic policies of the South Australian Labor governments still concerned Sam Jacobs nearly two decades later. In 2009, he publicly chastised Labor for their reckless economic policies. He was worried that the current state Labor government was putting its credit rating at risk by funding major infrastructure projects through debt. He was particularly concerned that the state Labor government was preparing to borrow to fund a $1.7 billion hospital—the new RAH. In March 2009—and that shows how active his mind still was so recently—in *The Australian*, he was quoted as saying:

> To incur that expense puts a strain on the state budget and there are global strains as well. It's important that states keep the AAA ratings, because it gets a more favourable rate of borrowing. I wouldn't want to sacrifice it.

But it was certainly not all work and no play for Sam. As well as raising their four children with his much-loved wife, Mary, from the early 1950s, Sam had various involvement in voluntary education roles, including 32 years as a member of the Council of the University of Adelaide. Indeed, he was deputy chancellor of the university from 1984 until 1993.

He was a member of the Council of Governors of Scotch College from 1966, a member of the State Law Reform Committee, a member of the Winston Churchill Memorial Trust, a member of the Board of Management of the Kindergarten Union and was associated with the work of the Crippled Children's Association. Interestingly, from 1966 to 1973, he was also a director of the SA Gas Company.

An active freemason, Sam was a past grandmaster in South Australia and the Northern Territory and he was honoured by the naming of the newly-renovated basement area of the Freemasons Hall in North Terrace as the Sam Jacobs Room, which he formally opened in September last year.

On top of all his voluntary work, Samuel saw the law as a form of public service and always acted with the best interests of the community in mind. It is obvious from all this that the Order of Australia he was awarded in 1982 for services to law and education was certainly well-deserved. He was also awarded the Centenary Medal in 2001.

On behalf of the Liberal Party, I would like to extend my sincere condolences to Sam's family, particularly his four children—Michael, who is known to many of us in here, Tim, Pete and

Jen—five grandchildren and three great-grandsons and, of course, his many friends and colleagues. I commend the motion to the house.

Honourable members: Hear, hear!

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Justice, Minister for Urban Development, Planning and the City of Adelaide, Minister for Tourism, Minister for Food Marketing) (14:52): I think, having heard the contributions of the last two speakers, I will confine myself to remarks about the late Sam Jacobs. The role of being a Supreme Court judge is one that, I guess, has been more in the spotlight recently, and probably for all the wrong reasons, in that, as the Premier has already remarked, we have lost, in the space of a very short time, four distinguished former members of that court—Justice Jacobs being the fourth.

I do not know if this indicates some sort of risk profile attached to being a member of the Supreme Court, but I am somewhat consoled by the fact that Sam Jacobs was, after all, 90 when he left us. To leave any time is not good, but at 90 is a lot better than earlier and, I guess, maybe that says good things about the longevity of people who serve in that distinguished role.

He was, as others have remarked, a member of the court from 1973 until his retirement in 1990, when he turned 70 years of age. Unlike the Leader of the Opposition, I did not have the privilege of appearing before His Honour when he was serving on the court, but I am very much aware of the fact that his tenure on the court straddled two great periods in the South Australian Supreme Court's history, being the Bray court and the King court, both of which were outstanding and nationally recognised courts for the quality of the judgements that those courts delivered.

As has already been remarked, Sam Jacobs began practising law in 1946 and took silk in 1965. Of course, during those days, it was possible for a person to take silk without being at the independent bar because it did not actually exist, as it presently does, at that time. He also, obviously, served with the Law Society and the university.

I have had the opportunity of looking at the remarks made by the newly-installed Justice Jacobs on 22 May 1973, at the time of his appointment. In these remarks, he refers to the Hon. Sir George Ligertwood, whom he describes as a mentor. Having read these, I think it is probably some good advice for any lawyer and probably even for members of parliament. He quotes Mr Ligertwood, saying that he had given him two pieces of advice. The first one is:

> 'If your legal research leads you to a result which offends your common sense, go and have another look at the law.'

I do not think that is a bad start. He then goes on to say:

> I am sure he was right, although I have come to learn that common sense alone is not a substitute for legal argument.

All of us who have practised know that is the case. Sam went on to say:

> But the next piece of advice is perhaps more pertinent…Never be scared of the Judge.

Having had the experience, as I know the Leader of the Opposition and the member for Bragg have, sometimes that is hard. He said:

> Never be scared of the Judge. If you have prepared your case properly you will know more about the law than he does.

Many of us have thought that but been shown to be wrong when the writing has been written. He then goes on to say:

> If, with great respect to my brethren, I have sometimes felt certain that that was true in the past, I am equally certain that so far as I am concerned it will be true in the future.

That is a very generous remark by an incoming judge. As I said, not having appeared before him, I do not know if he continued to hold that opinion throughout the entire period of his tenure.

I understand from various sources that Sam Jacobs was an active freemason and indeed a past grand master of freemasons in South Australia and the Northern Territory. I am, I think, obliged to advise the parliament—because his son Michael was concerned that this matter might cause confusion—that the Adelaide Crows' ruckman, Sam Jacobs, is not related. In any event, my condolences to his family. He is survived by his two sisters, three sons, one daughter, five grandchildren and three great-grandsons. I am sure this has been a great loss to all of them. He was a great contributor to South Australia.

Ms CHAPMAN (Bragg) (14:56): I hope today that the family of the Hon. Sam Jacobs will take some comfort in hearing the presentations moved by the Premier and supported by the Attorney and our leader to appreciate for the rest of South Australia the enormous contribution that their father and brother made to the state, the legal profession, the Law Society, and of course the judiciary, and, very significantly, his extraordinarily long service to the University of Adelaide and education generally.

Sam Jacobs was the third lawyer I ever met. As a teenager, I had met a lawyer from Adelaide who purported to be a very senior member of the legal world, but as he did not know the difference between a wether and a ewe I thought he was a complete idiot. The second one was the Hon. Robin Millhouse, who served in this parliament and also on the bench. I had the experience of being cross-examined by him for about two hours in the Supreme Court as a witness, and that is an experience I would probably prefer to forget.

The third person was Sam Jacobs, who by that stage, as has been explained today, had become a member of the Supreme Court bench; he had taken that position a few years before. As a young law student, I, like probably many South Australians, was stunned to read the headline in the *News*, which was a post 4 o'clock newspaper publication (for those who are too young to remember), when we had two daily papers in South Australia. The headline was '$60,000 compensation to woman plaintiff', etc. At the time it was probably the biggest civil compensation damages claim that had been awarded to a victim of a motor vehicle accident, but in any event it was certainly notorious and the determination had been made by the then His Honour Sam Jacobs.

Shortly after that, I was invited down to the Carrickalinga house of His Honour and his dear wife, Mary Jacobs, because, as it happened, my mother's first cousin was his long-serving secretary, who had worked with him during his legal career, I think from the time it was something like Stephens Mellor Jacobs and Bollen or some configuration, until his time on the bench.

I have to say, on occasions that I visited her at the chambers, I would not describe her as, frankly, the most hardworking secretary, notwithstanding that she was my cousin, but she was certainly very loyal to His Honour and was completely available at all times to provide services to His Honour, and she became a very good friend of both him and Mary.

I was invited to the Carrickalinga beach house as a young student. As usual, being presumptive on these occasions when you are young and, of course, outspoken (which, of course, I'm not now), I raised with His Honour this case. I said, 'This is an outrageous decision, judge. How could this possibly happen? This is extraordinary.' To which he responded something like, 'That is the advantage of hearing all of the evidence and not just relying on what's in the newspaper.' So, it was a sobering lesson, and I thank him for it.

Fortunately, I went on to graduate, and had his advice from time to time since that time. I just wish to place on the record my personal appreciation for his mentoring and support, because I represent so many who have had the benefit of his counsel and am one of all South Australians who should rejoice in his life of contribution to all of us, and I convey my condolences to his family.

Honourable members: Hear, hear!

The SPEAKER (15:01): I thank members for their contributions, which I will pass on to the family. I now ask all members to rise in support of the motion in the usual way.

Motion carried by members standing in their places in silence.

[Sitting suspended from 15:02 to 15:12]

HOSPITAL PARKING

Ms BEDFORD (Florey): Presented a petition signed by 4,332 residents of South Australia requesting the house to urge the government to urgently reassess the decision of introducing parking fees for patients and visitors at Lyell McEwin Hospital.

MURRAY BRIDGE SCHOOLS AMALGAMATION

Mr PEDERICK (Hammond): Presented a petition signed by 723 residents of Murray Bridge and greater South Australia requesting the house to urge the government not to go ahead

with the proposed amalgamation of the Murray Bridge Primary School and the Murray Bridge Junior Primary School.

PAPERS

The following papers were laid on the table:

By the Speaker—

Auditor-General—
Part A: Audit Overview Annual Report 2010-11
Part B: Agency Audit Reports—Volume 1 Annual Report 2010-11
Part B: Agency Audit Reports—Volume 2 Annual Report 2010-11
Part B: Agency Audit Reports—Volume 3 Annual Report 2010-11
Part B: Agency Audit Reports—Volume 4 Annual Report 2010-11
Part B: Agency Audit Reports—Volume 5 Annual Report 2010-11
Part C: State Finances and Related Matters Annual Report 2010-11
Report ordered to be published
Employee Ombudsman—Annual Report 2010-11

House of Assembly—The Parliamentary Service of Annual Report 2010-11

By the Premier (Hon. M.D. Rann)—

Auditor-General's Department—Annual Report 2010-11
Capital City Committee—Annual Report 2010-11
State Emergency Management Committee—Annual Report 2010-11

By the Attorney-General (Hon. J.R. Rau)—

Regulations made under the following Acts—
Classification (Publications, Films and Computer Games)—Applications for Exemption
Electoral—Registration of Political Parties

By the Minister for Urban Development, Planning and the City of Adelaide (Hon. J.R. Rau)—

Development Plan Amendment—
Interim Operation of the Barossa Valley and McLaren Wale Protection Districts—Ministerial Development Plan Amendment
Interim Operation of the District Council of Orroroo Carrieton—Heritage Development Plan Amendment
Regulations made under the following Acts—
Development—Trusses

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

Regulations made under the following Acts—
Road Traffic—Miscellaneous—Inspection Fee
Local Council By-Laws—
District Council of Peterborough—No. 6—Moveable Signs Variation

By the Minister for Police (Hon. K.O. Foley)—

Death of—Ryan, Rhys Allan Gerard and Henschke, Jake Spencer Report

By the Minister for Health (Hon. J.D. Hill)—

Health Practitioner Regulation National Law—Midwife Insurance Exemption Regulation

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

Non-Government Schools Registration Board—Annual Report 2010-11
Privacy Committee of South Australia—Annual Report 2010-11
State Records Act 1997, Administration of—Annual Report 2010-11

By the Minister for Science and Information Economy (Hon. J.W. Weatherill)—

Bio Innovation SA—Annual Report 2010-11

By the Minister for the River Murray (Hon. P. Caica)—

Water Amendment Regulations 2011—Amendments to the Murray-Darling Basin Agreement 2008

By the Minister for Agriculture and Fisheries (Hon. M.F. O'Brien)—

Dairy Authority of SA—Annual Reports 2010-11
Industry Fund—
Apiary Annual Report 2009-10
Cattle Annual Report 2009-10
Citrus Growers Annual Report 2009-10
Deer Annual Report 2009-10
Olive Annual Report 2009-10
Pig Annual Report 2009-10
SA Rock Lobster Annual Report 2009-10
Sheep Annual Report 2009-10
Rail Fund—Eyre Peninsula Grain Growers Annual Report 2009-10
South Australian Charter Boat Fishery—Management Plan
Wine Industry Fund—Annual Reports 2009-10
Adelaide Hills
Barossa
Clare Valley
Langhorne Creek
McLaren Vale
Riverland
South Australian Grape Growers

By the Minister for Energy (Hon. M.F. O'Brien)—

Regulations made under the following Act—
Electrical Products—Revocation 14A

By the Treasurer (Hon. J.J. Snelling)—

Asset Management Corporation, South Australian—Annual Report 2010-11
Essential Services Commission of South Australia—Annual Report 2010-11
Government Financing Authority, South Australian—Annual Report 2010-11
Distribution Lessor Corporation—Annual Report 2010-11
Generation Lessor Corporation—Annual Report 2010-11
Transmission Lessor Corporation—Annual Report 2010-11
Motor Accident Commission—Annual Report 2010-11
South Australian Parliamentary Superannuation Scheme—Annual Report 2010-11
Police Superannuation Board—Annual Report 2010-11
RESI Corporation—Annual Report 2010-11
State Procurement Board—Annual Report 2010-11
Superannuation Board, South Australian—Annual Report 2010-11
Superannuation Funds Management Corporation of South Australia—Annual Report 2010-11
Treasury and Finance, Department of—Annual Report 2010-11
Regulations made under the following Act—
Superannuation—Remuneration Exclusions

By the Minister for Employment, Training and Further Education (Hon. J.J. Snelling)—

Construction Industry Training Board—Annual Report 2010-11
Education Adelaide—Annual Report 2010-11
Playford Centre—Annual Report 2010-11

By the Minister for Workers Rehabilitation (Hon. J.J. Snelling)—

WorkCover Corporation of South Australia—Annual Report 2010-11

WorkCover Ombudsman South Australia, Office of—Annual Report 2010-11
Rules made under the following Acts—
Workers Rehabilitation and Compensation—Workers Compensation Tribunal Rules 2009—Representation Costs

By the Minister for Road Safety (Hon. T.R. Kenyon)—

Death of—Ryan, Rhys Allan Gerard; Henschke, Jake Spencer; Wanganeen, Derrick Terence Lee and Whyte, Mark Anthony Report of actions taken following Coronial Inquest

ANSWERS TO QUESTIONS

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

COOPER CREEK

161 Mr VAN HOLST PELLEKAAN (Stuart) (2 November 2010). What plans does the Government have in respect of the provision of a barge, other transport service or infrastructure so that travellers, including those with trailers, stock and freight transporters, can cross the Cooper Creek when it next floods and makes the Birdsville Track impassable?

The Hon. P.F. CONLON (Elder—Minister for Transport, Minister for Infrastructure): I am advised:

Flooding of the Cooper Creek is a relatively rare event, the last time it cut the Birdsville track was in 1991. When flood waters subsided in January 2011 and the ferry ceased operation, the Department commenced work to extend the ferry and increase its carrying capacity in readiness for the next time it may be needed to cross the Cooper Creek.

TRADE AND ECONOMIC DEVELOPMENT DEPARTMENT

167 Mr HAMILTON-SMITH (Waite) (30 November 2010).

1. How many of the proposed staff reductions in the Department of Trade and Economic Development in 2010-11 will come from non-renewal of short-term contracts?

2. What degree of notice of termination in the package for those contracts does the government intend to give those contracted employees?

3. What normal termination arrangements exist for contracted people?

4. How much notice and what payout will contracted people receive if they are terminated?

The Hon. A. KOUTSANTONIS (West Torrens—Minister for Mineral Resources Development, Minister for Industry and Trade, Minister for Small Business, Minister for Correctional Services): I have been advised the following:

1. The Department of Trade and Economic Development anticipates that 10 untenured non-executive public servants will be reduced to facilitate the implementation of the new structure.

2. Notice of termination for contract employees will be in line with the provisions in the various contracts of employment.

3. For employees who have one to five year contracts under the Public Sector Management Act:

- Contract expiry is applied in circumstances of expiry date being reached, withdrawal of project funding or no further need for the position;
- Early expiry/termination timeframes are generally in line with the relevant provisions of the Fair Work Act.
- The timing of termination of untenured Public Sector Management Act staff will be negotiated with the employee and the respective manager, and will be dependent on the timing of project cessation and handover arrangements.

4. Refer to 3.

TRADE AND ECONOMIC DEVELOPMENT DEPARTMENT

169 Mr HAMILTON-SMITH (Waite) (30 November 2010).

1. What was the process for the identification and selection of Mr Lance Worrall as the Department of Trade and Economic Development CEO?

2. How many candidates applied, and was Mr Worrall the Minister's preferred candidate?

3. Regarding the Executive E package under which Mr Worrall is employed, is that the current package being offered to all similar appointees and why was this particular package and not a SAES contract package?

4. Is Mr Worrall's contract identical to all other CEOs, is it the same model?

The Hon. A. KOUTSANTONIS (West Torrens—Minister for Mineral Resources Development, Minister for Industry and Trade, Minister for Small Business, Minister for Correctional Services): I have been advised the following:

1. Chief Executive appointments are made by the Premier. Lance Worrall was appointed Chief Executive of the Department of Trade and Economic Development in July 2010 based on his extensive knowledge and understanding of the South Australian economy which makes him eminently qualified for this position.

2. Appointments of the Chief Executives of government departments are the responsibility of the Premier, who made the appointment in this case.

3. I am advised that Mr Worrall's appointment on an Executive Level E package is consistent with his previous appointment as the Chief Executive of the Public Sector Performance Commission, and that the Executive Level E package is the standard for all Chief Executives. It is my understanding that Chief Executives are not employed on SAES contracts.

4. See 3.

KPMG COMPETITIVE ALTERNATIVES STUDY

176 Mr HAMILTON-SMITH (Waite) (30 November 2010). With reference to Budget Paper 4, volume 1, page 2.7, Highlights 2009-10, 2010 KPMG Competitive Alternatives Study—How many South Australians jobs were specifically generated from this program?

The Hon. A. KOUTSANTONIS (West Torrens—Minister for Mineral Resources Development, Minister for Industry and Trade, Minister for Small Business, Minister for Correctional Services): I have been advised that this program helps to promote Adelaide internationally as a competitive location in which to invest and do business. Therefore, it supports investment growth and job creation broadly in an efficient and effective manner.

TRADE AND ECONOMIC DEVELOPMENT DEPARTMENT

178 Mr HAMILTON-SMITH (Waite) (30 November 2010). With reference to Budget Paper 4, volume 1, page 2.7, Highlights 2009-10, case management—

1. Which companies were provided with case management?

2. Which projects were provided with case management?

3. How many projects were provided with case management?

4. How many Department of Trade and Economic Development staff were allocated to this task and how many contractors?

5. How much did this cost the Department?

The Hon. A. KOUTSANTONIS (West Torrens—Minister for Mineral Resources Development, Minister for Industry and Trade, Minister for Small Business, Minister for Correctional Services): I have been advised the following:

1. Outlined in Budget Paper 4, Volume 1, page 2.16.

2. Outlined in Budget Paper 4, Volume 1, page 2.16.

3. Outlined in Budget Paper 4, Volume 1, page 2.16.

4. DTED's case management services in 2009-10 were provided through its Strategic Project Facilitation unit. The unit had 7 DTED staff, with no contractor resources.

5. The Strategic Project Facilitation unit's total expenditure was $698,000 for 2009-10.

SOUTH AUSTRALIAN INVESTMENT SYMPOSIUM

180 Mr HAMILTON-SMITH (Waite) (30 November 2010). With reference to Budget Paper 4, volume 1, page 2.7, Highlights 2009-10, South Australian Investment Symposium—

1. What was the total cost of the 'South Australian Investment Symposium'?

2. How many staff were allocated to the 'South Australian Investment Symposium'?

3. How many South Australian jobs were created by the 'South Australian Investment Symposium'?

The Hon. A. KOUTSANTONIS (West Torrens—Minister for Mineral Resources Development, Minister for Industry and Trade, Minister for Small Business, Minister for Correctional Services): I have been advised the following:

1. The total cost of the South Australian Investment Symposium held in November 2009 was $106,737 (exclusive of GST). Sponsorship dollars received totalled $41,105 (exclusive of GST), resulting in a net cost of $65,632.

2. The Department of Trade and Economic Development had 0.35 of a full-time equivalent (FTE) resource allocated to organising the Investment Symposium.

3. The Investment Symposium provided a platform for the State Government to promote the State's pro-business and investment environment, highlight investment opportunities to business leaders and launch the SA Major Developments Directory. It showcased the diverse array of projects in our all-time high of $80 billion of major projects.

The Investment Symposium contributes to investment, growth and jobs by spreading information about the unprecedented business opportunities available in South Australia.

STATE SPONSORSHIP AND EMPLOYMENT CERTIFICATION TARGETS

183 Mr HAMILTON-SMITH (Waite) (30 November 2010). With reference to Budget Paper 4, volume 1, page 2.7, Highlights 2009-10, State's sponsorship and employment certification target—

1. Precisely how did DTED contribute to exceeding the State's sponsorship and employment certification target?

2. What was the total cost of the activity?

3. How many staff were allocated to this activity?

4. How many South Australian jobs were created?

The Hon. A. KOUTSANTONIS (West Torrens—Minister for Mineral Resources Development, Minister for Industry and Trade, Minister for Small Business, Minister for Correctional Services): I am advised the following:

1. The South Australian Government, through DTED's Immigration SA, exceeded its overall 2009-10 sponsorship/certification target of 3,500 with a total of 3,922 State sponsorship/certifications provided representing 9,580 people.

Certification processing is undertaken by the Employer Sponsored Migration Unit of Immigration SA. In 2009-10, the Employer Sponsored Migration Unit certified 1,281 applications from South Australian employers. This is a 30.45 per cent increase in certifications from 2008-09 to 2009-10 (982 certifications to 1,281).

In 2009-10, the General Skilled Migration Unit within Immigration SA processed 3,050 State Sponsorship applications 2,162 of which were approved.

In 2009-10, the Business Skilled Migration Unit within Immigration SA provided State sponsorship for 479 applications for provisional and permanent visas, a small increase on the 468 applications sponsored in 2008-09.

2. These costs in 2009-10 were approximately $953,786. The breakdown is provided in the table below:

Employer Sponsored Migration staff costs (3 FTEs)	210,857
General Skilled Migration staff costs (3 FTEs)	229,271
Business Skilled Migration staff costs (3 FTEs)	248,887
Temporary staff*	158,051
Online Application Web System	22,902
Process Re-engineering	83,818
Total	$953,786

*Temporary staff are used to backfill staff on leave and to handle peak demand times to remain within service standard delivery timeframes.

The South Australian Government does not charge a fee for the processing of sponsorship applications or employer nomination certification.

3. In 2009-10, there was three staff in the Employer Sponsored Migration Unit, three in the General Skilled Migration Unit and four in the Business Skilled Migration Unit whose activities enabled the provision of sponsorships and certifications required to participate in the three State Specific and Regional Migration mechanisms (10 full-time equivalents (FTEs)). A reception role assisted with general enquiries related to the program. There is also a Manager position for Immigration SA.

4. South Australia's participation in the State Specific and Regional Mechanisms is to assist employers to meet their current skills needs.

DTED's role as a Regional Certifying Body for the RSMS employer sponsored program involves South Australian employers identifying a skilled vacancy to be filled by a skilled migrant. In 2009-10, the Employer Sponsored Migration Unit certified 1,281 positions.

Under the State Sponsored Business Skills Program, business migrants on provisional visas are required to create a minimum of one FTE position to be eligible for permanent residency. According to Immigration SA's databases, employment created by sponsored business migrants for the 2009-10 financial year was 78 full-time and 186 part-time positions.

SMALL BUSINESS

185 Mr HAMILTON-SMITH (Waite) (30 November 2010). With reference to Budget Paper 4, volume 1, page 2.7, Highlights 2009-10, Small Business Development Grants—

1. What was the total cost of the activity?

2. How many and which companies were assisted and where are those companies located?

3. How many jobs were directly created from the activity?

The Hon. A. KOUTSANTONIS (West Torrens—Minister for Mineral Resources Development, Minister for Industry and Trade, Minister for Small Business, Minister for Correctional Services): I am advised the following:

1. The Small Business Development Grant provided $5 million over three years from 2008-09 to 2010-11 on a dollar for dollar basis to create sustainable new jobs in innovative manufacturing and technology/services projects and enhance the economic growth of the Southern Adelaide region, following the closure of Mitsubishi.

2. Twenty three companies were assisted; the companies and their locations are:

- Alfon Engineering Pty Ltd, located at Lonsdale
- ALS Library Services Pty Ltd, located at Edwardstown
- Athinian Valley Pty Ltd, located at Lonsdale
- Clintel Pty Ltd, located at Everard Park
- Comace Pty Ltd, located at St Marys

- Copeland Industries Pty Ltd, located at Lonsdale
- Executive Screens Aust (Mfg) Pty Ltd & Phantom Screens Aust (Mfg) Pty Ltd, located at Edwardstown
- Fravin Pty Ltd, located at Melrose Park
- GaggleHouse Pty Ltd, located at Hindmarsh
- Grants Bakery Equipment Pty Ltd, located at Lonsdale
- Grosvenor Health Pty Ltd, located at Lonsdale
- Hydragate Pty Ltd, located at Lonsdale
- Jadro Industries Pty Ltd, located at Lonsdale
- Kym Freebairn Construction Pty Ltd (as trustee for Kym Freebairn Settlement Trust), located at Lonsdale
- Pepper Tree Furniture Pty Ltd, located at Edwardstown
- Playquip Pty Ltd, located at Edwardstown
- Radicalogic Technologies Pty Ltd, located at Bedford Park
- RTM Products Pty Ltd, located at Edwardstown
- Vani-T Pty Ltd, located at Lonsdale
- Walter Clappis Nominees Pty Ltd, located at McLaren Vale
- Waterlab Pty Ltd, located at Lonsdale
- Zarloc Pty Ltd, located at Aberfoyle Park
- Zonge Engineering & Research Organization (Aust) Pty Ltd, located at Edwardstown

3. The above listed grantees have undertaken to create an additional 215.25 full time equivalent jobs.

SOUTH AUSTRALIA INNOVATION AND INVESTMENT FUND

186 Mr HAMILTON-SMITH (Waite) (30 November 2010). With reference to Budget Paper 4, volume 1, page 2.7, Highlights 2009-10, SA Innovation and Investment Fund—

1. What was the total cost of the activity?

2. How many and which companies were assisted and where are those companies located?

3. How many jobs were directly created from the activity?

The Hon. A. KOUTSANTONIS (West Torrens—Minister for Mineral Resources Development, Minister for Industry and Trade, Minister for Small Business, Minister for Correctional Services): I have been advised the following:

1. The South Australia Innovation and Investment Fund (SAIIF) is a $30 million industry development program. The Commonwealth Government is contributing $27.5 million to the program and the balance of $2.5 million is being contributed by the South Australian Government.

2. The following 18 businesses have been awarded funding under SAIIF:

Grantee	Location
Australian Advanced Manufacturing Centre	Thebarton
Australian Southern Exporters	Port Lincoln
Aztec Paints Pty Ltd	St Marys
Boart Longyear	Lonsdale
Broens Industries Pty Ltd	Elizabeth South
Central Diesel Pty Ltd	Wingfield
Digislide Holdings Ltd	Dry Creek
Ferrocut Pty Ltd	Osborne
Intex Holdings Pty Ltd	Seaford

Levett Engineering Pty Ltd	Elizabeth South
Long Distance Technologies Pty Ltd	Allenby Gardens
Manuele Engineers Pty Ltd	West Beach
Maxiplas Pty Ltd	Elizabeth
Modra Hayes Pty Ltd	Warooka
Samaras Group	Gillman
The Pipette Company	Thebarton
The Weeks Group Pty Ltd	Elizabeth West
Vivopharm Pty Ltd	Thebarton

3. The 18 businesses that have been awarded funding under SAIIF are projected to generate 723 new full-time equivalent (FTE) positions.

CLEVERGREEN CONFERENCE

187 Mr HAMILTON-SMITH (Waite) (30 November 2010). With reference to Budget Paper 4, volume 1, page 2.7, Highlights 2009-10, CleverGreen Conference—

1. What was the total cost of the activity?

2. How many and which companies were assisted and where are those companies located?

3. How many jobs were directly created from the activity?

The Hon. A. KOUTSANTONIS (West Torrens—Minister for Mineral Resources Development, Minister for Industry and Trade, Minister for Small Business, Minister for Correctional Services): I have been advised the following:

1. The total cost of the 2010 CleverGreen Conference and Showcase was $394,000 (GST exclusive) which includes $134,000 raised from sponsorships, exhibitor and delegate registrations and dinner ticket sales with a resultant net cost to the State Government of $260,000 funded by the Department of Trade and Economic Development, Department for Environment and Heritage and Zero Waste SA.

2. At their own cost of $495, the following 50 organisations exhibited at the 2010 CleverGreen Conference and Showcase:

Exhibitor	Location
Adcon Telemetry Australia Pty Ltd	Prospect
Adelaide Research & Innovation Pty Ltd	Adelaide
Application Service Provider	Adelaide
AusIndustry	Adelaide
Australian Harvest Fine Foods	Coldstream, Vic
Azzo Automation	Lonsdale
Bsmart (Aust) Pty Ltd	Balhannah
Business SA	Unley
Clipsal Limited	Gepps Cross
CRC For Contamination Assessment and	Salisbury
Cyclopic Energy	Adelaide
Eco Office & School Supplies	Happy Valley
Ecocreative	Stirling
Ecovortek Pty Ltd	Willunga
Elgas	Ararat
Energy Analytics Pty Ltd	Christies Beach
EPA	Adelaide
EPMG (SA) Pty Ltd	Adelaide
Esaving Systems Pty Ltd	Adelaide
Finsbury Green	Thebarton
Flinders University Molecular Technologies	Adelaide
Freewater Super-Slim Rainwater Tanks	Glenelg East
Global X	Chandlers Hill
Goody Environment	Burnside
Green Ochre Pty Ltd	Mile End

Exhibitor	Location
Green Technology	Stirling
H2Oasis Energy Pty Ltd	Port Willunga
Hydrosmart International Pty Ltd	Parkside
Innovate SA	Adelaide
InsureAust Pty Ltd	McMahons Point
Intelligent Software Development	Mawson Lakes
Jeffries Group	Wingfield
Micromet	Thebarton
Modulek Pty Ltd	South Brighton
Newtreat Pty Ltd	Mount Barker
NHP Electrical Engineering Products Pty Ltd	Keswick
Office for Water Security	Adelaide
R2 Game Agency	Rosewater
SARDI Aquaculture	West Beach
Seeley International Pty Ltd	Melrose Park
South Australian Tourism Commission	Adelaide
SRA Information Technology	Adelaide
Tafe SA	Adelaide
Technology Industry Association	Eastwood
Thermoview	Kent Town
Timbercrete	McLaren Vale
University of South Australia	Adelaide
Windesal Ltd	Mawson Lakes
ZEN Home Energy Systems	Norwood
Ziltek	Kent Town

In addition, the following seven South Australian companies participated in a conference session called 'Innovators in Business', where they gave a presentation about their company, products and commercialisation experience:

- Azzo Automation
- Cavitus
- Cogen Microsystems
- Embertec
- Goody Environment
- Thermoview
- Ziltek

3. The success of the CleverGreen Conference and Showcase was measured in terms of whether delegates and exhibitors had achieved their objectives. 95 per cent of exhibitors stated their objectives had been met, which included building brand awareness and generating business leads. 92 per cent of delegates attending the conference had their objectives met, which included intelligence gathering and learning more about the cleantech industry and the people who work within it.

Obviously, the CleverGreen Conference and Showcase contributed to economic growth, investment and jobs by showing South Australia's leadership in this growth sector.

TRADE AND ECONOMIC DEVELOPMENT DEPARTMENT

190 Mr HAMILTON-SMITH (Waite) (30 November 2010). With reference to Budget Paper 4, volume 1, page 2.10, Program 1—

1. Why did payments to consultants blow out by $235,000 in 2009-10?

2. What supplies and services will be cut in 2010-11?

The Hon. A. KOUTSANTONIS (West Torrens—Minister for Mineral Resources Development, Minister for Industry and Trade, Minister for Small Business, Minister for Correctional Services): I have been advised the following:

1. The increase in consultants during 2009-10, recognised in the Estimated Result in the 2009-10 Portfolio Statements, is due to an increase across a number of projects including Competitive Alternatives Study, Strategic Land Use Studies, Careers Promotion and Migration Review.

2. The reduction in Supplies and Services in 2010-11 relates to savings targets to be met which have been achieved through the cessation of the Careers Promotion Program and reduction in other economic research programs and associated operating costs.

TRADE AND ECONOMIC DEVELOPMENT DEPARTMENT

192 Mr HAMILTON-SMITH (Waite) (30 November 2010). With reference to Budget Paper 4, volume 1, page 2.12, Program 2—

1. What supplies and services will be cut given the budget has been reduced by $2.924 million in 2010-11?

2. Why were payments to consultants $66,000 over budget in 2009-10?

3. Why will payments to consultants increase in 2010-11?

The Hon. A. KOUTSANTONIS (West Torrens—Minister for Mineral Resources Development, Minister for Industry and Trade, Minister for Small Business, Minister for Correctional Services): I have been advised the following:

1. The reduction in supplies and services in 2010-11 relates to savings targets to be met. These have been achieved through the reduction in migration and trade programs and associated market strategies, along with a change in the service delivery model for overseas offices.

2. The increase in consultants during 2009-10, recognised in the Estimated Result in the 2009-10 Portfolio Statements, is predominantly due to an increase in Special Envoy costs associated with the appointment of Special Envoy China during 2009-10.

3. Payments to consultants will increase in 2010-11 as a result of consultancies to be undertaken by the Olympic Dam Taskforce and in trade related activities, offset by a reduction in a once-off migration related consultancy during 2009-10.

TRADE AND ECONOMIC DEVELOPMENT DEPARTMENT

196 Mr HAMILTON-SMITH (Waite) (30 November 2010). With reference to Budget Paper 4, volume 1, page 2.18, Program 4—

Precisely what activities will be funded in 2010-11 by this program, how many DTED staff will be employed and how many South Australian jobs will be created?

The Hon. A. KOUTSANTONIS (West Torrens—Minister for Mineral Resources Development, Minister for Industry and Trade, Minister for Small Business, Minister for Correctional Services): I have been advised the following:

With a focus on investment, migration and business opportunities, this program aims to position South Australia as an internationally competitive destination. The program leverages and complements other State marketing programs emphasising South Australia's strong economy, enviable lifestyle, vibrancy and geography. It is specifically targeted at markets that will contribute to the growth of South Australia's economy.

The key outcome of this program is that targeted markets and investors have positive perceptions and information about South Australia. In this way it will contribute to investment, economic growth and jobs.

The following activities will be funded in the 2010-11 Financial Year by this program:

- Joint marketing with AWD Alliance to attract skills to South Australia (FTE allocation: 0.55)
- Adelaide. Make the Move integrated interstate migration marketing campaign (FTE allocation: 0.8)

- Oversight and management of SA Government's Funding Agreement with Advantage SA (FTE allocation: 0.5)
- Integrated interstate investment attraction marketing program (FTE allocation: 1.3)
- Strategic Media and Communications (FTE allocation: 1.05)
- Online services (FTE allocation: 0.9)
- Strategic Marketing for Economic Growth (FTE allocation: 2.28)
- Events and Sponsorships–Strategic Implementation and Governance (FTE allocation: 1.3)
- SA Investment Symposium and Major Developments SA Directory 2010-11 (FTE allocation: 0.6)
- Business-in-SA Franchise–Common Internet Site for Government–sa.gov.au (FTE allocation: 1.0).
    - Cavitus
    - Cogen Microsystems
    - Embertec
    - Goody Environment
    - Thermoview
    - Ziltek

The success of the CleverGreen Conference and Showcase was measured in terms of whether delegates and exhibitors had achieved their objectives. 95 per cent of exhibitors stated their objectives had been met, which included building brand awareness and generating business leads. 92 per cent of delegates attending the conference had their objectives met, which included intelligence gathering and learning more about the cleantech industry and the people who work within it.

Obviously, the CleverGreen Conference and Showcase contributed to economic growth, investment and jobs by showing South Australia's leadership in this growth sector.

TRADE AND ECONOMIC DEVELOPMENT DEPARTMENT

197 Mr HAMILTON-SMITH (Waite) (30 November 2010). With reference to Budget Paper 4, volume 1, page 2.21, Program 6—

1. How many staff are employed to 'manage' the Department of Trade and Economic Development's business and at what salary levels and how many will be made redundant in 2010-11?

2. Why did payments to consultants exceed the budgeted amount of $248,000 in 2009-10 by $224,000 and why will this increase further in 2010-11?

The Hon. A. KOUTSANTONIS (West Torrens—Minister for Mineral Resources Development, Minister for Industry and Trade, Minister for Small Business, Minister for Correctional Services): I have been advised the following:

1. There are 50 FTE's included in Program 6, comprising:

Classification	No. of FTE's
ASO1	2
ASO2	2
ASO3	9
ASO4	6
ASO5	5
ASO6	8
ASO7	3
ASO8	9
MAS3	1
SAES1	3
SAES2	1

Classification	No. of FTE's
EXEC-E	1

The number of positions to be reduced within this program is 19.1.

2. The increase in consultants during 2009-10, recognised as the Estimated Result in the 2009-10 Portfolio Statements, is predominantly due to an increase in consultancies associated with the departmental cultural change program implemented during 2009-10, following the April 2009 internal restructure.

The minor increase in 2010-11 (from the 2009-10 Estimated Result) of $8,000 is a result of the reduction in cultural change consultancies, offset by an increase in consultants associated with the Electronic Document and Records Management System, which is a key component of the Protective Security Management project.

TRADE AND ECONOMIC DEVELOPMENT DEPARTMENT

198 Mr HAMILTON-SMITH (Waite) (30 November 2010). With reference to Budget Paper 4, volume 1, page 2.22, Program 6—

How many South Australian jobs were created and how many South Australian businesses were assisted by Department of Trade and Economic Development staff spending $11.7 million on the Department's culture change program 'Aurora' including key programs such as 'Bold and Brave Incubator'; 'Sharpening the People Stuff'; 'Communication that Counts' and 'Leadership Hothouse'?

The Hon. A. KOUTSANTONIS (West Torrens—Minister for Mineral Resources Development, Minister for Industry and Trade, Minister for Small Business, Minister for Correctional Services): I have been advised that DTED did not spend $11.7 million on the Aurora program.

PATAWALONGA LOCK GATES

223 Dr McFETRIDGE (Morphett) (15 March 2011).

1. At what stage are the negotiations between the Department of Transport Energy and Infrastructure and the City of Holdfast Bay in relation to the ownership of the Patawalonga lock gates at Glenelg?

2. In each year since 2005, how many times did the lock gates break down causing boats to be locked in or out of the marina?

3. How often is routine maintenance undertaken on the lock gates?

4. How is the Government planning to guarantee pedestrian access over the lock during the closure of the King Street bridge for the next twelve months?

The Hon. M.D. RANN (Ramsay—Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts, Minister for Sustainability and Climate Change): I am advised:

1. Ownership of the Patawalonga lock gates was formally transferred to the City of Holdfast Bay on 17 May 2011.

2. The City of Holdfast Bay has managed and operated the Patawalonga boat lock since early 2003 and as such this inquiry should be directed to the Council.

3. The City of Holdfast Bay, as the manager and operator of the boat lock should be approached for information on maintenance schedules.

4. The King Street bridge refurbishment project is also being managed by the City of Holdfast Bay Council and as such questions relating to pedestrian access during the life of the project should be directed to the Council.

ADELAIDE INTERNATIONAL GUITAR FESTIVAL

267 Mrs REDMOND (Heysen—Leader of the Opposition) (13 July 2011). With respect to 2011-12 Budget Paper 6, p59—

What is the total government financial contribution to the Adelaide International Guitar Festival and what is the level of private sector funding?

The Hon. J.D. HILL (Kaurna—Minister for Health, Minister for Mental Health and Substance Abuse, Minister for the Southern Suburbs, Minister Assisting the Premier in the Arts): I am advised:

1. The total initial State Government contribution to the Guitar Festival–for the festivals already held in 2007, 2008, 2010, and planned for 2012–has been $2,160,000.

The further funding allocated through the 2011-12 State Budget will allow the Guitar Festival to continue beyond 2012, with an amount of $500,000 being provided for each biennial event, commencing with the 2014 festival.

2. Private sector support for the 2010 Guitar Festival consisted of $50,600 in cash and $19,000 in-kind support from sponsors, plus an estimated $70,000 from media partnerships.

In addition, the Festival Centre Foundation provided $20,000 for the inaugural Classical Guitar Competition during the 2010 Guitar Festival.

INVESTING EXPENDITURE

302 Mr HAMILTON-SMITH (Waite) (23 August 2011). With respect to 2011-12 Budget Paper 4—Volume 1, p143—

Why was there a $15.6 million underspend in total investing expenditure in 2010-11?

The Hon. K.O. FOLEY (Port Adelaide—Minister for Defence Industries, Minister for Police, Minister for Emergency Services, Minister for Motor Sport, Minister Assisting the Premier with the Olympic Dam Expansion Project): I am advised:

The 2010-11 Estimated Result is $15.6 million under budget mainly due to:

- reduction in the overall cost of the Northern Lefevre Peninsula Masterplan ($4.9 million) and the Techport Australia Common User Facility ($2.2 million)
- cancellation of the Port Adelaide Industrial Precinct development ($1.1 million)
- deferred expenditure across the forward estimates for the Secure Electronic Common User Facility ($4.3 million), Northern Lefevre Peninsula Masterplan land remediation ($1 million), Osborne North Industrial Precinct ($2.4 million) and the Techport Australia- Common User Facility ($2.3 million)

partially offset by:

- carryover of expenditure from 2009-10 for various projects ($1.7 million), and
- approval and commencement of Technology Park Refurbishment and Upgrade works ($1.2 million).

AUDITOR-GENERAL'S REPORT

In reply to **Mr GRIFFITHS (Goyder)** (27 October 2011).

The Hon. A. KOUTSANTONIS (West Torrens—Minister for Mineral Resources Development, Minister for Industry and Trade, Minister for Small Business, Minister for Correctional Services): I am advised that the first two-year phase of the Government's red tape reduction program delivered $168 million a year in savings to business, well ahead of the $150 million target set by the Premier in 2006.

Building on this success, in April 2009, the Premier announced a three year, second phase of the program. This aims to reduce the cost of red tape by a further $150 million per annum by 2012.

Ernst & Young, appointed to audit the second phase of the program, has assessed annual savings to business of just over $111 million as at 30 June 2010. The identified savings are from initiatives currently included in agency red tape reduction plans which are either fully or partially completed or are in the planning stage.

AUDITOR-GENERAL'S REPORT

In reply to **Mr HAMILTON-SMITH (Waite)** (27 October 2010).

The Hon. A. KOUTSANTONIS (West Torrens—Minister for Mineral Resources Development, Minister for Industry and Trade, Minister for Small Business, Minister for

Correctional Services): I am advised that the Strategic Industry Support Fund (SISF) has funding of $2 million for the year ended 30 June 2011, incorporated in the Department of Treasury and Finance Budget. Funding for SISF has been discontinued effective from 30 June 2011.

The Strategic Industry Development Fund (SIDF) has funding of $2 million per annum for four years commencing the year ended 30 June 2011.

SIDF focuses on projects that provide significant net economic benefits through either a substantial increase in employment, substantial business investment or a significant boost to the State's Research and Development capability.

The South Australia Innovation and Investment Fund (SAIIF) is a $30 million industry development program. The Commonwealth Government is contributing $27.5 million to the program and the balance of $2.5 million is being contributed by the South Australian Government.

ADELAIDE WEST SPECIAL EDUCATION CENTRE

In reply to **Ms SANDERSON (Adelaide)** (5 April 2011).

The Hon. J.W. WEATHERILL (Cheltenham—Minister for Education, Minister for Early Childhood Development, Minister for Science and Information Economy):

Adelaide West Special Education Centre, after consulting the Governing Council, initially determined a subsidy of $100 per student for school uniforms as the school relocated from one site to another. This is unlike the other Education Works Stage 1 schools that closed to amalgamate to form an entirely new school.

In any event, a subsidy of $200 per student has subsequently been provided.

ARKAROOLA WILDERNESS SANCTUARY

The Hon. M.D. RANN (Ramsay—Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts, Minister for Sustainability and Climate Change) (15:16): I seek leave to make a ministerial statement.

Leave granted..

The Hon. M.D. RANN: On Friday I travelled to the Arkaroola Wilderness Sanctuary, and later was joined by the Minister for Environment and Conservation, to unveil the legislation that will protect the area forever. Arkaroola is unique with sensitive environmental, cultural and heritage values. As members may recall, we announced the area would be protected earlier this year. We unveiled a three-step process; first, to exclude the area from the Mining Act, then to provide special legislation to protect the area, and then to nominate it for world heritage listing.

In July the government removed Arkaroola from operations under the Mining Act, preventing future mining exploration and mining titles being granted in the area. Today, I will give notice that the Minister for Environment and Conservation have leave tomorrow to introduce the Arkaroola Protection Bill 2011, which will protect the cultural, natural and landscape values of a defined area, to be known as the Arkaroola Protection Area, and will exclude exploration and all forms of mining. The legislation will also ensure that any future development in the area is done in a way that the protection of these values has the highest consideration.

I have also written to the Prime Minister, Julia Gillard, signalling our intention to have Arkaroola listed on Australia's National Heritage List and, subsequently, the World Heritage List. As a precursor on these national and world heritage nominations, we also recently nominated Arkaroola to be assessed for its state heritage significance, and I am pleased to say that last week, on 12 October, the South Australian Heritage Council provisionally listed Arkaroola on the state Heritage Register.

Before introducing the legislation this week, we have consulted with Doug and Marg Sprigg, as well as the traditional owners of the ancient landscape. The native title rights of the Adnyamathanha people will be fully respected by this legislation and Aboriginal heritage will be able to continue to be protected.

The bill has a specific provision to support the conservation of objects, places or features of cultural value to the Adnyamathanha people, and the legislation will continue to support the determined native title rights of the Adnyamathanha. The Adnyamathanha will also be involved in developing the management plan for the area.

Since coming to office in 2002, we have made an unprecedented contribution to protecting South Australia's unique environment. In the past nine years the state government has created 51 new parks and made additions to 36 other parks, and the public protected area system now covers 21 million hectares, or 21 per cent of the state.

South Australia now has 13 wilderness protection areas, taking the total amount of land afforded the highest level of protection to 950,000 hectares. When the Nullarbor wilderness protection area is proclaimed in coming months, this will increase to more than 1.8 million hectares, representing not 26 per cent but a 26-fold increase in the amount of wilderness protection area proclaimed since the Labor government came to power in 2002.

I know there are some who oppose this decision to protect Arkaroola, but I am sure that neither I nor this cabinet nor this side of politics will ever apologise for doing what is right. We are unashamedly pro-mining but we have determined that the unique nature of Arkaroola justifies the decision to ban mining there. This bill will ensure that all types of mining, including sub-surface mining, are banned in the Arkaroola protection area. We have vast reserves of uranium in South Australia. Quite frankly, it would have been wrong—totally wrong—to allow the pristine wilderness of Arkaroola to be damaged through mining.

LYELL MCEWIN HOSPITAL COLONOSCOPE

The Hon. J.D. HILL (Kaurna—Minister for Health, Minister for Mental Health and Substance Abuse, Minister for the Southern Suburbs, Minister Assisting the Premier in the Arts) (15:22): I seek leave to make a ministerial statement.

Leave granted.

The Hon. J.D. HILL: I have directed SA Health to undertake an independent review into the incomplete disinfection of a colonoscope at the Lyell McEwin Hospital. This review will also look at the broader practices in place that govern the auditing and disinfection of colonoscopes at the Lyell McEwin Hospital.

We have received some early advice from the Lyell McEwin Hospital regarding this matter. I am advised the scope in question was removed from use on 6 October this year at the first notification that gastrointestinal bacteria, which is found in everyone's bowel, had been detected. Further microbiological samples were collected and results also showed bacterial growth on 8 October 2011. Confirmation of the type of bacteria was received on 10 October 2011. The bacteria in question does not present any health risk but indicates incomplete disinfection.

I am told that, because the bacteria had survived two series of processing (one prior to each test sample), there was concern that viruses might also be able to survive. As such, tests for enteric viruses—that is, viruses relating to the intestines—were undertaken on 11 October 2011, and the results obtained on 13 October 2011 showed no viruses. IMVS advise that it is not possible to accurately check for blood-borne viruses.

Final advice from the infectious disease physician regarding potential outcomes for patients and options for screening was received on 13 October. The hospital advises that it confirmed a final list of 56 affected patients on Monday 17 October (that is, yesterday) and began contacting these patients on that date to offer precautionary screening. SA Health's Chief Medical Officer Professor Paddy Phillips has today conducted a media conference, and I table a copy of his statement. Professor Phillips has stressed that the risk of transmission of any infection is extremely low.

I am aware that this will be of concern to those patients involved, and their families, of course, and I have been advised that, while there is no clinical urgency for patients to undertake the precautionary screening, the hospital is arranging for patients to be screened as soon as possible for their own peace of mind.

I am advised that the colonoscope was sent to Olympus for repair in March 2011 for rectification of a leak found in the distal tip. The scope was returned to the Lyell McEwin Hospital in May 2011 and the first procedure with the scope was undertaken on 9 May this year. The 56 patients had a colonoscopy with the instrument in question between 9 May and 6 October this year. The hospital has indicated that all endoscopes and colonoscopes should be routinely screened and audited approximately every three months for bacterial contamination as per Gastroenterological Society of Australia guidelines.

My office has been advised that routine screening of the colonoscope in question and four other scopes due to take place in June this year were missed and the reasons for this are unclear. The four other scopes have since tested negative for gastrointestinal bacteria in October. I am told that the hospital has been reviewing processes within the gastroenterology unit and has contacted Olympus, the supplier of the scope, to ask that they review the scope for potential damage that might have enabled bacterial growth.

Therefore, I am advised that this issue is limited to just one of the hospital's 16 colonoscopes, and that other patients who have had a colonoscopy at Lyell McEwin Hospital during this period are not affected. I am further advised that the presence of bacteria will not impact the results of the colonoscopy and the procedures will not need to be repeated. Members will be aware that colonoscopies are performed to identify and treat problems with the colon.

HOME BIRTHING

The Hon. J.D. HILL (Kaurna—Minister for Health, Minister for Mental Health and Substance Abuse, Minister for the Southern Suburbs, Minister Assisting the Premier in the Arts) (15:26): I seek leave to make another ministerial statement.

Leave granted.

The Hon. J.D. HILL: Today I tabled in this house the Health Practitioner Regulation National Law Amendment (Midwife Insurance Exemption) Regulation 2011. On 26 September this year, the Australian Health Workforce Ministerial Council made a regulation under national law to extend for a further 12 months the professional indemnity insurance exemption for privately practising midwives attending home births. This exemption will only apply to registered midwives. Registration requires midwives to comply with standards, codes or guidelines issued by the Nursing and Midwifery Board of Australia. Failure to do so, may result in disciplinary action against the practitioner. Health ministers were of the view that this form of regulation would protect the public in the absence of a national consistent approach to the regulation of unregistered health practitioners.

Home birthing is a legitimate practice when undertaken with the right safeguards. Since 2007, SA Health has provided publicly funded home birthing services for women who are deemed low risk in line with the Nursing and Midwifery Board of Australia's standards. I recently met the home birthing unit at the Women's and Children's Hospital, and I can assure members that they are a fantastic, dedicated and professional team. Women whose pregnancies are deemed to be high risk, often because they have previously delivered by caesarean section, are expecting multiple births, whose baby is in the breach position when labour starts, or are precluded by existing medical or health conditions, are not eligible for publicly supported home births.

I am extremely concerned that these women are, perhaps, turning to unregistered practitioners who present as birthing assistants or doulas. Prospective mothers, their partners, families and friends need to be fully aware of the potential risk involved with this approach. The Deputy Coroner recently held an inquest into two separate cases of babies birthed at home under the care of Ms Barrett following pregnancies that would not meet the SA Health guidelines for homebirths.

Following an appeal by Ms Barrett to the Supreme Court and the High Court of Australia, it was held that the State Coroner had jurisdiction to hold an inquest. The inquest concluded on 30 September and the Coroner's finding is pending. I am advised that Ms Barrett surrendered her registration as a midwife in January this year. I am also advised that, since that time, Ms Barrett has been practising as a doula. Doulas are unregulated and provide assistance and support to women during birth. This is distinct from the role of a midwife who is a qualified practitioner who has successfully completed the prescribed courses of study in midwifery, and has acquired the requisite qualifications to be registered and/or legally licensed to practise midwifery.

Members may have heard media reports over the weekend that Ms Barrett was associated with another incident on 7 October involving the home birthing of twins, one of whom subsequently and tragically died. The Women's and Children's Health Network has notified the State Coroner of this case.

I have been further briefed on yet another incident involving Ms Barrett. On 12 October 2011, another doula presented to the Lyell McEwin Hospital with a woman who was in established labour. A live infant birth was assisted by medical staff. Against medical advice, the

infant was taken home by the mother. The mother subsequently returned for medical treatment for the infant, accompanied by Ms Barrett.

I am advised that Ms Barrett is also at the centre of a coronial investigation underway in Western Australia regarding the death of a twin during a home delivery in July of this year. I have asked the chief executive of SA Health to write to the Health and Community Services Complaints Commissioner to request an investigation into the involvement of Ms Barrett in relation to the two 2011 incidents.

Having regard to the recent appeal from the decision of the Deputy Coroner and the subsequent decision of the Supreme Court upholding his decision, I am sufficiently concerned about this matter to have discussed it with the Attorney-General, who has indicated to me that he will raise this matter with the Director of Public Prosecutions to see whether the facts as known suggest the commission of any offence.

The South Australian government supports the rights of women to access safe, planned home births for women assessed as low risk. Planned home births conducted under the public system are attended to by at least two qualified practitioners, one of whom must be a registered midwife and have available, at short notice, the services of obstetricians and other hospital resources should the care required become more complex.

Women planning a birth at home should make an informed decision and ensure that they have qualified clinicians providing care. Mothers should be aware that all births carry an inherent risk and that despite choosing a home birth she may need to transfer to a health facility if complications arise.

TORRENS UNIVERSITY AUSTRALIA

The Hon. J.J. SNELLING (Playford—Treasurer, Minister for Employment, Training and Further Education, Minister for Workers Rehabilitation) (15:35): I seek leave to make a ministerial statement.

Leave granted.

The Hon. J.J. SNELLING: South Australia is continuing to prove why it has earned a reputation as Australia's learning city, and the latest news that many members will have heard yesterday is the culmination of that reputation. I am, of course, speaking of my approval for Laureate Education Asia to establish a private university in Adelaide using the proposed name, Torrens University Australia. Maybe 'West Torrens University Australia' might be a better name.

There is no getting around that this is a very big deal for our state. Attracting a university of this calibre shows the world is looking in our direction, looking at our city as an educational hub. This will be only the third private university to establish a presence in Australia and the first in 20 years since Bond University in Queensland and Notre Dame University in Western Australia were established. We can be extremely proud of the fact that Laureate has chosen Adelaide over every other capital city.

Laureate International Universities is a global organisation which has 58 accredited campus-based and online universities offering education to more than 675,000 students in more than 25 countries across the world. Impressively, Laureate boasts an honorary chancellor—none other than former US president Bill Clinton—who offers advice on social responsibility, youth leadership and increasing access to higher education, and that of course is a topic that is very close to my heart.

This is a vast international university network for domestic and international students, and its presence in Adelaide will provide incentives for students to choose Adelaide as their study destination of choice. With a focus on truly international education and research, a student in Adelaide will be able to study for part of their degree in Sao Paulo, Paris, Chicago, Osaka and many other cities. This offers a terrific opportunity and inspiration for our young people.

This result is the culmination of a stringent assessment process which began with Laureate's application in late 2010. Since then, an independent assessment panel, comprised of senior representatives from the university sector, chaired by Mr John Branson AM (former chairman of Stuart Petroleum Limited), reviewed the application and consequently recommended approval be granted.

Laureate International Universities will provide all start-up funding for their Adelaide institution. They have not received government funding or subsidies. They will initially be based in

the Torrens Building on Victoria Square while they search for suitable locations within the CBD. Students will begin to be enrolled for 2013 and the university will at first offer four academic programs. There will be a Bachelor of Design, a Bachelor of Business (International Hospitality Management), a Bachelor of Global Business and a Master of Education.

They intend to expand their offerings from the second year of operation; so, by 2016, they will cover six broad fields of study at either the undergraduate or postgraduate level or both. Beginning with about 200 students, they expect to build that to around 3,000 students after 10 years. Over the first few years, they expect to invest $A30 million, which does not take into account many assets including costs of intellectual property, systems and senior management. So, you can see that this is a long-term arrangement. Overall, Laureate expects to invest more than $A100 million.

This result would not have been possible without the work of many. I would like to offer my personal thanks to the chair of the assessment panel, Mr Branson, and the panel members, the delegate of the Training and Skills Commission (who is also the Director of Quality in DFEEST) and all the hardworking staff in DFEEST, the Department of Trade and Economic Development and, of course, my department of Treasury and Finance. So, Laureate looked at every capital city in Australia before they decided to apply for establishment here in Adelaide. In their words:

> Only South Australia had a university policy and competent people to talk to who made us feel welcome about creating a university in Adelaide. Our research backed up our initial feeling to be in Adelaide. It is growing quickly with very good demographics...it is a friendly and attractive destination for foreign students.

That is a tremendous endorsement for our city, Madam Speaker.

The SPEAKER: If members wish to have a deep and meaningful conversation, I would ask them to do it outside or do it quietly and not shout it across the benches.

LEGISLATIVE REVIEW COMMITTEE

Mr SIBBONS (Mitchell) (15:40): I bring up the report of the committee entitled Criminal Intelligence.

Report received.

QUESTION TIME

UNEMPLOYMENT FIGURES

Mrs REDMOND (Heysen—Leader of the Opposition) (15:41): My question is to the Minister Assisting the Minister for Employment, Training and Further Education. Why, after 10 years of Labor, does South Australia have the worst unemployment rate in the nation? South Australia's unemployment rate in September was 5.6—the worst in Australia.

The Hon. T.R. KENYON (Newland—Minister for Recreation, Sport and Racing, Minister for Road Safety, Minister for Veterans' Affairs, Minister Assisting the Premier with South Australia's Strategic Plan, Minister Assisting the Minister for Employment, Training and Further Education) (15:42): As I have said, ever since—

An honourable member interjecting:

The SPEAKER: Order! I can't hear the minister.

The Hon. T.R. KENYON: As I have said ever since I have taken over this portfolio, statistics bounce around from month to month. Last month, they were the second best on record; this month, they are not. That is going to happen. As I have said before and will continue to say, any number with a five in front of it—

Members interjecting:

The SPEAKER: Order!

The Hon. T.R. KENYON: —is a good number; 5.6 is a good number.

Members interjecting:

The SPEAKER: Order!

Members interjecting:

The SPEAKER: Order, Deputy Leader of the Opposition! Members on my right will also behave.

SOUTH AUSTRALIA POLICE

Mr ODENWALDER (Little Para) (15:42): My question is to the Premier. Can the Premier inform the house about the opening of the Police Association annual conference?

The Hon. M.D. RANN (Ramsay—Premier, Minister for Economic Development, Minister for Social Inclusion, Minister for the Arts, Minister for Sustainability and Climate Change) (15:43): As I have done throughout my time as Premier, this morning, I was proud to officially open the South Australian Police Association's annual conference. In fact, it was the 17th occasion that I have addressed the association conference, either as premier or as leader of the opposition.

In my final address to the association, I took the opportunity to reiterate the Labor government's commitment to the police and to public safety. From the day our government came to office, we have unashamedly maintained our commitment to fighting crime, particularly violent crime, and to trying to tilt the balance of our criminal justice system in the favour of victims, rather than criminals.

We now have more than 4,400 sworn police officers in South Australia, which is the highest rate of police per capita of any Australian state. We have also increased the police budget to $722 million for the current financial year, which represents a 96 per cent increase in what was being spent on police by our predecessors.

We have invested heavily in new infrastructure with 17 new police stations opened since 2002. In addition, we have undertaken major upgrades of several metropolitan stations. The government has built the new $41 million SAPOL headquarters in Angas Street and we are currently completing the new $53 million police academy.

We have ensured our hardworking officers have access to the latest technology to help them carry out their work more efficiently and more safely. Our efforts are working. SAPOL figures show that since we came to office we have seen a decline in victim reported crime of more than 36 per cent. It has been going down every year, whilst it went up every year that you were in office—

Members interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: —because you were soft on crime and you were soft on the causes of crime. What does a 36 per cent reduction in crime mean? That is around 75,000 fewer crimes committed per year.

Members interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: More than 200 fewer crimes every day. 75,000 fewer crimes committed per year, 200 fewer crimes every day than when we were elected. You don't like it; you fought virtually every measure to toughen up the criminal law and that is why you don't like the fact that your warnings that being tough on law and order would not result in one jot reduction proved to be wrong.

Members interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: Over the past 9½ years we have also built the sort of strong legislative framework that modern day police require to detect and tackle crime. We have introduced more than 100 new laws and we have increased and toughened up many more to keep pace with the changing nature of crime and to ensure that our police on the front line have every tool at their disposal to keep the public safe.

We have also had the courage to overrule the Parole Board recommendations and to intervene in cases when it was clear that justice was not being done. The then attorney-general intervened in the case of Paul Nemer, an action for which we have been bitterly criticised by some sections of the legal community, and as recently as the previous parliamentary sitting week.

The Hon. M.J. Atkinson interjecting:

The SPEAKER: Order, the member for Croydon!

The Hon. M.D. RANN: I was stunned to hear the Deputy Leader of the Opposition speculate in a grievance in this place last month. This is what he said:

> Did Paul Nemer go to gaol because of his offence, or did he go to gaol because the government of the day, the premier of the day, decided that it would win votes?

What an outrageous slur on the Supreme Court of South Australia, on the Solicitor-General of South Australia and indeed the High Court of Australia. Even more so, what an incredible slur on South Australians who were incensed by the inadequacy of the original penalty. The deputy leader then went on to say:

> I also take no pleasure in living a state where people are put in gaol on a political whim.

He went on to say:

> We still have prisoners in gaol who, but for decisions that are taken in secret…would have been released under our parole system.

In a flurry of rhetoric the deputy leader suggests that we may be living in a state that has 'political prisoners'.

Mr Williams: Hear, hear!

The Hon. M.D. RANN: He says, 'Hear, hear.' I make no apologies for the government's stance in toughening parole conditions and the power of the state's Parole Board. We were the first cabinet, the first government, to end the rubber-stamping of the board's recommendations for the release of murderers. Since 2005—

Members interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: Yes; it is called the public interest and public safety. Since 2005—

Members interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: If you want to line up behind McBride, go ahead and do so. Since 2005 our government has, when it is considered necessary in the public interest, taken a different view to the Parole Board and refused to grant parole to eight convicted murderers serving life sentences. This morning at the association's annual conference opening, I invited the Leader of the Opposition, who was also there, to explain which of the following her party believes are being unjustly held as 'political prisoners'.

For the benefit of the deputy leader—because he would not find this when he is reading James Thurber—a political prisoner is someone who is imprisoned unjustly for their political or religious views.

Members interjecting:

The SPEAKER: Order! Point of order, member for Bragg.

Ms CHAPMAN: Point of order: as you would be aware, the correctional services bill, which covers the parole reforms, is currently before the parliament. It is in committee stage, and I think we will probably be looking towards completion tomorrow. After that is completed, then the Premier, or any other member, will be at liberty to raise the reforms.

The SPEAKER: Thank you. The question was very broad-reaching and so was the answer.

Members interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: You don't want me to read out the list of those people that you would like to let out of gaol. You don't me to read out the list of those people and what they did, because you would rather people believe that these soft, cuddly, political—

Members interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: —prisoners are being held unfairly.

Members interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: Therefore—

The Hon. M.J. Atkinson: The Nelson Mandelas of Mobilong.

The Hon. M.D. RANN: That's right. So who would the Liberals release of our so-called political prisoners? Stephen Wayne McBride, who shot dead the proprietor of a country post office during a robbery, attempted to murder a woman bus driver, and maliciously winded and disfigured another woman in her own home when he attacked her with a knife? James Beauregard-Smith, convicted of a murder but released on parole in 1994 before being convicted of rape and indecent assault offences against a young woman later that very year?

James David Watson, who brutally sexually assaulted a 14-year-old girl before strangling her to death and concealing her body in a drain? David Andrew Miller, who repeatedly stabbed his girlfriend, left her for dead and then returned to cut her throat and strangle her? James Patrick Earley, who fired a shotgun at point-blank range into the chest of a drinking companion? Jonathan Peter Bakewell, convicted of the murder of a 20-year-old girl in the Northern Territory and transferred to prison here in 2004? Or perhaps it is someone else. Bevan Spencer von Einem, who completed his nonparole period in 2007 and who we have repeatedly maintained would never be released under a Labor government?

Anyone who seriously believes that offenders such as these are being held in prison as part of some secret government political conspiracy are either dangerously misinformed or seriously out of touch. For anyone, especially a senior member of parliament, to refer to these offenders as political prisoners is an affront not just to the victims of their heinous crimes but to all victims. To put these criminals in the same company as real political prisoners, the likes of Nelson Mandela and Aung San Suu Kyi, defies common sense as well as public decency.

I just want to say this: I have no regret and make no apology for refusing to release dangerous criminals—

Members interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: —into the community. Our government has listened to the victims of crime who challenged court decisions they considered inadequate and insensitive. We were the first state to create an independent Office for the Commissioner of Victims Rights, and we gave victim of crime advocates the legal right to make victim impact submissions to court in cases that had resulted in the victim's death or permanent incapacity. So, you pick who you side with. If you believe that those people are political prisoners—

Members interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: —then have the guts—

Mr Williams interjecting:

The SPEAKER: Order, member for MacKillop!

The Hon. M.D. RANN: —have the honesty—

An honourable member interjecting:

The Hon. M.D. RANN: Equality before the law.

Ms Chapman interjecting:

The SPEAKER: Order, the member for Bragg!

The Hon. M.D. RANN: Have the guts, and go out there on the front steps and tell the people of South Australia that, in the unlikely case that you are elected to government, you are

going to release that line-up, the people that you would prefer to be on their side, whilst we are on the side—

Members interjecting:

The SPEAKER: Order!

The Hon. M.D. RANN: —of ordinary, decent South Australians.

Members interjecting:

The SPEAKER: Order!

Mr Williams interjecting:

The SPEAKER: Order, the member for MacKillop!

Members interjecting:

The SPEAKER: Order! It's going to be a long day.

Members interjecting:

The SPEAKER: Member for MacKillop, will you behave? The Leader of the Opposition.

BUILDING APPROVALS

Mrs REDMOND (Heysen—Leader of the Opposition) (15:54): Thank you, Madam Speaker. My question is to the Treasurer. Why, after 10 years of Labor, does South Australia have the worst building approvals figures in the nation? The ABS building approvals data reveals that South Australia has the worst figures in August and a decline of 46 per cent in the last 12 months, also the worst in the nation.

The SPEAKER: The Treasurer.

Mr Williams: You don't like the truth, do you?

The SPEAKER: Order! Member for MacKillop, you are warned.

Mr Williams interjecting:

The SPEAKER: Member for MacKillop, you are warned for the second time.

The Hon. J.J. SNELLING (Playford—Treasurer, Minister for Employment, Training and Further Education, Minister for Workers Rehabilitation) (15:55): I find it a little galling, Madam Speaker, to hear such a question from the opposition, because every time this government has opened up new areas of land to new housing in South Australia—which is one of the key drivers of building approvals in this state—all we get is whingeing from the opposition—knocking and opposition every time this government does anything to drive economic growth.

Mr Marshall interjecting:

The SPEAKER: The member for Norwood!

The Hon. J.J. SNELLING: I find the double standards of the opposition quite extraordinary. They come in here bleating about the low numbers of building approvals, and at the same time every time this government says, 'We need to open up new land to housing to make housing affordable for young South Australians,' we get the opposition bleating opposition. Of course, there are difficult economic circumstances at the moment. We are going through—

Mr Pisoni: We're the worst, in South Australia.

The Hon. J.J. SNELLING: How's your petition going, David? You have got a petition to table, I understand. Are you going to table it? I am looking forward to seeing that petition tabled, mate. Madam Speaker, we are going through very difficult economic times. It is no surprise that, on a number of economic indicators, they are not looking as healthy as we have seen over the last decade this government has been in office, but what have we seen lately?

We have seen, of course, the final sign-off on the BHP indenture and, hopefully, the speedy passage of that. That will bring billions of dollars pumping through the South Australian economy and tens of thousands of jobs—that will see an enormous growth in the demand for housing; that will see an enormous growth in the population of South Australia. What is different

between the government and the opposition is that we have a definite plan to grow this state, to see—

Members interjecting:

The Hon. J.J. SNELLING: I know that the opposition will always prefer cheap and easy political stunts and—

Members interjecting:

The SPEAKER: Order!

The Hon. J.J. SNELLING: —bleating, because they are not interested in the prosperity of South Australia.

The SPEAKER: Point of order. The member for MacKillop.

Mr WILLIAMS: The question is: why do we currently have the lowest rate of—

The SPEAKER: Order!

Mr WILLIAMS: —housing approvals in South Australia?

The SPEAKER: Order! Sit down.

Mr Williams interjecting:

The SPEAKER: Order! Thank you, member for MacKillop. I direct the Treasurer back to his answer and to the substance of the question.

The Hon. J.J. SNELLING: In the next few years we are going to see extraordinary economic growth in this state. We are going to see a state absolutely transformed. In the words of the minister for mining, I think the minister assisting the Premier on the Olympic Dam expansion, we are going to see a state with an economy—

Mr Goldsworthy interjecting:

The SPEAKER: Member for Kavel, you are warned.

The Hon. J.J. SNELLING: —that is turbo charged—a turbo-charged economy.

Mr Pisoni interjecting:

The Hon. J.J. SNELLING: Just keep looking for that petition, David. Mate, just keep looking for that petition. I know that you are tearing the office apart trying to find the petition. I know you can't find the petition. Just keep looking for it, mate. Madam Speaker, we will see a state with phenomenal economic growth. I am very much looking forward to the next couple of years. I know that the opposition will continue trying to talk down the economy, but we will see some fantastic economic growth and fantastic opportunities for young South Australians.

Members interjecting:

The SPEAKER: Order!

Mr Goldsworthy interjecting:

The SPEAKER: Order, member for Kavel! Last week I spent time in question time in federal parliament, and approximately 150 members make less noise than you do—most of the time.

AFFORDABLE HOUSING

Ms BEDFORD (Florey) (15:59): My question is to the Minister for Housing. Can the minister advise the house of the latest developments under the National Rental Affordability Scheme?

The Hon. J.M. RANKINE (Wright—Minister for Families and Communities, Minister for Housing, Minister for Ageing, Minister for Disability) (15:59): I thank the member for Florey for her question and her ongoing support for affordable housing in South Australia. It is fortuitous that she would ask this question now.

We all know that the stimulus program is delivering a huge boost to housing, jobs and training in South Australia through the biggest social housing build program in 20 years. At least 1,378 new homes will be added to public and community housing here in South Australia.

Ms Chapman interjecting:

The Hon. J.M. RANKINE: 11,000 for you. For you.

The SPEAKER: Order!

The Hon. J.M. RANKINE: Your lot sold 11,000. Now I am very pleased to report that the National Rental Affordability Scheme (NRAS) will deliver almost triple the number of new affordable homes provided through the stimulus package, with 3,800 new homes that must be rented at at least 20 per cent below market rates to low and middle income households. Federal funding, combined with almost $100 million in state money, is providing incentives to private landlords to become an integral part of our affordable housing system. We have been working with the commonwealth for the last two years on this program and 640 houses are now complete and, at the start of October, the commonwealth confirmed South Australia's full share of this national program.

This program is smart, targeted and strategic. Most importantly, it fills a gap created by the previous state and commonwealth Liberal governments in 1996 when they agreed to focus public housing on those with the highest need and lowest income while selling 11,000 properties and putting in place nothing to help battling families that need affordable housing. NRAS projects are approved on the basis of a range of factors, including proximity to public transport and services, providing the right type of housing to address the needs of individual communities, and an agreement to consider applicants on the public housing waiting list such as those in categories 2 and 3.

A chain is only as strong as its weakest link, and that is why this government is strengthening every link in the system. $213 million is being invested in homelessness services over four years. The stimulus package, which the Liberals voted against, is giving a $434 million boost to social housing. The National Partnership on Remote Indigenous Housing is putting $292 million into Aboriginal communities. NRAS and the Affordable Housing Innovations Fund are providing affordable rental. The 15 per cent affordable housing policy, which the Liberals would have scrapped if they had won the 2010 election, is ensuring—

Mr WILLIAMS: Point of order, Madam Speaker.

The SPEAKER: Order! There is a point of order.

Mr WILLIAMS: The minister is clearly debating the answer to the question.

The SPEAKER: Order! Sit down, thank you, member for MacKillop. Minister, will you get back to the substance of the question?

The Hon. J.M. RANKINE: Thank you, Madam Speaker. In fact, it was their policy to scrap the 15 per cent affordable housing policy. This policy is ensuring affordable purchase and rental opportunities in all new developments, the Property Locator is giving low and middle income households the chance to buy an affordable home before investors, HomeStart continues to help provide finance to buyers who often cannot get help from a bank, and all this is tied by the Access Project which is developing a single register and assessment process for housing services.

In contrast, the Liberals' weak link started with their appalling history in housing, compounded by their utter lack of any new policy. A decade in opposition is surely enough time to have one original idea about how to address these—

Mr WILLIAMS: I have a point of order.

The SPEAKER: Order! Point of order. Member for MacKillop.

Mr WILLIAMS: The minister is debating the answer, still, Madam Speaker.

The SPEAKER: Thank you, member for MacKillop. Minister, have you finished your answer? Will you get back to the substance of the question?

The Hon. J.M. RANKINE: All but, ma'am. Their policy was: move 'em on and move 'em out. The state and federal Labor governments have been at the forefront of new housing policy and, with the ongoing public consultation around our housing green paper, this tradition of innovation and creativity is set to continue for decades to come.

HOUSING FINANCE

The Hon. I.F. EVANS (Davenport) (16:04): My question is to the Treasurer. Why, after 10 years of Labor, does South Australia have the worst housing finance figures in the nation? ABS housing finance data reveals that South Australia had the worst figures in August, the worst figures in the past 12 months, and the worst figures in the last two years, declining by 33 per cent.

Members interjecting:

The SPEAKER: Order!

The Hon. J.J. SNELLING (Playford—Treasurer, Minister for Employment, Training and Further Education, Minister for Workers Rehabilitation) (16:04): Madam Speaker, it is exactly the same question as was asked by the Leader of the Opposition except using a different indicator—a different indicator but exactly the same question—and the answer is—

Members interjecting:

The SPEAKER: Order, member for Norwood!

The Hon. J.J. SNELLING: The answer is exactly the same. The answer is simply that—

Mr Williams: That you've failed.

The Hon. J.J. SNELLING: Just keep looking for that petition, mate.

Mr Williams: You're bad managers, that's the answer, you're bad managers.

The Hon. J.J. SNELLING: I know you aspire to be a minister; I don't know how you can be a minister if you can't so much as table a petition in this place, but anyway—

Mr Williams: Take the allegation outside, Jack.

The Hon. J.J. SNELLING: I'm happy to go outside and say you've lost a petition that you were meant to table, mate! If you want to sue me, go for it!

Members interjecting:

The SPEAKER: Order!

The Hon. J.J. SNELLING: I will more than happily say that outside, mate; no problem. Eight hundred people signed this petition.

An honourable member: What on?

The Hon. J.J. SNELLING: Eight hundred people, about school amalgamations, and he lost it. He has lost it. Very angry residents—very angry residents about losing a petition—not happy! Not to mention the people who organised the petition and had to go and collect 800 signatures and now they have to go back to them and ask them for them all over again!

Members interjecting:

The SPEAKER: Order! Point of order, member for MacKillop.

Mr WILLIAMS: I have been listening to the Treasurer whose answer has got nothing to do with the—

The Hon. J.J. Snelling: Anyway, it is, Madam Speaker—

The SPEAKER: Order, Treasurer!

Mr WILLIAMS: I have been listening to the Treasurer's answer, Madam Speaker, and it has got nothing to do with the question.

The SPEAKER: Thank you, member for MacKillop. Treasurer, I would ask you to get back to the question and not the petition.

The Hon. J.J. SNELLING: I apologise, Madam Speaker, I was being provoked. The answer is exactly the same and that is: of course, we are going through difficult economic times and, on many of the indicators, we will see a downturn as part of the normal fluctuations in the economy, and that is being compounded, of course, by world events.

Mr Williams: By your management.

The Hon. J.J. SNELLING: Of course, the other thing is—

Mr Williams: Compounded by your management!

The Hon. J.J. SNELLING: Madam Speaker, I mean—

The Hon. I.F. Evans interjecting:

The Hon. J.J. SNELLING: The other feature of the Australian economy at the moment is extraordinarily high savings ratios. In fact, Australia has among the highest savings ratios in the world.

Members interjecting:

The SPEAKER: Order!

The Hon. J.J. SNELLING: Of course, that is a positive thing; that is a good thing but it is having an impact on growth in our economy.

Members interjecting:

The SPEAKER: Order! Point of order, member for MacKillop.

Mr WILLIAMS: Australian savings ratios might be very interesting but the question was: why are we suffering from the worst numbers—

The Hon. P.F. Conlon: What's the point of order?

Mr WILLIAMS: Relevance to the question!

The Hon. P.F. Conlon interjecting:

The SPEAKER: Member for MacKillop, sit down. I don't uphold that point of order. The Treasurer can answer as he chooses; he is not debating.

The Hon. J.J. SNELLING: It simply means the member for MacKillop doesn't understand—

Members interjecting:

The SPEAKER: Order!

The Hon. J.J. SNELLING: He doesn't understand, that's the only problem with the member for MacKillop. So, of course, what we're saying at the moment with all the world economic events—a downturn in the economy—but the important thing is this: in coming years this state economy will be absolutely turbo-charged. All the indicators will be extremely positive indeed. In fact, if we're going to have any difficulties it's going to be problems with labour supply—having enough workers to take the jobs—and that is why the government is making an investment of $194 million over six years to create 100,000 jobs—

Mr Williams interjecting:

The SPEAKER: Member for MacKillop!

The Hon. J.J. SNELLING: —to create 100,000 training places. That is the reason why we are turning on its head our vocational education and training system to create a training entitlement. You groan all you want because I know if it has to be explained in words of more than two syllables then the opposition turn off; they don't understand. Yet to get a single question on the Skills for All.

Members interjecting:

The SPEAKER: Order!

The Hon. J.J. SNELLING: Yet to get a single question on the Skills for All reforms, Madam Speaker.

The Hon. I.F. Evans interjecting:

The SPEAKER: Order, member for Davenport.

The Hon. J.J. SNELLING: I'm happy to correct that if I'm wrong, but to my recollection I am yet to get a single question on the Skills for All reforms—all these things, and, of course, governance reforms in TAFE, which is another area where I'm yet to get a single question. There are all of these things that the government is doing to position our state for the extraordinary economic growth and the extraordinary demands that that is going to put on our state labour force,

to make sure that we are able to accommodate those demands, and to make sure that our state makes the most out of the extraordinary opportunities that we are about to witness.

EDUCATION AND CHILDREN'S SERVICES DEPARTMENT COMPLAINTS PROCESS

Ms FOX (Bright) (16:09): My question is to the Minister for Education. Will the minister outline what steps are being taken to ensure that parents have access to support should they wish to make a complaint about how an issue has been handled by their school or regional office? In July, the minister stated that the department would be investigating the handling of parent complaints following a recommendation in the report prepared by Mr Bill Cossey AM, regarding violence in our schools.

The Hon. J.W. WEATHERILL (Cheltenham—Minister for Education, Minister for Early Childhood Development, Minister for Science and Information Economy) (16:10): I thank the member for Bright for her question. We have been working assiduously away on those recommendations of Mr Cossey. The department has, frankly, in the past been criticised for the way in which it has handled complaints. The Ombudsman has made some remarks about the failure to publish clearly accessible complaints procedures, and he has also made some helpful suggestions about how those arrangements should be put in place, and that criticism has been warranted.

Staff from the department have worked closely with the Ombudsman's office to make sure that we have processes in place that are much more user friendly. Staff from the Ombudsman's office have given advice to us about the sorts of complaints that are coming in about the department and on the processes that are used in other jurisdictions for dealing with these matters. Together we have come up with a system which we believe is going to be much more responsive to parents and caregivers who have an issue with the system. Processes will be much more transparent with online documentation being available so that parents can actually see what the steps in the process are, and realistic timelines will also be there to make sure that people know what to expect from the process.

From the beginning of 2012, a parents complaints unit will be established within the department which will provide parents with support and advice in the early stages of the grievance process, connecting them to advocacy and advice services and also providing them with advice on the direction of the process. The unit will also take on complaints that have not been able to be resolved at the school or regional level, providing an independent avenue for complaints resolution. The unit will be staffed by a manager and people trained in mediation processes. The position of manager will be advertised shortly, with the successful person beginning in the role in early 2012. The Ombudsman's office has been asked to provide advice to the manager of the unit about the methods that are currently used by the Ombudsman's office when they are investigating complaints. And, of course, what needs to be borne in mind is that parents will still have access to the Ombudsman if they are not happy with the outcome of this process.

Just to update you on another matter that arises out of the Cossey report, one of the other recommendations was a much clearer understanding between schools and the police about what gets reported to police in terms of incidents at the school level. A memorandum of administrative agreement between schools and police has been developed to clarify the times when police will be called to schools. Obviously we do not want them in there for relatively minor things but, of course, they need to be involved in cases of schoolyard violence which are of any significance. It is planned that the MOAA will be fully operational by the beginning of next year, and this has been the subject of consultation with parents, with police, of course, and regional directors and state directors will be fully trained to make sure that they can implement these important measures.

It is important that parents have confidence that, when their kids are at school, they are learning and their safety is not compromised, but when something goes wrong at school, it is also critical that they have the ability to chat with their teachers, the principal and regional directors if it doesn't work out there, but also access to an independent complaint service so that their issues can be resolved. I am confident that this will be a very important improvement for the system.

BUSINESS CONFIDENCE

The Hon. I.F. EVANS (Davenport) (16:13): My question is again to the Treasurer. Why, after 10 years of Labor, does the latest Sensis Business Index indicate that South Australia has the worst business confidence in the nation?

The Hon. J.J. SNELLING (Playford—Treasurer, Minister for Employment, Training and Further Education, Minister for Workers Rehabilitation) (16:14): I don't know if they're going to take up all ten questions of question time prefaced by 'Why, after 10 years of Labor, has something...' Essentially, you always know when an opposition is in trouble because they find it a bit hard to think of questions, and so they will ask the same ten questions one after the other with just a slight tinkering change so as to give the illusion that somehow the question is different.

An honourable member interjecting:

The Hon. J.J. SNELLING: Indeed.

Members interjecting:

The SPEAKER: Order!

Mr Pisoni interjecting:

The SPEAKER: Member for Unley, order!

The Hon. J.J. SNELLING: The simple fact is that, as I have said before, not only South Australia but Australia and indeed the world are going through difficult economic times. We have—

Members interjecting:

The Hon. J.J. SNELLING: The member for Bragg says 'Rubbish.' I don't know where the member for Bragg has been—

Ms Chapman interjecting:

The SPEAKER: Order!

The Hon. J.J. SNELLING: Maybe the member for Bragg has spent the last two years camped out in some remote location on Kangaroo Island.

Mr WILLIAMS: I rise on a point of order. The minister has been asked a series of questions trying to ascertain why South Australia is performing so badly and all he is talking about is the member for Bragg and other members of the opposition.

The SPEAKER: Thank you. I presume your point of order is standing order 98?

Mr WILLIAMS: That is exactly right, Madam Speaker.

The SPEAKER: Minister, I would refer you back to the question and please don't give us your opinion on members of the opposition.

The Hon. J.J. SNELLING: Of course I will, Madam Speaker. I am just somewhat surprised that it would be news to the member for Bragg that there are difficult economic circumstances in the world.

Members interjecting:

The SPEAKER: Order!

The Hon. J.J. SNELLING: It seems somewhat of a surprise to me that she might think that to be news. Nonetheless, it is the case that we are going through difficult economic circumstances. So, if members opposite want to pick and trawl through the data, of course they will find downturn. The government has made absolutely no secret of the fact that we have been going through some of the most difficult economic times for a very long time indeed, and you are going to find on all the indicators that the economy has softened.

Members interjecting:

The SPEAKER: I warn the member for Bragg!

The Hon. J.J. SNELLING: But, as I have said, enormous opportunities are before us in the resources sector, high end manufacturing and the defence sector, all fantastic initiatives of this government which show that when it came in it had the foresight to diversify our economic base, to make us far more resilient—

Members interjecting:

The SPEAKER: Order! The member for Davenport, you are warned!

The Hon. J.J. SNELLING: —to make us, as a state, far more resilient to the ups and downs of economic fortune. They are measures of which we have an incredible amount to be proud of.

Mr WILLIAMS: I rise on a point of order. I want to help the Treasurer, I know he is fairly young, but Roxby Downs has been operating since 1982.

The SPEAKER: There is no point of order. Minister, could you complete your answer.

The Hon. J.J. SNELLING: There are enormous opportunities before us, and enormous opportunities of which this government is incredibly proud, and we shall weather the economic storm that we are currently going through and do very well out of it indeed.

STATE TAXES

Mrs REDMOND (Heysen—Leader of the Opposition) (16:18): My question is also for the Treasurer.

Members interjecting:

The SPEAKER: Order! Minister for Transport, behave!

Mrs REDMOND: Given that South Australia has the worst unemployment rate, the worst building approvals figures, the worst housing finance figures and the worst business confidence in the nation, why, after 10 years of Labor, does South Australia have the highest taxes in the nation?

Members interjecting:

The SPEAKER: Order!

Mrs REDMOND: The Commonwealth Grants Commission, the Institute of Public Affairs and Pitcher Partners all independently confirm that this state has the highest taxes in this nation.

The Hon. J.J. SNELLING (Playford—Treasurer, Minister for Employment, Training and Further Education, Minister for Workers Rehabilitation) (16:18): I have been wondering where it is all going to. I have been wondering: the crescendo, the question that was going to blow us all away.

Members interjecting:

The SPEAKER: Order!

The Hon. J.J. SNELLING: I was thinking there must be a trick in there somewhere.

The Hon. P.F. CONLON: I rise on a point of order. Interjecting is out of order and I would ask you to draw these people to some order.

Mr PISONI: I rise on a point of order. Responding to interjections is out of order.

The SPEAKER: Order! Thank you very much for your opinion.

Members interjecting:

The SPEAKER: Order! We have 22 minutes left of question time. I will call it to a close if we don't get some order. It is going to be a long week.

The Hon. J.J. SNELLING: The simple fact is that this government has made enormous steps to reduce the tax burden facing South Australians, and we have provided tax relief in payroll tax and in land tax, amounting to some billions of dollars. I haven't got the exact figure; it doesn't come to mind. We have given substantial tax relief. Of course, there is more work to be done, and of course as the circumstances permit—

Members interjecting:

The SPEAKER: Order!

The Hon. J.J. SNELLING: —tax reform is something which is high on my mind, and how we might continue to make South Australia a good place to live and a good place to do business—very high on my mind, indeed. But we should not ignore the fact that this government has already provided many hundreds of millions, if not billions, of dollars worth of tax relief over its time in office, particularly in the area of land tax and in the area of payroll tax. The fact is that South Australia also has the highest number of nurses per head of population in the country—

An honourable member: What's that got to do with taxes?

The SPEAKER: Order!

The Hon. J.J. SNELLING: We have the highest number of police per head of any of the states—on many of the services we provide, a much higher service level—and South Australians expect a much higher level of service than Australians do in other parts of Australia. If the opposition has plans or suggestions to make about taxes that they would like to reduce or abolish, I would be more than happy to have a look at those because I would also like to see how they intend—

Members interjecting:

The Hon. J.J. SNELLING: Madam Speaker, I can't scream over. They are quick to jump up and call a point of order on me and yet I am having to speak over a barrage of screaming from members opposite.

Ms Chapman interjecting:

The SPEAKER: Member for Bragg, you are warned for the second time.

The Hon. J.J. SNELLING: The simple fact is that if the opposition think that there is capacity in the budget to provide further tax relief then I would be more than happy for them to be honest with the South Australian people and say what services they are going to cut, which hospitals they are going to close, which schools they are going to close, how many teachers, doctors, nurses and police they are going to sack in order to pay for tax cuts because believe me, at this stage, for anything other than incremental tax reform, that is exactly what it would involve.

HOSPITAL PARKING

The Hon. I.F. EVANS (Davenport) (16:23): My question is to the Treasurer. Will he rule out abolishing public hospital car parking fees as introduced in the last budget?

The Hon. J.J. SNELLING (Playford—Treasurer, Minister for Employment, Training and Further Education, Minister for Workers Rehabilitation) (16:23): I am not going to rule anything in or out. That would be—

Members interjecting:

The SPEAKER: Order!

The Hon. J.J. SNELLING: The important point I have always said is that we achieve a certain quantum of savings and, if there are other ways that we might go about achieving that, then I would be stupid as a treasurer to rule anything out.

Members interjecting:

The SPEAKER: Order!

APY LANDS, YOUTH STRATEGY

Mr MARSHALL (Norwood) (16:23): My question is to the Minister for Aboriginal Affairs and Reconciliation. Will the minister update the house on the APY lands youth strategy first announced by the previous minister, the Hon. Jay Weatherill, in 2008 and subsequently put on hold by the current minister while a strategy was developed for just one of the 10 main communities on the APY lands, that being Amata, which incidentally is still not complete.

The Hon. K.O. FOLEY: Point of order, Madam Speaker. The member for Norwood is clearly commenting in his question. He must ask a question seeking fact and he can give an explanation appropriately. I would ask that he rewrite the question and return when it is done.

Mr MARSHALL: I'm happy to do so, Madam Speaker. Will the minister update the house on the APY lands youth strategy first announced by the previous minister, the Hon. Jay Weatherill, in 2008 and subsequently put on hold by the current minister while a strategy was developed for just one of the 10 main communities on the APY lands, and can the minister please advise the house—

The Hon. K.O. FOLEY: Point of order, Madam Speaker.

The SPEAKER: Point of order. There was comment in that that did not need to be there.

The Hon. K.O. FOLEY: He really needs to take the question down here—

Members interjecting:

The SPEAKER: Order!

The Hon. K.O. FOLEY: —and rewrite it.

Members interjecting:

The SPEAKER: Sit down, you're not ready yet.

Members interjecting:

The SPEAKER: Order!

Members interjecting:

The Hon. K.O. FOLEY: You've got to learn to be quiet in this place. You are very loud. Now, the member for Norwood is clearly out of order, commenting in his question. I think he really needs to go away, rewrite it and allow somebody else to ask a proper question.

Mr MARSHALL: Thanks for that advice. I have written it, Madam Speaker.

The Hon. K.O. Foley: Third time lucky.

Mr MARSHALL: Third time lucky. Will the minister update the house on the APY lands youth strategy and can the minister please advise the house why there is still no strategic plan to help young people on the APY lands, three years after this policy was first announced by your government?

The Hon. G. PORTOLESI (Hartley—Minister for Aboriginal Affairs and Reconciliation, Minister for Multicultural Affairs, Minister for Youth, Minister for Volunteers, Minister Assisting the Premier in Social Inclusion) (16:25): Thank you—

Members interjecting:

The SPEAKER: Order!

The Hon. G. PORTOLESI: And you tried so hard, member for Norwood, reading the question over and over again—practising, practising, you tried so hard.

Members interjecting:

The SPEAKER: Order!

The Hon. G. PORTOLESI: You tried so hard.

Members interjecting:

The SPEAKER: The Leader of the Opposition, order!

An honourable member: Come on, Sophia.

The SPEAKER: Order! Thank you. The minister for Aboriginal affairs.

The Hon. G. PORTOLESI: The first point I would like to make is that I am very happy to address the member's question. There is one point that he makes that I don't accept which is that, I, according to him—I would like to see evidence of that—put some strategy on hold. What I am very happy to report to the house is the most recent report by the Coordinator-General, Brian Gleeson, for whom I have enormous respect. This is the release of the fourth six-monthly report.

The report contains nine recommendations, including one about youth action plans. I am pleased to report that the Amata youth action plan, for instance, has been refreshed, following consultation with the Amata community in June. The focus of the plan—

Members interjecting:

The Hon. G. PORTOLESI: —they don't like the answer—is to improve the coordination and delivery—

Members interjecting:

The SPEAKER: Order!

The Hon. G. PORTOLESI: —of youth services. With this mind, a directory of youth services will soon be released and a monthly program of activities will be placed in the community.

Our commitment to young people starts with things like this—community safety. It starts with education—upgrading the school at Amata. It starts with health—the lowest Indigenous infant mortality rate in Australia. It starts with mental health—introducing a visiting mental health service to the—

Members interjecting:

The SPEAKER: Order!

Mr MARSHALL: Point of order, Madam Speaker.

An honourable member interjecting:

The SPEAKER: Order!

Mr MARSHALL: My point of order is relevance. I specifically asked about the APY youth strategy, first announced by the government in 2008. I want to know where it is and when it is going to be delivered.

The SPEAKER: Thank you. I direct the minister back to the substance of the question. Have you finished?

The Hon. G. Portolesi: Yes.

Members interjecting:

The SPEAKER: Order! The member for Norwood.

GIENTZOTIS CONSULTING

Mr MARSHALL (Norwood) (16:27): My question is again to the Minister for Aboriginal Affairs and Reconciliation. Now that the minister has had almost a month since it was revealed that $450,000 of her department's money was spent with Gientzotis Consulting between 2009 and 2011, can she now advise what outcomes have been achieved by this consultancy? Can the minister advise how it is possible that the head of her very own department had no idea what this money was spent on.

Members interjecting:

The SPEAKER: Order! Point of order.

The Hon. P.F. CONLON: He is off commenting again, he needs to understand.

The SPEAKER: Thank you.

The Hon. P.F. CONLON: But I would ask: could he repeat the question because I couldn't catch the name of that consulting firm? Could he please repeat it? I just couldn't quite get it.

Mr Marshall: Gientzotis.

The SPEAKER: The minister for Aboriginal affairs. I think he has asked his question.

The Hon. G. PORTOLESI (Hartley—Minister for Aboriginal Affairs and Reconciliation, Minister for Multicultural Affairs, Minister for Youth, Minister for Volunteers, Minister Assisting the Premier in Social Inclusion) (16:28): I don't have the information about each individual consultancy contracted, or contractor, arranged by my department because, of course, they don't seek—

Members interjecting:

The SPEAKER: Order!

The Hon. G. PORTOLESI: —my permission in every case. They don't seek my permission, because they are perfectly entitled to arrange their business. But I am very happy to provide some information for you.

Members interjecting:

The SPEAKER: Order! If this place does not quieten down I will call question time to a close.

VISITORS

The SPEAKER: I understand we have a delegation from Vietnam here. It is good to see you here. Our parliament is not always this noisy.

QUESTION TIME

Members interjecting:

The SPEAKER: Order! The member for Mitchell.

Mr SIBBONS: Thank you, Madam Speaker.

An honourable member: That was a shock.

SA AMBULANCE SERVICE

Mr SIBBONS (Mitchell) (16:30): I will just get my heart rate back. My question is to the Minister for Health.

An honourable member interjecting:

Mr SIBBONS: This is probably a pertinent question. How satisfied are patients with the South Australian Ambulance Service?

Mr Pisoni interjecting:

The SPEAKER: Order! Member for Unley, you are warned.

The Hon. J.D. HILL (Kaurna—Minister for Health, Minister for Mental Health and Substance Abuse, Minister for the Southern Suburbs, Minister Assisting the Premier in the Arts) (16:30): I am very pleased to be able to say that 98 per cent of emergency and urgent patients who responded to a recent survey indicated that they are either satisfied or very satisfied with the ambulance service that they received in South Australia. Each year patients are surveyed about how satisfied they are with the ambulance services right across Australia. This research is commissioned by the Council of Ambulance Authorities and enables SA Ambulance Service to evaluate its performance according to its patients' experiences and also to measure its approval against other services.

The report details the service quality and satisfaction ratings of ambulance service patients and carers in Australia and, of course, New Zealand. Of 1,476 surveys sent out in South Australia, 624 were returned, which is a response rate of 42 per cent. That is the second-highest response rate around the nation and it contributes to a national average of 34 per cent. Of respondents from South Australia, 78 per cent were patients and 22 per cent were carers; 75 per cent were 60 years or older and 42 per cent were 75 years or older. That reflects the nature of people who use ambulances. There was a relatively balanced survey of men and women across our state.

Ninety-eight per cent of respondents said they were satisfied or very satisfied with the care the ambulance paramedics took when attending them. Ninety-seven per cent of respondents said they were satisfied or very satisfied with the explanations given by SA ambulance paramedics about what was happening to them and why it was happening. The SA Ambulance Service was one of the three top performers in this area.

Ninety-six per cent of respondents, up from 94 per cent last year, were satisfied or very satisfied with the conditions of the trip when being transported by an ambulance, making the service in South Australia one of the top three performers again in this area.

These are terrific results and I congratulate and thank all the staff of the Ambulance Service in South Australia for the outstanding service they provide to South Australians who are in need. Our ambulance officers deserve thanks not only for saving lives but also for showing care, concern and compassion to South Australians who are critically ill and their family members at obviously difficult times in their lives. I commend their service to the house.

APY LANDS, COMMUNITY COUNCIL OFFICERS

Mr MARSHALL (Norwood) (16:33): My question is again to the Minister for Aboriginal Affairs and Reconciliation. Given the minister has made a commitment to provide community council support officers in each of the communities on the lands, can the minister confirm to the house how many of the communities currently have these officers in place, how many are full time, what the term of their contract is, and why the position at Pipalyatjara has never been filled?

The Coordinator-General's report was tabled in federal parliament last week, as the minister previously announced. This report stated that community council support officers have been employed on the APY lands and that these positions will continue in 2011 and 2012. Despite this, we know that many of the communities are without community council support officers and that contracts are for only three months, making it extremely difficult to fill these positions.

The Hon. G. PORTOLESI (Hartley—Minister for Aboriginal Affairs and Reconciliation, Minister for Multicultural Affairs, Minister for Youth, Minister for Volunteers, Minister Assisting the Premier in Social Inclusion) (16:34): I am very happy to answer this question, but before I do I would like to ask the member for Norwood what his plan is for the future of the APY lands. A big fat zero!

Members interjecting:

The SPEAKER: Order! Point of order, member for Finniss.

Mr PENGILLY: The minister is clearly trying to debate without even attempting to answer the question. You don't ask us questions.

The SPEAKER: Order! Thank you, member for Finniss. Minister, can you get back to the substance of the question?

The Hon. G. PORTOLESI: Of course. Funding for these positions, funding that this government instituted, has been extended—and this was the subject of one of the discussions I had with minister Macklin—until the end of the year. I understand that discussions continue regarding the funding—

Mr Marshall interjecting:

The SPEAKER: Order! Member for Norwood, you've asked your question. Minister.

The Hon. G. PORTOLESI: He practises so hard. I understand that discussions continue regarding the funding of these positions into the future. Positions in Ernabella, Amata, Fregon and Indulkana are all filled.

Mr Marshall interjecting:

The SPEAKER: Order!

The Hon. G. PORTOLESI: Expressions of interest for the position at Mimili close on Friday. The shared position for Pipalyatjara and Kalka is currently not filled in, because it has been my objective to fill those positions with Anangu, to fill those positions—

Mr Marshall interjecting:

The Hon. G. PORTOLESI: Here they are, attacking people on the lands, talking down the lands. What is their plan, Madam Speaker? We have the real shadow minister—

Members interjecting:

The SPEAKER: Order!

The Hon. G. PORTOLESI: —in the other place, who says that he wants to create a mini government on the lands. Then we have the member for Norwood going up to the lands, looking to do a bit of muckraking. What does he want to do? Set up a committee.

Members interjecting:

The SPEAKER: Order!

Mr MARSHALL: Point of order, Madam Speaker: that has nothing to do with the question whatsoever. We want to know how many you've got, and I think the answer is four out of ten.

The SPEAKER: Thank you. You have just answered the question yourself.

The Hon. G. PORTOLESI: I would just like to close on the final point, which is this: we have done our very, very best to recruit local people into these positions. I think it is very important if we want those positions to be successful. This is an initiative—

Members interjecting:

The SPEAKER: Order!

The Hon. G. PORTOLESI: —of this government, and we will do our very best to recruit good people to those positions.

ROYAL ADELAIDE HOSPITAL GYNAECOLOGY DEPARTMENT

Dr McFETRIDGE (Morphett) (16:37): My question is to the Minister for Health. Will the minister confirm that general gynaecology services at the Royal Adelaide Hospital will be closing shortly?

The Hon. J.D. HILL (Kaurna—Minister for Health, Minister for Mental Health and Substance Abuse, Minister for the Southern Suburbs, Minister Assisting the Premier in the Arts) (16:37): No, I won't confirm that at all.

The Hon. P.F. Conlon interjecting:

The Hon. J.D. HILL: Yes, I'm sure the mayor of Glenelg has been talking to him. As part of the planning for the new Royal Adelaide Hospital we are determining what services will be provided in that hospital. All of the in-hospital services—the clinical services, the acute services that are required in our system—of course will continue to be there. We are looking at whether or not some outpatient services can be dealt with in other locations. All of these things are occurring. I have given the same answer to the house in the past.

There are obviously a number of specialists associated with the Royal Adelaide Hospital who do not like the plans to build a new hospital. They prefer to stay in a set of buildings which are way past their usefulness, and they have been stirring things up and making allegations that services will be taken away. It is not the case. In fact, we have invested more and more in-services, and we will do so at the new Royal Adelaide Hospital. We obviously make changes from time to time, the best way of providing services to the community. Our overall theme is to get services close to where people live and sometimes that means moving services to other hospitals—

Ms Chapman interjecting:

The SPEAKER: Order, the member for Bragg!

The Hon. J.D. HILL: —sometimes it means moving outpatient services into GP Plus centres and the like. We work that through in consultation with the clinicians, but the advice I have is that the more acute services associated with the services of the Royal Adelaide Hospital will continue. I am happy to get a further report for the member.

BUSHFIRE PRESCRIBED BURNING

The Hon. S.W. KEY (Ashford) (16:39): My question is directed to the Minister for Environment and Conservation. Could the minister advise the house of what measures are being taken by the government as part of our state bushfire management strategy?

The Hon. P. CAICA (Colton—Minister for Environment and Conservation, Minister for the River Murray, Minister for Water) (16:39): I thank the honourable member for her very, very important question. The Department of Environment and Natural Resources is now commencing the spring season of the prescribed burning program across all lands under my care and control as the Minister for Environment and Conservation under the National Parks and Wildlife Act 1972, the Wilderness Protection Act 1992 and the Crown Land Management Act 2009. This will be followed by further burns in autumn next year. Subject to suitable weather conditions, more than 19,600 hectares of public land is expected to be burnt by undertaking 125 burns through a coordinated operation between the Department of Environment and Natural Resources, SA Water and ForestrySA with support from the South Australian Country Fire Service.

Most members will understand that prescribed burning is a critical component of bushfire management. Reducing fuel loads through prescribed burning is very important because it can make it easier to control a bushfire, it can help to prevent a bushfire from spreading to residential areas and ultimately it can save lives and property.

This program of prescribed burns will focus on high-risk areas, including the Mount Lofty Ranges (where 31 burns are planned, covering approximately 680 hectares), as well as the Lower Eyre Peninsula, the Southern Flinders Ranges, the South-East and Kangaroo Island; and, of course, it is important to focus on these high-risk areas.

Earlier this year the government allocated $23.1 million in additional funding over the next four years to help protect our state against the ongoing risk of bushfire. This significant funding boost will allow DENR to employ an additional 62 people to assist in the bushfire management

strategy, which includes 15 ongoing and 47 seasonal firefighters, as well as ongoing funding of more than $1 million per year to buy firefighting equipment such as appliances and bulk water carriers.

By 2014-15 the state government will be providing an additional $7.3 million per year indexed for our important long-term program of prescribed burning. This reflects the government's commitment to increasing prescribed burns on public land following a key recommendation arising from the Victorian Bushfires Royal Commission.

The reduction of fuel loads through prescribed burning is critical to South Australia's bushfire preparedness measures ahead of our typically hot and dry summers. Members might like to know that, depending on the weather conditions being suitable today, DENR will be undertaking a prescribed burn in the Belair National Park this afternoon. I do understand that it did and is currently taking place. This, indeed, is an important program, and I trust that all members recognise it as such given the protection it affords to South Australians right across our state.

I think it is timely to remind all South Australians that being bushfire ready is a shared responsibility and that all landholders must ensure that they are bushfire ready.

GRIEVANCE DEBATE

HOSPITAL PARKING

Dr McFETRIDGE (Morphett) (16:42): In question time today we saw the Treasurer equivocate on the issue of paid hospital car parking. He will not rule in or rule out whether there will be changes. For 18 months now we have seen the Premier, the former treasurer, the current Treasurer and the current Minister for Health all trying to justify the implementation of paid car parking in our public hospitals. This is an absolute travesty. The suffering and the anger it is causing are palpable.

Even today I had a phone call from a senior consultant at one of the hospitals where parking has just been implemented, because, under this scheme, doctors lose their allocated car parking. There was no car parking for this consultant. He said, 'I'm not going to come in and consult. I can't find a car park.' For 30 minutes he drove around looking for a car park, and he is not the only one.

The implementation of paid car parking in our hospitals is such an absolutely ill-thought-out project. By the time they have put in the infrastructure, maintained the infrastructure and enforced the paid car parking, the financial returns to the state government are really minimal. Why would you do this to people who are at their wits' end?

You do not choose to go to hospital; you do not choose to be ill. Friends, family and carers want to visit patients in hospital, but what they have to do is pay and pay and pay. For 18 months now we have seen the Minister for Health saying that this is an irreversible decision, yet yesterday on the front page of *The Advertiser* we saw an article by Greg Kelton saying that the new premier, Jay Weatherill, is expected to reverse this paid car parking issue and abolish paid car parking.

It is about time we saw something of a social inclusion nature from this government because what we have seen so far is social exclusion. They do not care, they do not connect and they certainly did not consult. We heard the incoming premier, Jay Weatherill, say to a public meeting that this government's 'announce and defend' policy is going to be a thing of the past. What we are seeing now—I hope—according to *The Advertiser* paper yesterday and from today's equivocation by the Treasurer is that we are going to see an announcement about paid car parking in our hospitals being abolished.

It is a complete injustice and, to reinforce the fact of the anger out there, we have the member for Florey with a petition of over 4,000 signatures being presented to this place today and we also see the member for Florey organising a protest on the steps of parliament.

Ms Bedford: I beg your pardon?

Dr McFETRIDGE: If I am wrong, I ask the member for Florey to correct it. I know the member for Florey has been a strong advocate for her electorate and I would not blame her for taking this stance. I have a letter from the office of the Mayor of Tea Tree Gully, Miriam Smith, about the hospital car parking fee petitions. I have in my possession a petition with over 7,000 signatures on it but, because the wording is not quite right, it cannot be accepted by this place.

What we need to do is accept the fact that there is significant anger out there. I will be presenting this petition to the Minister for Health because it may not be in a form that can be presented to this particular chamber but the minister should be listening to the people, both out in Florey and, in general, out in the Tea Tree Gully council area.

This was a wrong thing to have done. It was ill-thought-out. We hope the incoming premier is going to do something about it. It is a fact that South Australians cannot afford another levy, another tax, another impost on their hip pocket. We have heard today in question time of the evidence of all the parameters—unemployment going up and building approvals going down. The whole state is suffering under this government, yet what do they do? The meanest cut of all that I have seen from this government so far is imposing paid car parking in our hospitals. It is not fair to the people of South Australia.

I just hope that the minister starts acting like the chief minister and gets some courage to say this was wrong. Look at The Queen Elizabeth Hospital today. It is at 110 per cent capacity. People could not find a car park, doctors could not find car parks, so what do we see: patients missing out. It is a travesty. Let's hope that premier Jay Weatherill does something about it, lives up to the expectations of the people of South Australia and delivers for South Australians not what we have had in the past, that is, the announce and defend, the cruel cuts and the health system in crisis under a minister in complete denial.

THE BIG ISSUE

The Hon. S.W. KEY (Ashford) (16:47): I was very pleased to hear on the radio in the past week the promotion of a publication that I am really keen on supporting, that is, *The Big Issue*. I hear that Kate Ellis (the member for Adelaide and also a minister) and Peter Goers are going to go out on the hustings and sell *The Big Issue* to people in the community.

One of the reasons I am a big fan of *The Big Issue* is that it is an independent current affairs and entertainment magazine that has really been important for a number of people I have spoken to who sell it, to help them get back into the workforce and give them confidence about being out in the community.

The vendors keep half the cover price of the magazine they sell and also receive training and sign a code of conduct and, obviously, wear identification. There is actually a warning in *The Big Issue* that if you are approached by anyone requesting a donation, as opposed to buying the paper, not to do so, because that is not how money is distributed.

I was also pleased, having been associated with *The Big Issue* and being a person who has bought it for many years, that South Australia has actually played an important role in Australia regarding *The Big Issue*. One of the distributing partners is the South Australia Premier's community benefits fund, and also listed as principal supporters are the Adelaide City Council and the government of South Australia, particularly through the Social Inclusion Unit. They know, and I think we know in this place, that this is a way of connecting people who in the past have been dissociated from paid work or gone through hard times and getting them back into the community.

The other reason, I suspect, that Kate Ellis and Peter Goers in particular are going to be selling *The Big Issue* is to acknowledge the fact that in Australia we will hold Anti-Poverty Week from 16 to 22 October, and I note that yesterday, 17 October, was United Nations international anti-poverty day. Unlike a lot of people, I was really impressed when prime minister Hawke said that his aim was that no child would live in poverty. A lot of people scoffed at that and thought it was impossible and also a bit sentimental, but I must say I still think that we need to have those goals, not only in Australia but also on an international level.

The Big Issue is part of an international network of street papers. This is an idea that, certainly in Australia, we adopted from the UK. I understand that there are 110 papers in 40 countries which have similar programs to our *The Big Issue*. A big campaign going on through that international network of street papers is that poverty should be made illegal, which is again a very lofty sentiment but one that I think we need to look at as well. It is argued that this may seem a ridiculous claim but the first attempts to make slavery illegal were along the same lines. Whether that is a good comparison or not I do not know, but it certainly has the sentiments that I support.

I was a little bit concerned in this edition of *The Big Issue* to read an article that the great divide, the gap between rich and poor, has got bigger. ABS statistics tell us that 20 per cent of household incomes in 2009-10 accounted for 62 per cent of household worth; the poorest 20 per cent of households accounted for 1 per cent of household worth. This means, according to Alan

Atwood, who wrote the article, that one-fifth of society has claimed two-thirds of the cake and the other fifth shares a very slim slice—or some could say the crumbs. He goes on to say that there is some good news for poor people: between 2005-06 and 2009-10 their average worth went up by 16.8 per cent.

SAVE OUR SCHOOLS RALLY

Mr PISONI (Unley) (16:52): Last Friday I was at the Save Our Schools rally at Elder Park where there were families, students and teachers opposed to the school cuts that were announced last year under the first budget of the Minister for Education, Mr Weatherill. We all know that there was a proposition to amalgamate 67 co-located schools, and a very active campaign has been run by parent Julie Caust, the chairman at Modbury High School, to put a stop to the process happening between high schools and primary schools—and now those who are in junior primary schools and primary schools are fighting the battle.

This measure was to save $8.2 million. At that rally I was presented with a copy of a petition, and 879 people within the electorate in and around the school have expressed their concerns about the government's announce-and-defend policy of ignoring the very same amendments to the Education Act that they made in this place in 1998 that called for consultation and a proper process to be in place in order to enact school closures and school amalgamations.

We are looking at the government forcing through these amalgamations and saving $8.2 million. When he backed down on the merger of the high schools and primary schools, the education minister explained that that was not going to cost them anything—to back down on that savings measure—so we can only assume that the $8.2 million referred directly to the 42 primary and junior primary schools that are being forced to amalgamate through a farce of a review process that has been conducted after a decision has been made.

If we look at where the government has found these so-called 'tough cuts', this 'tough budget' that had to be made for the sake of saving the state—at that time, eight years of Labor government in Australia's most buoyant time when we saw enormous growth in state revenues. I think the budget here in South Australia doubled in that time from about $8 billion to $16 billion. We have not seen a single percent more in the share of the education budget. They are stuck at around 24.5 per cent, as it was in 2002, and as it is in this year's budget.

We saw cuts of about $100 million straight out of schools—not from the bureaucracy but out of schools—and we saw cuts to teacher development programs and school security. Remember earlier in the year the fire at Unley High School. The arsonist was successful, I understand, after about six attempts to burn that building down, and I know that Unley had to wait longer for their fencing requirements because of the cuts to the school's security budget. Out of school hours care has been cut. Around $500,000 has been cut from the budget and those costs will be passed directly on to the parents.

Do not forget that the forward estimates predicts an extra $25 million in school fees being collected from parents, more so then than what is being collected now. We saw school maintenance budgets cut, and we saw bus services cut. This is the extraordinary thing: we saw cuts to basic skills test funding. The reason given in the budget was, 'Well we don't need it anymore because that funding is being provided by the federal government,' but this May, the federal government cut their funding. Do not forget that Mr Weatherill, the education minister, has presided over the two worst Naplan results in this state's history since he has been the education minister. We went backwards in 14 out of 20 categories in the last Naplan results, after going backwards in 2010 from the 2009 results.

So you can see that the education minister, who is soon to be premier, has taken the easy option, taking money from schools rather than looking at the bureaucracy within his department to make those savings that were required through the Sustainable Budget Review Committee. The Auditor-General has even identified a very easy saving for the minister with $4.5 million in surplus education department employees with nothing to do. Some of them are being paid up to $120,000 a year.

Time expired.

SOUTH AUSTRALIAN TRAINING AWARDS

Ms THOMPSON (Reynell) (16:57): This afternoon I would like to congratulate all the recent winners of the South Australian Training Awards and, particularly, I would like to make some

comments about the Murray Bridge Veterinary Clinic, which won the Small Employer Trainer of the Year Award.

I found myself on the panel for both the Employer of the Year and the Small Employer of the Year, and was very impressed by the work of this small, regional business that was exemplifying many of the characteristics that I had only previously encountered in St Mary's Girls' College in Derry, Ireland. St Mary's won the European Quality Organisation of the Year quite some years ago. They are regarded throughout Europe as a lighthouse organisation for the way that they have managed to bring business practices into a school in a very disadvantaged area.

Derry is by some known as Londonderry, and St Mary's is in Bogside. Its student population consists largely of girls whose parents have not worked, whose grandparents have not worked and, often, many generations know of no-one in the family who has worked.

It was interesting to me that St Mary's in Northern Ireland and the Murray Bridge Veterinary Clinic were using the same approach to success in their organisation, to making it an organisation where the corporate goals and personal goals came together to fulfil their business purposes. For the Murray Bridge Veterinary Clinic, that is providing care to animals. For St Mary's girls' school that is providing excellent education to girls who have had little experience of success in life or success in education.

The methods that both organisations used were really interesting. I cannot, of course, disclose anything about the details of the application from the Murray Bridge Veterinary Clinic so I do need to talk in fairly abstract terms, but in both organisations there was a clear purpose for the organisation.

There was a clear purpose for the skills that were required to make the best of the organisation and an involvement of each individual in how they were going to contribute to those goals, what skills and training they needed to contribute and, importantly, that training was never done in isolation.

In both organisations when somebody participates in a training program they come back and report to their colleagues about what they have learnt from that training program and how the services in the organisation can be improved as a result of the learning and training that has been undertaken.

There are clear reviews on an annual basis of the individual training plan and progress against it. These reviews are both formal and informal. There is a clear recognition of people's achievements and contribution to their organisation.

There is also recognition that people learn and communicate in different ways, so each member of the organisation is invited to participate in some simple tests to identify their own preferred learning and communication style and to understand the learning and communication styles of others and to understand that just because they do not seem to be getting a point across to another person it is not necessarily because that other person cannot understand, it is because the communication styles are different and different strategies and techniques may be used. So, each person learns how to communicate in different ways, so that the organisation and the individuals benefit from clear communication and a clear common purpose within the organisation.

I am very pleased that Dr Fiona Warton and Ms Jacqui Kempe of the Murray Bridge Veterinary Clinic are going to address the education forum that I am holding in November for parent leaders of the public schools in my electorate.

RUNDLE MALL

Ms SANDERSON (Adelaide) (17:03): I rise today to talk about an issue that concerns visitors, tourists, residents and shopkeepers in Rundle Mall. The issue is the growing number of preachers and protest groups in the mall that are creating civil unrest and threatening public safety through their vocal and affronting demonstrations.

The unrest does not revolve around one particular group, there are several groups using the mall as a space to convey their religious or political ideology. Nobody denies a person's right to free speech, however, when such free speech becomes what I believe to be hate speech and offends innocent passers-by, the Labor government must act to protect the general public.

As the member for Adelaide, my electorate office has received a number of calls and emails from residents and visitors to the mall who are genuinely concerned for their safety when

such protests and demonstrations are taking place. I would like to read a few of the emails that have been sent directly, so these are direct quotes:

I have nothing but respect for religion and people's right to free speech, but the Adelaide Street Church show no respect for anyone. Yesterday at around 5pm, they were in the Mall, by the Mall's Balls. I saw them harassing a pair of young girls who were walking with their arms linked. They were telling them that innocently walking arm-in-arm with a friend was 'the path to homosexuality and sin'. I thought this was beyond wrong, so I stepped between the 'preacher' and the girls and asked him calmly to back off, they were only little girls. He then proceeded to repeatedly call me a filthy dyke. As an openly gay woman, I find that incredibly offensive, but I know there are obnoxious people around, so I have developed a thick skin. When I didn't react and moved to walk away, he called after me 'Filthy dyke whores like you deserve to be raped'.

This is totally unacceptable in the Rundle Mall. I quote from another email sent to Rundle Mall Management Authority:

Hey Rundle Mall, just letting you know what the 'God preachers' screamed at me a week or two ago and I won't be coming back to the Mall again! I walked down Rundle Mall last week when they were there. I have cancer, so I have no hair. I was in a pretty good mood so I didn't have my wig on. They (the Preachers) screamed at me that I was going to die because I look like a boy, and that God doesn't want trannies...I AM FEMALE, I HAVE CANCER! But, no my reply wasn't that, instead it was tears on the one day that I had confidence to leave my house without a wig on...and this is what I got...I rarely leave the house now. PLEASE do something about the words they scream.

From the Myer Centre management, I quote:

We have become increasingly concerned over the activities of various interest groups in Rundle Mall over the past 10 months and the impact their activities are having on retail and Rundle Mall perceptions more broadly. It would seem that Rundle Mall is being hijacked by the disruptive activities of various interest groups, at the expense of the everyday community and businesses in the area.

The letter states further:

Myer Centre Retailers were forced to close their doors early in the evening, allegedly due to:

- High noise levels...
- Racist abuse hurled...
- Retailers fear for...safety...

...we would expect that any persons breaking the law, including inciting violence or verbally abusing other people are brought to task. It would seem that the only avenue left open in order to address this issue and remove the risk of these emotive confrontations is a request to the State Government to step in, before someone is seriously hurt, or worse.

I also quote from another shop owner in the Myer Centre:

I understand there is an issue with this surrounding free speech, however, I don't believe Rundle Mall is the appropriate place for people to air views of a discriminatory or prejudiced nature. It is a shopping precinct and everyone should feel safe, comfortable and welcome shopping here. It is behaviour that certainly would not be tolerated in a Westfield or other such shopping centre that Rundle Mall competes with for customers.

Another phone call to my office was from a lady who was in Rundle Mall and was harassed by the street church group. She has been told that she hates God and God hates her. She has never experienced this sort of hate before and said she will not be coming to Rundle Mall again until this problem has been resolved.

I do not believe that any person, whether using the guise of preaching or protesting, has a right to be so offensive as to inhibit a person from entering a public place, namely Rundle Mall. This behaviour is unacceptable, and I call on the Labor government to act swiftly and decisively to ensure that this behaviour ceases. It is deeply offensive, unacceptable behaviour and it is unAustralian.

Time expired.

PEDAL PRIX

Ms BEDFORD (Florey) (17:08): On the weekend of 17 and 18 September, Pedal Prix devotees from all over Australia gathered in the great rural city of Murray Bridge for the third heat in the 2011 series. The member for Hammond and I, in what has become a mutual pilgrimage and highlight of our year, were made welcome by Andrew McLachlan and the board of the International Pedal Prix, all of whom work above and beyond every year to make sure this fantastic event is always bigger and better. To Andrew and his team and all the volunteers who make Pedal Prix happen, and particularly to UniSA and all the other sponsors, we all say a very big thank you.

I want to give the house a few Pedal Prix facts. The lap is 2.15 kilometres. There are four categories: category 1 is primary (up to and including year 7), which allows 20 riders per vehicle; category 2 is junior secondary where riders are under the age of 16 before the first day of competition and up to 14 riders are allowed; category 3 is senior secondary where everyone is under the age of 19 with up to 12 riders in a team; and category 4 is for those who exceed the age limit of category 3 and they are private or non-institutional teams, and this is where all the fast riders and fast machines are, and we have up to 10 riders per vehicle in this category.

Fair skies greeted us this year, although a strong wind caused some concern. The start saw 215 vehicles on the grid to begin the 24 hours of challenge to human and machine. It would be wrong to say 'human' and indicate only one person as responsible for an individual bike's performance as each machine has a strong team behind it. People build and power the machines and for every rider on each team there are people cooking and feeding, maintaining the bikes, controlling the fitness and IT needed to get the team to the grid and, of course, all the logistics and transport people who move the entire team around South Australia.

Thousands of people attended this year, as they do each year, for it has become one of the state's most anticipated and well-loved events. Some Pedal Prix enthusiasts have been going for well over 20 years, and every year people attend or participate for the first time, boding well for the future.

Florey is well represented in the Pedal Prix. Modbury High School had four teams: Cheetah came sixth in category 3 and 25th overall; Wildcat, 19th in category 4 and 33rd overall; Pink Panther, 24th in category 3 and 74th overall—that is a girls' team and they came seventh overall in the girls' section; and Lynx came 26th in category 2.

The Heights School had Odyssey, who came 37th in category 3; Quasar, 40th in category 2; Harsky & Such, 26th in category 4; and Phoenix, who came 81st in category 1. The Heights School had a team in each category.

I am terribly proud of the Chilli Peppers of East Para Primary School. They came eighth in category 1, 82nd in their section and, actually, 83rd overall in the entire competition. Ardtornish Primary School, just one street out of Florey, had the Ardtornish Rockets, who came 54th in category 1. St Paul's College, also very close to Florey, came 12th in category 3 and 43rd overall.

Of nearby schools, Golden Grove came 26th in category 3. Gleeson did the best of them all, coming ninth in category 4 and ninth overall. Emilio came 14th in category 3. Pedare college had Laser, 16th in category 3, and I must mention the sponsor, UniSA. They came 23rd in category 4.

I would also like to put on the record the fact that the Scotch College girls team won the national title for the third year in a row. The girls, who are all in years 8 to 10, competed with their aerodynamically-designed carbon fibre vehicle, which was pretty speccy, and they took that to the third round in Murray Bridge.

Their three wins have never been matched in any division in the competition, according to the article in *The Advertiser* on 27 September, which also mentioned that the Australian human-powered series began in 1984. So, it will not be long before they are having their 30th anniversary, and I urge all members to get behind the schools in their area who compete in this event. It is the most fantastic day and, for every person riding a bike or every team there, there are dozens and dozens of supporters from each of their schools. I really commend Pedal Prix, thank wholeheartedly everyone involved with the event and look forward to seeing them all again next year, particularly at heat 3 at Murray Bridge.

WORK HEALTH AND SAFETY BILL

Adjourned debate on second reading.

(Continued from 28 September 2011.)

The Hon. I.F. EVANS (Davenport) (17:13): I am continuing my remarks as the lead speaker on the Work Health and Safety Bill, following its adjournment when the house was last sitting. Leading into the adjournment, as part of my contribution on the last day of sitting, I was talking about the Australian housing industry being largely made up of subcontractors, particularly the South Australian Housing Industry Association, and how this particular bill was an attack on the subcontracting system and how that would ultimately put up the cost of housing in South Australia as a result.

I talked about the 5,000 pages of codes and 600 pages of regulation, and the Housing Industry Association has done independent work to look at the extra cost on housing within South Australia. I refer to a document presented to the Housing Industry Association on 23 September, so only a month ago, from Rider Levett Bucknall.

Rider Levett Bucknall are the same people the government has used to cost the Adelaide Oval upgrade, so the government thinks they are a credible source, I think the Housing Industry Association believes they are a credible source, and I think the opposition believes they might be a credible source. They have done some work on the cost of compliance with the model Work Health and Safety Bill. They say that they have reviewed the document and they summarise the cost as follows.

The Housing Industry Association has done its own costings and believes that under its modelling the price of housing would go up; for a single-storey house the housing industry predicted $15,940. Rider Levett Bucknall estimate $15,476. For a double-storey home, the Housing Industry Association estimated $22,600 and Rider Levett Bucknall estimate an increased cost of $21,918.

The Rider Levett Bucknall estimate is based on the competitively tendered rates and conditions applicable to the residential construction market as of September 2011, and surprisingly the estimate does not include anything to do with the GST or indeed a builder's margin. Add the GST, add the profit margin and you will get a significant increase to the cost of housing as a result of this particular provision.

In fairness to the house, the increasing cost is not in the legislation itself; it is ultimately in the regulations and the codes that are attached to the legislation. As always, the devil is in the detail and the increased cost is in the regulations. The increased costs primarily come about through a whole range of new requirements or amended requirements of the Housing Industry Association in relation to what they now have to do under this bill which they would not necessarily have had to do under the previous legislation.

In regard to site preparation, they are talking about site fencing—all sites need to be fenced now—all-weather access, rubbish removal, induction audit and site management. They are talking about traffic management for residential buildings, different requirements for plumbers in relation to trenching, different scaffolding requirements in relation to ceiling fixers, and different requirements for truss erection, tile and sheet roofing construction and gable construction and painting.

They are talking about different requirements for brickwork, and for the rendering of cables. They are talking about different requirements for scaffolding for all trades, different design requirements as a result of these issues, and other costs such as a requirement to hire a cherry picker if you want to put on a solar hot water service, air conditioning or an evaporative cooler.

These are not my estimates, although I declared to the house previously that I was from the building industry. These are the estimates from the Housing Industry Association, and the reality is that they will push up the cost of housing as a result of this particular provision introduced by the government which is changes to the work and safety act or the occupational health and safety legislation, as some would know it.

The government claims and SafeWork SA claims that they have done their figures. I challenge the government to release the figures and show that they have been done by a licensed quantity surveyor, or by a quantity surveyor from the building industry, and not from a best-guess consultant. I challenge the government to release the figures, done by a quantity surveyor who is familiar with the housing industry, and let us see what they say about the increase in costs this is going to put on to the housing industry.

There is absolutely no doubt in my mind, having come from that industry, having worked in it for many years, that this legislation, through its codes and its regulations, is going to increase the cost of housing significantly, all on the basis of harmonisation, that there is this great love that all of Australia needs to be the same. All in the great name of harmonisation is this cost being imposed on South Australians.

We have had our occupational health and safety system in place for years, that has worked reasonably well, but for some reason the government wants to harmonise laws nationally. The reason tends to be that those businesses that trade across the states want to have the same regulation. The problem I have with this in terms of this debate is simply this: according to the government's own figures, of the 110,000 small businesses that exists in South Australia that are

going to be under this particular provision, because it applies to all industries, not just the building industry, only 6,000 trade across the borders. Only 6,000, according to the government's own figures, trade across the border.

The Hon. J.J. Snelling interjecting:

The Hon. I.F. EVANS: The Treasurer interjects: how many workers do those people employ? They would employ a significant number because they tend to be the larger employers. I accept that they certainly have a significant number of employees or, indeed, they use a significant number of contractors. However, all the other 104,000 businesses in South Australia employ a lot of people too. My own family's retailing business run by my sister has six or seven shops and must employ 30 or 40 people, and there are thousands of those out there.

I do not have the figures in front of me, but the Treasurer happens to be the minister for employment, or has access to the details at least for the employment figures. I will invite the Treasurer to bring those figures back. However, regardless of the number of employees, the great tragedy is this—and I will challenge the Treasurer to produce the figures. We are going to be here very late tonight because I have a few documents to go through. We see that the federal government—

Mrs Geraghty interjecting:

The Hon. I.F. EVANS: Well, the member for Torrens need not interject; it will only hold me up. The federal government did a regulation impact statement for the new laws. I am not sure whether the other side of the house is aware of this, but what does the impact statement on the cost of business say? It states that for the single state business—so those 104,000 businesses that I am talking about—the outcome is not clear. I am quoting from page 3 of the executive summary of the regulatory impact statement.

The government has waltzed in, gone to the ministerial council meeting, and the new minister, very enthusiastic to impress his colleagues, has signed up for the harmonisation program, and the regulatory impact statement at the federal level states that the impact on the 104,000 businesses that do not trade across borders—so, your butcher, your baker, your candlestick maker, the little operator in South Australia—cannot be clear about what the impact is. Well, I can tell you what the impact is going to be on the housing industry, because they are your plumber, your electrician, your plasterer, your bricklayer, your ceiling fixer, your roofer. They are the small businesses that drive this economy, and the impact on those people is going to be a significant increase—over $15,000 for a single-storey house and over $21,000 for a double-storey house.

I challenge the government to release the figures that show the impact on those businesses that do not trade across borders—the 104,000, because, for the officers who push this harmonisation, I say go and look at what happened when we went to a national industrial system, and the cost to the retailing industry was significant. I know one business that, for exactly the same roster, hour by hour, person by person, the increase costs were over $30,000 a year, and for that the business got the joy of saying that their industrial relations law was the same as Bundaberg and Bunbury. The Blackwood business got to say, 'We're the same as Bundaberg and Bunbury.'

Well, they are pretty excited about that—$30,000 extra in costs. And exactly the same thing will happen under this provision, under this law, because the government cannot produce a regulatory impact statement that shows what is going to happen to those businesses that trade within the one state. The Regulatory Impact Statement says:

> The object of harmonising the work health and safety regulations are as follows:
>
> - Reduce compliance costs for business;
>
> For multistate businesses nationally, consistent acts should equate to lower compliance costs.

Well, we are yet to have that proven. It then goes on:

> For single state businesses the outcome is not clear.

They are not my words, they are the words of the federal government. But all those small businesses out there that are struggling under the highest taxes, the worst WorkCover scheme in Australia and the carbon tax, all those things that are making business very difficult, you can relax because, once we harmonise all the laws and bring in this extra cost to you, what the system is going to say, what the legislation promises, is that they will do an analysis of the actual impacts in 2015, and that is on page 4.

They have had every level of government in Australia looking at this, every state government, every federal government in South Australia looking at this, and through all of the Public Service, through all of the energy of the ministers there is not one that can produce a set of figures that is going to say to the single state business what the increase cost is, but they have got the capacity to do it in 2015—'We have got the capacity to do it in 2015. Don't worry, put it in first, then we'll tell you how much it's going to cost.'

If they have got the capacity to do it in 2015, then why have they not got the capacity to do it in 2009, 2010 or 2011 when this has been discussed? Why have they not got the capacity? It absolutely staggers me as to why you get to this point in the debate and have that issue not resolved, because I suspect that there are many employees in the single state business—if not more than those businesses—who trade across borders, and there has been absolutely no analysis in relation to the cost on those businesses.

With all due respect to the industry associations, it is the one-man and two-man operations that sometimes struggle to be totally informed about the changes that are being made.

The theory behind this legislation is that Australia needs one set of occupational health and safety laws because that is going to somehow deliver benefits, and I think there will be some argument from those who do trade across borders about harmonisation and reduction in costs. But where are we up to, in actual fact, when we look at the debate around Australia? I refer to an update that I received today, but when it was issued I am not quite sure. This is a summary of the harmonised law around Australia dated October 2011, so it was issued this month. It says:

> The Victorian government last week caused great surprise when it called on the commonwealth to delay the implementation of [this particular act in Victoria] scheduled to commence on 1 January 2012.

The reason for that is that the Victorian government is going out to do exactly what I have called for. It is going out to model the cost on single state businesses to see what the actual effect is. Well done, Victorian government! This note goes on:

> In 2009, the federal government, in consultation with the states and territories, agreed to establish a new set of national work health and safety...laws.

I will repeat that, 2009. I will reinforce the point. From 2009 to 2011 is nearly three years. Not one bureaucracy has done the calculation of the cost on the single state business but they are going to do it within 24 months if the bill gets through. It states:

> In 2009, the federal government, in consultation with the states and territories, agreed to establish a new set of national work health and safety...laws, to commence 1 January 2012.

It goes on to give a summary of each jurisdiction:

> With only three governments (Australian Capital Territory, New South Wales and Queensland) having passed legislation to date—

Even the commonwealth has not passed this legislation. It wants to start on 1 January, which is eight or nine weeks away, and even the commonwealth has not yet passed it. New South Wales and Queensland have passed it and—

> with...parliaments closed from mid December through to the beginning of February, the proposed national commencement date of 1 January 2012 is now unlikely to be achieved.

SafeWork Australia published the model act in June 2011 following a consultation process. It goes on:

> The following table summarises the current position of each state and territory and actions to date:

It is a fascinating read. It says that the Australian Capital Territory passed it on 6 June, with the commencement date yet to be proclaimed. New South Wales passed it on 7 June, to commence on 1 January, but it made changes to the model law so the model law is not the same in New South Wales as is being proposed in South Australia or Victoria or Western Australia or Queensland. It is the same nowhere. They are harmonising the law except it is not in harmony in any of the states. The Northern Territory has no legislation. The Queensland act was passed on 29 September with a starting date yet to be proclaimed.

South Australia reads like a tale of woe. The bill was introduced into the lower house on 19 May 2011. The debate on the bill was adjourned at the last sitting of 28 September 2011. They are hoping that we will pass the bill in October. The upper house will then have to sit six sitting days in November to debate and pass the bill.

Tasmania has no legislation. Victoria has no legislation and will not commence on 1 January 2012. Western Australia has no legislation and will not commence on 1 January 2012. At present, none of the states or territories has released the regulations that are associated with this bill. There are 600 pages of regulations that attach to this bill and none of the states has yet released it. As I said earlier in my contribution about the increased cost to business, the devil is in the detail, it is in the regulations, and there are something like 5,000 or 6,000 pages of codes. A lot of the increased cost is in the codes.

Although South Australia was the first to introduce the bill on 7 April 2011, the passing of the model act has stalled, initially by the resignation of the relevant minister and more recently by debate over OH&S union right of entry and the removal of the right to silence which had not previously featured in South Australia's OH&S laws. South Australia is also divided over increased penalties and the use of the concept 'persons controlling a business or undertaking' which it is argued is unclear in comparison to the current South Australian concept.

Western Australia has made it clear that it will not be in a position to pass the legislation by 1 January 2012. While the vast majority of the proposed model laws are likely to be adopted, the government has indicated that it will not accept an increase in penalties, union entry rights and the reverse onus of proof in discrimination matters. The Western Australian government also has concerns over the power of health and safety reps to direct the cessation of work.

The Tasmanian and Northern Territory governments have confirmed that they will introduce the bills in late October 2011. These two proposals may, however, be delayed following Victoria's recent request for postponement. While the initial commencement date of 1 January 2012 may not be achieved, this briefing to business says that they hope to get the green light some time in the next year.

My point is twofold. One, we do not need to rush this legislation because no other state is going to be starting it on 1 January 2012 and that will give the government a chance to go away and do some sums on the cost to business. The second point is that the legislation will not be harmonised. Every state is going to characterise the legislation to suit its own purposes. If you are going to do that then the question is why not leave the key elements of the existing legislation in place? Why go through the process to increase costs to the business community?

You would assume that the reason you would be introducing occupational health and safety legislation would be because you wanted to reduce workplace injury, so I thought I had better check to see whether workplace injury is going up or down in South Australia. According to WorkCover's annual report—WorkCover dealing with the claims arising out of workplace injury—the number of claims has gone down.

They have gone down 26,610 in the 2001 financial year; then 25,050 in the 2001-02 financial year; 24,030 in the 2002-03 financial year; 24,720 in the 2003-04 financial year; 24,070 in the 2004-05 financial year; 22,660 in the 2005-06 financial year; 21,930 in the 2006-07 financial year; 21,000 in the 2007-08 financial year; 19,710 in the 2008-09 financial year; and 19,740 in the 2009-10 financial year. There has been a slow decline in the number of claims and over that decade it has essentially gone from 26,000 down to 19,500, so workplace injuries in South Australia are going down.

Workplace injuries are going down so why should business be hit? Why should taxpayers be hit with an increase in costs when workplace injuries have actually gone down? They are not the opposition's figures, they are straight out of the WorkCover annual report.

You can imagine that a lot of submissions have been given to the opposition. The Treasurer will be pleased to know that I do not intend to read all of the submissions, but I can if he wants me to. I want to touch on some of the submissions because they will highlight a few points. The Australian Hotels Association has written to the opposition in very simple terms. In a letter of 26 September to Hon. Mr Lucas, lead speaker in the other place, and the shadow minister handling this bill on behalf of the opposition, they say:

> We write to you in relation to the model Work Health and Safety Bill. We have well-founded concerns about this bill in its present form and ask that you vote against its adoption.

So, the hotels industry is opposed to the bill per se. Business SA wrote to the opposition on 12 September this year saying they are concerned with the bill in its current form and that it will not provide suitable legislation for South Australian workplaces, and they state:

But rather it removes some important rights of employers and, it has the potential to create confusion amongst employers.

Of the major issues of concern are:

1. Right of Representation for Employers—there is an express right of representation for workers but not for Employers (known as a Person Conducting a Business or Undertaking (PCBU).

2. The Control Test—currently an employer is responsible for safety where the employer has 'control' over the matter. Under the proposed Bill, the 'control test' is removed and the obligations on the employer are more onerous and somewhat ambiguous. This is likely to lead to litigation and new precedent case law. In addition, it contradicts the ILO Convention No.155, article 16 (which I have no doubt is one of the Treasurer's favourites).

3. Definition of 'any person'—in regards to Health Safety Representatives (HSRs), the Bill enables a HSR to 'enlist' the assistance of any person regarding a safety issue. In our view this could lead to a HSR having the media called in to assist by placing a public scrutiny on an employer/worksite. Last year at the Desalination Plant a safety delegate and the Union attempted to have the media go on site when there was a fatality, however, were precluded from doing so because of the current OHS legislation.

4. Penalties/Infringement Notices and Enforceable Undertakings—the quantum of Penalties and Infringement Notices is excessive, particularly in regards to small business.

5. Enactment date—the proposed date of enactment of the SA WHS legislation is 1 January 2012. However, given the significance and complexity of the new legislation, businesses and in particular small business, will not be ready by 1 January 2012. The enactment date should be delayed until 2013 (as will be the case in WA) or at least until 1 July 2012.

6. The right to silence and protection from self incrimination—the proposed Bill seeks to remove this right. This is a right at criminal law and the WHS prosecutions will be criminal matters.

7. Union Right of Entry—there is no right of entry under the current legislation and there has been no evidence to suggest why such a right of entry is necessary.

Business SA has clearly set out their concerns with the bill, and to my knowledge there is nothing that the government is proposing that goes any way to dealing with those matters.

The Housing Industry Association has called on the government to delay the flawed bill. They put out a press release on 12 September urging the state government not to push ahead with the proposed Work Health and Safety Bill in the current session of parliament; so they want it put off for some time. Their press release states that the bill is significantly flawed. It fails to improve safety requirements in South Australia but adds enormous complexity and cost, particularly in regard to residential construction.

The Victorian government today (12 September), questioned the cost benefit of the model act and the lack of timing for industry to prepare for changes. The Rann government has claimed the bill is in response to national harmonisation, however, not all states and territories have passed the act and those that have done so have made significant changes to the model act to the extent that rather than there being harmonisation there is indeed a discordant chorus.

There is no demonstrated need for the changes given that South Australia generally enjoys a good safety record, particularly in residential construction and particularly when compared to other states and territories. The cost to the home owner in South Australia will be considerable, and I have gone through those costs earlier in my debate.

These added costs will be imposed upon an industry which is already on its knees with the lowest number of approvals for many years. The industry has seen significant layoffs and unemployment, not only among builders but also subcontractors, manufacturers and suppliers. So, they call on the government, in line with the Victorian government, to re-think its position on the timing of this bill and not to add further costs to the construction industry at a time when many of its members are struggling to survive. So, the Housing Industry Association wants it deferred.

Something the minister might want to address in his response is the issue of the discussions that were had at a national level about whether these laws should not apply to the residential building sector. I understand that at a national SIG meeting there was a move to remove housing from the new national regime. Tasmania, the Northern Territory, the ACT and ACCI voted in favour, while Queensland, Victoria, New South Wales, TLC and South Australia voted against it. If the minister could confirm whether that occurred and the reasons why, then I would be interested to read that in his second reading response.

I mentioned earlier the level of workplace injuries falling. I make the point that if you look at the WorkCover SA statistical review part 1, 2008-09, total claims by years for registered employers,

in the registered employers section, which are mainly the small businesses—it is the big businesses that are self-insured—the total claims in 1993-94 were 40,618. This particular chart goes up to the year 2008-09, there were 20,361 claims.

The level of claims has halved. It has halved in 15 years. That is a cooperative effort, with the parliament through legislation, governments of both colours through education programs, employers and employees working together, and the number of claims has halved.

It is hard to make an argument, and I have yet to hear the argument, that the South Australian occupational health and safety laws are not working. Show me another state that has reduced its injury rate by half over that period. I would be happy for the minister to bring back those particular stats in his response in due course.

If you want to look at the level of claims for the self-insureds, which is the bigger end of town and tend to be the bigger employers, which the Treasurer was interjecting about earlier, they would be part of the 6,000 businesses in South Australia that trade across borders. In 1995-96 there were 8,687 claims and in 2008-09 there were 7,000 claims. So, their claims have gone down by 1,600 over that period: 1,600 in 8,500, rough enough, 20 per cent.

So, you have the small end of town registered with WorkCover, and the evidence shows that the injury rate has halved; and, on the big end of town, which this legislation will help, the injury rate is reduced by 20 per cent. It is hard to mount the argument, in my view, that the health and safety laws are not working in South Australia, but we are going to change them for the sake of being the same.

I mentioned in my previous contribution to this debate a couple of weeks ago, before it was adjourned, that I worked in the building industry and I worked as a chippie for some time. For those who are not familiar, that would be a carpenter. Although in fairness, I think my brother would argue that I did not actually work as a carpenter.

Mr Williams: And when you did you were more like a firewood producer.

The Hon. I.F. EVANS: No, he reckons I was the gofer. I have here the comments from Ken Phillips of the contractors' association of Australia. This is an association that looks after the independent contractors throughout Australia. This is the group that will be very much impacted by this bill. He argues as follows:

> Australia's OHS laws are specific to each state and territory. They generally comply, however, with international principles that state everyone is responsible for safety according to what people 'reasonably and practicably control'. Those three words, locked together, give each person a clear sense that they must be responsible for safety.
>
> There is also a good thirty years of legal precedent supporting what reasonable, practicable control means when it comes to OHS prosecutions.
>
> New South Wales was the standout exception. NSW laws held that employers were automatically guilty whether they had control or not, even if they had acted reasonably or practicably. It was this NSW disconnect from the rest of Australia that caused pressure to harmonise the laws across Australia.

It was the laws in New South Wales that were so out of kilter with the rest of Australia that they have signed off on harmonisation. So, the rest of Australia is going to suffer a penalty just because the union movement in New South Wales has been able to introduce a system through the governments of the day to make it so much tougher and more difficult to operate in New South Wales. Mr Phillips continues:

> When all governments agreed to a harmonised model in 2009, it appeared that the NSW model had been dropped. This is where I declared victory for the white hats. The NSW laws pushed a focus away from prevention and systematically-caused injustices in prosecution.
>
> On the surface, Australia's governments appeared to agree to embed the principles of 'reasonable and practicable control'. What's unfolded, however, in the detail of the new model laws is something different. The laws include 'reasonable and practicable' but have removed 'control'. That is, everyone is to be held responsible for safety according to what they consider reasonable and practicable. It doesn't make sense, as I detail here. Essentially, no one will be sure if they are responsible for safety or not.
>
> Instead, you will be held responsible if you are a 'person conducting a business or undertaking', or PCBU, and if you 'influence' work. This also doesn't make sense. It's a new and untested concept both at law and in a practical sense. It's dangerous because it's confusing for work safety, particularly prevention. What will happen is that people will wonder if they are a PCBU—

that is, a person conducting a business or undertaking—

and wonder if they are responsible for safety or not. People will wonder if they have influence. This sort of confusion is the reverse of what's needed in good OH[&]S laws.

This PCBU concept will also require extensive legal testing before [any] clarity is achieved. My bet is that it will take [some] 15 or so years...several High Court rulings before clarity is achieved. This is not a pathway to good work safety laws.

The harmonisation process requires each state to enact the model laws. [New South Wales] have done this. It's an improvement for them [New South Wales] because they've rid themselves of their prior bad laws.

But as the realisation of the flaws in the model...have now spread, implementation is being delayed in Victoria, South Australia and Western Australia at least, and could possibly not even occur. My analysis comparing Victoria's current laws to the model laws, and South Australia's laws to the model laws, shows [some] stark differences.

In the way the harmonisation process has been handled, there's a sense of...sleight-of-hand con in play. The federal government pushes harmonisation seemingly for harmonisation's sake, without a full debate over the fundamental new area of law being created. This is not the way work safety laws should be handled.

Further, sitting deep inside the model laws are disturbing aspects not at all discussed. [The] OH[&]S law is [a] criminal law. Yet the model harmonised law takes away basic rights of criminal justice—namely the right to silence and [the] protection from self-incrimination.

There's more: the harmonised laws allow a work safe authority to seize a business without court supervision. This is not something that exists in current laws.

The Victorian government has said they agree to harmonisation on the condition that the new laws do not damage work safety or [business]. My analysis says...this would be the outcome.

In South Australia, attempts to introduce the harmonised laws were defeated in the Upper House early this year.

I think, in actual fact, he is wrong there. I think they were withdrawn rather than defeated.

The government is trying again but the opposition and independents continue to see [the] major flaws.

There's a simple principle that must be in place. [Harmonisation] of...safety laws should only occur where an improvement in the work safety environment can be demonstrated. Anything [else], risks work safety. These new laws put safety at risk.

I think Mr Phillips makes a very good point and the point that the government has failed to illustrate is, given that workplace injuries have reduced over the last 15 to 20 years, both in the small business sector and the self-insured sector, where is the evidence that these laws will actually produce a reduction in the workplace injuries? Then, if it does produce a reduction in workplace injuries, where is the evidence from the government, or the research from the government, about the costs?

I mentioned earlier the regulatory impact statement put out by the federal government, and the minister can take this on notice. Industry groups are suggesting to me that the regulatory impact statement that came out with some savings at the national level was an internet survey of less than 100 companies. I would be interested to get the information. I do not know whether that is true. That has certainly been put to me.

I would be interested in the minister coming back in due course to let the parliament know how many businesses they surveyed, whether they were big or small businesses, as far as employees go, and the state make up. I wonder how many South Australian businesses were interviewed as part of the regulatory impact statement undertaken by the federal government.

Ken Phillips has put out a number of comments on this and here is another one where he was talking about the harmonisation process. In fact, I think I have just covered that territory, so I will not go back there.

A further aspect I want clarified from the minister, and I raise it now so he can come and give me a detailed response as part of the second reading contribution, is the issue of whether householders—

[Sitting suspended from 17:59 to 19:30]

The Hon. I.F. EVANS: Before the very enjoyable dinner break, which may add to the length of the contribution, I was about to raise the impact on households of the health and safety bill as proposed. I am quoting from the report of a Queensland consultant, which has given a written brief to its clients on the national OH&S harmonisation safety concepts question-and-

answer. It raises the following issue: are at-home workers (for example, nannies, cleaners and, I dare say, gardeners) considered workers? The answer to that question, according to this consultant's report, is yes:

> In this situation, where an individual ('the resident') chooses to employ a worker rather than engage a contractor for domestic reasons, the resident is entering into an employment relationship and exercises a higher degree of control over the work being carried out by the worker. While the resident is not employing the worker as part of a business, employing the worker to carry out certain duties at home would be regarded as an undertaking. Consequently the resident has a duty of care as a PCBU under the new laws and the person employed by the resident has the worker's duty of care.

The issue here becomes twofold. Firstly, is it possible for a contractor to be deemed an employee under any of the current acts? Is it possible for a contractor to be deemed an employee if you have an ongoing relationship with the contractor? For instance, I know that in my business, if I employ a casual on a regular basis over a two-year period, the casual becomes permanent. I just wonder whether a similar thing can happen with a contractor, whether if you contract the same contractor on the same basis over a period of many years an employee/employer relationship then develops.

The second point I want to make is what happens with investment properties? With investment properties, I am not the resident. With the investment property, I am conducting a business. As a business person, asking a contractor to go in and fix plumbing, painting, electrical—whatever—is the relationship different? Is the relationship different between the home resident and the contractor and the investment property and the contractor? There is a very important provision in this bill and that is that the wording has been changed to include a nebulous word, 'undertaking'.

If you are involved in doing an undertaking, then the new laws kick in. There are certain obligations on the person doing the undertaking and there are certain obligations on the person in the facility or on the site where the undertaking is taking place. I would like the Treasurer to clarify for the house what the circumstances are for the home resident and what the circumstances are for an investment property. I think that will be of interest to the committee, when we get there.

The other issue that is of concern to the opposition is the issue of volunteering. This particular discussion paper, put out by Safety Concepts, raises the issue of how this bill deals with volunteers. It raises the question: do volunteer businesses have an obligation now? It answers it in this way:

> In answering this question, a distinction needs to be made between a charitable or community service organisation that does volunteer work and a 'volunteer association' under the...act. A charitable or community service organisation such as an RSL or Blue Nurses, for example, because it is usually incorporated and conducts its operations with a degree of organisation and repetition, does conduct a business or undertaking and will have duties under the...act.
>
> On the other hand, a 'volunteer association' means a group of volunteers working together for one or more community purposes where *none* of the volunteers, whether alone or jointly with any other volunteers, *employs* any person to carry out work for volunteer association. Such a group is not regarded as conducting a business or undertaking for the purposes of the...act, and therefore the volunteer association does not have a duty of a person conducting a business or undertaking [a famous] PCBU under the act. An example of a volunteer association not intended to be regarded as a PCBU would be a swimming club at the local primary school which is run by parents and no other person is employed by the club.

Let me walk through that, because this needs a lot of thought. There are lots of volunteer organisations out there, some incorporated, some not incorporated. A lot of community organisations have vastly different structures. Some are sole clubs, some are members of associations, and some are members of national organisations. I want to walk through each one of them, because I, as the house would recall, have a strong interest in the volunteer community, coming from that background. So, let's walk through it. It states:

> A charitable or community service organisation such as an RSL or Blue Nurses, for example, because it is usually incorporated and conducts its operations with a degree of organisation and repetition, does conduct a business or undertaking and will have duties under the...act.
>
> On the other hand, a 'volunteer association' means a group of volunteers working together for one or more community purposes where none of the volunteers, whether alone or jointly with any other volunteers, employs any person...

The local netball association has raised this with me. The local netball club pays a coaching fee—pays for a coach. Does that mean that the volunteers, alone or jointly, have then employed a coach and therefore the netball club comes under the coverage of the bill? What about the local cricket association that has paid umpires? Does that mean that the cricket association executive and, indeed, the clubs that make up the association through delegates to the association

committee, then come under this particular provision? As the volunteers, through the club employing the coach, or the volunteers through the club as a delegate to the association, has employed the umpires and the coach—what then is it?

Look at local football. In amateur football and country football there are players who get paid $1,000 a game, $1,500 a game; so, over a season they would get $25,000 to $30,000. Does that mean that, under this provision, the local football club, if it is paying players and paying coaches, suddenly comes under this provision? The minister can clarify that for us.

The other option relates to the service organisations. This says that 'none of the volunteers whether acting alone or jointly with any other volunteers employs any person'. I was national president of Apex. Nationally Apex employed a chief executive officer. Through the membership fees of the 18,000 members, it employed the chief executive officer. The local club to which they were affiliated (in my case Stirling Apex or Blackwood Apex)—those clubs—did not directly employ, but the associations to which they were affiliated did employ. In fact, they employed a membership officer, a chief executive officer and an accounts officer. Is the Apex club suddenly at the local club level caught by the legislation, even though the club itself does not employ, but as a collective across the nation it does employ, or, indeed, a collective across the state it does employ?

These things need to be clarified because it is simply unclear. It is also unclear what happens to unincorporated associations. This particular discussion paper says, 'Is a volunteer a worker?' The answer to that question, according to this discussion paper, is:

> Yes, the definition of a worker includes a volunteer. The act also defines a volunteer to mean a person who is acting on a voluntary basis irrespective of whether a person receives out-of-pocket expenses, therefore volunteer workers have the duty of workers under the new laws, for example:
>
> - to take reasonable care for their own health and safety; and
> - comply with reasonable health and safety instructions.

If you were receiving out-of-pocket expenses, that is one thing, but what happens if you were receiving a payment which is greater than your out-of-pocket expenses? We would like the Treasurer to explain in detail the issues about exactly how this particular provision is going to apply to volunteers. The Treasurer might like to address that issue.

I think that we might be coming back tomorrow to debate this bill, so, in fairness to the Treasurer, I will quickly put some other questions on notice so that his staff, who have absolutely nothing to do tonight, can have a look at these matters overnight and see whether they can provide answers in the minister's second reading response.

These questions come from a number of issues, particularly around the issues of control and volunteers—those sorts of things. As part of the harmonisation project, the commonwealth government commissioned two reports from a panel of occupational health and safety experts. The panels were asked to review the OH&S legislation in each state, territory and commonwealth and to make recommendations on the optimal structure and content of the model OH&S act as capable of being adopted in all jurisdictions.

The first report was provided to the Workplace Relations Ministerial Council in October 2008. The second report was provided in January 2009. The ministerial council provided the response to the recommendations to the panel in early April 2009. These three documents set out the basis of the introduction of the model OH&S laws and should be referred to for guidance to the reasoning behind drafting of the current bill. These are the questions that the industry groups have asked me to raise.

> In the first report [on page 30]—

this goes to the issue of 'reasonably practicable' and 'control'—

> the panel discussed the concept of 'reasonably practicable' and the issue of control. At paragraph 5.60 the panel stated 'reasonably practicable represents what can be reasonably done in the circumstances. An inability to control relevant matters must necessarily imply that it is either not possible for duty holders to do anything, or it is not reasonable to expect them to do so. It is in this way that control is at least implied as an element in determining what is reasonably practicable'.
>
> Further at paragraph 5.63, the panel stated 'Control is an inherent element in determining what can reasonably be done in the circumstances. Making express reference to control in the definition in reasonably practicable may have led to a focus on that issue, ahead of other factors noted in the definition.'

At paragraph 5.62 the panel stated 'there has been inconsistency in the interpretation by the courts of control as an element of a duty of care. However, there does not appear to have been inconsistency in the approach of the courts to considering the issue of control in determining what was reasonably practicable'.

The panel recommended that 'control' should not be included in the definition of reasonably practicable.

The question is:

- If 'control' is something that will be considered by courts to determine what is 'reasonably practicable' for any duty holder, would the government please explain why it so strongly advocates that 'control' should not be first principle when determining whether a duty of care exists?

The second question is:

- If the courts have been consistent in the interpretation of control as an element of a duty of care (as suggested by the panel), would the government please provide examples of such cases by reference to case law and to legislation?

In regard to primary duty of care they state:

At paragraph 6.59 of the first report, the panel states that 'defining what is meant by "conduct of a business or undertaking" might be difficult and could cause unintended consequences. We consider excluding certain individuals from the class of persons owing the duty of care to be a preferred approach.'

The questions are:

- If the panel members and the government are not able to define what is a [person conducting a business or undertaking], then how is the ordinary everyday person meant to understand what it means and know whether they are a PCBU or not?
- While it is relatively easy for us to determine who will be a 'person conducting a business', would the government please explain who will be a 'person conducting an undertaking'?
- Does the government concede that the WHS Bill in its current format results in the ordinary person carrying out their day-to-day activities, being a person conducting an undertaking? If not, why not?

The panel recommended at paragraph 6.74 that the primary duty of care should not include express reference to control. It stated 'Every person who is conducting a business or undertaking should owe a duty of care to any other person, worker or other whose health or safety may be put at risk from the conduct of that business or undertaking'.

The panel went on to state at paragraph 6.76 'If a duty holder does not have control over an activity or a matter...then it cannot be reasonably practicable for the duty holder to do anything in relation to it.' At paragraph 6.78 the panel stated 'In this way, the duty of care is limited by the issue of control and it need not be stated in the duty.'

The questions are:

- Would the government please explain why it refuses to insert the concept of 'control' into the primary duty of care?
- Can the government explain how the removal of control as the primary trigger for a duty of care will guarantee worker safety?
- What evidence does the government have that placing the concept of control into the primary duty of care will result in a lesser return on safety for workers?
- What guarantees can the government give that the removal of 'control' from the primary duty of care will not lead to confusion in workplaces as to who has work safety responsibilities?
- Can the government explain how the term PCBU will ensure that everyone in the workplace understands they have a shared responsibility for safety?
- Can the government explain how replacing the tried and tested concept of 'control' with the totally unknown and untested concept of a PCBU will not lead to increases in deaths and injuries in South Australia?

I seek leave to continue my remarks.

Leave granted; debate adjourned.

EDUCATION AND EARLY CHILDHOOD SERVICES (REGISTRATION AND STANDARDS) BILL

Adjourned debate on second reading.

(Continued from 28 September 2011.)

The Hon. J.W. WEATHERILL (Cheltenham—Minister for Education, Minister for Early Childhood Development, Minister for Science and Information Economy) (19:52): I would like to thank all members for their contributions and, in particular, the opposition for its support of the bill. Some of the remarks made, in terms of the issues that were raised by the member for Waite

concerning affordability, have been carefully canvassed in the material that has measured the impacts of these changes on various private businesses.

Certainly, the impacts are not such as to concern the dislocation that the member for Waite has suggested, bearing in mind that the commonwealth government provides a substantial subsidy in relation to childcare payments and those subsidies remain in place. For many, especially low-income families, this amounts to bearing 50 per cent of the cost of child care. I think the overwhelming imperative here is to lift standards in this area.

Increasingly, we have information about the crucial nature of those first five years of life and the way that the environment in which those children are brought up is absolutely crucial to the way in which their brain develops. This not only has an effect on their learning capacity but also their future health trajectories.

The fragile developing brain of a child is something that is uppermost in our minds when we talk about lifting standards in this area. It is certainly the case that the improved ratios—the other standards in relation to child care—will fundamentally lift standards.

This is not just an agenda about the quality of child care in terms of the well-being of children and their future health and well-being, it is actually a productivity agenda about the capacity of our citizens and their ability to participate in our modern society and take their place as citizens in a more complicated and fast-changing world. This is, I think, amongst one of the most important bills that we will deal with in this house. It is part of a national scheme, and there are some significant regulations that will then follow which set out the detail of the improved standards for child care and early childhood services in not only this state but this country. So, I thank members for their contribution and foreshadow our willingness to accept the amendment that the member for Unley has placed on the *Notice Paper.*

Bill read a second time.

In committee.

Clauses 1 and 2 passed.

Clause 3.

Mr PISONI: I move:

Page 7, after line 12—Insert:

> Education and Care Services National Law text means the Education and Care Services National Law set out in Schedule A1 (as in force from time to time);

I thank the minister for accepting the amendment that we would like to insert. Basically, this amendment puts the national law into the act rather than by reference to Victorian law. In other words, this will put the legislation which sits in the Victorian statute books into the South Australian statute books. It will also enable South Australians to go to straight to the law in the South Australian statute books without having to refer to Victoria. It also gives the South Australian parliament—should it make laws for South Australia in Victoria, for example—the ability to deal with it through Executive Council. We on this side of politics believe that the parliaments of Australia should make laws for themselves; laws should not be made centrally through Ministerial Councils.

So, this is really just one additional process that will mean that, if laws are changed based on a national law, we can decide here in South Australia to either opt for it or reject it, but it is up to this parliament to make that decision through the executive and the parliament through the dismissal of regulations, for example.

I note that regulations have been published and there are a separate number of regulations relating to South Australia that are separate or in addition to the national regulations. I do have some questions of clarification on those regulations that I might bring up in another clause of the bill.

Amendment carried; clause as amended passed.

Clause 4.

Mr PISONI: Clause 4 describes early childhood services as meaning in-home care services. I am just wondering whether you are able to give the house some guidance as to whether that relates to babysitters, whether they be amateur or professional, or where there is a particular size, whether they are included in the in-home care services.

The Hon. J.W. WEATHERILL: Yes, you are right. It is licensed agencies that were generally known as babysitting agencies providing services in-home. So, it is not individual babysitters, like a friend who might come into the house or anything of that sort.

Mr PISONI: Would a university student, for example, who might babysit two or three nights a week over a period of years, need to be registered and comply?

The Hon. J.W. WEATHERILL: No, certainly not.

Mr HAMILTON-SMITH: Excuse me if this has already been put, as I have just arrived in the chamber. The definition of long day care under clause 4, how is that provided for? Does long day care, particularly private long day care, fall under the definition of an early childhood service, even when it is clearly a childcare service?

The Hon. J.W. WEATHERILL: I think this relates to a question that you raised in your earlier contribution: why is there no mention of long day care centres in the definitions of the bill? Clause 4 details the services in South Australia that are not within the scope of the national law, and they include:

(a) in-home care services;

(b) occasional care services;

(c) rural and mobile care services;

(d) family day care services that are not education and care services within the meaning of the Education and Care Services National Law...

(e) any other service declared by the regulations not to be...

but does not include a service declared by the regulations not to be included...

So, the four service types which are within the scope of the national law, will be required to meet the new national standards as defined in the national law which South Australia is adopting. These include all centre-based long day care services, preschool services, out of school hour care services and family day care schemes.

Mr HAMILTON-SMITH: The national law which we will be adopting is not incorporated into the bill itself. What you are saying is that there is a parent bill (a national bill or a national law) which we are adopting which is not before us in the bill folder at present.

The Hon. J.W. WEATHERILL: That is right, that by virtue of the amendment will now become part of the act.

Clause passed.

Clauses 5 to 8 passed.

Clause 9.

Mr PISONI: This clause refers to the fact that this bill recognises that all children should have access to high quality education and early childhood facilities and services. Is the minister able to put on the record what are the federal subsidies for parents who will be using these services and whether subsidies will increase when the new regulations come into play?

The Hon. J.W. WEATHERILL: The residual and schooling services set out in clause 9 are not services provided within the scope of the national law and so therefore do not attract the federal subsidies.

Mr HAMILTON-SMITH: This clause is pivotal to the bill. As I look through subclauses (1), (2) and (3) of the clause on page 12, it explains clearly that the objects of the act are to provide for the regulation of early childhood services, and it goes on to emphasise the educational and early childhood outcomes. That is commendable—and this relates to my second reading speech, but it is a pivotal point—but at no point in clause 9 do I see an emphasis in the objects and principles of the act about providing long day care that is affordable and is child care for working mothers. In other words, the emphasis of clause 9 appears to be all about educational outcomes. Why does not this clause include a very clear statement that an object of the act is to ensure that working families have access to affordable child care so mum can go and get a job?

The Hon. J.W. WEATHERILL: I suppose at its most fundamental level it is because child care has become about a bit more than that; it has become about the healthy development of children. The real answer is that the clause you are talking about really applies to the state-

regulated services, whereas clause 9, in the objects and principles of the national law act, deals with child care, long day care, as you have described it. If you go to clause 9, objects and principles of the Education and Care Services National Law Act 2010, the thing which has now been incorporated as part of the schedule, you will see has different objects and principles which provide for the description of the purposes for the legislation. The question remains of caring for children in a way which promotes their wellbeing and their developmental outcomes, despite the fact that there is a collateral benefit and collateral purpose of providing care while parents are at work.

Mr PISONI: I come back to the object and principles. First, I clarify that in the clause it claims that the bill recognises the rights of parents to access a diverse range of education and early childhood service providers.

Is there any obligation on the government to deliver on that? I am thinking of either delivering it directly or indirectly, and I am particularly thinking of regional South Australia. I know that when I toured regional South Australia with the work life balance select committee that it was an area very much of concern. It was raised. I remember speaking to a single mother who was a policewoman in Port Pirie who had enormous difficulties without family support in having her two boys looked after when she was on duty. I am wondering whether you are able to advise the committee if there is in fact any obligation to facilitate, if not provide, those types of facilities in regional South Australia and other hard-to-deliver areas under this bill?

The Hon. J.W. WEATHERILL: The obligations that fall on the state government in relation to the provision of children's services are set out in the Children's Services Act and those obligations apply to preschool. What we have here is the regulation of all of the state government services and so what is described here as an objective is not an objective to actually make provision as it is in the Children's Services Act but, as the language here is, to recognise the rights to access a diverse range of education and early childhood service providers.

There is an acknowledgement of expectations by parents in this regard and the act seeks to assist and to some extent facilitate that, but there is no obligation to provide as there is for preschool services. This is a much broader remit than the Children's Services Act which provides for a particular set of obligations in respect of preschool services.

Mr PISONI: I want to bring you back to the regulations, if I can. I note there are specific regulations for each state. There are the national regulations and there are specific regulations for each state. If I can use a couple of examples. My reading is that they relate to this clause. Early childhood teachers, preschools—am I in the right area? Family day care, educational qualifications?

The Hon. J.W. WEATHERILL: That is under clause 10. That is dealt with in clause 10.

Mr PISONI: I am happy to move to clause 10 unless the member for Waite has more on clause 9.

The CHAIR: So, you are still on clause 9.

Mr HAMILTON-SMITH: Yes, I am still on clause 9. In fact, it is a fairly large clause. As you know, minister, my concern is with the affordability of child care for families as a consequence of these changes. My advice is that at present the cost of day care in some centres averages at about $80 a day. I would be interested in your confirmation of that. I am advised that this act and the subsequent regulations could push up the cost of that anywhere between $13 and $20 a day. That is a very significant impost on families, bringing it towards $100 a day, $500 a week; with two kids, that is $1,000 a week after tax. So, I am focused on subclause (3)(a) of clause 9 which provides:

> providers of education services and early childhood services should not be burdened by regulation more than is reasonably necessary;

I have looked up the regulations today. I note that there are about 340 pages or so of regulations, and they include changes to staff care ratios. I know we are going to a new standard which I understand will mean that, instead of 1:5 for babies, we will now have 1:4. I understand that for toddlers aged two to three, it will now go from 1:10 to 1:5, and I understand that for children aged three to five the ratio—and correct me if I am wrong—will go from 1:11 (unless we are staying at 1:10). I have heard from industry sources that we could be staying at 1:10 thus taking that benefit away. Now, all that pushes up the costs of care.

I note staff ratios are not specifically mentioned in the bill, so I am going to raise it in this clause and I may raise it in subsequent clauses. Why are we imposing a new regulation and thus

pushing up the costs of care? Have we independently asked the question 'Is this necessary' or are we just blindly going along with a national staff ratio because somebody has told us there will be better outcomes for children?

I am sure there will be. There always are when you reduce class sizes or group sizes, but is it actually necessary? What costings, what analysis, what assessment have we done to justify whether this additional cost for families and this additional regulation is warranted?

The Hon. J.W. WEATHERILL: Thank you. The member for Waite asks an important question because I think this is what many parents will be wanting to know. They will accept, I think, a modest increase in the fee if they think that it is worthwhile.

Just in terms of the analysis that has been undertaken of the average cost of child care in South Australia, the average cost came out at an average daily fee of about $66 per day. It is expected that, by 2016, when all of the regulations are fully implemented, it would increase by an extra $8 per day. For the lowest-paid families, or not even the very low-paid but certainly for lower-paid families that are entitled to the full 50 per cent rebate, that, of course, would halve that cost in relation to the family. They are averages, of course, so there would be different effects but, in the scheme of things, they are relatively modest.

In relation to the staffing ratios, just to confirm that, from birth to 24 months, the current ratio is 1:5. It is going to 1:4 on 1 January 2012. From 25 to 35 months, it is currently 1:10. That goes to 1:5 by 1 January 2016. From 36 months, but not including over-preschool-aged students, it is currently 1:10 and it is going to 1:11 by 1 January 2016. For school-aged children, it is presently 1:15 and that remains the case. So, those are the compliance time lines and the ratios.

The fundamental question is the benefit and the purpose. I think the critical importance of the early years is being increasingly understood. There has been a massive advance in neuroscience about the way in which the developing brain of a child is influenced by environmental factors. The stimulation that occurs for those children in those first five years of life is profound, in terms of making the connections in terms of their brain development.

The developments that actually occur are in terms of being able to understand languages, symbols, social skills, numbers, habits, habitual ways of responding to stressors, emotional control, vision and hearing. The most profound elements of the development of a child's brain are often occurring in the first 12 months and, of course, it is very profound over the first three years.

Certainly, we know, from the evidence of the research that is undertaken, that the whole of this period that is covered by child care is the most profound period of development of a child's brain. So, it is absolutely essential that we do what we can to provide a high-quality environment that is stimulating, but not overstimulating, because we also know that bathing a child's brain in stress hormones because of a very noisy sort of environment, or one that is very stressful, is likely to strip out the capacity of a child's brain to develop.

In essence, it is a relatively new understanding. The neuroscience tells us that the early years of life and the earliest experience we have will have the greatest impact on brain development. So, knowing that, by the time a child is three years of age, 90 per cent of their brain is developed, really does tell you that we need to do what we can to ensure that children are in the most appropriately nurturing environment in those early years.

What we also know is that the capacity to remedy any of the deficiencies or damage that is caused in the early years for a child is just so difficult to turn around. It costs so much money to remedy some of the damage that may occur through low-quality or inappropriate caring arrangements for those children. I think the case for change is very strong. Of course it needs to be balanced with something which is affordable; that is why there has been a lot of discussion about going to standards which are affordable, and there has been a phasing in so that organisations can provide for a transition over an extended time period. There is no doubt that some would push for even lower ratios, suggesting that they are even better practice than the ones we have agreed upon, but there is a judgement and a balance to be made regarding affordability.

I do acknowledge the member for Waite's concerns. There is a tipping point where we could make child care so unaffordable that it does cause burdens, but we think we have the balance right. These will improve standards; they will increase costs, but in a modest fashion and half the cost is borne by subsidy from the commonwealth.

Mr HAMILTON-SMITH: I thank the minister for his answer, but I have a further question. With regard to clause 9(3)(a), has the minister read the submission from the Australian Childcare

Alliance titled Education and Care Service National Regulations Submission 2011 under the signature of the president Gwynn Bridge, who disputes the figures the minister has just given regarding the costs? I want to pick up on the answer the minister has given about the need to improve the quality of care; that is fine, provided the children remain in care. If the parents cannot afford it, as a result of a 20 per cent increase (even on the figures the minister has given us) in fees and they go into backyard care, they get none of the benefits.

I would like to quote from what the Childcare Alliance has said, and ask for the minister's guidance. It says:

> We know working families will not be able to meet the rising cost of child care that these reforms will absolutely incur. We fear these families, already struggling with the rising cost of living, will be unable to absorb the $3,000 to near on $6,000 [depending on the state] annual increases these reforms will impose per child. This does not begin to take into consideration any attempt to means test the parental benefit, the Child Care Rebate. We fear these regulatory changes will significantly and negatively impact upon Australian society as working mothers flee the childcare sector and quit the workforce. Surveys are currently indicating in areas across Australia that families are unable to gain employment or remain in employment and their children have been withdrawn from early learning programs and these regulations will further exacerbate these problems.

Again, I ask the minister whether he has seen this advice from the private childcare sector? Does he acknowledge that they have a different figure on the costs that will be incurred by working families as a result of the legislation he has brought before the house? Does he acknowledge that there is a danger that these children will be abandoned into backyard care because their parents can no longer afford family day care with the high principles the minister is expounding?

The Hon. J.W. WEATHERILL: I thank the member for Waite for his question. We certainly have considered the national childcare alliance's submission; indeed, I met with the South Australian representatives of the alliance today. Looking at the national survey that was undertaken, in South Australia 46 per cent of parents said that they could afford a fee in excess of a $13 increase per day.

We are proposing one which is much lower than that, on average and, of course, there is also the question of the application of the subsidy arrangement. I think that that data is equivocal. Certainly in South Australia, in terms of the national picture, there was a much larger number of parents who acknowledged that they could affordably accept an increase, even much higher than those forecasted for South Australia.

I think that is only one half of the equation. The other half of the equation is the importance of the reforms, and the importance that they have for the quality of child care. I think when that is put into the balance, the overwhelming majority of parents would see that this is good value for money.

Mr HAMILTON-SMITH: Could I then seek the minister's guidance in response to clause 9 about the view put to me by the private childcare sector that it is not a level playing field, and that the impost of these regulations and this legislation will sit unfairly with one service over another. This particularly relates to the issue of a private school's childcare service, as it tends to target high-income families. They can clearly afford private schooling fees, so private childcare fees are less of an impost; they are less fee sensitive. There is a low ratio of parents on child care benefits compared to lower socioeconomic areas.

Similarly, some of the community-based sector of long day care occupy premises that are funded by councils, state government, or by public schools, and I understand—perhaps the minister can clarify this for me—that some of the community-based centres are not required to pay land tax nor, in some cases, council rates, nor payroll tax.

However, the husband and wife teams—the small family business that runs the private long day care centre across the road—which I understand provides anything up to about 50 per cent of child care across the nation—do have to pay payroll tax and land tax, and are not on property where there is a cross-subsidy. For example, with the private schools, often they built on land they already own, etc. So they are batting out there alone, having to match their costs with their revenues.

What answer does the minister have that the parliament can pass on to the families who are using a private long day care provider who is having to pay payroll tax, land tax, and these other costs, and who may now suffer a financial disincentive compared to other childcare centres who will not be hit as hard by these changes?

The Hon. J.W. WEATHERILL: I think the simple equity point is that if you are running a business and you are making a profit out of it, then you do not get the benefit of the exemptions that are available for the not-for-profit sector; that is the simple point. It would be an unusual if there was a tax exemption provided for a for-profit sector, and that is the simple rationale.

Mr HAMILTON-SMITH: It is very easy to run a business that does not make a profit, minister, and it is very easy for a so-called non-profit service to run a business that does not make a profit either. You can overpay people, you can overstaff, you can do any one of a range of things, and the minister's answer does not pick up the issue of the private school childcare centres where the land is cross-subsidised, for example, by virtue of the fact that it is owned by the private school, and even the buildings may be built using cross-subsidies from the private school.

So, I get back to the question: does he have a concern that the small family businesses that run a service will be hit by these regulations more than some other services? Perhaps you could specifically address the question of payroll tax: why is one service charged payroll tax and not another?

The Hon. J.W. WEATHERILL: I suppose the issue is that this has not changed. I do not think it is a new proposition, and it has certainly not been changed by this legislation. So, if there is a perceived inequity about that, it is one of long standing, and it is not being altered by these arrangements.

I think we are talking about different things. The not-for-profit sector enjoys certain tax benefits, and this is consistent across a range of different fields of endeavour, not just childcare services but also health and other welfare services. The for-profit sector does not enjoy those benefits even when those services are pitching in to areas that might be competing with the not-for-profit sector.

Clause passed.

Clause 10.

Mr PISONI: I believe that this is the appropriate place to discuss the regulations specific to South Australia. I notice that there is a set of national regulations and there is a set of regulations specific to each state. In my quick look at 340-odd pages of regulations it seems that South Australia has a lot more differences than some of the other states; there are minor changes to other states but South Australia has quite significant changes.

One example is regulation No. 324 which applies in place of regulation 126 for preschools. Regulation 126 describes the qualification of educators and the percentage of educators. In South Australia it appears to me to be more onerous on the provider than the national regulations. A classic example is the change of one educator to 10 children, as opposed to 11 children as described in 323. Is the minister able to explain why they are so different in South Australia when my understanding is that the intent of this legislation is to try to make things across the nation much more similar?

The Hon. J.W. WEATHERILL: I think what you are observing there are the differences in the transitional provisions. The end point is harmonised but the transitional arrangements to get to that end point require a lot of specific regulations for each state. Most of them are about relaxing the guidelines so that there is some capacity over time to get to the higher standard. The one that you were referring to before, which is different from the national standard and seems to be more onerous, is a current standard, so it preserves and maintains that in the face of the national standards. That case just remains the same and there is no change for us, although it is a higher standard than the national standard.

However, in respect of most of the other regulations you will see that they are providing a longer time period to reach the national standard. That is the explanation for the differences between the states.

Mr PISONI: I am wondering if the minister might consider that, where we are holding South Australian early childhood centres to a higher standard, we may look at what is happening interstate and assess whether that standard is acceptable. There are other regulations here that put a bigger burden on South Australian childcare centres. For example, if I refer to 325—qualifications for family day care educators—this regulation applies in place of regulation 127. Regulation 127 states that a family day care educator must have or be actively working towards at least an approved Certificate III level of education and care qualification, whereas in South Australia it says you must actually have that. I know from my own experience of running a business

that training can be a benefit to both the employer and the employee. It would appear as though it certainly would be a bigger burden on operators if they were not able to utilise trainees as part of their quotas.

The Hon. J.W. WEATHERILL: Once again, that is another example of something where we are a bit ahead of the national standard. I think that what needs to be understood is part of the national standard was the notion that nobody would actually take the opportunity to slide backwards. All states agreed, and some other states are ahead of us in certain areas and, indeed, ahead of this national standard. The idea there is that nobody reduces their standards to meet a common national standard, but that everybody works towards the national standard. There are steps and transitions along the way, but there are saving provisions for those areas where the current practice, as it is in the case you just cited, is actually superior to the national standard.

We keep talking about these as burdens, but the flip side of the burden is the benefit for the children. We need to bear in mind that the improvements that are made here do not go as far as some would say is absolute best practice and, indeed, there are some areas of international practice which have even more beneficial standards and qualifications. It is a balance between making sure that those standards are improved and not also placing financial impost that would make these services difficult to run or to finance, either through parents or through the way the commonwealth finances them in terms of subsidy.

Mr HAMILTON-SMITH: Just on this same clause, and this issue of staff ratios. I am advised by the industry that there is a shortage of trained staff, that it is really difficult to get qualified childcare workers and early childhood teachers as it is, and that the department is providing exemptions to a large number of childcare centres to operate without qualified staff. The situation is already dire, with the TAFE system and the university system unable to provide the required number of skilled workers.

What this legislation and the associated regulations do is further crank up that requirement for skilled staff by lifting the bar even further. If we cannot jump the bar where it is currently set, how are we going to jump the bar now that you propose to lift the qualified staff ratios? If we are not coping now, how will we cope with this new arrangement?

The Hon. J.W. WEATHERILL: The member for Waite raises a very good question. A lot of attention has been paid to this. There are two answers. One is the transitional periods provide opportunities for people to gain the extra qualifications, but the other is the support that is being provided by the commonwealth and state governments to essentially retrain. The Health and Community Services Skills Board has been funded by our department to get up a 12-month workforce development project to support the state's achievement of new qualification requirements. Nationally, the Workforce Development Fund provides $3 billion over six years, which includes measures that target areas of workforce shortages, which would include this area.

In recognition that much of our EEC workforce is skilled and experienced, but without formal qualifications, the commonwealth has also provided $9.2 million for a recognition of prior learning package to make it easier for early childhood workers to obtain or upgrade their qualifications. This includes the development of new national assessment tools for certificate III, diploma and advanced diploma, upskilling of assessors, and grants to support workers in rural and remote areas to help with the expenses in undertaking RPL processes.

In addition, there are existing initiatives: removal of TAFE fees for diplomas and advanced diplomas in children's services, 1,500 additional university places nationally for students who want to undertake early childhood qualifications—as a result of that, South Australian unis have allocated a total of 110 packages comprising 25 masters degrees, 85 bachelor degrees—and the reduction in HECS and HELP debt for early childhood teachers who work in regional and remote areas and areas of high socioeconomic disadvantage.

The user choice policy is changed to enable existing early childhood workers to access traineeships, which means that existing workers and their employers can access funding to subsidise the upskilling costs to certificate III and diploma levels. In South Australia, the Skills for All reform is making the single greatest investment in the history of vocational training in South Australia—$194 million to support an extra 100,000 training places over the next six years.

One component of this reform is designed to raise skill levels for existing workers and address skill demands in key industry areas, which includes this area. It also involves increasing university places for early childhood. We think those measures together should address the

workforce issues, but we will continue to monitor it. There is a review due in 2014 to see the way in which these particular measures are rolling out.

Mr HAMILTON-SMITH: Expanding that further, minister, has the government modelled how many additional childcare workers or early childhood teachers you will need to train now to meet this new regulation? I understand that the New South Wales government has modelled and found that they need around 5,800 new staff in New South Wales alone, people who would need to undergo further training to meet the requirements being imposed by these regulations. I imagine the figure would be smaller here.

How many new staff will we need to train, and are you confident the TAFE system can do that? I note your earlier answer. In your answer, could you comment on proposals from the private childcare sector to look at new approaches, like a bonded HECS scheme, or some arrangement for bonding child care placements with in the TAFE system similar to the medical board's scheme, or the scheme used by the Australian Defence Force Academy, or the university model, so that we get the right people to train in child care, with some bonding arrangement to keep them in the industry? Could you include that in your answer?

The Hon. J.W. WEATHERILL: Yes, we have undertaken that modelling. As I said, there are two fundamental ways: one is the time to get there. We already making quite a lot of leeway on the existing workforce and making sure that their qualifications are lifted. The other element includes the things I mentioned before: the workforce strategies that are being supervised nationally and in which South Australia has a key component. That will involve all of those sectors, including the TAFE sector, in providing the qualifications that are necessary. There is no doubt that this is being worked upon. It is a challenge, but the advice we have is that we are on target to meet the relevant workforce demands, but it will be monitored as we go through the process.

Mr PISONI: I have one final question on this clause. Have you audited or surveyed existing private operators in particular to establish how many will be closing because of the new regulations? Obviously, it is not simply because of the new regulations, but the new regulations have become the catalyst. In my electorate, there is one that has been operating 30 years, and obviously the owner is getting into their senior years. They have decided that they will close, rather than go through the changes that are required under the new regulations, and then sell the property, capitalise on the capital gains the property has made in that time, and retire rather than sell the business on. Does your department have any idea of how many examples like that are out there and whether there will be any short-term or medium-term shortage of those facilities because of that?

The Hon. J.W. WEATHERILL: We had, I must say, a very expensive process of consultation over both the act and the national regulations. I think there was something like 500 submissions nationally. In relation to our extensive investigations here in South Australia, no-one has reported that there is any intention to close as a consequence of these regulations; and, certainly, no closures have been reported. I understand what the member for Unley suggests, and I do not seek to suggest that what he is reporting is inaccurate, but certainly there have been no reports made to us and there have been no estimates of any business closing on the basis of these changes.

I just remind members that, by 2016, there will be an $8 a day increase in the cost of child care which ordinarily would be passed onto the families, and lower income families will enjoy the benefit of the 50 per cent commonwealth rebate. It does seem that, on the basis of those average numbers, there should be no need for closures.

Mr HAMILTON-SMITH: I will just give an example of a centre that has publicly said that it is closing partly as a result of the new changes. I understand that the Playford council has been operating a centre which has now been offered out to tender as Playford council has publicly stated in the local newspaper that it is not able to sustain the centre—which is currently operating at a loss—with the additional costs of the impending staffing requirements. That is just one example that has been reported to me anecdotally, and there are others that I understand are very gloomy about their prospects of survival.

This may not seem like an issue to many of us here—we are not running a childcare centre. As I mentioned, I have been there trying to pay the bills. You look at the income going out, you are paying the bills out, you are writing off your superannuation, and so on and so forth. It is tough out there. These people are going to have these new regulations imposed on them in January, I understand (which is not very far away), with no guarantee that the federal government

will increase the childcare benefit or their contributions at all to help the families pay and with no offering from the state government.

Again, I just seek an absolute assurance that the minister is comfortable that, without offering any money from his budget and without having secured any money from the federal government's budget to help families pay, there will not be more Playford council childcare centres that find they have to close because the parents cannot afford it.

The Hon. J.W. WEATHERILL: Yes, I understand what the member for Waite is saying, and it is impossible to exclude the individual circumstances of every business, but it needs to be remembered that, contained within the regulations, there is also the capacity to seek a temporary waiver from the application of the standards, and that certainly is available to enterprises just as it is under the current arrangements.

There is also the broader review in 2014 and the fact that we have pushed out a number of the requirements to 2016. There have been lots of attempts here to be sensible about this. It is not a completely idealistic set of arrangements. It does understand that there are real businesses that have to make plans and that have certain cost structures.

The service waiver could provide an exemption on an ongoing basis. A service is taken to comply with the requirements, including for rating purposes. The temporary waiver might also allow a service to operate with an exemption for a fixed period, and the service is not required to comply with the requirements during this time. There are some facilities that can assist the enterprises to continue operating if they find themselves in these sorts of difficulties.

Already a fairly substantial number of exemptions exist under our current laws, and no doubt we would expect that further applications may be made.

Mr PISONI: I move:

Page 13, lines 11 to 16—Delete subclause (1) and substitute:

(1) The Education and Care Services National Law text—

(a) applies as a law of this jurisdiction; and

(b) as so applying may be referred to as the *Education and Care Services National Law (South Australia)*.

Amendment carried; clause as amended passed.

New clause 10A.

Mr PISONI: I move:

Page 13, after line 18—Insert:

10A—Amendments to law to maintain national consistency

(1) If—

(a) the Parliament of Victoria enacts an amendment to the *Education and Care Services National Law* set out in the Schedule to the *Education and Care Services National Law Act 2010* of Victoria; and

(b) the Governor is satisfied that an amendment that corresponds, or substantially corresponds, to the amendment made by the Parliament of Victoria should be made to the *Education and Care Services National Law (South Australia)*,

the Governor may, by regulation, amend the Education and Care Services National Law text.

(2) The Governor may, as part of a regulation made under subsection (1), make any additional provision (including so as to modify the terms of an amendment that has been made to the *Education and Care Services National Law* by the Parliament of Victoria or to provide for related or transitional matters) considered by the Governor to be necessary to ensure that the amendment to the *Education and Care Services National Law* has proper effect in South Australia.

(3) A regulation made under this section may, if the regulation so provides, take effect from the day of the commencement of an amendment to the *Education and Care Services National Law* made by the Parliament of Victoria (including a day that is earlier than the day of the regulation's publication in the Gazette).

New clause inserted.

Clause 11.

Mr PISONI: I move:

Page 13—

Line 20—Delete 'The' and substitute:

Subject to subsections (1a) and (1b), the

After line 23—Insert:

(1a) To avoid doubt, the *Subordinate Legislation Act 1978* applies to a regulation made under section 10.

(1b) In connection with the operation of section 303 of the *Education and Care Services National Law (South Australia)*—

(a) the Minister must, after a regulation made under that law is tabled in each House of Parliament, forward a copy of the regulation to the Legislative Review Committee of the Parliament for inquiry and report; and

(b) if a regulation is disallowed under that section, the disallowance will have effect in this State despite any provision in the *Education and Care Services National Law*.

Amendments carried.

Mr PISONI: In regard to exemption from the Freedom of Information Act, is it the intention that it would be a full exemption or, once this bill becomes an act, if a member of the public has questions about the way that the department might be behaving in a certain area in regard to this act, will they have access under the Freedom of Information Act to information about things that may have happened in the department, the minister's office, or whatever?

The Hon. J.W. WEATHERILL: As I understand it, the answer is that the commonwealth FOI act applies instead of the law of the participating jurisdiction for the purposes of the national quality framework.

Mr HAMILTON-SMITH: I am seeking clarity on the operation of the regulations. My understanding is that they will completely replace the current state regulations and the national child care quality and accreditation process that existed previously; and now this set of regulations, administered by this set of officials, will be the only set of regulations and quality assurance programs that centres will need to comply with. Is that correct?

The Hon. J.W. WEATHERILL: I think the answer is that there are national regulations for nationally regulated services and state regulations for state-regulated services, so there are two separate schemes, if you like, and both sit alongside each other.

Mr HAMILTON-SMITH: But, in regard to child care services, long day care, are they all state-run?

The Hon. J.W. WEATHERILL: No.

Mr HAMILTON-SMITH: Could you clarify which ones are national and which are state?

The Hon. J.W. WEATHERILL: Child care services—long day care, as you described them—are federally regulated services, so therefore the federal regulations apply to them.

Mr HAMILTON-SMITH: Which regulations will apply to the state-run services? Do I understand correctly that there are two sets of regulations that are different from one another, applying to different types of services? Could the committee get clarity on what is a state and what is a national service?

The Hon. J.W. WEATHERILL: Essentially, the residual early childhood services are state regulated, so the ones that are not part of the national quality framework. They are in-home care services (the babysitting agencies that we referred to earlier), occasional care services, rural and mobile care services, sole provider family day care services and any other services declared by the regulation. The national laws are applying to centre-based long day care, out of school hours care, family day care schemes and preschools; and the residual services are the ones that remain regulated under the state regulatory arrangements.

Mr HAMILTON-SMITH: I understand from the minister's answer that most long day care centres will be nationally regulated, not state regulated, because they receive the childcare benefit or are funded. Why would we have children in two separate services, possibly from the same

family, being regulated under two separate regulatory codes? Why wouldn't we have one common standard? I understand the minister to be saying that the national and state regulations are different. Why wouldn't we have one common set of standards applying, where possible, to all services whether they are state or nationally run?

The Hon. J.W. WEATHERILL: The simple answer is that the national law has had a certain scope, and what we have done in South Australia to make sure that we avoid the concern that you raise is to have one regulator, so there is only one regulator for both national and state services and we have applied the same standard. In a sense, the national quality standard framework had a certain scope. There were some other things that were not in scope that remain to be regulated by the state. What we did was try to harmonise it so that there is not this disconnect of two separate regulators, two separate standards. We have tried to overcome the concern that you have anticipated.

Mr HAMILTON-SMITH: On the same line of questioning: we have one set of regulators and one set of regulations across the state and we have pulled them all together. How are you going to deal with issues to do with, for instance, family day care and long day care, given that they compete with each other? Will there be a level playing field in a regulatory sense or will family day care schemes be able to out-compete their long day care competitors and offer cheaper, more affordable child care?

They do not have to jump the same regulatory hurdles as the long day care centres in regard to things like fences, gates, capital works that may be required to the property, rules and regulations about food, and a host of other things. Have we tried to lift family day care up so that they are not undercutting their competitors?

The Hon. J.W. WEATHERILL: Just to be clear, family day care schemes are covered by the national law; they are not in some separate arrangement. Standards have been lifted there to make sure that the situation you anticipated did not come about.

Clause as amended passed.

Clause 12.

Mr HAMILTON-SMITH: This is a fairly large clause which deals with a wide array of services. I want to get back to this issue of staffing and the cost impost of staffing, because this is really concerning stakeholders. I seek the minister's confirmation that the regulations we will be adopting will require that teachers—that is, fully qualified teachers—will need to be present at a service for a certain period each day. My understanding is that there is a variance in the hours of operation, ranging from eight to 12 hours per day at various centres. There is often a maximum limit on the time that a service must have access to a qualified teacher, and it is suggested that it be limited to 10 hours a week and assessed on a quarterly basis.

My understanding is that the regulations are going to require an early childhood teacher to be physically present on the site for at least six hours a day if there are more than 25 children at the centre. This requirement, I am advised, will exacerbate the already serious problem facing the sector of recruitment and retention of qualified staff because, to meet this requirement at a practical level, the service would need to be required to have permanent access to at least two early childhood teachers to ensure that all holidays, personal leave days, etcetera, are covered. I am advised that this will be next to impossible, both in terms of the number of early childhood teachers currently available in South Australia and also in terms of the additional cost it would add to the service. So, are we creating a system that is too rigid to sustain?

The Hon. J.W. WEATHERILL: I am advised that there is sufficient flexibility in the regulations to accommodate your concerns. There is not an obligation to have two teachers there all of the time. That is contemplated within the nature of the regulations. That was discussed and it is a matter that has been reflected in regulations.

Mr HAMILTON-SMITH: I think the problem is not that you have two teachers there at any one time but that you need two teachers on staff to meet the requirement, because one teacher on staff cannot manage when you have leave absences and that sort of thing. One of the suggestions put forward by the private childcare centre is that we seek to modify the regulations such that the permanent early childhood teacher can be covered by a less qualified staff member for school holiday periods of the year and during absences such as illness and family emergencies, and that sort of thing. So, a centre might only need to have one early childhood teacher on staff. Will our

regulations provide for that flexibility or will proprietors be, if you like, pinged or fined or in trouble with the regulator by not having an ECT on the site strictly in accordance with the requirements?

The Hon. J.W. WEATHERILL: I am advised that, in the circumstances that you postulated, there is that flexibility in the regulations to avoid that circumstance coming about.

Mr HAMILTON-SMITH: I will just go on and talk about the burden of responsibilities. There are penalties associated with inadequate supervision of children in the regulations. I ask whether the minister is satisfied that these penalties are reasonable when placed solely on the approved provider and the nominated supervisor.

As the minister would know, childcare educators with the appropriate qualification are required to take their role as supervisor of children very earnestly indeed, and children may be placed at risk from inadequate supervision. No matter how hard you try, it is not always possible to get these qualified staff.

Is the minister satisfied that these regulatory arrangements will enable these qualified staff to monitor up to the required number of children and teachers at any given time at all times to ensure that teachers and educators are diligently supervising the children in their care.

In other words, depending on the size of the centre, we do not want the directors or the managers of the centres to get into trouble because they have not been able to keep their eye on every staff member on the premises 24 hours a day, every hour and every minute.

So, I am seeking an assurance that centres are not going to be fined and directors penalised in a burdensome way by these new arrangements because they could not be everywhere for every moment of the day.

The Hon. J.W. WEATHERILL: I think the nature of obligation is qualified by the concept of reasonableness. So, the obligations are about taking steps to reasonably ensure that certain steps are taken. The penalties, I am sure, would be applied as a matter of last resort.

There are many opportunities for enterprises to apply for exemptions or seek some other forbearance from the regulatory bodies. Of course, they are maximum penalties and the courts would consider the circumstances of a case should the matter get to that rather extreme step of having to prosecute a service for non-compliance.

We view taking those steps here in South Australia in relation to noncompliance as very much a regulatory framework where consent and compliance is sought to be obtained, rather than using a punitive method. There needs to be some backup in the legislation in the event of enterprises or organisations choosing to not comply.

Mr HAMILTON-SMITH: If I can move to the issue of penalties under the regulations. One of the concerns that the industry has put to me is that they do not want to be harassed, if you like, or they seem to want to limit the potential for harassment from bureaucrats or officials who might be overzealous in the exercise of their responsibilities.

This is a real problem when you are running a small business where there is a high level of government regulation. Someone can roll into your business and start fining you for this and that, claiming that the regulations have been breached.

I am specifically focused on the issue of a requirement for the service to put up certain information at the main entrance to the service that it is clearly visible to anyone when they come into the building. I understand that they will need to put up—and perhaps the minister could clarify for me what our regulations will require—a provider approval, the service approval, the nominated supervisor or the prescribed class of person to which the nominated supervisor belongs, the rating of the service, any service waivers or temporary waivers held by the service, and any other prescribed matters.

I understand—and perhaps the minister could clarify this for me—that there is a penalty of $3,000 in the case of an individual breaching this (presumably the director or the owner) and up to $15,000 in any other case (presumably, again, the proprietor or the service owner). Is that correct? Perhaps the minister could clarify what are those fines, and does he feel that that is a little bit tough on the providers? There may be just one document missing, but they can find themselves getting bumped because that one is not framed and on the wall.

The Hon. J.W. WEATHERILL: I am advised that the whole approach taken in this area, both in the past and certainly now with these new regulations, is about continuous improvement in

services. It is not a compliance penalty culture that is sought to be put in place. It is necessary for there to be some backup in the act for recalcitrant services, but the general notion is to try to simply, through the provision of information and encouragement, ensure that organisations continue to improve their business. If for various cogent reasons that presents difficulties, there are opportunities for exemptions, as we said earlier, or other mechanisms for preventing organisations from getting into particular difficulty. There will be a sensible approach taken to these things. That was certainly the culture in the past with the current regulatory systems, and there is no reason to believe that a different approach will be taken with these regulatory arrangements.

Mr HAMILTON-SMITH: Are they the fine levels, minister—$3,000 and $15,000 respectively?

The Hon. J.W. WEATHERILL: Yes, they are, but they are maximums, and we would not expect them to be given, except in the most egregious cases.

Clause passed.

Clause 13 passed.

Clause 14.

Mr PISONI: Is the minister able to advise the committee what is the anticipated time frame from the production of the annual report and the report of the public sector auditor and when the parliament can expect to see it each year?

The Hon. J.W. WEATHERILL: Clause 39 of the bill provides for the South Australian board to provide an annual report by 31 October each year, and the minister must table a report to both houses within 12 days of receipt of the report on the administration of the South Australian act and the work of the board during the financial year under this section and have copies of the report. It is intended that the two reports be tabled together and be complementary.

Mr PISONI: Is that 12 sitting days or 12 calendar days?

The Hon. J.W. WEATHERILL: Sitting days.

Mr PISONI: So, 31 October?

The Hon. J.W. WEATHERILL: Yes, 12 sitting days upon receipt of the report.

Mr PISONI: There are not usually 12 sitting days after 31 October. Will that mean that it will be February before the parliament would see that?

There being a disturbance in the gallery:

The ACTING CHAIR (Mr Piccolo): I remind the gallery that if they wish to be heard—I will ask the staff to remove that person soon.

The Hon. J.W. WEATHERILL: These are just the end dates by which these things have to be tabled. It has been prepared at the end of the financial year, so no later than 31 October and no later than 12 sitting days after the receipt of the report. So, it is likely that the report will be received before 31 October, and therefore it is likely that the report will be tabled at an earlier time as well.

Mr PISONI: Between the houses would the minister be amenable to an amendment that would ensure the reports were tabled in the calendar year in which they were produced?

The Hon. J.W. WEATHERILL: We are not troubled by that. We are happy to give that consideration between the houses.

Clause passed.

Clauses 15 to 16 passed.

Clause 17.

Mr PISONI: The functions of the minister under this act are to support the delivery of the highest possible standards of education services and early childhood services, to work with the board to ensure effective monitoring and evaluation of delivery of education and early childhood services. I suppose it may be a bit out of left field but I raise this for some of the remote areas of the state: is there actually a responsibility to provide access (or as equal as possible access) to

early childhood development and early childhood education to what is available in more accessible areas of the state?

I refer to the School of the Air, for example. On a visit to the School of the Air in Port Augusta a couple of years ago, I was advised that South Australia is about the only state where the satellite connection and downloads are not covered by the department. I would have thought that this may very well be an opportunity to deal with that and ensure that there is equal access. Obviously, if you do not have equal access through population or classrooms when people live too far away—is that something the minister has considered or may promise to consider? Has it been costed? What cost would that be for the department to enable the School of the Air to have internet access covered by the department, which will enable many of them to then have full access to video conferencing and video classrooms, which even in our own metropolitan schools here we have access to?

The Hon. J.W. WEATHERILL: Yes, I thank the member for his question. It doesn't strictly relate to the regulatory arrangements here. It is more a matter for the Education Act should it be dealt with at all in legislation. On the topic, we have had representations from the isolated students and parent teacher associations about these questions of internet access and we are presently engaged with them in finding solutions for them.

Essentially the question is not one of provision. All of the various organisations and the various families have internet connections. It is really a question of the choices that are being made about which particular provider in terms of satellite coverage is made available. We have investigated very carefully the departmental end of that equation, which is the provision of the service, and it has been found to be functioning properly. We are presently working with those families for some technological solutions that will allow them to get more consistent access to the School of the Air services. They do have access to it but it does become interrupted and that can become frustrating, but we are working closely with those families. We do acknowledge that this is an issue.

Mr PISONI: Paragraph (c) of clause 17 reads:

...support the promotion of, and public awareness on the availability and quality of, education and early childhood services.

Are you able to give some examples, that we might likely see, to deal with that part of the clause? Are we talking about advertising? Are we talking about promotion through PR companies? Are we talking about promotion in the public sector or promotion out in the general public? Are you able, perhaps, to define that for *Hansard*, minister?

The Hon. J.W. WEATHERILL: This is an important part of raising awareness of this critical link between the way in which children develop and the interaction with early childhood services. I think this is a public information role. It may be about the production of material or the promotion of discussion about this issue, so that parents' awareness is raised about the importance of early childhood services, the quality of them and the effect that has on the healthy development of their children.

So, it could come in a range of ways, from just public discourse that the minister would engage in, through the production of pamphlets and the production of other methods of communication with parents or service providers in the sector. So, it is a broad remit to really promote the importance of the quality of education in early childhood services.

Mr HAMILTON-SMITH: Can I ask the minister, under this clause 17, whether he is the right person to be the minister? Let me explain that. Is the Minister for Education—

The Hon. J.W. Weatherill interjecting:

Mr HAMILTON-SMITH: Excuse me, not you personally, minister, but your position, your office, particularly in regard to child care. I am not really addressing the issue of kindergartens and those services which are clearly educational, but in regard to child care is it appropriate that that remain with the education minister or should, for instance, it be under the Minister for Families and Communities?

The minister might be able to correct me here, but I understand that, in New South Wales, it comes under the Department of Community Services (DoCS) and not under education. I might be wrong about that. It might have changed since then. I used to operate a licensed childcare centre in New South Wales and that was certainly the arrangement at that time. It might have changed, but

the view taken by the New South Wales government was that child care was about child care—which is a surprising thing, actually—and that it was mainly for helping working mums and working families to access affordable child care. There was a limit to what you could achieve in terms of educational outcomes for babies and toddlers, and kindergarten was kindergarten and child care was child care.

A lot of the family in crisis issues present at the childcare centre, and some families that are in communication with the Department for Families and Communities are also in child care. Surprisingly, the family wants child care ahead of educational outcomes, but they want it to be affordable.

I just cut to this question: should we be excising long day care, and possibly even family day care and some of those services that are strictly childcare services from education, putting it in Families and Communities? Would there be a benefit in that? I think I know what the minister's answer will be but I have asked the question.

The Hon. J.W. WEATHERILL: It is a really important question, but, I suppose, the short answer is it is a bit against the run of play. Even New South Wales has just shifted its arrangements for child care out of DoCS into the education area.

I suppose there is this increasing idea that a lot of these services are becoming inextricably mixed. So, in our children's centres, for instance, child care, preschool and family support are all now in the same organisation. If anything, it is moving in the opposite direction. So I think this is a really important question about where it sits, and I suppose what we have tried to do is develop this idea of child development. Children do not think they have healthcare needs or care needs, disability services needs or family support needs or learning needs; they are just children, and they develop in a certain way. We have all these fancy ways of describing the disciplines that have an effect on their healthy development, but essentially it is just the healthy development of children.

Interestingly, a little over 100 years ago, just down the street we had one of the earliest free kindergarten movements—which one of those women up above the member's head may have been responsible for. They started up the School of Mothers, which was the precursor to Child and Youth Health, in that very building. So, back then we had this holistic notion of the child, which was essentially around parenting and mothers. Since that time, what has happened is that we have these service disciplines, like nursing and education, so we have professionalised, but in the course of doing that we have also disaggregated things, and I think we have lost some of the coherence of looking at the whole child.

I think what we have to do is recover that idea of looking at the whole child and make sure that services wrap around the child. I think there is a sense that we need to bring them back into a more holistic concept, and our regulatory arrangements give us the opportunity to do that.

Clause passed.

Clause 18.

Mr PISONI: In relation to ministerial directions, no ministerial direction may be given in relation to the registration of a particular school. In this instance, what does the minister do if his office has been contacted about an issue and he then must inform the board? Is informing the board not considered a direction?

The Hon. J.W. WEATHERILL: The minister could lay a complaint, but not direct the board about how it might deal with that complaint.

Mr PISONI: Subclause (4) provides that the minister 'must prepare a report on the matter and cause a copy of the report to be laid before each House of Parliament'. Can the minister advise in what time frame, after completion of that report, would that be expected?

The Hon. J.W. WEATHERILL: The bill does not contain a specific time frame, but it is envisaged that if such a direction were to be given the minister would table it as soon as practicable. Any direction given must be reported in the board's annual report, which is tabled every 12 months.

Clause passed.

Clauses 19 to 21 passed.

Clause 22.

Mr PISONI: Regarding conditions of membership, is the minister able to inform the committee how the length of tenure of board members will be managed? Will there be staggered appointments so that we see the overlapping of appointed periods?

The Hon. J.W. WEATHERILL: There are likely to be staggered appointments to provide for continuity. The terms are up to three years, so we could appoint accordingly to maintain that staggered arrangement.

Mr HAMILTON-SMITH: Just on this clause—and I am also looking over the previous clause—my question has to do with the composition of the board, but also with conditions of membership with the board and who is a member of the board. I note that that the act states that there will be a nominee by the minister, two to be nominated from a panel submitted by the director-general, two from the independent schools, two from the Catholic schools, and:

(e) 2 must be nominated from a panel of 4 persons submitted by the prescribed child care bodies;

I wonder if you could just explain that aspect of membership. What I am seeking is guidance with regard to whether the family business—the small business side of child care—will be represented on the board and whether the mum-and-dad proprietors—the small business people—will have two of those seats at the board, so that the family business interest is reflected on the board.

The Hon. J.W. WEATHERILL: It is an expert board and the people there will understand the way in which those child care bodies work. Two of the members must be nominated from a panel of four submitted by prescribed childcare bodies, so that should assist with ensuring that the board has the relevant expertise, or at least has input from people with the relevant expertise.

Mr HAMILTON-SMITH: In relation to the same matter, if I could just seek the minister's clarification here. I am really suggesting that the minister consider amending that particular part of that clause 21(2), because we specifically say that the independent schools will have representation, we specifically say that the Catholic schools will have representation, and we specifically say that there will be two nominated by the director-general (and I am not sure whether that means to represent the community-based sector).

I am wondering whether clause 21(2)(e) should read, 'two must be nominated from a panel of four persons submitted by the prescribed childcare bodies; at least one of which must be from the family business/small business sector, and one from the family day care sector,' or something along those lines. As it stands, the composition of the board would not necessarily require the family day care sector or long day care private sector to be represented, and I just think that would be a mistake, because you could have something that is completely government-sector oriented, and with the Catholic schools and independent schools represented—that is fine, but they are cherrypicking the high-income parents (not so much the Catholic school sector, but certainly the independent schools). How do we cater for the family businesses? Could we put an amendment in on that?

The Hon. J.W. WEATHERILL: The thing here is there is no one single body that represents the childcare sector, and the Catholic and non-government sectors are also large providers of child care. You have community-based child care, non-government independent private providers and private-for-profit providers. What this does is give us an opportunity to flexibly try to represent those various sectors, because it may be that, for one year or for a certain period, there is a decision that the composition is of a certain type, and then it might change at another time.

What it permits is for a full range of groups representing the early childhood sector to be listed as prescribed, designated entities and, under these clauses, these groups will be asked to provide advice to the minister, which will be taken into account before nominating positions for the appointment to the board. This is the mechanism that operates for the education sector for other board appointments such as the SACE Board, so we think that will safeguard the interests of the private-for-profit sector.

Clause passed.

Clause 23 passed.

Clause 24.

Mr PISONI: This relates to allowances and expenses. Do you have a scheduled set of fees that you would be able to advise the house? I might just cover the power of delegation in order

to speed things up a little bit. The board may delegate a function or power under this act to a member of the board: would that include any additional fees or allowances on top of board fees?

The Hon. J.W. WEATHERILL: As occurs now with the Non-Government Schools Registration Board, the new board members who are not public servants will receive sitting fees. These are determined by the Governor and will be in line with other boards and committees in South Australia. Board members will also be eligible to be reimbursed for any reasonable out-of-pocket expenses. Members who are public servants undertake board responsibilities as part of their employment and are not paid sitting fees except in exceptional circumstances. It is anticipated that the board will meet monthly; however, this will be determined by the board. In terms of delegation, it would be a question of the board determining what would be the appropriate remuneration in a given case, if that was appropriate.

Mr PISONI: Are you able to inform the house what the board fees are?

The Hon. J.W. WEATHERILL: I do not have them to hand. The current sitting fees for the Non-Government Schools Registration Board are published in the annual report. We will be seeking a determination, and it may be that the determination by the Public Service Commissioner may alter or adjust them, but I would not imagine they would be any less than the current fees that are being paid.

Clause passed.

Clauses 25 to 49 passed.

Clause 50.

Mr HAMILTON-SMITH: This question relates to clauses 50 and 52, so I might deal with it as one and then we can wrap them up. In relation to illegal holding out, is it to be illegal for a neighbour or anyone to hold themselves out as a child carer, that is, for example, to say, 'I'll look after three or four children at home for a neighbour or a friend'? Is that to be in any way an offence? Are we proposing to restrict a private citizen's ability to say to a neighbour or a friend, 'I'll look after the kids for a fee'?

The Hon. J.W. WEATHERILL: Clause 52 is all about schools, so it does not cover child care.

Mr HAMILTON-SMITH: Just more generally, in relation to division 3 offences, clauses 50, 51 and 52, 'a person must not hold a school out as a registered school' (and I am happy to ask at another part of the bill if you want me to), what I am really cutting to is: when is it an offence to offer childcare services for a fee, and when is it just a neighbourly or family act where you say, 'I'll look after the kids'?

The Hon. J.W. WEATHERILL: Those people are outside the national law. The law about holding yourself out as being such a person is not covered. It is not regulated, so offering yourself out as somebody who is available to undertake child care—like a university student might offer themselves for the purpose of child care—is not covered by the national law and is not covered by the offences that are associated with the national law.

Mr HAMILTON-SMITH: I am not suggesting that it should be, but I suppose I am pointing to an issue I raised earlier and that is, what do we do when, as a result of the claimed 20 per cent increase in childcare fees that might flow from this—and I think even the figures you gave earlier pointed to an increase of that order—the parent who might not be either wealthy or covered by the full childcare benefit simply says to the neighbour, 'Look, there is no law stopping us from doing this, so rather than pay whatever it is going to be—$60 or $80 a day—why don't I slip you $30, or $60 for my two children, and I'll just give them to you and I'll go off to work and you can keep them in your house, in unregulated, uncontrolled childcare arrangements?'

This is what I would call backyard care. In some cases it might be very high quality care, very loving care; it might even be from a relative or a loved one. In other cases it might simply be a pure arrangement of convenience that might indeed put the children at considerable risk. You do not know who is coming around to visit the house, you do not know what is going on; it is the lock-key kid syndrome. How do we deal with that issue, because there is going to be some real financial pressure here? As you have just explained, there is nothing to stop families from just taking the easy way out.

The Hon. J.W. WEATHERILL: Single family day care is contemplated as being within the scope of regulation of the residual services, and we are presently consulting on what the definition

of that would look like. Obviously we are not seeking to capture the university student who helps out families from time to time. I suppose the broader answer is that, if there was a response to these regulations that caused the concerns that the honourable member fears, then there could be a regulatory response, because we can bring within the scope of the national regulations and the state regulations other service types that might, as you postulate, grow up in response to any perceived lack of affordability here.

I think there are ways of capturing any changes in behaviour which might expose children to risk. We do not anticipate that, but should that happen there is scope within the regulations to capture that and prevent that sort of leakage out of the system in a way which might be potentially risky to the wellbeing of children.

Clause passed.

Clauses 51 to 66 passed.

Clause 67.

Mr PISONI: This refers to enforcement and I refer to authorised officers and 68—Powers of authorised officers. Are you able to inform the house whether these authorised officers will be contract employees, direct employees of the Department of Education and Children's Services or employees of some other government department and whether they will be employed under the Education Act or under the Public Service Act?

The Hon. J.W. WEATHERILL: Authorised officers will most likely be employees of the board. Authorisation enables the persons to legally undertake functions under the act. It will also be possible for those who are designated authorised officers under the national law to be authorised officers for the purposes of the state legislation in regard to state-regulated early childhood services. This may also occur when an integrated site has a service that is under the national law and another that is state regulated, that is, a residual service. In this circumstance, it may be in the interest of the service to have one person visit, someone who has expertise in both service types which, for example, could be occasional care service and a preschool.

Mr PISONI: So it won't be employees of the department: it will be employees of the board as people would be employees of the SACE board. Will there be a range of qualifications? I noted the tail end of your answer. What would be the minimum qualification? Will they always have to be direct employees, or are you ruling out them being employed on a contract basis?

The Hon. J.W. WEATHERILL: That will be a matter for the board; they will decide. We expect they will be employees, but they could be contractors from time to time, depending on what expertise the board needs in a given situation. The board will make judgements about what the qualifications are of the people who need to discharge those functions, and they will consult with the sector.

Clause passed.

Clause 68.

Mr HAMILTON-SMITH: This is a section of the act that worries me a lot, because it strikes to the issue of officers, bureaucrats and officials having the power to come into a business premises and throw their weight around. If the officers are doing the right thing and acting responsibly, as the minister suggested earlier, it is not a problem, but we all know there are cases where, for one reason or another, officers do not act appropriately. They are not police officers, these people, and they have considerable powers under the act to administer fines and all sorts of things, so I just want clarify a few things.

For instance, I understand that there is a condition of the regulations that talks about the approved provider having to ensure that children being educated and cared for are not required to undertake activities that are inappropriate, having regard to each child's family and cultural values, age, physical and intellectual development and the child being educated and cared for is not separated from other children for any reason other than illness or accident. This is the time out provision. I am seeking clarification.

I understand there have been some media coverage on this over the weekend. I am seeking confirmation that both those provisions have been removed from the South Australian regulations and are gone. As you know, it cuts not only into time out, but it also cuts to the issue of Muslim kids not being able to put up the Christmas decorations and all that stuff.

The Hon. J.W. WEATHERILL: I will just confirm that you are right: those regulations no longer exist. Just to clarify, the clause you are talking about will apply to schools.

Mr HAMILTON-SMITH: Without going back to the definitions, I note that some of the definitions—schools and all sorts of things—are being included under all sorts of definitions, so I just want to make sure we have got it covered. There are other aspects of the regulations, and I mentioned one earlier, where there is a fine for $3,000 for not having the registration certificate, for example, up on the wall, in the case of an individual, or $15,000 to the business, potentially.

I believe there might be another provision in there in regard to children leaving the education and care service premises. This is where I understand there might be in the regulations something along the lines that as far as practicable you should be able to stop someone from entering the service if the parent has a court order against them, etc. This is to do with access to the centre and to children where there are court orders, marriage split ups, and all this sort of thing. These are always difficult situations for proprietors, whether it is a school or a childcare centre.

My understanding is that the regulations puts some onus on proprietors to intervene in these circumstances, which could not only put the person at risk, but if you have got an angry father walking in there demanding to see their child, you try get in their way at your peril. I understand that there might be a penalty of $2,000 for failing to comply with that. Is that still there or has that gone?

The Hon. J.W. WEATHERILL: The national regulations reflect existing laws that exist in the child services legislation, which means that the various bodies that are covered by the regulations have to comply with court orders. There is no relevant change in relation to those matters; that is an existing regime.

Mr HAMILTON-SMITH: Let me give the minister another example. I understand that there might be a provision in the new regulations to do with the nominated supervisor of an education and care service ensuring that the service keeps and maintains an appropriate number of suitably equipped first-aid kits having regard to the number of children being educated, and, again, there is a fine of $2,000 if that is not the case. Is that still correct?

Perhaps the minister is starting to see the situation I can imagine, and I have seen this happen not without the fine capabilities—I see the staff looking on incredulously as if it does not happen. I can tell you that it does, and I can tell you that sometimes you get officials who, for example, might be from the community-based sector and who have established a career in the government community-based sector. They might be going to a private childcare centre. They may have a prejudice against private childcare centres, and they might be coming in here and thinking, 'Right, I'm going to teach these people a thing or two', and what we are now doing is giving them the ability to render fines.

How are you intending to deal with the situation where an over-zealous officer comes in and says, 'Right, you haven't got your registration up on the wall, $3,000. I reckon you haven't got enough first-aid kits. There's $2,000. Here are three or four fines', and the business is $15,000 to $20,000 out of pocket. Are these people going to have the ability simply to administer fines willy-nilly? How is this system going to be controlled from an over-zealous officer?

The Hon. J.W. WEATHERILL: The first thing is that those are existing obligations, and they have existing penalty provisions attached to them. The only change is that there is an easier process in relation to expiation of those matters. There are significant internal and external appeal provisions there which would ensure that the enterprise would be able to protect itself through some heavy-handed application.

That is the same obligation that exists presently, and it is also presently backed up by a penalty should there be noncompliance.

Mr HAMILTON-SMITH: Can I just clarify that, minister? Is it the case that, at present in those instances I have mentioned, you can virtually get an on-the-spot fine by expiation? Can people now just walk in and fine people right, left and centre, or are we making it easier for such situations to arise, because it is quite a considerable power to be able to administer expiation fines. Police officers cannot do that for speeding. What is the fine for speeding—$300 or $400?

An officer is going to walk into a private childcare centre, to a business that might be marginal, and say, 'Bang, I'm bumping you with a $2,000 expiation for not having the first-aid kit in the right place', or for not having their registration certificate on the wall.

The Hon. J.W. WEATHERILL: You can choose to expiate. If you do not expiate you can choose to take up the court process, and before you even get to the court process there are two other processes—an internal and an external process. There are plenty of opportunities to avoid court. This just provides an option for someone who wants to avoid a court process and who wants to expiate the penalty through the payment of a fee.

I do not think that it will operate in the fashion that the honourable member fears but, again, this can be a matter that is monitored and, if there are concerns, it can be reflected upon and altered.

Clause passed.

[Sitting extended beyond 22:00 on motion of Hon. J.W. Weatherill]

Clauses 69 to 88 passed.

Clause 89.

Mr PISONI: I move:

Page 50, lines 7 to 9—Delete subparagraph (ii) and substitute:

(ii) amendments to the Education and Care Services National Law text; or

Amendment carried; clause as amended passed.

New schedule A1.

Mr PISONI: I move:

Page 50, after line 38—Insert:

Schedule A1—Education and Care Services National Law

Part 1—Preliminary

1—Short title

This Law may be cited as the *Education and Care Services National Law*.

2—Commencement

This Law commences in a participating jurisdiction as provided under the Act of that jurisdiction that applies this Law as a law of that jurisdiction.

3—Objectives and guiding principles

(1) The objective of this Law is to establish a national education and care services quality framework for the delivery of education and care services to children.

(2) The objectives of the national education and care services quality framework are—

(a) to ensure the safety, health and wellbeing of children attending education and care services;

(b) to improve the educational and developmental outcomes for children attending education and care services;

(c) to promote continuous improvement in the provision of quality education and care services;

(d) to establish a system of national integration and shared responsibility between participating jurisdictions and the Commonwealth in the administration of the national education and care services quality framework;

(e) to improve public knowledge, and access to information, about the quality of education and care services;

(f) to reduce the regulatory and administrative burden for education and care services by enabling information to be shared between participating jurisdictions and the Commonwealth.

(3) The guiding principles of the national education and care services quality framework are as follows—

(a) that the rights and best interests of the child are paramount;

(b) that children are successful, competent and capable learners;

(c) that the principles of equity, inclusion and diversity underlie this Law;

(d) that Australia's Aboriginal and Torres Strait Islander cultures are valued;

(e) that the role of parents and families is respected and supported;

(f) that best practice is expected in the provision of education and care services.

4—How functions to be exercised

An entity that has functions under this Law is to exercise its functions having regard to the objectives and guiding principles of the national education and care services quality framework set out in section 3.

5—Definitions

(1) In this Law—

approved education and care service means an education and care service for which a service approval exists;

approved family day care service means an approved education and care service that is a family day care service;

approved family day care venue means a place other than a residence where an approved family day care service is provided;

approved learning framework means a learning framework approved by the Ministerial Council;

approved provider means a person who holds a provider approval;

associated children's service means a children's service that is operated or intended to be operated by an approved provider at the same place as an approved education and care service;

Australian Accounting Standards means the standards issued or pronounced by the Australian Accounting Standards Board;

authorised officer means a person authorised to be an authorised officer under Part 9;

Authority Fund means the Australian Children's Education and Care Quality Authority Fund established under section 274;

Board means the Australian Children's Education and Care Quality Authority Board established under this Law;

certified supervisor means a person who holds a supervisor certificate;

chief executive officer means the chief executive officer of the National Authority appointed under this Law;

children's service means a service providing or intended to provide education and care on a regular basis to children under 13 years of age that is primarily regulated under a children's services law of a participating jurisdiction and is not an education and care service;

children's services law, in relation to a participating jurisdiction, means a law declared by a law of that jurisdiction to be a children's services law for the purposes of this Law;

children's services regulator, in relation to a participating jurisdiction, means a person declared by a law of that jurisdiction to be the children's services regulator for the purposes of this Law;

Commonwealth Minister means the Minister of the Commonwealth who is responsible for policies and programs relating to education and care services;

compliance direction means a compliance direction under section 176;

compliance notice means a compliance notice under section 177;

education and care service means any service providing or intended to provide education and care on a regular basis to children under 13 years of age other than—

(a) a school providing full-time education to children, including children attending in the year before grade 1 but not including a preschool program delivered in a school or a preschool that is registered as a school; or

(b) a preschool program delivered in a school if—

(i) the program is delivered in a class or classes where a full-time education program is also being delivered to school children; and

(ii) the program is being delivered to fewer than 6 children in the school; or

(c) a personal arrangement; or

(d) a service principally conducted to provide instruction in a particular activity; or

Example—

Instruction in a particular activity could be instruction in sport, dance, music, culture or language or religious instruction.

(e) a service providing education and care to patients in a hospital or patients of a medical or therapeutic care service; or

(f) care provided under a child protection law of a participating jurisdiction; or

(g) a prescribed class of disability service; or

(h) a service of a prescribed class;

Example—

Education and care services to which this Law applies include long day care services, family day care services, outside school hours services and preschool programs including those delivered in schools, unless expressly excluded.

education and care service premises means—

(a) in relation to an education and care service other than a family day care service, each place at which an education and care service operates or is to operate; or

(b) in relation to a family day care service—

(i) an office of the family day care service; or

(ii) an approved family day care venue; or

(iii) each part of a residence used to provide education and care to children as part of a family day care service or used to provide access to the part of the residence used to provide that education and care;

education law, in relation to a participating jurisdiction, means a law declared by a law of that jurisdiction to be an education law for the purposes of this Law;

educator means an individual who provides education and care for children as part of an education and care service;

eligible association means an association of a prescribed class;

family day care co-ordinator means a person employed or engaged by an approved provider of a family day care service to monitor and support the family day care educators who are part of the service;

family day care educator means an educator engaged by or registered with a family day care service to provide education and care for children in a residence or at an approved family day care venue;

family day care residence means a residence at which a family day care educator educates and cares for children as part of a family day care service;

family day care service means an education and care service that is delivered through the use of 2 or more educators to provide education and care for children in residences whether or not the service also provides education and care to children at a place other than a residence;

family member, in relation to a child, means—

(a) a parent, grandparent, brother, sister, uncle, aunt, or cousin of the child, whether of the whole blood or half-blood and whether that relationship arises by marriage (including a de facto relationship) or by adoption or otherwise; or

(b) a relative of the child according to Aboriginal or Torres Strait Islander tradition; or

(c) a person with whom the child resides in a family-like relationship; or

(d) a person who is recognised in the child's community as having a familial role in respect of the child;

former education and care services law, in relation to a participating jurisdiction, means a law declared by a law of that jurisdiction to be a former education and care services law for the purposes of this Law;

grade 1, in relation to a school, means the first year of compulsory full-time schooling;

guardian, in relation to a child, means the legal guardian of the child;

infringements law, in relation to a participating jurisdiction, means a law declared by a law of that jurisdiction to be an infringements law for the purposes of this Law;

Ministerial Council means the Ministerial Council consisting of the persons who from time to time hold office as Ministers of the Crown responsible for early childhood education or care in the governments of the States and Territories and the Commonwealth;

National Authority means the Australian Children's Education and Care Quality Authority established under this Law;

national education and care services quality framework means—

(a) this Law; and

(b) the national regulations; and

(c) the National Quality Standard; and

(d) the prescribed rating system;

National Partnership Agreement means the National Partnership Agreement on the National Quality Agenda for Early Childhood and Care entered into by the States and Territories and the Commonwealth on 7 December 2009, as amended from time to time;

National Quality Framework means the national education and care services quality framework;

National Quality Standard means the National Quality Standard prescribed by the national regulations;

national regulations means the regulations made under this Law;

nominated supervisor, in relation to an education and care service, means a person—

(a) who is a certified supervisor; and

(b) who is nominated by the approved provider of the service under Part 3 to be the nominated supervisor of that service; and

(c) who has consented to that nomination;

Note—

A person may be both the nominated supervisor of a family day care service and the family day care co coordinator for that service if the person meets the criteria for each role.

office, in relation to a family day care service, means—

(a) the principal office or any other business office of the approved provider of the service; or

(b) any premises of the service from which its family day care educators are co-ordinated;

parent, in relation to a child, includes—

(a) a guardian of the child; and

(b) a person who has parental responsibility for the child under a decision or order of a court;

participating jurisdiction means a State or Territory in which—

(a) this Law applies as a Law of the State or Territory; or

(b) a law that substantially corresponds to the provisions of this Law has been enacted;

payment, in relation to a prescribed fee, includes payment by electronic or other means;

person means—

(a) an individual; or

(b) a body corporate; or

(c) an eligible association; or

(d) a partnership; or

(e) a prescribed entity;

person with management or control, in relation to an education and care service, means—

(a) if the provider or intended provider of the service is a body corporate, an officer of the body corporate within the meaning of the *Corporations Act 2001* of the

Commonwealth who is responsible for managing the delivery of the education and care service; or

(b) if the provider of the service is an eligible association, each member of the executive committee of the association who has the responsibility, alone or with others, for managing the delivery of the education and care service; or

(c) if the provider of the service is a partnership, each partner who has the responsibility, alone or with others, for managing the delivery of the education and care service; or

(d) in any other case, a person who has the responsibility, alone or with others, for managing the delivery of the education and care service;

personal arrangement means education and care provided to a child—

(a) by a family member or guardian of a child personally, otherwise than as a staff member of, or under an engagement with, a service providing education and care on a regular basis to children under 13 years of age; or

(b) by a friend of the family of the child personally under an informal arrangement where no offer to provide that education and care was advertised;

preschool program means an early childhood educational program delivered by a qualified early childhood teacher to children in the year that is 2 years before grade 1 of school;

prescribed ineligible person means a person in a class of persons prescribed by the national regulations to be prescribed ineligible persons;

protected disclosure—see section 296;

provider approval means a provider approval—

(a) granted under Part 2 of this Law or this Law as applying in another participating jurisdiction; and

(b) as amended under this Law or this Law as applying in another participating jurisdiction,

but does not include a provider approval that has been cancelled;

public sector law, in relation to a participating jurisdiction, means a law declared by a law of that jurisdiction to be a public sector law for the purposes of this Law;

rating assessment means an assessment or reassessment of an approved education and care service under Part 5;

Ratings Review Panel means a Ratings Review Panel established under section 146;

receiving approved provider has the meaning set out in section 58;

Regulatory Authority means a person declared by a law of a participating jurisdiction to be the Regulatory Authority for that jurisdiction or for a class of education and care services for that jurisdiction;

relevant Commonwealth Department means the government department administered by the Commonwealth Minister;

relevant tribunal or court, in relation to a participating jurisdiction, means the tribunal or court declared by a law of that jurisdiction to be the relevant tribunal or court for the purposes of this Law or a provision of this Law;

residence means the habitable areas of a dwelling;

school children includes children attending school in the year before grade 1;

school means—

(a) a government school; or

(b) a non-government school that is registered or accredited under an education law of a participating jurisdiction;

serious detrimental action—see section 296;

service approval means a service approval—

(a) granted under Part 3 of this Law or this Law as applying in another participating jurisdiction; and

(b) as amended under this Law or this Law as applying in another participating jurisdiction,

but does not include a service approval that has been cancelled;

staff member, in relation to an education and care service, means any individual (other than the nominated supervisor or a volunteer) employed, appointed or engaged to work in or as part of an education and care service, whether as family day care co-ordinator, educator or otherwise;

supervisor certificate means a supervisor certificate—

(a) issued under Part 4 of this Law or this Law as applying in another participating jurisdiction; and

(b) as amended under this Law or this Law as applying in another participating jurisdiction,

but does not include a supervisor certificate that has been cancelled;

transferring approved provider has the meaning set out in section 58;

working with children card means a card issued to a person under a working with children law of a participating jurisdiction that permits that person to work with children;

working with children check means a notice, certificate or other document granted to, or with respect to, a person under a working with children law to the effect that—

(a) the person has been assessed as suitable to work with children; or

(b) there has been no information that if the person worked with children the person would pose a risk to the children; or

(c) the person is not prohibited from attempting to obtain, undertake or remain in child-related employment;

working with children law, in relation to a participating jurisdiction, means a law declared by a law of that jurisdiction to be a working with children law for the purposes of this Law;

working with vulnerable people law, in relation to a participating jurisdiction, means a law declared by a law of that jurisdiction to be a working with vulnerable people law for the purposes of this Law.

(2) In this Law, a reference (either generally or specifically) to a law or a provision of a law (including this Law) includes a reference to the statutory instruments made or in force under the law or provision.

(3) In this Law a reference to education and care includes a reference to education or care.

(4) In this Law, an education and care service as defined in subsection (1) is an education and care service even if the service also provides education and care to children of or over the age of 13 years.

(5) In this Law, a children's service as defined in subsection (1) is a children's service even if the service also provides education and care to children of or over the age of 13 years.

(6) In this Law, a reference to this Law as applying in a jurisdiction, includes a reference to a law that substantially corresponds to this Law enacted, or applying, in a jurisdiction.

6—Interpretation generally

(1) Schedule 1 applies in relation to this Law.

(2) The National Partnership Agreement is declared to be a relevant document for the purposes of Schedule 1 of the definition of *extrinsic material* in clause 8(1) of Schedule 1.

7—Single national entity

(1) It is the intention of the Parliament of this jurisdiction that this Law as applied by an Act of this jurisdiction, together with this Law as applied by Acts of other participating jurisdictions, has the effect that an entity established by this Law is one single national entity, with functions conferred by this Law as so applied.

(2) An entity established by this Law has power to do acts in or in relation to this jurisdiction in the exercise of a function expressed to be conferred on it by this Law as applied by Acts of each participating jurisdiction.

(3) An entity established by this Law may exercise its functions in relation to—

(a) one participating jurisdiction; or

(b) 2 or more or all participating jurisdictions collectively.

(4) In this section, a reference to this Law as applied by an Act of a jurisdiction includes a reference to a law that substantially corresponds to this Law enacted in a jurisdiction.

8—Extraterritorial operation of Law

It is the intention of the Parliament of this jurisdiction that the operation of this Law is to, as far as possible, include operation in relation to the following:

(a) things situated in or outside the territorial limits of this jurisdiction;

(b) acts, transactions and matters done, entered into or occurring in or outside the territorial limits of this jurisdiction;

(c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Law, be governed or otherwise affected by the law of another jurisdiction.

9—Law binds the State

(1) This Law binds the State.

(2) In this section—

State means the Crown in right of this jurisdiction, and includes—

(a) the Government of this jurisdiction; and

(b) a Minister of the Crown in right of this jurisdiction; and

(c) a statutory corporation, or other entity, representing the Crown in right of this jurisdiction.

Part 2—Provider approval

Division 1—Application for provider approval

10—Application for provider approval

(1) A person, other than a prescribed ineligible person, may apply to the Regulatory Authority for a provider approval.

(2) An application may be made by more than one person.

(3) If an application is made by more than one person—

(a) the prescribed information must be provided in respect of each person; and

(b) the requirements of this Division must be complied with by and in respect of each person.

11—Form of application

An application under section 10 must—

(a) be made to the Regulatory Authority of the participating jurisdiction—

(i) in which the applicant, or any of the applicants, is ordinarily resident; or

(ii) if the applicant or applicants are not individuals, in which the principal office of the applicant or any of the applicants is located; and

(b) be in writing; and

(c) include the prescribed information; and

(d) include payment of the prescribed fee.

12—Applicant must be fit and proper person

(1) An applicant who is an individual must satisfy the Regulatory Authority that the applicant is a fit and proper person to be involved in the provision of an education and care service.

(2) If the applicant is not an individual, the applicant must satisfy the Regulatory Authority that—

(a) each person who will be a person with management or control of an education and care service to be operated by the applicant is a fit and proper person to be involved in the provision of an education and care service; and

(b) the applicant is a fit and proper person to be involved in the provision of an education and care service.

(3) The head of a government department administering an education law of a participating jurisdiction is taken to be a fit and proper person for the purposes of this Part.

13—Matters to be taken into account in assessing whether fit and proper person

(1) In determining whether a person is a fit and proper person under this Division, the Regulatory Authority must have regard to—

(a) the person's history of compliance with—

(i) this Law as applying in any participating jurisdiction; and

(ii) a former education and care services law of a participating jurisdiction; and

(iii) a children's services law of a participating jurisdiction; and

(iv) an education law of a participating jurisdiction; and

Note—

If a person has been served with an infringement notice for an offence under this Law, and the person has paid the penalty, the Regulatory Authority cannot consider that conduct when determining whether the person is fit and proper. See section 291(5).

(b) any decision under a former education and care services law, a children's services law or an education law of a participating jurisdiction to refuse, refuse to renew, suspend or cancel a licence, approval, registration or certification or other authorisation granted to the person under that law; and

(c) either—

(i) any prescribed matters relating to the criminal history of the person to the extent that history may affect the person's suitability for the role of provider of an education and care service; or

(ii) any check of the person under a working with vulnerable people law of a participating jurisdiction; and

(d) whether the person is bankrupt, or has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors or, in the case of a body corporate, is insolvent under administration or an externally-administered body corporate.

(2) Without limiting subsection (1), the Regulatory Authority may have regard to—

(a) whether the person has a medical condition that may cause the person to be incapable of being responsible for providing an education and care service in accordance with this Law; and

(b) whether the financial circumstances of the person may significantly limit the person's capacity to meet the person's obligations in providing an education and care service in accordance with this Law.

(3) Nothing in subsection (1) or (2) limits the circumstances in which a person may be considered not to be a fit and proper person to be involved in the provision of an education and care service.

14—Regulatory Authority may seek further information

(1) For the purpose of carrying out an assessment as to whether a person is a fit and proper person, the Regulatory Authority may—

(a) ask the person to provide further information; and

(b) undertake inquiries in relation to the person.

(2) If the Regulatory Authority asks the applicant for further information under this section, the period from the making of the request and the provision of the further information is not included in the period referred to in section 15 for the Regulatory Authority to make a decision on the application.

15—Grant or refusal of provider approval

(1) On an application under section 10, the Regulatory Authority may—

(a) grant the provider approval; or

(b) refuse to grant the provider approval.

Note—

A provider approval is granted subject to conditions in accordance with section 19.

(2) The Regulatory Authority must not grant a provider approval unless the Authority is satisfied as to the matters in section 12.

(3) Subject to subsection (4), the Regulatory Authority must make a decision on the application within 60 days after the Regulatory Authority receives the application.

Note—

If further information is requested under section 14(2), the period between the making of the request and the provision of the information is not included in the 60 day period.

(4) The period referred to in subsection (3) may be extended by up to 30 days with the agreement of the applicant.

(5) The Regulatory Authority is taken to have refused to grant a provider approval if the Regulatory Authority has not made a decision under subsection (1)—

(a) within the relevant period required under subsection (3); or

(b) within the period extended under subsection (4),

as the case requires.

16—Notice of decision on application

The Regulatory Authority must give written notice to the applicant of a decision under section 15 and the reasons for that decision within 7 days after the decision is made.

17—Duration of provider approval

A provider approval granted under section 15 continues in force until it is cancelled or surrendered under this Law, or this Law as applying in a participating jurisdiction.

18—Effect of provider approval

A provider approval authorises the approved provider to operate an approved education and care service and an associated children's service if the approved provider is the holder of the service approval for those services.

19—Conditions on provider approval

(1) A provider approval may be granted subject to any conditions that are prescribed in the national regulations or that are determined by the Regulatory Authority.

(2) Without limiting subsection (1), a provider approval is subject to the condition that the approved provider must comply with this Law.

(3) A condition of a provider approval applies to the provider as the operator of any education and care service or associated children's service, unless the condition expressly provides otherwise.

(4) An approved provider must comply with the conditions of the provider approval.

Penalty:

(a) $10,000, in the case of an individual.

(b) $50,000, in any other case.

20—Copy of provider approval

If the Regulatory Authority grants a provider approval under this Part, the Regulatory Authority must provide a copy of the provider approval to the approved provider stating—

(a) the name of the approved provider; and

(b) if the approved provider is not an individual, the address of the principal office of the provider; and

(c) any conditions to which the approval is subject; and

(d) the date that the provider approval was granted; and

(e) the provider approval number; and

(f) any other prescribed matters.

Division 2—Reassessment

21—Reassessment of fitness and propriety

(1) The Regulatory Authority may at any time assess—

(a) whether an approved provider continues to be a fit and proper person to be involved in the provision of an education and care service; or

(b) whether a person with management or control of an education and care service operated by an approved provider continues to be a fit and proper person to be involved in the provision of an education and care service; or

(c) whether a person who becomes a person with management or control of an education and care service operated by the approved provider after the grant of the provider approval is a fit and proper person to be involved in the provision of an education and care service.

(2) Sections 13 and 14 apply to the reassessment.

Division 3—Amendment of provider approvals

22—Amendment of provider approval on application

(1) An approved provider may apply to the Regulatory Authority for an amendment of the provider approval.

(2) The application must—

(a) be in writing; and

(b) include the prescribed information; and

(c) include payment of the prescribed fee.

(3) The Regulatory Authority must decide the application by—

(a) amending the provider approval in the way applied for; or

(b) with the applicant's written agreement, amending the provider approval in another way; or

(c) refusing to amend the provider approval.

(4) The Regulatory Authority must make a decision on the application within 30 days after the Regulatory Authority receives the application.

(5) Without limiting subsection (3), an amendment may vary a condition of the provider approval or impose a new condition on the provider approval.

23—Amendment of provider approval by Regulatory Authority

(1) The Regulatory Authority may amend a provider approval at any time without an application from the approved provider.

(2) Without limiting subsection (1), an amendment may vary a condition of the provider approval or impose a new condition on the provider approval.

(3) The Regulatory Authority must give written notice to the approved provider of the amendment.

(4) An amendment under this section has effect—

(a) 14 days after the Regulatory Authority gives notice of the amendment under subsection (3); or

(b) if another period is specified by the Regulatory Authority, at the end of that period.

24—Copy of amended provider approval to be provided

If the Regulatory Authority amends a provider approval under this Division, the Regulatory Authority must—

(a) provide an amended copy of the provider approval to the approved provider; and

(b) make any necessary amendments to any service approval held by the provider and provide an amended copy of the service approval to the approved provider.

Division 4—Suspension or cancellation of provider approval

25—Grounds for suspension of provider approval

The Regulatory Authority may suspend a provider approval if—

(a) the approved provider has been charged with an indictable offence, or with an offence that if committed in this jurisdiction would be an indictable offence, or any other circumstance indicates that the approved provider may not be a fit and proper person to be involved in the provision of an education and care service; or

(b) the approved provider has failed to comply with a condition of the provider approval; or

(c) the approved provider has failed to comply with this Law as applying in any participating jurisdiction; or

(d) action is being taken under Part 7 (other than a compliance direction) in respect of more than one education and care service operated by the approved provider; or

(e) the approved provider has not operated any education and care service for a period of more than 12 months (including any period of suspension); or

(f) the approved provider purported to transfer or receive a transfer of an approved education and care service without the consent of the Regulatory Authority; or

(g) the approved provider has not paid any outstanding prescribed fees.

26—Show cause notice before suspension

(1) This section applies if the Regulatory Authority is considering the suspension of a provider approval under section 25.

(2) The Regulatory Authority must first give the approved provider a notice (show cause notice) stating—

(a) that the Regulatory Authority intends to suspend the provider approval; and

(b) the proposed period of suspension; and

(c) the reasons for the proposed suspension; and

(d) that the approved provider may, within 30 days after the notice is given, give the Regulatory Authority a written response to the proposed suspension.

27—Decision to suspend after show cause process

After considering any written response from the approved provider received within the time allowed by section 26(2)(d), the Regulatory Authority may—

(a) suspend the provider approval for a period not more than the prescribed period; or

(b) decide not to suspend the provider approval.

28—Suspension without show cause notice

(1) The Regulatory Authority may suspend the provider approval on a ground referred to in section 25 without giving the approved provider a show cause notice under section 26 if the Regulatory Authority is satisfied that there is an immediate risk to the safety, health or wellbeing of a child or children being educated and cared for by an education and care service operated by the provider.

(2) The suspension may not be for a period of more than 6 months.

29—Notice and taking effect of suspension

(1) The Regulatory Authority must give the approved provider written notice of the decision to suspend the provider approval.

(2) The notice of a decision to suspend must set out the period of suspension and the date on which it takes effect.

(3) The decision under section 27 to suspend takes effect at the end of 14 days after the date of the decision, or, if another period is specified by the Regulatory Authority, at the end of that period.

(4) The decision under section 28 to suspend takes effect on the giving of the notice.

30—Effect of suspension

(1) Subject to this section, if a provider approval is suspended under section 27 or 28 of this Law as applying in any participating jurisdiction, all service approvals held by the provider are also suspended for the same period.

(2) A suspension under subsection (1) applies to both education and care services and any associated children's services.

(3) A person whose provider approval is suspended is taken not to be an approved provider for the period of the suspension.

(4) A service approval is not suspended under subsection (1) during any period that a person is approved under section 41 to manage or control the education and care service.

(5) The Regulatory Authority may consent under Part 3 to the transfer of a service approval that is suspended under section 27 or 28.

(6) The suspension of the service approval ceases on the transfer taking effect, unless the conditions imposed by the Regulatory Authority on the consent to the transfer specify a later date.

31—Grounds for cancellation of provider approval

The Regulatory Authority may cancel a provider approval if—

(a) the Regulatory Authority is satisfied that the approved provider or a person with management or control of an education and care service operated by the approved provider is not a fit and proper person to be involved in the provision of an education and care service; or

(b) the Regulatory Authority is satisfied that the continued provision of education and care services by the approved provider would constitute an unacceptable risk to the safety, health or wellbeing of any child or class of children being educated and cared for by an education and care service operated by the approved provider; or

(c) the approved provider has been found guilty of an indictable offence or an offence that if committed in this jurisdiction would be an indictable offence; or

(d) the approved provider has been found guilty of an offence under this Law as applying in any participating jurisdiction; or

(e) the approved provider has breached a condition of the provider approval; or

(f) the approved provider has not operated any education and care service for a period of more than 12 months (including any period of suspension).

32—Show cause notice before cancellation

(1) This section applies if the Regulatory Authority is considering the cancellation of a provider approval under section 31.

(2) The Regulatory Authority must first give the approved provider a notice (*show cause notice*) stating—

(a) that the Regulatory Authority intends to cancel the provider approval; and

(b) the reasons for the proposed cancellation; and

(c) that the approved provider may, within 30 days after the notice is given, give the Regulatory Authority a written response to the proposed cancellation.

33—Decision in relation to cancellation

(1) After considering any written response from the approved provider received within the time allowed under section 32(2)(c), the Regulatory Authority—

(a) may—

(i) cancel the provider approval; or

(ii) suspend the provider approval for a period not more than the prescribed period; or

(iii) decide not to cancel the provider approval; and

(b) must give the approved provider written notice of the decision.

(2) The decision to cancel the provider approval takes effect at the end of 14 days after the date of the decision or, if another period is specified by the Regulatory Authority, at the end of that period.

(3) The notice of a decision to cancel the provider approval must set out the date on which it takes effect.

(4) This Law applies to a suspension of a provider approval under this section as if it were a suspension under section 27.

34—Effect of cancellation

(1) Subject to this section, if a provider approval is cancelled under section 33 of this Law as applying in any participating jurisdiction, all service approvals held by the person who was the approved provider are also cancelled.

(2) A cancellation under subsection (1) applies to both education and care services and any associated children's services.

(3) A service approval is not cancelled under subsection (1) if before that cancellation a person is approved under section 41 to manage or control the education and care service.

(4) A service approval is cancelled if a person referred to in subsection (3) ceases to manage or control the service.

(5) A provider whose provider approval is to be cancelled under section 33 may apply to the Regulatory Authority under Part 3 for consent to transfer a service approval held by the provider.

(6) The application for consent to transfer must be made within 14 days after the date of the decision to cancel the provider approval is made.

(7) If an application for consent to transfer is made, the service approval is suspended until the Regulatory Authority determines the application.

(8) The suspension of the service approval ceases on the transfer taking effect, unless the conditions of the transfer specify a later date.

(9) If the Regulatory Authority refuses to consent to the transfer, the service approval is cancelled on the making of the decision to refuse consent.

35—Approved provider to provide information to Regulatory Authority

(1) This section applies if a show cause notice has been given to an approved provider under section 26 or 32.

(2) The approved provider, at the request of the Regulatory Authority, must, within 7 days of the request, provide the Regulatory Authority with the contact details of the parents of all children enrolled at each education and care service operated by the approved provider.

(3) The Regulatory Authority may use the information provided under subsection (2) solely to notify the parents of children enrolled at an education and care service about the suspension or cancellation.

36—Notice to parents of suspension or cancellation

(1) This section applies if a provider approval has been suspended or cancelled under section 27, 28, 33 or 34.

(2) The Regulatory Authority may require the person who is or was the approved provider to give written notice of the suspension or cancellation and its effect to the parents of children enrolled at all or any of the education and care services operated by that person.

(3) A person must comply with a requirement made of that person under subsection (2).

Penalty:

(a) $3,000 in the case of an individual.

(b) $15,000 in any other case.

37—Voluntary suspension of provider approval

(1) An approved provider may apply to the Regulatory Authority for a suspension of the provider approval for a period of not more than 12 months.

(2) The application must—

(a) be in writing; and

(b) include the prescribed information; and

(c) include payment of the prescribed fee.

(3) The approved provider must, at least 14 days before making an application under this section, notify the parents of children enrolled at the education and care services operated by the approved provider of the intention to make the application.

(4) The Regulatory Authority must within 30 days after the application is made decide whether or not to grant the application.

(5) The Regulatory Authority must give written notice of its decision (including the period of suspension) to the approved provider.

(6) If the Regulatory Authority decides to grant the application, the suspension takes effect on a date agreed between the Regulatory Authority and the approved provider.

(7) A suspension under this section remains in force for the period of time specified in the notice.

(8) The approved provider may apply to the Regulatory Authority to revoke the suspension before the end of the suspension period.

(9) If the Regulatory Authority grants the application to revoke the suspension, the suspension ceases on the date determined by agreement with the approved provider.

(10) If a provider approval is suspended under this section, each service approval held by the provider is also suspended for the same period unless—

(a) a person is approved under section 41 to manage or control the education and care service to which the approval relates; or

(b) the service approval is transferred under Division 3 of Part 3.

38—Surrender of provider approval by approved provider

(1) An approved provider may surrender the provider approval by written notice to the Regulatory Authority.

(2) The notice must specify a date on which the surrender is intended to take effect which must be—

(a) after the notice is given; and

(b) after the end of the period of notice required under subsection (3).

(3) The approved provider must notify the parents of children enrolled at the education and care services operated by the approved provider of the intention to surrender the provider approval, at least 14 days before the surrender is intended to take effect.

(4) If a provider approval is surrendered, the approval is cancelled on the date specified in the notice.

(5) If a provider approval is surrendered, any service approval held by the provider is also taken to be surrendered.

Note—

If a service approval is surrendered, it is cancelled—see section 86. A cancelled service approval cannot be transferred—see definition of service approval and also Division 3 of Part 3.

Division 5—Approval of executor, representative or guardian as approved provider

39—Death of approved provider

(1) This section applies if an approved provider dies.

(2) The nominated supervisor or any other person having day to day control of an education and care service of the approved provider must notify the Regulatory Authority of the approved provider's death within 7 days after that death.

(3) The executor of the estate of the approved provider may continue to operate any approved education and care service of the approved provider for the relevant period provided the nominated supervisor or any certified supervisor continues to manage the day to day operation of the service.

(4) The executor of the estate of the approved provider may transfer, surrender or apply for suspension of a service approval of the approved provider under this Law during the relevant period as if the executor were the approved provider.

(5) The executor of the estate of the approved provider may apply to the Regulatory Authority for a provider approval.

(6) The application must be made within 30 days of the death of the approved provider and must—

(a) be in writing; and

(b) include the prescribed information; and

(c) include payment of the prescribed fee.

(7) In this section *relevant period* means—

(a) the period of 30 days after the death of the approved provider; or

(b) if the executor of the estate of the approved provider makes an application under subsection (5) within that period, until the application is finally determined under this Law.

40—Incapacity of approved provider

(1) This section applies if an approved provider has become incapacitated.

(2) The legal personal representative or guardian of an approved provider may apply to the Regulatory Authority for a provider approval.

(3) The application must—

(a) be in writing; and

(b) include the prescribed information; and

(c) include payment of the prescribed fee.

41—Decision on application

(1) The Regulatory Authority must not grant a provider approval to a person who has made an application under section 39 or 40 unless the Regulatory Authority is satisfied that the person is a fit and proper person to be involved in the provision of an education and care service.

(2) Sections 12, 13 and 14 apply to the assessment of a person under subsection (1).

(3) Subject to this section, the Regulatory Authority may—

(a) grant the provider approval; or

(b) grant the provider approval subject to conditions; or

(c) refuse to grant the provider approval.

(4) An approval under this section—

(a) may be granted for a period of not more than 6 months; and

(b) may be extended for a further period of not more than 6 months—

at the discretion of the Regulatory Authority.

(5) The provider approval is granted only in relation to the operation of the approved education and care services of the approved provider for whom the applicant is the executor, legal personal representative or guardian, as the case requires.

Division 6—Exercise of powers by another Regulatory Authority

42—Exercise of powers by another Regulatory Authority

(1) This section applies if the Regulatory Authority has granted a provider approval under this Part.

(2) A Regulatory Authority of another participating jurisdiction may exercise all of the powers and perform all of the functions of the Regulatory Authority under this Part (except Division 5) in respect of the provider approval if the approved provider operates an approved education and care service in that participating jurisdiction.

(3) A Regulatory Authority (including the Regulatory Authority of this jurisdiction) may only exercise a power to amend, suspend or cancel a provider approval after consulting with the Regulatory Authority of each participating jurisdiction in which the approved provider operates an approved education and care service.

(4) A failure by a Regulatory Authority to comply with subsection (3) does not affect the validity of the exercise of the power.

(5) A cancellation or suspension of a provider approval in another participating jurisdiction has effect in this jurisdiction.

Part 3—Service approval

Division 1—Application for service approval

43—Application for service approval

(1) An approved provider may apply to the Regulatory Authority for a service approval for an education and care service.

(2) An approved provider may only apply for a service approval for an education and care service if the approved provider is or will be the operator of the education and care service and is or will be responsible for the management of the staff members and nominated supervisor of that service.

(3) A person who has applied for a provider approval may apply to the Regulatory Authority for a service approval, however the Regulatory Authority must not grant the service approval unless the provider approval is granted.

44—Form of application

(1) An application for a service approval must—

(a) be made to the Regulatory Authority of the participating jurisdiction in which the service is to be located; and

(b) be in writing; and

(c) include the prescribed information; and

(d) nominate a certified supervisor to be the nominated supervisor for the service and include that person's written consent to the nomination; and

(e) include payment of the prescribed fee.

(2) An application for service approval may include an associated children's service.

(3) The approved provider can be the nominated supervisor if he or she—

(a) is a certified supervisor; or

(b) has applied for a supervisor certificate,

however the Regulatory Authority must not grant the service approval unless the supervisor certificate has been granted.

45—Regulatory Authority may seek further information

(1) The Regulatory Authority may ask an applicant for a service approval to provide any further information that is reasonably required for the purpose of assessing the application.

(2) If the Regulatory Authority asks the applicant for further information under this section, the period from the making of the request until the provision of the further information is not included in the period referred to in section 48 for the Regulatory Authority to make a decision on the application.

46—Investigation of application for service approval

(1) For the purposes of determining an application for a service approval, the Regulatory Authority may—

(a) undertake inquiries and investigations, including inquiries relating to the previous licensing, accreditation or registration of the education and care service under a former education and care services law, a children's services law or an education law of any participating jurisdiction; and

(b) inspect the education and care service premises; and

(c) inspect the policies and procedures of the service.

(2) For the purposes of an inspection under subsection (1)(b) or (c), the Regulatory Authority may enter the education and care service premises at any reasonable time.

47—Determination of application

(1) Subject to subsection (3), in determining an application under section 43, the Regulatory Authority must have regard to—

(a) the National Quality Framework; and

(b) except in the case of a family day care residence, the suitability of the education and care service premises and the site and location of those premises for the operation of an education and care service; and

(c) the adequacy of the policies and procedures of the service; and

(d) whether the applicant has a provider approval; and

(e) whether the nominated supervisor for the service is a certified supervisor and whether that person has consented in writing to the nomination; and

(f) any other matter the Regulatory Authority thinks fit; and

(g) any other prescribed matter.

(2) In addition, the Regulatory Authority may have regard to either of the following:

(a) whether the applicant is capable of operating the education and care service having regard to its financial capacity and management capability and any other matter the Regulatory Authority considers relevant;

(b) the applicant's history of compliance with this Law or this Law as applying in any participating jurisdiction, including in relation to any other education and care service it operates.

(3) Subject to subsection (4), in assessing an associated children's service for the purposes of determining whether to grant a service approval, the Regulatory Authority must have regard to the criteria under the children's services law of this jurisdiction for the grant of a children's services licence.

(4) The criteria referred to in subsection (3) do not include criteria relating to whether the applicant is a fit and proper person.

48—Grant or refusal of service approval

(1) On an application under section 43, the Regulatory Authority may—

(a) grant the service approval; or

(b) refuse to grant the service approval.

Note—

A service approval is granted subject to conditions in accordance with section 51.

(2) Subject to subsection (3), the Regulatory Authority must make a decision on the application within 90 days after the Regulatory Authority received the application.

Note—

If further information is requested under section 45(2), the period between the making of the request and the provision of the information is not included in the 90 day period.

(3) The period referred to in subsection (2) may be extended with the agreement of the applicant.

(4) The Regulatory Authority may grant a service approval solely for an education and care service if—

(a) the application includes an application for an associated children's service; and

(b) that associated children's service does not comply with the criteria referred to in section 47(3).

(5) The Regulatory Authority is taken to have refused to grant a service approval if the Regulatory Authority has not made a decision under subsection (1)—

(a) within the relevant time required under subsection (2); or

(b) within the period extended under subsection (3),

as the case requires.

(6) A service approval cannot be granted solely for an associated children's service.

49—Grounds for refusal

(1) The Regulatory Authority must refuse to grant a service approval if—

(a) the Regulatory Authority is satisfied that the service, if permitted to operate, would constitute an unacceptable risk to the safety, health or wellbeing of children who would be educated or cared for by the education and care service; or

(b) the applicant does not have a provider approval.

(2) The Regulatory Authority may refuse to grant a service approval on any other grounds prescribed in the national regulations.

50—Notice of decision on application

The Regulatory Authority must give written notice to the applicant of a decision under section 48 and the reasons for the decision within 7 days after the decision is made.

51—Conditions on service approval

(1) A service approval is granted subject to the condition that the education and care service is operated in a way that—

(a) ensures the safety, health and wellbeing of the children being educated and cared for by the service; and

(b) meets the educational and developmental needs of the children being educated and cared for by the service.

(2) A service approval for a family day care service is granted subject to the additional condition that the approved provider must ensure that—

(a) sufficient persons are appointed as family day care co-ordinators to monitor and support the family day care educators engaged by or registered with the service; and

(b) each family day care educator is adequately monitored and supported by a family day care co-ordinator.

(3) A service approval is granted subject to a condition that the service must commence ongoing operation of the service within 6 months after the approval is granted unless the Regulatory Authority agrees to an extension of time.

(4) A service approval is granted subject to a condition that the approved provider must hold the prescribed insurance in respect of the education and care service.

(5) A service approval is granted subject to any other conditions prescribed in the national regulations or imposed by—

(a) this Law; or

(b) the Regulatory Authority.

(6) A condition of a service approval does not apply to an associated children's service unless the condition is expressed to apply to that associated children's service.

(7) A condition of a service approval may be expressed to apply solely to an associated children's service only if the Regulatory Authority has first consulted with the children's services regulator.

(8) An approved provider must comply with the conditions of a service approval held by the approved provider.

Penalty:

(a) $10,000, in the case of an individual.

(b) $50,000, in any other case.

52—Copy of service approval to be provided

If the Regulatory Authority grants a service approval under this Part, the Regulatory Authority must provide a copy of the service approval to the approved provider stating—

(a) the name of the education and care service; and

(b) the location of the education and care service or, if the education and care service is a family day care service, the location of the principal office and any approved family day care venue for the service; and

(c) any conditions to which the service approval is subject; and

(d) the date the service approval was granted; and

(e) the service approval number; and

(f) the name of the approved provider; and

(g) for a service other than a family day care service, the maximum number of children who can be educated and cared for by the service at any one time; and

(h) the details of any service waiver under Division 5 or temporary waiver under Division 6 applying to the service; and

(i) any other prescribed matters.

53—Annual fee

An approved provider must, in accordance with the national regulations, pay the prescribed annual fee in respect of each service approval held by the approved provider.

Division 2—Amendment of service approval

54—Amendment of service approval on application

(1) An approved provider may apply to the Regulatory Authority for an amendment of a service approval.

(2) An application must—

(a) be in writing; and

(b) include the prescribed information; and

(c) include payment of the prescribed fee.

(3) The Regulatory Authority may ask the approved provider to provide any further information that is reasonably required for the purpose of assessing the application.

(4) If the Regulatory Authority asks the applicant for further information under this section, the period from the making of the request and the provision of the further information is not included in the period referred to in subsection (5).

(5) The Regulatory Authority must make a decision on the application within 60 days after the Regulatory Authority receives the application.

(6) The Regulatory Authority must decide the application by—

(a) amending the service approval in the way applied for; or

(b) with the applicant's written agreement, amending the service approval in another way; or

(c) refusing to amend the service approval.

(7) Without limiting subsection (6), an amendment may vary a condition of the service approval or impose a new condition on the service approval.

(8) An amendment cannot change a location of an education and care service.

(9) The Regulatory Authority must give written notice of its decision to the approved provider.

55—Amendment of service approval by Regulatory Authority

(1) The Regulatory Authority may amend a service approval at any time without an application from the approved provider.

(2) Without limiting subsection (1), an amendment may vary a condition of the service approval or impose a new condition on the service approval.

(3) The Regulatory Authority must give written notice of the amendment to the approved provider.

(4) An amendment under this section has effect—

(a) 14 days after the Regulatory Authority gives notice of the amendment under subsection (3); or

(b) if another period is specified by the Regulatory Authority, at the end of that period.

(5) The Regulatory Authority must amend a service approval to the extent that it relates to an associated children's service in accordance with any direction by the children's services regulator if that direction is given in accordance with the children's services law of this jurisdiction.

56—Notice of change to nominated supervisor

(1) The approved provider of an education and care service must give written notice to the Regulatory Authority in accordance with this section if the approved provider wishes to change the person nominated as the nominated supervisor of the education and care service.

(2) The notice must—

(a) nominate a certified supervisor to be the nominated supervisor for the service and include that person's written consent to the nomination; and

(b) include the prescribed information; and

(c) be given—

(i) at least 7 days before the new certified supervisor is to commence work as the nominated supervisor; or

(ii) if that period of notice is not possible in the circumstances, as soon as practicable and not more than 14 days after the certified supervisor commences work as the nominated supervisor.

57—Copy of amended service approval to be provided

If the Regulatory Authority amends a service approval under this Division, the Authority must provide an amended copy of the service approval to the approved provider.

Division 3—Transfer of service approval

58—Service approval may be transferred

(1) Subject to this Division, an approved provider who holds a service approval (*transferring approved provider*) may transfer the service approval to another approved provider (*receiving approved provider*).

(2) If a service approval is transferred to a receiving approved provider the transfer includes the transfer of the service approval for any associated children's service.

(3) A person who holds a provider approval may transfer a service approval held by the provider even if the provider approval or service approval is suspended.

59—Regulatory Authority to be notified of transfer

(1) The transferring approved provider and the receiving approved provider must jointly notify the Regulatory Authority of the transfer—

(a) at least 42 days before the transfer is intended to take effect; or

(b) if the Regulatory Authority considers that the circumstances are exceptional, a lesser period agreed to by the Regulatory Authority.

(2) The notice must—

(a) be in writing; and

(b) include the prescribed information; and

(c) include payment of the prescribed fee.

60—Consent of Regulatory Authority required for transfer

A service approval cannot be transferred without the consent of the Regulatory Authority.

61—Consent taken to be given unless Regulatory Authority intervenes

The Regulatory Authority is taken to have consented to the transfer of a service approval if—

(a) the parties have given a notification under section 59; and

(b) 28 days before the transfer is intended to take effect, the Regulatory Authority has not notified the parties that it intends to intervene under section 62.

62—Transfer may be subject to intervention by Regulatory Authority

(1) The Regulatory Authority may intervene in a transfer of a service approval if the Regulatory Authority is concerned as to any of the following matters:

(a) whether the receiving approved provider is capable of operating the education and care service having regard to its financial capacity and management capability and any other matter the Regulatory Authority considers relevant;

(b) the receiving approved provider's history of compliance with this Law as applying in a participating jurisdiction, including in relation to any other education and care service it operates;

(c) any other matter relevant to the transfer of the service approval.

(2) The Regulatory Authority must notify the transferring approved provider and the receiving approved provider of the decision to intervene.

(3) The notice must be given at least 28 days before the date on which the transfer is intended to take effect.

(4) A notification under subsection (2) must—

(a) be in writing; and

(b) include the prescribed information.

63—Effect of intervention

If the Regulatory Authority intervenes under section 62, the transfer must not proceed unless and until the Regulatory Authority gives written consent to the transfer.

64—Regulatory Authority may request further information

If the Regulatory Authority has intervened under section 62, the Regulatory Authority may—

(a) request further information from the transferring approved provider or receiving approved provider for the purposes of deciding whether to consent to the transfer; and

(b) undertake inquiries in relation to the receiving approved provider for that purpose.

65—Decision after intervention

(1) If the Regulatory Authority has intervened under section 62, it may decide—

(a) to consent to the proposed transfer; or

(b) to refuse to consent to the proposed transfer.

(2) If the Regulatory Authority consents to the proposed transfer the Regulatory Authority may impose conditions on the consent, including specifying the date on which the proposed transfer is to take effect.

(3) The service approval must be transferred in accordance with the conditions imposed on the consent.

66—Regulatory Authority to notify outcome 7 days before transfer

(1) If the Regulatory Authority has intervened in the transfer of a service approval, the Authority must, at least 7 days before the date on which the transfer is intended to take effect, give a notice to each party specifying that the Authority—

(a) consents to the transfer; or

(b) refuses to consent to the transfer; or

(c) has suspended further consideration of the transfer until further information is received and that the transfer may not proceed until a further notice is given under this section consenting to the transfer; or

(d) has not yet made a decision on the transfer and that the Regulatory Authority will make a decision on the transfer within 28 days and that the transfer may not proceed until a further notice is given under this section consenting to the transfer.

(2) If the Regulatory Authority consents to the transfer, the notice—

(a) must specify—

(i) the date on which the transfer is to take effect; and

(ii) any conditions on the consent to the transfer; and

(b) may include notice of any condition that the Regulatory Authority has imposed on the provider approval or a service approval of the receiving approved provider because of the transfer.

(3) If the Regulatory Authority refuses to consent to the transfer, the notice must include the reasons for the refusal.

67—Transfer of service approval without consent is void

A transfer of a service approval is void if—

(a) it is made without the consent of the Regulatory Authority; or

(b) it is made in contravention of the conditions imposed by the Regulatory Authority on the consent to the transfer; or

(c) it is made to a person who is not the approved provider who gave the notification under section 59 as the receiving approved provider.

68—Confirmation of transfer

(1) The transferring approved provider and the receiving approved provider must give written notice to the Regulatory Authority within 2 days after the transfer takes effect specifying the date of the transfer.

Penalty:

(a) $4,000, in the case of an individual.

(b) $20,000, in any other case.

(2) On receipt of a notice under this section, the Regulatory Authority must amend the service approval and provide an amended copy of the service approval to the receiving approved provider.

(3) The amendment to the service approval is taken to take effect on the date of the transfer.

(4) An approved provider who gives notice under this section is not guilty of an offence for a failure of any other person to give that notice.

69—Notice to parents

(1) The receiving approved provider must give written notice to the parents of children enrolled at an education and care service of the transfer of the service approval for that service to that provider.

Penalty:

(a) $3,000, in the case of an individual.

(b) $15,000, in any other case.

(2) The notice must be given at least 2 days before the date on which the transfer of the service approval takes effect.

Division 4—Suspension or cancellation of service approval

70—Grounds for suspension of service approval

A Regulatory Authority may suspend a service approval if—

(a) the Regulatory Authority reasonably believes that it would not be in the best interests of children being educated and cared for by the service for the service to continue; or

(b) a condition of the service approval has not been complied with; or

(c) the service is not being managed in accordance with this Law; or

(d) the service has operated at a rating level as not meeting the National Quality Standard and—

(i) a service waiver or temporary waiver does not apply to the service in respect of that non-compliance; and

(ii) there has been no improvement in the rating level; or

(e) the approved provider has contravened this Law as applying in any participating jurisdiction; or

(f) the approved provider has failed to comply with a direction, compliance notice or emergency order under this Law as applying in any participating jurisdiction in relation to the service; or

(g) the approved provider has—

(i) ceased to operate the education and care service at the education and care service premises for which the service approval was granted; and

(ii) within 6 months of ceasing to operate the service, has not transferred the service to another approved provider; or

(h) the approved provider has not, within 6 months after being granted a service approval, commenced ongoing operation of the service; or

(i) the approved provider has not paid the prescribed annual fee for the service approval.

71—Show cause notice before suspension

(1) This section applies if the Regulatory Authority is considering the suspension of a service approval under section 70.

(2) The Regulatory Authority must first give the approved provider a notice (*show cause notice*) stating—

(a) that the Regulatory Authority intends to suspend the service approval; and

(b) the proposed period of suspension; and

(c) the reasons for the proposed suspension; and

(d) that the approved provider may, within 30 days after the notice is given, give the Regulatory Authority a written response to the proposed suspension.

72—Decision in relation to suspension

After considering any written response from the approved provider received within the time allowed by section 71(2)(d), the Regulatory Authority may—

(a) suspend the service approval for a period not more than the prescribed period; or

(b) decide not to suspend the service approval.

73—Suspension of service approval without show cause

The Regulatory Authority may suspend the service approval without giving the approved provider a show cause notice under section 71 if the Regulatory Authority is satisfied that there is an immediate risk to the safety, health or wellbeing of a child or children being educated and cared for by the education and care service.

74—Notice and effect of decision

(1) The Regulatory Authority must give the approved provider written notice of the decision to suspend.

(2) Subject to section 76, the decision under section 72 to suspend takes effect at the end of 14 days after the date of the decision, or, if another period is specified by the Regulatory Authority, at the end of that period.

(3) Subject to section 76, the decision under section 73 to suspend takes effect on the giving of the notice.

(4) The notice of a decision to suspend must set out—

(a) the period of suspension; and

(b) the date on which it takes effect.

(5) A suspension of a service approval also suspends the service approval to the extent that it relates to an associated children's service.

75—Suspension of service approval to the extent that it relates to associated children's service

(1) If the Regulatory Authority considers that a service approval should be suspended to the extent only that it applies to an associated children's service, the Regulatory Authority must refer the matter to the children's services regulator of this jurisdiction for determination under the children's services law.

(2) The children's services regulator must notify the Regulatory Authority if it proposes to conduct any investigation or inquiry into an associated children's service under the children's services law.

(3) If a final determination is made under the children's services law of this jurisdiction that a service approval should be suspended to the extent that it relates to an associated children's service—

(a) the children's services regulator must advise the Regulatory Authority of that determination; and

(b) the service approval is suspended to the extent that it relates to the associated children's service in accordance with that determination.

76—Transfer of suspended service

(1) The Regulatory Authority may consent under this Part to the transfer of a service approval that is suspended under section 72 or 73.

(2) The suspension of the service approval ceases on the transfer taking effect, unless the conditions of the Regulatory Authority's consent to the transfer otherwise provide.

77—Grounds for cancellation of service approval

A Regulatory Authority may cancel a service approval if—

(a) the Regulatory Authority reasonably believes that the continued operation of the education and care service would constitute an unacceptable risk to the safety, health or wellbeing of any child or class of children being educated and cared for by the education and care service; or

(b) the service has been suspended under section 72 or 73 and the reason for the suspension has not been rectified at or before the end of the period of suspension; or

(c) the service approval was obtained improperly; or

(d) a condition of the service approval has not been complied with.

78—Show cause notice before cancellation

(1) This section applies if the Regulatory Authority is considering the cancellation of a service approval under section 77.

(2) The Regulatory Authority must first give the approved provider a notice (show cause notice) stating—

(a) that the Regulatory Authority intends to cancel the service approval; and

(b) the reasons for the proposed cancellation; and

(c) that the approved provider may, within 30 days after the notice is given, give the Regulatory Authority a written response to the proposed cancellation.

79—Decision in relation to cancellation

(1) After considering any written response from the approved provider received within the time allowed by section 78(2)(c), the Regulatory Authority—

(a) may—

(i) cancel the service approval; or

(ii) suspend the service approval for a period not more than the prescribed period; or

(iii) decide not to cancel the service approval; and

(b) must give the approved provider written notice of the decision.

(2) Subject to section 81, the decision to cancel the service approval takes effect—

(a) at the end of 14 days after the date of the decision; or

(b) if another period is specified by the Regulatory Authority, at the end of that period.

(3) The notice of a decision to cancel must set out the date on which it takes effect.

(4) A cancellation of a service approval includes the cancellation of the service approval to the extent that it relates to an associated children's service.

(5) This Law applies to a suspension of a service approval under this section as if it were a suspension under section 72.

80—Cancellation of service approval to the extent that it relates to associated children's service

(1) If the Regulatory Authority considers that a service approval should be cancelled to the extent only that it applies to an associated children's service, the Regulatory Authority must refer the matter to the children's services regulator of this jurisdiction for determination under the children's services law.

(2) The children's services regulator must notify the Regulatory Authority if it proposes to conduct any investigation or inquiry into an associated children's service under the children's services law.

(3) If a final determination is made under the children's services law of this jurisdiction that a service approval should be cancelled to the extent that it relates to an associated children's service—

(a) the children's services regulator must advise the Regulatory Authority of that determination; and

(b) the service approval is cancelled to the extent that it relates to the associated children's service in accordance with that determination.

81—Application for transfer of cancelled service

(1) An approved provider may apply to the Regulatory Authority under this Part for consent to transfer a service approval that is to be cancelled under this Part.

(2) The application for consent to transfer must be made within 14 days after the decision to cancel the service approval is made.

(3) If an application for consent to transfer is made, the cancellation of the service approval does not take effect, and the service approval is suspended, until the Regulatory Authority determines the application.

(4) An application cannot be made under this section for consent to transfer a cancelled service approval if the cancellation relates only to an associated children's service.

82—Decision on application to transfer cancelled service

(1) If the Regulatory Authority consents to the transfer—

(a) the decision to cancel the service approval is revoked; and

(b) the suspension of the service approval ceases on the transfer taking effect, unless the conditions imposed by the Regulatory Authority on the consent to the transfer specify a later date for the suspension to cease.

(2) If the Regulatory Authority refuses to consent to the transfer, the service approval is cancelled on the making of the decision to refuse to consent.

83—Approved provider to provide information to Regulatory Authority

(1) This section applies if a show cause notice has been given to an approved provider under section 71 or 78.

(2) The approved provider, at the request of the Regulatory Authority, must provide the Authority with the contact details of the parents of all children enrolled at the education and care service.

(3) The Regulatory Authority may use the information provided under subsection (2) solely to notify the parents of children enrolled at an approved education and care service of a suspension or cancellation of the service approval for the service.

84—Notice to parents of suspension or cancellation

(1) This section applies if a service approval has been suspended or cancelled under section 72, 73, 79 or 81.

(2) The Regulatory Authority may require the approved provider to give written notice of the suspension or cancellation and its effect to the parents of children enrolled at the education and care service to which the approval relates and any associated children's service.

(3) The approved provider must comply with a requirement made under subsection (2).

Penalty:

(a) $3,000 in the case of an individual.

(b) $15,000 in any other case.

85—Voluntary suspension of service approval

(1) An approved provider may apply to the Regulatory Authority for the suspension of a service approval for a period of not more than 12 months.

(2) The application must—

(a) be in writing; and

(b) include the prescribed information; and

(c) include payment of the prescribed fee.

(3) The Regulatory Authority may agree to the suspension, having regard to whether the suspension is reasonable in the circumstances.

(4) The approved provider must, at least 14 days before making an application under this section, notify the parents of children enrolled at the education and care service and any associated children's service of the intention to make the application.

(5) The Regulatory Authority must, within 30 days after the application is made, decide whether or not to grant the application.

(6) If the Regulatory Authority decides to grant the application, the suspension takes effect on a date agreed between the Regulatory Authority and the approved provider.

86—Surrender of service approval

(1) An approved provider may surrender a service approval by written notice to the Regulatory Authority.

(2) The notice must specify a date on which the surrender is intended to take effect which must be—

(a) after the notice is given; and

(b) after the end of the period of notice required under subsection (3).

(3) The approved provider must notify the parents of children enrolled at the education and care service to which the approval relates and any associated children's service of the intention to surrender the service approval, at least 14 days before the surrender is intended to take effect.

(4) If a service approval is surrendered, the approval is cancelled on the date specified in the notice.

Division 5—Application for service waiver

87—Application for service waiver for service

(1) An approved provider may apply to the Regulatory Authority for a waiver from a requirement that an approved education and care service comply with a prescribed element or elements of the National Quality Standard and the national regulations as provided for in the national regulations.

(2) A person who applies for a service approval may apply for a service waiver under this section together with the application for the service approval.

(3) The Regulatory Authority must not grant a service waiver to a person who applies under subsection (2) unless the service approval is granted to that person.

88—Form of application

An application under section 87 must—

(a) be in writing; and

(b) include the prescribed information; and

(c) include payment of the prescribed fee.

89—Powers of Regulatory Authority in considering application

For the purpose of determining an application under this Division, the Regulatory Authority may—

(a) ask the applicant to provide further information; and

(b) inspect the education and care service premises and the office of the applicant.

90—Matters to be considered

In considering whether the grant of a service waiver is appropriate, the Regulatory Authority may have regard to either or both of the following:

(a) whether the education and care service is able to meet the prescribed element or elements of the National Quality Standard and the national regulations by alternative means that satisfy the objectives of those elements;

(b) any matters disclosed in the application that are relevant to the application for the service waiver.

91—Decision on application

(1) On an application under this Division, the Regulatory Authority may decide to grant the service waiver or refuse the application.

(2) Subject to subsection (3), the Regulatory Authority must notify the applicant within 60 days after the application is made of the Authority's decision on the application.

(3) If an application for a service waiver has been made together with an application for service approval, the Regulatory Authority may notify the applicant of the Authority's decision on the application at the same time as the notice of the decision on the application for the service approval.

(4) If a service waiver is granted, the Regulatory Authority must issue or reissue the service approval specifying the element or elements of the National Quality Standard and the national regulations to which the service waiver applies.

92—Revocation of service waiver

(1) The Regulatory Authority may, at its discretion, revoke a service waiver.

(2) An approved provider may apply to the Regulatory Authority for the revocation of a service waiver applying to any education and care service that it operates.

(3) A revocation under this section takes effect at the end of the period prescribed in the national regulations.

93—Effect of service waiver

While a service waiver is in force, the approved education and care service is taken to comply with the element or elements of the National Quality Standard and the national regulations that are specified in the service waiver.

Division 6—Temporary waiver

94—Application for temporary waiver

An approved provider may apply to the Regulatory Authority for a temporary waiver from a requirement that an approved education and care service comply with any prescribed element or elements of the National Quality Standard and the national regulations as provided for in the national regulations.

95—Form of application

An application under section 94 must—

(a) be in writing; and

(b) include the prescribed information; and

(c) include payment of the prescribed fee.

96—Regulatory Authority may seek further information

For the purpose of determining an application under this Division, the Regulatory Authority may—

(a) ask the applicant to provide further information; and

(b) inspect the education and care service premises and the office of the applicant.

97—Special circumstances

In considering whether the grant of a temporary waiver is appropriate, the Regulatory Authority must have regard to whether special circumstances disclosed in the application reasonably justify the grant of the temporary waiver.

98—Decision on application

(1) The Regulatory Authority must notify the applicant within 60 days after the application is made of the Authority's decision on the application.

(2) A temporary waiver must specify the period of the waiver which cannot be for a period of more than 12 months.

(3) The Regulatory Authority, on the application of the approved provider, may—

(a) extend and further extend the period of a temporary waiver by periods of not more than 12 months; and

(b) grant a further temporary waiver for an education and care service under this Division.

(4) If the Regulatory Authority grants a temporary waiver, the Regulatory Authority must issue or reissue the service approval specifying the element or elements of the National Quality Standard and the national regulations which have been temporarily waived and the period of the waiver.

99—Revocation of temporary waiver

The Regulatory Authority may, at its discretion, revoke a temporary waiver.

100—Effect of temporary waiver

While a temporary waiver is in force, the approved education and care service is not required to comply with the element or elements of the National Quality Standard and the national regulations that have been temporarily waived.

Division 7—Exercise of powers by another Regulatory Authority

101—Exercise of powers by another Regulatory Authority—family day care services

(1) This section applies if the Regulatory Authority has granted a service approval under this Part to an approved provider for a family day care service.

(2) A Regulatory Authority of another participating jurisdiction may exercise all the powers and perform all the functions of a Regulatory Authority under this Part (except Division 3 or section 76, 81 or 82) in respect of the service approval if the family day care service operates in that participating jurisdiction.

(3) A Regulatory Authority (including the Regulatory Authority of this jurisdiction) may only exercise a power to amend, suspend or cancel a service approval after consulting with the Regulatory Authority of each participating jurisdiction in which the family day care service operates.

(4) A failure by a Regulatory Authority to comply with subsection (3) does not affect the validity of the exercise of the power.

(5) A cancellation or suspension of a service approval for a family day care service in another participating jurisdiction has effect in this jurisdiction.

Division 8—Associated children's services

102—Application of this Law to associated children's services

This Law does not apply to an associated children's service except as expressly provided in this Law.

Division 9—Offences

103—Offence to provide an education and care service without service approval

(1) A person must not provide an education and care service unless—

(a) the person is an approved provider in respect of that service; and

(b) the education and care service is an approved education and care service.

Penalty:

(a) $20,000, in the case of an individual.

(b) $100,000, in any other case.

(2) Subsection (1) does not apply to a family day care educator providing education and care to children as part of an approved family day care service.

104—Offence to advertise education and care service without service approval

(1) A person must not knowingly publish or cause to be published an advertisement for an education and care service unless it is an approved education and care service.

Penalty:

(a) $6,000, in the case of an individual.

(b) $30,000, in any other case.

(2) Subsection (1) does not apply if an application for a service approval in respect of the education and care service has been made under this Law but has not been decided.

Part 4—Supervisor certificates

Division 1—Application for supervisor certificate

105—Purpose of supervisor certificate

A supervisor certificate makes the person to whom it is issued eligible to be placed in day to day charge of an approved education and care service.

106—Application for supervisor certificate

(1) A person may apply to the Regulatory Authority for a supervisor certificate.

(2) An applicant must be an individual of or above the age of 18 years.

(3) An application must be made to the Regulatory Authority of the participating jurisdiction in which the applicant is ordinarily resident or intending to reside.

107—Form of application

An application under section 106 must—

(a) be in writing signed by the applicant; and

(b) include the prescribed information; and

(c) include payment of the prescribed fee.

108—Applicant must satisfy Regulatory Authority of specified matters

(1) An applicant must satisfy the Regulatory Authority that the applicant—

(a) is a fit and proper person to be a supervisor of an education and care service; and

(b) meets the prescribed minimum requirements for qualifications, experience and management capability.

(2) The following persons are taken, in the absence of evidence to the contrary, to satisfy the requirements of subsection (1)(a):

(a) a person who is a registered teacher under an education law of a participating jurisdiction;

(b) a person who holds a current working with children card under the working with children law of a participating jurisdiction.

109—Matters to be taken into account in assessing whether fit and proper person

(1) The Regulatory Authority, in determining whether it is satisfied that a person is a fit and proper person under this Division, must have regard to—

(a) the history of the person's compliance with—

(i) this Law as applying in any participating jurisdiction; and

(ii) a former education and care services law of a participating jurisdiction; and

(iii) a children's services law of a participating jurisdiction; and

(iv) an education law of a participating jurisdiction; and

Note—

If a person has been served with an infringement notice for an offence under this Law, and the person has paid the penalty, the Regulatory Authority cannot consider that conduct when determining whether the person is fit and proper. See section 291(5).

(b) any decision under a former education and care services law, a children's services law or an education law of a participating jurisdiction to refuse, refuse to renew, suspend or cancel a licence, approval, registration or certification or other authorisation granted to the person under that law; and

(c) the working with children check for that person, or if there is no working with children check for that person, any prescribed matters relating to the criminal history of the person to the extent that that history may affect the person's suitability for the role of supervisor of an education and care service.

(2) Without limiting subsection (1), the Regulatory Authority may have regard to whether the person has a medical condition that may affect the person's capacity to be the supervisor of an education and care service.

(3) Nothing in subsection (1) or (2) limits the circumstances in which a person may be considered not to satisfy the Regulatory Authority that he or she is a fit and proper person to be a supervisor of an education and care service.

110—Regulatory Authority may seek further information

(1) For the purpose of carrying out an assessment as to whether a person is a fit and proper person to hold a supervisor certificate, the Regulatory Authority may—

(a) ask the person in respect of whom the assessment is being carried out to provide further information; and

(b) undertake inquiries or investigations in relation to the person in respect of whom the assessment is being carried out.

(2) If the Regulatory Authority asks the applicant for further information under this section, the period from the making of the request until the provision of the further information is not included in the period referred to in section 111 for the Regulatory Authority to make a decision on the application.

111—Grant or refusal of supervisor certificate

(1) The Regulatory Authority may grant or refuse to grant a supervisor certificate on an application under section 106.

Note—

A supervisor certificate is granted subject to conditions in accordance with section 115.

(2) Subject to subsection (3), the Regulatory Authority must make a decision on the application within 60 days after the Regulatory Authority received the application.

Note—

If further information is requested under section 110(2), the period between the making of the request and the provision of the information is not included in the 60 day period.

(3) The period referred to in subsection (2) may be extended by up to 30 days with the agreement of the applicant.

(4) The Regulatory Authority is taken to have refused to grant a supervisor certificate if the Regulatory Authority has not made a decision under subsection (1)—

(a) within the relevant time required under subsection (2); or

(b) within the period extended under subsection (3),

as the case requires.

112—Grounds for refusal

The Regulatory Authority must refuse to grant a supervisor certificate if—

(a) the Regulatory Authority is not satisfied that the applicant is a fit and proper person to be the supervisor of an education and care service; or

(b) the applicant is under the age of 18 years; or

(c) the Regulatory Authority is not satisfied that the applicant meets the prescribed minimum requirements for qualifications, experience and management capability.

113—Notice of decision on application

The Regulatory Authority must give written notice to the applicant of a decision under section 111 and the reasons for the decision within 7 days after the decision is made.

114—Grant of supervisor certificate to specified classes of persons

(1) The Regulatory Authority may grant a supervisor certificate to a person in a prescribed class of persons.

Note—

A supervisor certificate is granted subject to conditions in accordance with section 115.

(2) Sections 106 to 113 do not apply to the grant of a supervisor certificate under this section.

115—Conditions on certificate

(1) A supervisor certificate is subject to any conditions imposed by—

(a) this Law; or

(b) the Regulatory Authority.

(2) Without limiting subsection (1), a supervisor certificate is subject to the condition that the certified supervisor must, to the extent that a matter is within the supervisor's control, comply with this Law in relation to that matter.

(3) Without limiting subsection (1), a supervisor certificate is subject to the condition that the certified supervisor must notify the Regulatory Authority of a change in his or her name or mailing address.

(4) A certified supervisor must comply with the conditions of the supervisor certificate held by that person.

Penalty: $4,000.

116—Issue of certificate

If the Regulatory Authority grants a supervisor certificate under section 111 or 114, the Authority must issue a certificate containing the following information to the applicant:

(a) the name of the certified supervisor or the prescribed class of person to which the certified supervisor belongs;

(b) any conditions imposed on the supervisor certificate;

(c) the date the supervisor certificate was granted;

(d) the certified supervisor number;

(e) any other prescribed information.

117—Effect of supervisor certificate

A person who is the holder of a supervisor certificate may—

(a) be nominated as the nominated supervisor of an education and care service; and

(b) be the responsible person present at the education and care service premises in the absence of the approved provider or the nominated supervisor.

Division 2—Reassessment

118—Reassessment of suitability

(1) The Regulatory Authority may at any time reassess whether a certified supervisor is a fit and proper person to be a supervisor of an education and care service.

(2) Sections 108, 109 and 110 apply to the reassessment.

Division 3—Amendment of supervisor certificate

119—Amendment of supervisor certificate on application

(1) A certified supervisor may apply to the Regulatory Authority for an amendment of the supervisor certificate.

(2) The application must—

(a) be in writing; and

(b) include the prescribed information; and

(c) include payment of the prescribed fee.

(3) The Regulatory Authority must decide the application by—

(a) amending the supervisor certificate in the way applied for; or

(b) with the applicant's written agreement, amending the supervisor certificate in another way; or

(c) refusing to amend the supervisor certificate.

(4) The Regulatory Authority must make a decision on the application within 30 days after the Regulatory Authority receives the application.

(5) Without limiting subsection (3), an amendment may vary a condition of the supervisor certificate or impose a new condition on the supervisor certificate.

120—Amendment of supervisor certificate by Regulatory Authority

(1) The Regulatory Authority may amend a supervisor certificate at any time.

(2) Without limiting subsection (1), an amendment may vary a condition of the supervisor certificate or impose a new condition on the supervisor certificate.

(3) The Regulatory Authority must give written notice to the certified supervisor of the amendment.

(4) An amendment under this section has effect—

(a) 14 days after the Regulatory Authority gives notice of the amendment under subsection (3); or

(b) if another period is specified by the Regulatory Authority, at the end of that period.

121—Notice of change of circumstances

(1) A certified supervisor must notify the Regulatory Authority of—

(a) any change in the circumstances of the supervisor that affects—

(i) a requirement under section 108 or 109; or

(ii) the information specified in the supervisor certificate under section 116; or

(b) the suspension or cancellation of a working with children check, working with children card or teacher registration held by the certified supervisor; or

(c) any disciplinary proceedings in relation to the certified supervisor under an education law of a participating jurisdiction.

Penalty: $4,000.

(2) The notice must be given within 7 days after the change occurs.

122—Notice of change of information

If the certified supervisor notifies the Regulatory Authority of a change in any of the information stated on the supervisor certificate, the Regulatory Authority may amend the supervisor certificate to show the correct information.

Division 4—Suspension or cancellation of supervisor certificate

123—Grounds for suspension or cancellation of supervisor certificate

The Regulatory Authority may suspend or cancel a supervisor certificate—

(a) if the Regulatory Authority is of the opinion that the certified supervisor is no longer a fit and proper person to be a supervisor of an education and care service; or

(b) if the certified supervisor fails to comply with a condition of the supervisor certificate; or

(c) if the certified supervisor fails to comply with a requirement of this Law as applying in any participating jurisdiction in relation to a matter within the certified supervisor's control.

124—Show cause notice before suspension or cancellation

(1) This section applies if the Regulatory Authority is considering the suspension or cancellation of a supervisor certificate under section 123.

(2) The Regulatory Authority must first give the certified supervisor a notice (*show cause notice*) stating—

(a) that the Regulatory Authority intends to suspend or cancel the supervisor certificate; and

(b) the reasons for the proposed suspension or cancellation; and

(c) that the certified supervisor may, within 30 days after the notice is given, give the Regulatory Authority a written response to the proposed suspension or cancellation.

125—Decision in relation to suspension or cancellation

After considering any written response from the certified supervisor received within the time allowed by section 124(2)(c) (if applicable), the Regulatory Authority—

(a) may—

(i) suspend the supervisor certificate for a period not exceeding the prescribed period; or

(ii) cancel the supervisor certificate; or

(iii) decide not to suspend or cancel the supervisor certificate; and

(b) must give the certified supervisor notice of the decision.

126—Suspension of supervisor certificate without show cause notice

The Regulatory Authority may suspend the supervisor certificate on a ground referred to in section 123 without giving the supervisor a show cause notice under section 124 if the Regulatory Authority is satisfied that there is an immediate risk to the safety, health or wellbeing of a child or children.

127—Notice and taking effect of suspension or cancellation

(1) The Regulatory Authority must give the certified supervisor written notice of the decision to suspend or cancel the supervisor certificate under section 125 or 126.

(2) The notice of a decision to suspend must set out—

(a) the period of suspension; and

(b) the date on which it takes effect.

(3) The decision under section 125 to suspend or cancel takes effect at the end of 14 days after the date of the decision, or, if another period is specified by the Regulatory Authority, at the end of that period.

(4) The decision to suspend under section 126 takes effect on the giving of the notice.

128—Suspension or cancellation of certain supervisor certificates

(1) If the teacher registration of a person is suspended, the supervisor certificate of that person is suspended at the end of 14 days after that suspension unless and until the Regulatory Authority has assessed the person under section 109 as being a fit and proper person.

(2) If the teacher registration of a person is cancelled, the supervisor certificate of that person is cancelled at the end of 14 days after that cancellation unless the Regulatory Authority has assessed the person under section 109 as being a fit and proper person.

(3) The supervisor certificate of a person is suspended immediately if the working with children card of that person is suspended.

(4) The supervisor certificate of a person is cancelled immediately if the working with children card of that person is cancelled.

129—Voluntary suspension of supervisor certificate

(1) A certified supervisor may apply to the Regulatory Authority for a suspension of the supervisor certificate for a period of not more than 12 months.

(2) An application must—

(a) be in writing; and

(b) include the prescribed information; and

(c) include payment of the prescribed fee.

(3) The Regulatory Authority may, by written notice, agree to the suspension if the Authority is satisfied that it is reasonable in the circumstances.

(4) The Regulatory Authority must, within 30 days after the application is made, decide whether or not to grant the application.

(5) If the Regulatory Authority decides to grant the application, the suspension takes effect on a date agreed between the Regulatory Authority and the certified supervisor.

130—Surrender of a supervisor certificate by certified supervisor

(1) A certified supervisor may surrender the supervisor certificate by written notice to the Regulatory Authority.

(2) On the surrender of the supervisor certificate, the certificate is cancelled.

Division 5—Exercise of powers by another Regulatory Authority

131—Exercise of powers by another Regulatory Authority

(1) This section applies if the Regulatory Authority has granted a supervisor certificate under this Part.

(2) A Regulatory Authority of a participating jurisdiction may exercise all of the powers and perform all the functions of the Regulatory Authority under this Part in respect of the supervisor certificate if the certified supervisor works as a certified supervisor in that jurisdiction.

(3) A Regulatory Authority (including the Regulatory Authority of this jurisdiction) may only exercise a power referred to in subsection (2) after consulting with the Regulatory Authority of each participating jurisdiction in which the certified supervisor is currently working as a nominated supervisor.

(4) A failure by a Regulatory Authority to comply with subsection (3) does not affect the validity of the exercise of the power.

(5) A cancellation or suspension of a supervisor certificate in another participating jurisdiction has effect in this jurisdiction.

Division 6—Offence

132—Offence to act as supervisor without supervisor certificate

A person must not hold himself or herself out as being a certified supervisor unless the person holds a supervisor certificate.

Penalty: $10,000.

Part 5—Assessments and ratings

Division 1—Assessment and rating

133—Assessment for rating purposes

(1) The Regulatory Authority that granted the service approval for an education and care service may at any time assess the service in accordance with the national regulations to determine whether and at what rating level the service meets the National Quality Standard and the requirements of the national regulations.

(2) Until an approved education and care service is first assessed under this Part, it is taken to have the prescribed provisional rating.

134—Rating levels

(1) The rating levels for the purposes of this Law are the levels prescribed by the national regulations.

(2) The highest rating level prescribed by the national regulations can only be given by the National Authority under this Part.

135—Rating of approved education and care service

(1) After carrying out a rating assessment of an approved education and care service, the Regulatory Authority must determine the rating level (other than the highest rating level)—

(a) for each quality area stated in the National Quality Standard; and

(b) for the overall rating of the service.

(2) In determining a rating level, the Regulatory Authority may have regard to—

(a) any information obtained in the rating assessment; and

(b) any information obtained in any monitoring or investigation of the service under this Law; and

(c) the service's history of compliance with this Law as applying in any participating jurisdiction; and

(d) any other prescribed information.

136—Notice to approved education and care service of rating

(1) The Regulatory Authority must give written notice to the approved provider of an approved education and care service of the outcome of the rating assessment and the rating levels for that service determined under section 135.

(2) The notice under subsection (1) must be given within 60 days—

(a) after the completion of the assessment by an authorised officer under Part 9 of the premises of the approved education and care service for the purpose of the rating assessment; or

(b) if section 137 applies, after the end of the final period for review of the applicable decision or action referred to in section 137(1).

(3) A rating level set out in the notice is to be a rating level for the education and care service for the purposes of this Law unless a review of the rating level is sought under Division 3 or 4.

137—Suspension of rating assessment

(1) This section applies in respect of a rating assessment of an approved education and care service if the assessment has not been completed and—

(a) the provider approval or the service approval for the service is suspended or cancelled; or

(b) a compliance notice has been given to the approved provider in respect of the service; or

(c) a notice has been given under section 179 in respect of the service; or

(d) an action has been taken under section 189 in respect of a child or children being educated and cared for by the service.

(2) The Regulatory Authority must give the approved provider a written notice stating that notice of the outcome of the rating assessment will be given under section 136 within 60 days after—

(a) the end of the final period for review of the decision or action referred to in subsection (1); or

(b) if that review is sought, the determination of the review.

Division 2—Reassessment and re-rating

138—Regulatory Authority may reassess and re-rate approved education and care service

The Regulatory Authority may at any time reassess an approved education and care service or any aspect or element of an approved education and care service in accordance with the national regulations to determine whether and at what rating level it meets the National Quality Standard and the requirements of the national regulations for the purpose of rating that service.

139—Application for reassessment and re-rating by approved provider

(1) An approved provider may apply to the Regulatory Authority for a reassessment and re rating of an approved education and care service or any aspect or element of an approved education and care service which is rateable against the National Quality Standard or the national regulations.

(2) An application must—

(a) be in writing; and

(b) include the prescribed information; and

(c) include payment of the prescribed fee.

(3) An application under this section can only be made once in every 2 year period, unless the Regulatory Authority agrees otherwise.

140—Application of Division 1

Division 1 applies (with any necessary changes) to a reassessment and re-rating of an approved education and care service or any aspect or element of an approved education and care service under this Division.

Division 3—Review by Regulatory Authority

141—Review by Regulatory Authority

(1) This section applies to an approved provider that is given a notice under section 136.

(2) The approved provider may ask the Regulatory Authority that determined the rating levels to review the rating levels.

(3) A request must be made within 14 days after the approved provider receives the notice.

(4) A request must—

(a) be in writing; and

(b) set out the grounds on which review is sought; and

(c) be accompanied by the prescribed information; and

(d) include payment of the prescribed fee.

142—Process for review

(1) The person who conducts a review of rating levels for an approved education and care service for the Regulatory Authority must not be a person who was involved in the assessment or rating of the service.

(2) The person conducting the review may ask the approved provider and any person who was involved in the assessment or rating of the service for further information.

(3) A review under this section must be conducted within 30 days after the application for review is received.

(4) The period specified in subsection (3) may be extended by up to 30 days—

(a) if a request for further information is made under subsection (2); or

(b) by agreement between the approved provider and the Regulatory Authority.

143—Outcome of review by Regulatory Authority

(1) Following a review under section 142, the Regulatory Authority may:

(a) confirm the specific rating levels or the overall rating or both; or

(b) amend the specific rating levels or the overall rating or both.

(2) The Regulatory Authority must give the approved provider written notice of the decision on the review within 30 days after the decision is made.

(3) The notice must set out—

(a) the rating levels and overall rating for the approved education and care service; and

(b) the reasons for the decision.

(4) Unless an application is made under Division 4 for a review of the rating levels, the rating levels set out in the notice are the rating levels for the approved education and care service for the purposes of this Law.

Division 4—Review by Ratings Review Panel

Subdivision 1—Application for review

144—Application for further review by Ratings Review Panel

(1) This section applies if the Regulatory Authority has conducted a review of any rating levels of an approved education and care service under Division 3.

(2) The approved provider may apply to the National Authority for a further review by a Ratings Review Panel of the rating levels confirmed or amended by the Regulatory Authority under Division 3.

(3) An application may only be made on the ground that the Regulatory Authority—

(a) did not appropriately apply the prescribed processes for determining a rating level; or

(b) failed to take into account or give sufficient weight to special circumstances existing or facts existing at the time of the rating assessment.

145—Form and time of application

(1) An application must be made under section 144 within 14 days after the decision of the Regulatory Authority is received under Division 3.

(2) An application must—

(a) be in writing; and

(b) include the prescribed information; and

(c) include payment of the prescribed fee.

(3) An application must not include information or evidence that was not given to the Regulatory Authority for the purpose of a determination under Division 1, 2 or 3.

(4) The National Authority must—

(a) within 7 days after receipt of the application, give written notice to the Regulatory Authority of an application under this Division to review a determination of the Regulatory Authority; and

(b) invite the Regulatory Authority to make submissions to the review.

Subdivision 2—Establishment of Ratings Review Panel

146—Establishment of Ratings Review Panel

(1) The Board must establish a Ratings Review Panel for the purposes of conducting a review under this Division.

(2) The Panel is to consist of up to 3 members appointed by the Board.

(3) One of the members is to be appointed as chairperson.

(4) The members are to be appointed from the Review Panel pool established under section 147.

147—Review Panel pool

(1) The Board must establish a pool of persons to act as members of a Ratings Review Panel.

(2) The pool may consist of persons nominated by the Regulatory Authorities of each participating jurisdiction and the Commonwealth Minister.

(3) Subject to subsection (4), the persons approved as members of the pool must have expertise or expert knowledge in one or more of the following areas:

(a) early learning and development research or practice;

(b) law;

(c) a prescribed area.

(4) A member of staff of the National Authority may be approved as a member of the pool.

148—Procedure of Panel

(1) Subject to this Law, the procedure of a Ratings Review Panel is in its discretion.

(2) The chairperson of a Panel must convene meetings of the Panel.

(3) A Panel must keep minutes of its deliberations setting out—

(a) the dates and duration of its deliberations; and

(b) its decisions on the review.

(4) The Panel must seek to make decisions by consensus.

(5) In the absence of a consensus, a decision of the Panel is a decision of the majority of the members of the Panel.

(6) If a majority decision is not reached, the Panel is taken to have confirmed the rating levels determined by the Regulatory Authority.

149—Transaction of business by alternative means

(1) A Ratings Review Panel may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Panel for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Panel.

(2) The Panel may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

(3) Papers may be circulated among the members for the purposes of subsection (1) by facsimile, email or other transmission of the information in the papers concerned.

Subdivision 3—Conduct of review

150—Conduct of review

(1) In conducting a review, the Ratings Review Panel may consider—

(a) any documents or other information or plans, photographs or video or other evidence available to the Regulatory Authority in carrying out the rating assessment; and

(b) the approved provider's history of compliance with this Law as applying in any participating jurisdiction; and

(c) the approved education and care service's history of compliance with this Law as applying in any participating jurisdiction; and

(d) the application for review to the Regulatory Authority; and

(e) any submissions made by the approved provider to the review by the Regulatory Authority; and

(f) the written findings on the review by the Regulatory Authority; and

(g) the application for review to the Ratings Review Panel; and

(h) any written submissions or responses made to the Ratings Review Panel by the approved provider; and

(i) any written submissions or responses made to the Ratings Review Panel by the Regulatory Authority relating to the stated grounds for review; and

(j) any advice received from the National Authority, at the request of the Ratings Review Panel, about how the prescribed processes for rating assessments are intended to be applied that is relevant to the review.

(2) The Ratings Review Panel is not required to hold an oral hearing for a review.

(3) The Ratings Review Panel may ask the Regulatory Authority to provide in writing any information in relation to the assessment.

(4) The Ratings Review Panel may ask the approved provider for further written information in relation to its application.

(5) The Ratings Review Panel must ensure that the approved provider is provided with a copy of, and an opportunity to respond in writing to, any documents, information or evidence provided to the Panel by the Regulatory Authority.

151—Decision on review by Ratings Review Panel

(1) Following a review, the Ratings Review Panel may:

(a) confirm the rating levels determined by the Regulatory Authority; or

(b) amend the rating levels.

(2) The Ratings Review Panel must make a decision on the review within 60 days after the application for review was made.

(3) The chairperson of the Panel may extend the period for the making of a decision by a Ratings Review Panel if the chairperson considers there are special circumstances that warrant that extension.

(4) The period for the making of a decision by a Ratings Review Panel may be extended by agreement between the chairperson of the Panel and the approved provider.

(5) The Ratings Review Panel must give the approved provider, the Regulatory Authority and the National Authority written notice of the decision on the review within 14 days after the decision is made setting out its findings on each review ground.

(6) A rating level confirmed or amended on a review under this Division by the Ratings Review Panel is the rating level for the approved education and care service for the purposes of this Law.

Division 5—Awarding of highest rating

152—Application for highest rating

(1) An approved provider may apply to the National Authority for an approved education and care service operated by that provider to be assessed for the highest rating level for the education and care service if the criteria determined by the National Authority are met.

(2) The highest rating level is an overall rating of the education and care service.

(3) An application must—

(a) be in writing; and

(b) include the prescribed information; and

(c) include payment of the prescribed fee.

(4) An application may be made only once every 3 years, unless the National Authority determines otherwise in a particular case.

(5) An application may be made for the highest rating level only if the current overall rating of the service is the second highest rating level.

153—Assessment of education and care service

(1) The National Authority may determine and publish criteria that must be met by approved education and care services in respect of the award of the highest rating level.

(2) The Board must assess the approved education and care service in accordance with the criteria published under subsection (1) to determine whether the service meets the highest rating level in meeting the National Quality Standard and the requirements of the national regulations.

(3) The Board must ask for, and take into account, the advice of the Regulatory Authority in carrying out the assessment.

(4) The advice of the Regulatory Authority may include—

(a) previous rating assessments and ratings for the education and care service; and

(b) information about the service's compliance history; and

(c) any other relevant information.

154—Board may seek information and documents

(1) The Board for the purposes of the rating assessment may—

(a) ask the approved provider of the approved education and care service for any information and documents; and

(b) make any inquiries it considers appropriate.

(2) If the Board asks the approved provider for further information and documents under subsection (1), the period from the making of the request until the provision of the further information and documents is not included in the period referred to in section 155(2) for the Board to make a decision on the application.

155—Decision on application

(1) After assessing the approved education and care service, the Board must—

(a) if it is satisfied that it is appropriate to do so, give the approved education and care service the highest rating level; or

(b) otherwise refuse to give that rating.

(2) The Board must make its decision within 60 days after the application is received.

(3) The period specified in subsection (2) may be extended by up to 30 days—

(a) if a request for information and documents is made under section 154; or

(b) by agreement between the approved provider and the Board.

(4) If the Board gives the highest rating level to an approved education and care service, that rating becomes the rating level for that service.

(5) The highest rating level awarded to an approved education and care service applies to that service for 3 years, unless sooner revoked.

156—Notice of decision

(1) The Board must give written notice of its decision under section 155 in relation to an approved education and care service to—

(a) the approved provider; and

(b) the Regulatory Authority.

(2) The notice must be given within 14 days of making the decision.

157—Reassessment of highest rating level

The Board may at any time reassess an approved education and care service in accordance with section 153.

158—Revocation of highest rating level

The Board must revoke the highest rating level of an approved education and care service if—

(a) it determines that the service no longer meets the criteria for the highest rating level; or

(b) the Regulatory Authority advises the Board that the overall rating level of the education and care service has been determined to be at a level that is lower than the second highest rating level.

159—Re-application for highest rating level

(1) An approved provider of an approved education and care service that has been awarded the highest rating level may reapply for the award of the highest rating level for the service.

(2) The application must be made within 90 days before the expiry of the existing highest rating level for the approved education and care service.

(3) The application must—

(a) be in writing; and

(b) include the prescribed information; and

(c) include payment of the prescribed fee.

Division 6—Publication of rating levels

160—Publication of ratings

(1) The National Authority must publish the rating levels for an approved education and care service in accordance with this section.

(2) The National Authority must publish any rating levels determined under Division 1 or 2 at the end of the period for requesting a review of the rating levels under Division 3 if no request for review is received in that period.

(3) If a review by the Regulatory Authority is requested under Division 3, the rating levels must be published at the end of the period for requesting a further review of the rating under Division 4 if no request for further review is received in that period.

(4) If a further review is requested under Division 4, the rating levels must be published after the notification to the approved provider of the decision on the review.

(5) The National Authority must publish notice of the giving of the highest rating level to an approved education and care service under Division 5, as soon as possible after the Regulatory Authority and the approved provider are notified of the decision of the Board under that Division.

Part 6—Operating an education and care service

161—Offence to operate education and care service without nominated supervisor

The approved provider of an education and care service must not operate the service unless there is a nominated supervisor for that service.

Penalty:

(a) $5,000, in the case of an individual.

(b) $25,000, in any other case.

162—Offence to operate education and care service unless responsible person is present

(1) The approved provider of an education and care service must ensure that one of the following persons is present at all times that the service is educating and caring for children:

(a) the approved provider, if the approved provider is an individual or, in any other case, a person with management or control of an education and care service operated by the approved provider;

(b) the nominated supervisor of the service;

(c) a certified supervisor who has been placed in day to day charge of the service in accordance with the national regulations.

Penalty:

(a) $5,000, in the case of an individual.

(b) $25,000, in any other case.

(2) This section does not apply to an approved family day care service.

163—Offence relating to appointment or engagement of family day care co-ordinators

(1) The approved provider of a family day care service must ensure that at all times one or more qualified persons are employed or engaged as family day care co-ordinators of the family day care service—

(a) to assist with the operation of the family day care service; and

(b) to support, monitor and train the family day care educators of that service.

Penalty:

(a) $5,000, in the case of an individual.

(b) $25,000, in any other case.

(2) A person is a qualified person under this section if the person has the qualifications prescribed by the national regulations.

164—Offence relating to assistance to family day care educators

(1) The approved provider of a family day care service must ensure that, at all times that a family day care educator is educating and caring for a child as part of the service, one of the following persons is available to provide support to the family day care educator:

(a) the approved provider, if the approved provider is an individual, or a person with management or control of the family day care service, in any other case;

(b) the nominated supervisor of the service;

(c) a certified supervisor who has been placed in day to day charge of the family day care service in accordance with the national regulations.

Penalty:

(a) $5,000, in the case of an individual.

(b) $25,000, in any other case.

(2) For the purposes of this section, the requirement to be available to provide support to a family day care educator includes being available to be contacted by telephone to provide advice and assistance to the family day care educator.

165—Offence to inadequately supervise children

(1) The approved provider of an education and care service must ensure that all children being educated and cared for by the service are adequately supervised at all times that the children are in the care of that service.

Penalty:

(a) $10,000, in the case of an individual.

(b) $50,000, in any other case.

(2) The nominated supervisor of an education and care service must ensure that all children being educated and cared for by the service are adequately supervised at all times that the children are in the care of that service.

Penalty: $10,000.

(3) A family day care educator must ensure that any child being educated and cared for by the educator as a part of a family day care service is adequately supervised.

Penalty: $10,000.

166—Offence to use inappropriate discipline

(1) The approved provider of an education and care service must ensure that no child being educated and cared for by the service is subjected to—

(a) any form of corporal punishment; or

(b) any discipline that is unreasonable in the circumstances.

Penalty:

(a) $10,000, in the case of an individual.

(b) $50,000, in any other case.

(2) The nominated supervisor of an education and care service must ensure that no child being educated and cared for by the service is subjected to—

(a) any form of corporal punishment; or

(b) any discipline that is unreasonable in the circumstances.

Penalty: $10,000.

(3) A staff member of, or a volunteer at, an education and care service must not subject any child being educated and cared for by the service to—

(a) any form of corporal punishment; or

(b) any discipline that is unreasonable in the circumstances.

Penalty: $10,000.

(4) A family day care educator must not subject any child being educated and cared for by the educator as part of a family day care service to—

(a) any form of corporal punishment; or

(b) any discipline that is unreasonable in the circumstances.

Penalty: $10,000.

167—Offence relating to protection of children from harm and hazards

(1) The approved provider of an education and care service must ensure that every reasonable precaution is taken to protect children being educated and cared for by the service from harm and from any hazard likely to cause injury.

Penalty:

(a) $10,000, in the case of an individual.

(b) $50,000, in any other case.

(2) A nominated supervisor of an education and care service must ensure that every reasonable precaution is taken to protect children being educated and cared for by the service from harm and from any hazard likely to cause injury.

Penalty: $10,000.

(3) A family day care educator must ensure that every reasonable precaution is taken to protect a child being educated and cared for as part of a family day care service from harm and from any hazard likely to cause injury.

Penalty: $10,000.

168—Offence relating to required programs

(1) The approved provider of an education and care service must ensure that a program is delivered to all children being educated and cared for by the service that—

(a) is based on an approved learning framework; and

(b) is delivered in a manner that accords with the approved learning framework; and

(c) is based on the developmental needs, interests and experiences of each child; and

(d) is designed to take into account the individual differences of each child.

Penalty:

(a) $4,000, in the case of an individual.

(b) $20,000, in any other case.

(2) A nominated supervisor of an education and care service must ensure that a program is delivered to all children being educated and cared for by the service that—

(a) is based on an approved learning framework; and

(b) is delivered in a manner that accords with the approved learning framework; and

(c) is based on the developmental needs, interests and experiences of each child; and

(d) is designed to take into account the individual differences of each child.

Penalty: $4,000.

169—Offence relating to staffing arrangements

(1) An approved provider of an education and care service must ensure that, whenever children are being educated and cared for by the service, the relevant number of educators educating and caring for the children is no less than the number prescribed for this purpose.

Penalty:

(a) $10,000, in the case of an individual.

(b) $50,000, in any other case.

(2) An approved provider of an education and care service must ensure that each educator educating and caring for children for the service meets the qualification requirements relevant to the educator's role as prescribed by the national regulations.

Penalty:

(a) $10,000, in the case of an individual.

(b) $50,000, in any other case.

(3) A nominated supervisor of an education and care service must ensure that, whenever children are being educated and cared for by the service, the relevant number of educators educating and caring for the children is no less than the number prescribed for this purpose.

Penalty: $10,000.

(4) A nominated supervisor of an education and care service must ensure that each educator educating and caring for children for the service meets the qualification requirements relevant to the educator's role as prescribed by the national regulations.

Penalty: $10,000.

(5) A family day care educator must ensure that the number of children being educated and cared for by the family day care educator at any one time is no more than the number prescribed for this purpose.

Penalty: $10,000.

(6) Subsections (1), (2), (3), (4) and (5) do not apply in respect of an education and care service—

(a) to the extent that it holds a temporary waiver under Division 6 of Part 3 in respect of this requirement; or

(b) to the extent that it holds a service waiver under Division 5 of Part 3 in respect of this requirement.

(7) The National Authority may, on application, determine qualifications, including foreign qualifications, to be equivalent to the qualifications required by the national regulations.

(8) If a determination is made under subsection (7), any person holding the qualification is to be taken to be qualified in accordance with the national regulations.

170—Offence relating to unauthorised persons on education and care service premises

(1) This section applies to an education and care service operating in a participating jurisdiction that has a working with children law.

(2) The approved provider of the education and care service must ensure that an unauthorised person does not remain at the education and care service premises while children are being educated and cared for at the premises unless the person is under the direct supervision of an educator or other staff member of the service.

Penalty:

(a) $1,000, in the case of an individual.

(b) $5,000, in any other case.

(3) The nominated supervisor of the education and care service must ensure that an unauthorised person does not remain at the education and care service premises while children are being educated and cared for at the premises unless the person is under the direct supervision of an educator or other staff member of the service.

Penalty: $1,000.

(4) A family day care educator must ensure that an unauthorised person does not remain at the residence or approved family day care venue at which the educator is educating and caring for a child as part of a family day care service unless the unauthorised person is under the direct supervision of the educator.

Penalty: $1,000.

(5) In this section—

authorised nominee, in relation to a child, means a person who has been given permission by a parent or family member of the child to collect the child from the education and care service or the family day care educator;

unauthorised person means a person who is not—

(a) a person who holds a current working with children check or working with children card; or

(b) a parent or family member of a child who is being educated and cared for by the education and care service or the family day care educator; or

(c) an authorised nominee of a parent or family member of a child who is being educated and cared for by the education and care service or the family day care educator; or

(d) in the case of an emergency, medical personnel or emergency service personnel; or

(e) a person who is permitted under the working with children law of this jurisdiction to remain at the education and care service premises without holding a working with children check or a working with children card.

(6) A reference in subsection (5) to a parent or family member of a child does not include a person—

(a) whose access to the child is prohibited or restricted by an order of a court or tribunal of which the approved provider, nominated supervisor or family day care educator (as the case requires) is aware; or

(b) who is an inappropriate person within the meaning of section 171.

171—Offence relating to direction to exclude inappropriate persons from education and care service premises

(1) The Regulatory Authority may direct an approved provider, a nominated supervisor or a family day care educator to exclude a person whom the Authority is satisfied is an inappropriate person from the education and care service premises while children are being educated and cared for at the premises for such time as the Authority considers appropriate.

(2) A person to whom a direction is given under subsection (1) must comply with the direction.

Penalty:

(a) $10,000, in the case of an individual.

(b) $50,000, in any other case.

(3) In this section—

inappropriate person means a person—

(a) who may pose a risk to the safety, health or wellbeing of any child or children being educated and cared for by the education and care service; or

(b) whose behaviour or state of mind or whose pattern of behaviour or common state of mind is such that it would be inappropriate for him or her to be on the education and care service premises while children are being educated and cared for by the education and care service.

Example—

A person who is under the influence of drugs or alcohol.

172—Offence to fail to display prescribed information

An approved provider of an education and care service must ensure that the prescribed information about the following is positioned so that it is clearly visible to anyone from the main entrance to the education and care service premises:

(a) the provider approval;

(b) the service approval;

(c) the nominated supervisor or the prescribed class of persons to which the nominated supervisor belongs;

(d) the rating of the service;

(e) any service waivers or temporary waivers held by the service;

(f) any other prescribed matters.

Penalty:

(a) $3,000, in the case of an individual.

(b) $15,000, in any other case.

173—Offence to fail to notify certain circumstances to Regulatory Authority

(1) An approved provider must notify the Regulatory Authority of the following in relation to the approved provider or each approved education and care service operated by the approved provider:

(a) a change in the name of the approved provider;

(b) any appointment or removal of a person with management or control of an education and care service operated by the approved provider;

(c) a failure to commence operating an education and care service within 6 months (or within the time agreed with the Regulatory Authority) after being granted a service approval for the service.

Penalty:

(a) $4,000, in the case of an individual.

(b) $20,000, in any other case.

(2) An approved provider must notify the Regulatory Authority of the following in relation to an approved education and care service operated by the approved provider:

(a) if the approved provider is notified of the suspension or cancellation of a working with children card or teacher registration of, or disciplinary proceedings under an education law of a participating jurisdiction in respect of, a nominated supervisor or certified supervisor engaged by the service;

(b) if a nominated supervisor of an approved education and care service ceases to be employed or engaged by the service or withdraws consent to the nomination;

(c) any proposed change to the education and care service premises of an approved education and care service (other than a family day care residence);

(d) ceasing to operate the education and care service;

(e) in the case of an approved family day care service, a change in the location of the principal office of the service;

(f) an intention to transfer a service approval, as required under section 59.

Penalty:

(a) $4,000, in the case of an individual.

(b) $20,000, in any other case.

(3) A notice under subsection (1) must be in writing and be provided within the relevant prescribed time to the Regulatory Authority that granted the provider approval.

(4) A notice under subsection (2) must be in writing and be provided within the relevant prescribed time to—

(a) the Regulatory Authority that granted the service approval for the education and care service to which the notice relates; and

(b) in the case of a family day care service, the Regulatory Authority in each participating jurisdiction in which the family day care service operates.

174—Offence to fail to notify certain information to Regulatory Authority

(1) An approved provider must notify the Regulatory Authority of the following information in relation to the approved provider or each approved education and care service operated by the approved provider:

(a) any change relevant to whether the approved provider is a fit and proper person to be involved in the provision of an education and care service;

(b) information in respect of any other prescribed matters.

Penalty:

(a) $4,000, in the case of an individual.

(b) $20,000, in any other case.

(2) An approved provider must notify the Regulatory Authority of the following information in relation to an approved education and care service operated by the approved provider:

(a) any serious incident at the approved education and care service;

(b) complaints alleging—

(i) that the safety, health or wellbeing of a child or children was or is being compromised while that child or children is or are being educated and cared for by the approved education and care service; or

(ii) that this Law has been contravened;

(c) information in respect of any other prescribed matters.

Penalty:

(a) $4,000, in the case of an individual.

(b) $20,000, in any other case.

(3) A notice under subsection (1) must be in writing and be provided within the relevant prescribed time to the Regulatory Authority that granted the provider approval.

(4) A notice under subsection (2) must be in writing and be provided within the relevant prescribed time to—

(a) the Regulatory Authority that granted the service approval for the education and care service to which the notice relates; and

(b) in the case of a family day care service, the Regulatory Authority in each participating jurisdiction in which the family day care service operates.

(5) In this section—

serious incident means an incident or class of incidents prescribed by the national regulations as a serious incident.

175—Offence relating to requirement to keep enrolment and other documents

(1) An approved provider of an education and care service must keep the prescribed documents available for inspection by an authorised officer in accordance with this section.

Penalty:

(a) $4,000, in the case of an individual.

(b) $20,000, in any other case.

(2) Documents referred to in subsection (1)—

(a) must, to the extent practicable, be kept at the education and care service premises if they relate to—

(i) the operation of the service; or

(ii) any staff member employed or engaged by the service; or

(iii) any child cared for, or educated at, those premises,

in the previous 12 months; and

(b) in any other case, must be kept at a place, and in a manner, that they are readily accessible by an authorised officer.

(3) A family day care educator who educates and cares for a child at a residence or approved family day care venue, as part of a family day care service, must keep the prescribed documents available for inspection by an authorised officer at that residence or venue.

Penalty: $4,000.

Part 7—Compliance with this Law

Division 1—Notices

176—Compliance directions

(1) This section applies if the Regulatory Authority is satisfied that an education and care service has not complied with a provision of this Law that is prescribed by the national regulations.

(2) The Regulatory Authority may give the approved provider a written direction (a *compliance direction*) requiring the approved provider to take the steps specified in the direction to comply with that provision.

(3) An approved provider must comply with a direction under subsection (2) within the period (being not less than 14 days) specified in the direction.

Penalty:

(a) $2,000, in the case of an individual.

(b) $10,000, in any other case.

177—Compliance notices

(1) This section applies if the Regulatory Authority is satisfied that an education and care service is not complying with any provision of this Law.

(2) The Regulatory Authority may give the approved provider a notice (a *compliance notice*) requiring the approved provider to take the steps specified in the notice to comply with that provision.

(3) An approved provider must comply with a compliance notice under subsection (2) within the period (being not less than 14 days) specified in the notice.

Penalty:

(a) $6,000, in the case of an individual.

(b) $30,000, in any other case.

178—Notice to suspend education and care by a family day care educator

(1) This section applies if the Regulatory Authority is satisfied that because of the conduct of, or the inadequacy of the service provided by, a family day care educator engaged by or registered with a family day care service—

(a) the approved provider or the nominated supervisor of an approved family day care service is not complying with any provision of this Law; or

(b) there is a risk to the safety, health or wellbeing of children being educated and cared for by the family day care educator.

(2) The Regulatory Authority may give the approved provider, the nominated supervisor (if applicable) and the educator a notice (*show cause notice*) stating—

(a) that the Regulatory Authority intends to give the approved provider a notice directing the provider to suspend the provision of education and care by the educator; and

(b) the reasons for the proposed direction; and

(c) that the approved provider, nominated supervisor or educator, (as the case requires) may, within 14 days after the show cause notice is given, make submissions to the Regulatory Authority in respect of the proposed direction.

(3) The show cause notice must be served by delivering it personally to the family day care educator.

(4) The Regulatory Authority—

(a) must consider any submissions from the approved provider, the nominated supervisor and the family day care educator received within the time allowed by subsection (2)(c); and

(b) may consider any other submissions and any matters the Regulatory Authority considers relevant; and

(c) may—

(i) give the approved provider a notice directing the provider to suspend the provision of education and care of children by the family day care educator; or

(ii) decide not to give that direction.

(5) The Regulatory Authority must give the family day care educator a notice of the decision under subsection (4).

(6) If the Regulatory Authority decides not to give the direction to suspend, the Regulatory Authority must give the approved provider notice of the decision.

(7) A person must comply with a direction under subsection (4).

Penalty:

(a) $6,000, in the case of an individual.

(b) $30,000, in any other case.

179—Emergency action notices

(1) This section applies if the Regulatory Authority is satisfied that an education and care service is operating in a manner that poses, or is likely to pose, an immediate risk to the safety, health or wellbeing of a child or children being educated and cared for by the service.

(2) The Regulatory Authority may, by written notice, direct the approved provider of the education and care service to take the steps specified in the notice to remove or reduce the risk within the time (not more than 14 days) specified in the notice.

(3) An approved provider must comply with a direction given under subsection (2).

Penalty:

(a) $6,000, in the case of an individual.

(b) $30,000, in any other case.

Division 2—Enforceable undertakings

180—Enforceable undertakings

(1) This section applies if a person has contravened, or if the Regulatory Authority alleges a person has contravened, a provision of this Law.

(2) The Regulatory Authority may accept a written undertaking from the person under which the person undertakes to take certain actions, or refrain from taking certain actions, to comply with this Law.

(3) A person may with the consent of the Regulatory Authority withdraw or amend an undertaking.

(4) The Regulatory Authority may withdraw its acceptance of the undertaking at any time and the undertaking ceases to be in force on that withdrawal.

(5) While an undertaking is in force, proceedings may not be brought for any offence constituted by the contravention or alleged contravention in respect of which the undertaking is given.

(6) If a person complies with the requirements of an undertaking, no further proceedings may be brought for any offence constituted by the contravention or alleged contravention in respect of which the undertaking was given.

(7) The Regulatory Authority may publish on the Regulatory Authority's website an undertaking accepted under this section.

181—Failure to comply with enforceable undertakings

(1) If the Regulatory Authority considers that the person who gave an undertaking under section 180 has failed to comply with any of its terms, the Regulatory Authority may apply to the relevant tribunal or court for an order under subsection (2) to enforce the undertaking.

(2) If the relevant tribunal or court is satisfied that the person has failed to comply with a term of the undertaking, the relevant tribunal or court may make any of the following orders:

(a) an order directing the person to comply with that term of the undertaking;

(b) an order that the person take any specified action for the purpose of complying with the undertaking;

(c) any other order that the relevant tribunal or court considers appropriate in the circumstances.

(3) If the relevant tribunal or court determines that the person has failed to comply with a term of the undertaking, proceedings may be brought for any offence constituted by the contravention or alleged contravention in respect of which the undertaking was given.

Division 3—Prohibition notices

182—Grounds for issuing prohibition notice

(1) The Regulatory Authority may give a prohibition notice to a person who is in any way involved in the provision of an approved education and care service if it considers that there may be an unacceptable risk of harm to a child or children if the person were allowed—

(a) to remain on the education and care service premises; or

(b) to provide education and care to children.

(2) For the purposes of subsection (1), a person may be involved in the provision of an approved education and care service as any of the following:

(a) an approved provider;

(b) a certified supervisor;

(c) an educator;

(d) a family day care educator;

(e) an employee;

(f) a contractor;

(g) a volunteer,

or in any other capacity.

183—Show cause notice to be given before prohibition notice

(1) Before giving a person a prohibition notice, the Regulatory Authority must give the person a notice (a *show cause notice*)—

(a) stating that the Regulatory Authority proposes to give the person a prohibition notice; and

(b) stating the reasons for the proposed prohibition; and

(c) inviting the person to make a written submission to the Regulatory Authority, within a stated time of at least 14 days, about the proposed prohibition.

(2) Subsection (1) does not apply if the Regulatory Authority is satisfied it is necessary, in the interests of the safety, health or wellbeing of a child or children, to immediately issue a prohibition notice to the person.

184—Deciding whether to issue prohibition notice

(1) If the Regulatory Authority gives a show cause notice under section 183 to a person, the Regulatory Authority must have regard to any written submission received from the person within the time stated in the show cause notice before deciding whether to give the person a prohibition notice.

(2) If the Regulatory Authority decides not to issue a prohibition notice to the person, the Regulatory Authority must give the person notice of the decision.

185—Content of prohibition notice

A prohibition notice given to a person must state—

(a) that the person is prohibited from doing any of the following:

(i) providing education and care to children for an education and care service;

(ii) being engaged as a supervisor, educator, family day care educator, employee, contractor or staff member of, or being a volunteer at, an education and care service;

(iii) carrying out any other activity relating to education and care services; and

(b) that the person may apply for cancellation of the notice; and

(c) how an application for cancellation must be made.

186—Cancellation of prohibition notice

(1) If the Regulatory Authority is satisfied there is not a sufficient reason for a prohibition notice to remain in force for a person, the Regulatory Authority must cancel the prohibition notice and give the person notice of the cancellation.

(2) A person for whom a prohibition notice is in force may apply to the Regulatory Authority to cancel the notice.

(3) The application must—

(a) be in writing; and

(b) include the prescribed information; and

(c) be signed by the person.

(4) The person may state in the application anything the person considers relevant to the Regulatory Authority's decision about whether there would be an unacceptable risk of harm to children if the person were—

(a) to remain at the education and care service premises; or

(b) to provide education and care to children.

(5) The application may include a statement setting out any change in the person's circumstances since the prohibition notice was given or since any previous application under this section that would warrant the cancellation of the notice.

(6) The Regulatory Authority must decide the application as soon as practicable after its receipt.

187—Person must not contravene prohibition notice

While a prohibition notice is in force under this Law as applying in any participating jurisdiction for a person, the person must not—

(a) provide education and care to children for an education and care service; or

(b) be engaged as a supervisor, educator, family day care educator, employee, contractor or staff member of, or perform volunteer services for, an education and care service; or

(c) carry out any other activity relating to education and care services.

Penalty: $20,000.

188—Offence to engage person to whom prohibition notice applies

An approved provider must not engage a person as a supervisor, educator, family day care educator, employee, contractor or staff member of, or allow a person to perform volunteer services for, an education and care service if the provider knows, or ought reasonably to know, a prohibition notice is in force under this Law as applying in any participating jurisdiction in respect of the person.

Penalty:

(a) $20,000, in the case of an individual.

(b) $100,000, in any other case.

Division 4—Emergency removal of children

189—Emergency removal of children

(1) This section applies if the Regulatory Authority considers, on reasonable grounds, that there is an immediate danger to the safety or health of a child or children being educated and cared for by an education and care service.

(2) The Regulatory Authority may remove, or cause the removal of, the child or children from the education and care service premises.

(3) In exercising a power under subsection (2)—

(a) the Regulatory Authority may be given such assistance by other persons (including police officers) as is reasonably required; and

(b) the Regulatory Authority and any person assisting the Regulatory Authority may—

(i) enter the education and care service premises, without warrant; and

(ii) use reasonable force as necessary.

(4) If a child is removed from the education and care service premises under subsection (2), the Regulatory Authority must ensure that the child's parents are immediately notified of the situation and the child's current location.

Part 8—Review

Division 1—Internal review

190—Reviewable decision—internal review

A reviewable decision for internal review is a decision of the Regulatory Authority under this Law as applying in any participating jurisdiction—

(a) to refuse to grant a provider approval, a service approval or a supervisor certificate; or

(b) to amend or refuse to amend a provider approval, a service approval or a supervisor certificate; or

(c) to impose a condition on a provider approval, a service approval or a supervisor certificate; or

(d) to suspend—

(i) a provider approval under section 28; or

(ii) a service approval under section 73; or

(iii) a supervisor certificate under section 126; or

(e) to refuse to consent to the transfer of a service approval; or

(f) to revoke a service waiver; or

(g) to issue a compliance direction; or

(h) to issue a compliance notice.

191—Internal review of reviewable decisions

(1) A person who is the subject of a reviewable decision for internal review may apply to the Regulatory Authority in writing for review of the decision.

(2) An application under subsection (1) must be made—

(a) within 14 days after the day on which the person is notified of the decision; or

(b) if the person is not notified of the decision, within 14 days after the person becomes aware of the decision.

(3) The person who conducts the review for the Regulatory Authority must not be a person who was involved in the assessment or investigation of the person or service to whom or which the decision relates.

(4) The person conducting the review may ask the person who applied for the review for further information.

(5) A review under this section must be conducted within 30 days after the application is made.

(6) The period specified in subsection (5) may be extended by up to 30 days—

(a) if a request for further information is made under subsection (4); or

(b) by agreement between the person who applied for the review and the Regulatory Authority.

(7) The Regulatory Authority may, in relation to an application under subsection (1)—

(a) confirm the decision; or

(b) make any other decision that the Regulatory Authority thinks appropriate.

Division 2—External review

192—Reviewable decision—external review

A reviewable decision for external review is—

(a) a decision of the Regulatory Authority made under section 191 (other than a decision in relation to the issue of a compliance direction or a compliance notice); or

(b) a decision of the Regulatory Authority under this Law as applying in any participating jurisdiction—

(i) to suspend a provider approval under section 27; or

(ii) to cancel a provider approval under section 33; or

(iii) to suspend a service approval under section 72; or

(iv) to cancel a service approval under section 79 or 307; or

(v) to suspend or cancel a supervisor certificate under section 125; or

(vi) to direct the approved provider of a family day care service to suspend the care and education of children by a family day care educator; or

(vii) to give a prohibition notice or to refuse to cancel a prohibition notice.

Note—

A person is not entitled to a review under this section in respect of a suspension or cancellation of a service approval if that suspension or cancellation relates only to an associated children's service. Any right of review would be under the children's services law.

193—Application for review of decision of the Regulatory Authority

(1) A person who is the subject of a reviewable decision for external review may apply to the relevant tribunal or court for a review of the decision.

(2) An application must be made within 30 days after the day on which the applicant is notified of the decision that is to be reviewed.

(3) After hearing the matter, the relevant tribunal or court may—

(a) confirm the decision of the Regulatory Authority; or

(b) amend the decision of the Regulatory Authority; or

(c) substitute another decision for the decision of the Regulatory Authority.

(4) In determining any application under this section, the relevant tribunal or court may have regard to any decision under this Law as applying in another participating jurisdiction of a relevant tribunal or court of that jurisdiction.

Division 3—General

194—Relationship with Act establishing administrative body

This Part applies despite any provision to the contrary in the Act that establishes the relevant tribunal or court but does not otherwise limit that Act.

Part 9—Monitoring and enforcement

Division 1—Authorised officers

195—Authorisation of authorised officers

(1) The Regulatory Authority may authorise any person who the Regulatory Authority is satisfied is an appropriate person to be an authorised officer for the purposes of this Law.

(2) In considering whether a person is an appropriate person to be an authorised officer, the Regulatory Authority must take into account the requirements for the authorisation of authorised officers determined by the National Authority under subsection (5).

(3) An authorised officer holds office on any terms and conditions stated in the authorisation.

(4) A defect in the authorisation of an authorised officer does not affect the validity of any action taken or decision made by the authorised officer under this Law.

(5) The National Authority may determine the requirements for the authorisation of authorised officers under this section.

(6) A determination under subsection (5) must be published on the website of the National Authority.

196—Identity card

(1) The Regulatory Authority must issue to each authorised officer an identity card in the form prescribed by the national regulations.

(2) The identity card must identify the authorised officer as an authorised officer authorised by the Regulatory Authority under this Law.

(3) An authorised officer must—

(a) carry the identity card whenever the officer is exercising his or her functions under this Law; and

(b) show the identity card—

(i) before exercising a power of entry under this Law; and

(ii) at any time during the exercise of a power under this Law when asked to do so.

Penalty: $1,000.

(4) An authorised officer who fails to comply with subsection (3)(b) in relation to the exercise of a power ceases to be authorised to exercise the power in relation to the matter.

(5) An authorised officer must return his or her identity card to the Regulatory Authority on ceasing to be authorised as an authorised officer for the purposes of this Law.

Penalty: $1,000.

Division 2—Powers of entry

197—Powers of entry for assessing and monitoring approved education and care service

(1) An authorised officer may exercise a power under this section for any of the following purposes:

(a) monitoring compliance with this Law;

(b) a rating assessment of an approved education and care service under Part 5;

(c) obtaining information requested under section 35 or 83.

(2) An authorised officer may, at any reasonable time and with such assistants as may reasonably be required, enter any education and care service premises and do any of the following:

(a) inspect the premises and any plant, equipment, vehicle or other thing;

(b) photograph or film, or make audio recordings or make sketches of, any part of the premises or anything at the premises;

(c) inspect and make copies of, or take extracts from, any document kept at the premises;

(d) take any document or any other thing at the premises;

(e) ask a person at the premises—

(i) to answer a question to the best of that person's knowledge, information and belief; or

(ii) to take reasonable steps to provide information or produce a document.

(3) A power under subsection (2)(a) to (d) is limited to a document or thing that is used or likely to being used in the provision of the education and care service.

(4) If the authorised officer takes any document or thing under subsection (2), he or she must—

(a) give notice of the taking of the document or thing to the person apparently in charge of it or to an occupier of the premises; and

(b) return the document or thing to that person or the premises within 7 days after taking it.

(5) An authorised officer may not, under this section, enter a residence unless—

(a) an approved education and care service is operating at the residence at the time of entry; or

(b) the occupier of the residence has consented in writing to the entry and the inspection.

198—National Authority representative may enter service premises in company with Regulatory Authority

(1) A person authorised by the National Authority, in company with an authorised officer, may enter premises used by an approved education and care service within the usual hours of operation of the service at those premises.

(2) The entry by the person authorised by the National Authority is solely for the purpose of informing the National Authority of the rating assessment processes of the Regulatory Authority under Part 5 to assist the National Authority in promoting consistency across participating jurisdictions.

199—Powers of entry for investigating approved education and care service

(1) An authorised officer may exercise the powers under this section to investigate an approved education and care service if the authorised officer reasonably suspects that an offence may have been or may be being committed against this Law.

(2) The authorised officer, with any necessary assistants, may with or without the consent of the occupier of the premises, enter the education and care service premises at any reasonable time and do any of the following:

(a) search any part of the premises;

(b) inspect, measure, test, photograph or film, or make audio recordings of, any part of the premises or anything at the premises;

(c) take a thing, or a sample of or from a thing, at the premises for analysis, measurement or testing;

(d) copy, or take an extract from, a document, at the premises;

(e) take into or onto the premises any person, equipment and materials the authorised officer reasonably requires for exercising a power under this subsection;

(f) require the occupier of the premises, or a person at the premises, to give the authorised officer information to help the authorised officer in conducting the investigation.

(3) A power under subsection (2)(b) to (d) is limited to a document or thing that is used or likely to be used in the provision of the education and care service.

(4) An authorised officer may not, under this section, enter a residence unless—

(a) an approved education and care service is operating at the residence at the time of entry; or

(b) the occupier of the residence has consented in writing to the entry and the inspection.

200—Powers of entry to business premises

(1) An authorised officer may exercise powers under this section if the authorised officer reasonably suspects that documents or other evidence relevant to the possible commission of an offence against this Law are present at the principal office or any other business premises of an approved provider.

(2) The authorised officer, with the consent of the occupier of the premises, may enter the premises and do any of the following:

(a) search any part of the premises;

(b) inspect, measure, test, photograph or film, or make audio recordings of, any part of the premises or anything at the premises;

(c) take a thing, or a sample of or from a thing, at the premises for analysis, measurement or testing;

(d) copy, or take an extract from, a document, at the premises;

(e) take into or onto the premises any person, equipment and materials the authorised officer reasonably requires for exercising a power under this subsection;

(f) require the occupier of the premises, or a person at the premises, to give the authorised officer information to help the authorised officer in conducting the investigation.

(3) An authorised officer must not enter and search the premises with the consent of the occupier unless, before the occupier consents to that entry, the authorised officer has—

(a) produced his or her identity card for inspection; and

(b) informed the occupier—

(i) of the purpose of the search and the powers that may be exercised; and

(ii) that the occupier may refuse to give consent to the entry and search or to the taking of anything found during the search; and

(iii) that the occupier may refuse to consent to the taking of any copy or extract from a document found on the premises during the search.

201—Entry to premises with search warrant

(1) An authorised officer under the authority of a search warrant may enter premises if the authorised officer reasonably believes that a person is operating an education and care service in contravention of section 103 at or from the premises.

(2) An authorised officer under the authority of a search warrant may enter any education and care service premises or any premises where the authorised officer reasonably believes that an approved education and care service is operating if the authorised officer reasonably believes that the education and care service is operating in contravention of this Law.

(3) An authorised officer under the authority of a search warrant may enter the principal office or any other business premises of an approved provider if the authorised officer reasonably believes that documents or other evidence relevant to the possible commission of an offence against this Law are present at those premises.

(4) Schedule 2 applies in relation to the issue of the search warrant and the powers of the authorised officer on entry.

202—Seized items

(1) If an authorised officer has taken a thing under section 199 or 200 or under a search warrant under section 201, the authorised officer must take reasonable steps to return the thing to the person from whom it was taken if the reason for the taking no longer exists.

(2) If the thing has not been returned within 60 days after it was taken, the authorised officer must take reasonable steps to return it unless—

(a) proceedings have been commenced within the period of 60 days and those proceedings (including any appeal) have not been completed; or

(b) a court makes an order under section 203 extending the period the thing can be retained.

(3) If an authorised officer has taken a thing under section 199 or 200 or under a search warrant under section 201, the authorised officer must provide the owner of the thing with reasonable access to the thing.

203—Court may extend period

(1) An authorised officer may apply to a court within the period of 60 days referred to in section 202 or within a period extended by the court under this section for an extension of the period for which the thing can be held.

(2) The court may order the extension if satisfied that retention of the thing is necessary—

(a) for the purposes of an investigation into whether an offence has been committed; or

(b) to enable evidence of an offence to be obtained for the purposes of a prosecution.

(3) The court may adjourn an application to enable notice of the application to be given to any person.

Division 3—Other powers

204—Power to require name and address

(1) This section applies if—

(a) an authorised officer finds a person committing an offence against this Law; or

(b) an authorised officer finds a person in circumstances that lead, or the authorised officer has information that leads, the officer to reasonably suspect the person is committing, or has committed, an offence against this Law.

(2) The authorised officer may require the person to state the person's name and residential address.

(3) The authorised officer may require the person to give evidence of the correctness of the stated name or residential address if the officer reasonably suspects the stated name or address to be false.

205—Power to require evidence of age, name and address of person

(1) This section applies if—

(a) the national regulations require a staff member, a family day care educator or a volunteer to have attained a prescribed minimum age; and

(b) an authorised officer reasonably suspects that a person—

(i) is employed or engaged as a staff member or a family day care educator by, or is a volunteer at, an education and care service; and

(ii) has not attained that prescribed minimum age.

(2) The authorised officer may require the person to state the person's correct date of birth, whether or not when requiring the person to state the person's correct name and address.

(3) Also, the authorised officer may require the person to provide evidence of the correctness of the stated date of birth—

(a) at the time of making the requirement under subsection (2) if, in the circumstances, it would be reasonable to expect the person to be in possession of evidence of the correctness of the stated date of birth; or

(b) otherwise, within 14 days of making the requirement under subsection (2).

(4) The authorised officer may require the person to state the person's name and residential address if—

(a) the person refuses or is unable to comply with a requirement under subsection (2) or (3); or

(b) according to the date of birth the person states, or the evidence of the person's age the person gives, the person has not attained the prescribed minimum age.

206—Power of authorised officers to obtain information documents and evidence

(1) An authorised officer may exercise a power under this section for any of the following purposes:

(a) monitoring compliance with this Law;

(b) a rating assessment of an approved education and care service under Part 5;

(c) obtaining information requested under section 35 or 83.

(2) An authorised officer may, by written notice, require a specified person to provide to the authorised officer, by writing signed by that person or, if the person is not an individual, by a competent officer of that person, within the time and in the manner specified in the notice, any relevant information that is specified in the notice.

(3) The time specified in the notice must not be less than 14 days from the date the notice is issued.

(4) In this section—

specified person means a person who is or has been—

(a) an approved provider, a certified supervisor or a staff member of, or a volunteer at, an approved education and care service; or

(b) a family day care educator.

Division 4—Offences relating to enforcement

207—Offence to obstruct authorised officer

A person must not obstruct an authorised officer in exercising his or her powers under this Law.

Penalty:

(a) $8,000, in the case of an individual.

(b) $40,000, in any other case.

208—Offence to fail to assist authorised officer

A person must not, without reasonable excuse—

(a) refuse to answer a question lawfully asked by an authorised officer (other than a question asked under section 197(2)(e)); or

(b) refuse to provide information or produce a document lawfully required by an authorised officer; or

(c) fail to comply with a requirement made by an authorised officer under clause 5(2)(f) or (g) of Schedule 2.

Penalty:

(a) $8,000, in the case of an individual.

(b) $40,000, in any other case.

209—Offence to destroy or damage notices or documents

A person must not, without lawful authority, destroy or damage any notice or document given or prepared or kept under this Law.

Penalty:

(a) $8,000, in the case of an individual.

(b) $40,000, in any other case.

210—Offence to impersonate authorised officer

A person must not impersonate an authorised officer.

Penalty: $8,000.

211—Protection against self incrimination

(1) An individual may refuse or fail to give information or do any other thing that the individual is required to do by or under this Law if giving the information or doing the thing might incriminate the individual.

(2) However, subsection (1) does not apply to—

(a) the production of a document or part of a document that is required to be kept under this Law; or

(b) the giving of the individual's name or address in accordance with this Law; or

(c) anything required to be done under section 215 or 216.

(3) Any document referred to in subsection (2)(a) that is produced by an individual or any information obtained directly or indirectly from that document produced by an individual is not admissible in evidence against the individual in any criminal proceedings (except for criminal proceedings under this Law) or in any civil proceedings.

212—Warning to be given

(1) Before requiring a person to answer a question or provide information or a document under this Part or Schedule 2, an authorised officer must—

(a) identify himself or herself to the person as an authorised officer by producing the officer's identity card; and

(b) warn the person that a failure to comply with the requirement or to answer the question, without reasonable excuse, would constitute an offence; and

(c) in the case of an individual, warn the person about the effect of section 211.

(2) Nothing in this section prevents an authorised officer from obtaining and using evidence given to the authorised officer voluntarily by any person.

(3) This section does not apply to a request made under section 197.

213—Occupier's consent to search

(1) An occupier who consents in writing to the entry and inspection of his or her premises under Division 2 must be given a copy of the signed consent immediately.

(2) If, in any proceeding, a written consent is not produced to the court, it must be presumed until the contrary is proved that the occupier did not consent to the entry and search.

Division 5—Powers of Regulatory Authority

214—Powers of Regulatory Authority to obtain information for rating purposes

The Regulatory Authority may, for the purpose of a rating assessment—

(a) ask the approved provider of the approved education and care service for any information and documents; and

(b) make any inquiries it considers appropriate.

215—Power of Regulatory Authority to obtain information, documents and evidence by notice

(1) This section applies if the Regulatory Authority reasonably suspects that an offence has or may have been committed against this Law.

(2) The Regulatory Authority may, by written notice, require a specified person—

(a) to provide to the Regulatory Authority, in writing signed by that person or, if the person is not an individual, by a competent officer of that person, within the time and in the manner specified in the notice, any relevant information that is specified in the notice; or

(b) to produce to the Regulatory Authority, or to a person specified in the notice acting on the Regulatory Authority's behalf, in accordance with the notice, any relevant document referred to in the notice; or

(c) to appear before the Regulatory Authority, or a person specified in the notice acting on the Regulatory Authority's behalf, at a time and place specified in the notice to give any evidence or to produce any relevant document specified in the notice.

(3) The notice must—

(a) warn the person that failure or refusal to comply with the notice would constitute an offence; and

(b) warn the person about the effect of sections 217, 218 and 219.

(4) The Regulatory Authority or the person specified in the notice acting on the Regulatory Authority's behalf may require the evidence referred to in subsection (2)(c) to be given on oath or affirmation and for that purpose may administer an oath or affirmation.

(5) The person may give evidence under subsection (2)(c) by telephone or video conference or other electronic means unless the Regulatory Authority, on reasonable grounds, requires the person to give that evidence in person.

(6) In this section, *specified person* has the meaning given in section 206(4).

216—Power of Regulatory Authority to obtain information, documents and evidence at education and care service

(1) This section applies if the Regulatory Authority reasonably suspects that an offence has or may have been committed against this Law.

(2) The Regulatory Authority may require a specified person at an education and care service—

(a) to provide the Regulatory Authority, or a person acting on the Regulatory Authority's behalf, with any specified information that is relevant to the suspected offence; or

(b) to produce to the Regulatory Authority, or to a person acting on the Regulatory Authority's behalf, any specified document that is relevant to the suspected offence.

(3) The Regulatory Authority must—

(a) warn the person that failure or refusal to comply with the requirement would constitute an offence; and

(b) warn the person about the effect of sections 217, 218 and 219.

(4) The Regulatory Authority must not require a person to remain at the education and care service more than a reasonable time for the purposes of providing information or producing documents under subsection (2).

(5) In this section, *specified person* has the meaning given in section 206(4).

217—Offence to fail to comply with notice or requirement

A person must not refuse or fail to comply with a requirement under section 215 or 216 to the extent that the person is capable of complying with that requirement.

Penalty:

(a) $8,000, in the case of an individual.

(b) $40,000, in any other case.

218—Offence to hinder or obstruct Regulatory Authority

A person must not obstruct or hinder the Regulatory Authority in exercising a power under section 215 or 216.

Penalty:

(a) $8,000, in the case of an individual.

(b) $40,000, in any other case.

219—Self incrimination not an excuse

(1) A person is not excused from complying with a notice or requirement under section 215 or 216 on the ground that complying with the notice or requirement may result in information being provided that might tend to incriminate the person.

(2) Subject to subsection (3), disclosed information is not admissible in evidence against the individual in any criminal proceedings (other than proceedings under section 218 or 295) or in any civil proceedings.

(3) Despite subsection (2), any information obtained from a document or documents required to be kept under this Law that is produced by a person is admissible in evidence against the person in criminal proceedings under this Law.

(4) In this section—

disclosed information means—

(a) the answer by an individual to any question asked under section 215 or 216; or

(b) the provision by an individual of any information in compliance with section 215 or 216; or

(c) any information obtained directly or indirectly because of that answer or the provision of that information.

Part 10—Ministerial Council

220—Functions of Ministerial Council

(1) The Ministerial Council has the following functions under this Law:

(a) to oversee the implementation and administration of the National Quality Framework;

(b) to promote uniformity in the application and enforcement of the National Quality Framework;

(c) to review and approve the National Quality Standard and set specific standards for education and care services and classes of education and care services;

(d) to review and approve the rating level system to be used in rating education and care services;

(e) to review and approve the fee structure under this Law;

(f) to review and approve new learning frameworks for the purposes of this Law;

(g) to monitor the implementation and operation of, and recommend or approve amendments to, this Law;

(h) to monitor the implementation and operation of the national regulations;

(i) to review the education and care services to which this Law applies and recommend, or amend the national regulations to provide for, the inclusion of new classes of education and care services under this Law;

(j) to appoint the members of the Board;

(k) to monitor and review the performance of the National Authority;

(l) any other functions given to the Ministerial Council by or under this Law.

(2) The Ministerial Council must have regard to the objectives and guiding principles of the National Quality Framework in carrying out its functions.

221—Powers of Ministerial Council

The Ministerial Council may—

(a) make recommendations to the Board in relation to the exercise of the National Authority's functions under this Law; and

(b) refer any matter to the Board for consideration and advice; and

(c) make regulations in accordance with this Law; and

(d) do anything necessary or convenient to be done in carrying out its functions.

222—Directions

(1) The Ministerial Council may give directions to the Board in relation to the carrying out of the National Authority's functions under this Law, including the following:

(a) reporting and accountability to the Ministerial Council and Regulatory Authorities;

(b) the application of the National Quality Framework;

(c) the rating level system to be used in rating education and care services;

(d) the collection and use of information.

(2) The Ministerial Council may give directions to a Regulatory Authority with respect to the administration of the National Quality Framework.

(3) A direction under this section cannot be about—

(a) a particular person or education and care service; or

(b) a particular application, approval, notification, assessment or proceeding; or

(c) the determination of a rating for a particular education and care service.

(4) A direction must be in writing.

(5) A direction must not be inconsistent with this Law.

(6) A direction is not a legislative instrument or an instrument of a legislative character.

(7) A direction to the Board under this section must be given to the Chairperson of the Board.

(8) The Board or a Regulatory Authority must comply with a direction given to the Board or the Authority by the Ministerial Council under this section.

223—How Ministerial Council exercises powers

(1) The Ministerial Council is to give a direction for the purposes of this Law by resolution of the Council passed in accordance with procedures determined by the Council.

(2) An act or thing done by the Ministerial Council (whether by resolution, instrument or otherwise) does not cease to have effect merely because of a change in the Council's membership.

Part 11—Australian Children's Education and Care Quality Authority

Division 1—The National Authority

224—National Authority

(1) The Australian Children's Education and Care Quality Authority is established.

(2) The National Authority—

(a) is a body corporate with perpetual succession; and

(b) has a common seal; and

(c) may sue and be sued in its corporate name.

(3) The National Authority represents the State.

225—Functions of National Authority

(1) The functions of the National Authority are as follows—

(a) to guide the implementation and administration of the National Quality Framework and to monitor and promote consistency in its implementation and administration;

(b) to report to and advise the Ministerial Council on the National Quality Framework;

(c) to report to the Regulatory Authorities and the relevant Commonwealth Department in relation to the following:

(i) the collection of information under this Law;

(ii) the evaluation of the National Quality Framework;

(d) to establish consistent, effective and efficient procedures for the operation of the National Quality Framework;

(e) to determine the arrangements for national auditing for the purposes of this Law;

(f) to keep national information on the assessment, rating and regulation of education and care services;

(g) to establish and maintain national registers of approved providers, approved education and care services and certified supervisors and to publish those registers;

(h) to promote and foster continuous quality improvement by approved education and care services;

(i) to publish, monitor and review ratings of approved education and care services;

(j) to make determinations with respect to the highest level of rating for approved education and care services;

(k) in conjunction with the Regulatory Authorities, to educate and inform education and care services and the community about the National Quality Framework;

(l) to publish guides and resources—

(i) to support parents and the community in understanding quality in relation to education and care services; and

(ii) to support the education and care services sector in understanding the National Quality Framework;

(m) to publish information about the implementation and administration of the National Quality Framework and its effect on developmental and educational outcomes for children;

(n) to publish practice notes and guidelines for the application of this Law;

(o) to determine the qualifications for authorised officers and to provide support and training for staff of Regulatory Authorities;

(p) to determine the qualifications required to be held by educators, including the assessment of equivalent qualifications;

(q) any other function given to the National Authority by or under this Law.

(2) In carrying out its functions, the National Authority must ensure that the regulatory burden on education and care services is minimised as far as possible.

(3) In carrying out its functions, the National Authority must have regard to the objectives and guiding principles of the National Quality Framework.

226—National Authority may advise and seek guidance of Ministerial Council

The National Authority may provide advice to and seek the guidance of the Ministerial Council if the National Authority considers it necessary in carrying out its functions under this Law.

227—Powers of National Authority

(1) The National Authority has all the powers of an individual and, in particular, may—

(a) enter into contracts; and

(b) acquire, hold, dispose of, and deal with, real and personal property; and

(c) borrow and invest money; and

(d) develop and supply resources and consultancy services to the education and care sector on a commercial basis; and

(e) do anything necessary or convenient to be done in carrying out its functions.

(2) Without limiting subsection (1), the National Authority may—

(a) collect, hold and use information obtained under this Law by the National Authority or a Regulatory Authority about the provision of education and care to children including information about outcomes for children and about providers of education and care services in each participating jurisdiction; and

Note—

See section 270, which provides for the National Authority to publish information about approved providers.

(b) develop protocols for communication and dispute resolution among the National Authority, the Regulatory Authorities and the relevant Commonwealth Department to provide for consistency in the implementation and administration of the National Quality Framework; and

(c) collect, waive, reduce, defer and refund fees and enter into agreements in relation to fees in accordance with the national regulations; and

(d) enter into agreements in relation to fees and funding with the Regulatory Authorities; and

(e) undertake research and evaluation activities for the purpose of its functions under this Law.

228—Co-operation with participating jurisdictions and Commonwealth

(1) The National Authority may exercise any of its functions in co-operation with or with the assistance of a participating jurisdiction or the Commonwealth, including in co-operation with or with the assistance of any of the following:

(a) a government agency of a participating jurisdiction or of the Commonwealth; or

(b) an educational body or other body established by or under a law of a participating jurisdiction or the Commonwealth; or

(c) a prescribed body or body in a prescribed class of bodies.

(2) In particular, the National Authority may—

(a) ask a person or body referred to in subsection (1) for information that the Authority requires to carry out its functions under this Law; and

(b) use the information to carry out its functions under this Law.

(3) A person or body referred to in subsection (1) that receives a request for information from the National Authority is authorised to give the information to the National Authority.

229—National audit functions

(1) The National Authority is to undertake national audits of the administration of the National Quality Framework and—

(a) review the findings of the national audit processes; and

(b) evaluate trends in the administration of the National Quality Framework across participating jurisdictions; and

(c) advise the Regulatory Authorities about the outcomes of the national audit processes and its evaluations; and

(d) report to the Ministerial Council on the outcomes of the national audit and evaluation processes.

(2) The audits are to be undertaken at the intervals, and by the means, determined by the National Authority.

Division 2—The Board of the National Authority

Subdivision 1—Establishment and responsibilities

230—National Authority Board

The National Authority has a governing body known as the Australian Children's Education and Care Quality Authority Board.

231—Responsibilities of Board

(1) The affairs of the National Authority are to be controlled by the Board.

(2) The Board has all the powers and duties and all the functions of the National Authority.

(3) All acts and things done in the name of, or on behalf of, the National Authority by or with the authority of the Board are taken to have been done by the National Authority.

(4) The Board must ensure that the National Authority carries out its functions and duties and exercises its powers in a proper, effective and efficient way.

(5) The Board has any other functions given to it under this Law.

(6) Any report to the Ministerial Council under this Law is to be made by or through the Board.

(7) The Board must act in accordance with any directions given to the National Authority by the Ministerial Council under section 222.

(8) The Board must work collaboratively with the Regulatory Authorities and the relevant Commonwealth Department to support and promote the National Quality Framework.

232—Membership of Board

(1) The Board consists of up to 13 members appointed by consensus of the Ministerial Council.

(2) The Ministerial Council must appoint by consensus one person to be the Chairperson of the Board.

(3) One member is to be appointed for each State and Territory from 2 persons nominated by each State or Territory Minister on the Ministerial Council.

(4) The Commonwealth Minister may nominate up to 8 persons for appointment to the Board.

(5) Four of the persons nominated under subsection (4) must be appointed to the Board.

(6) The Ministerial Council must appoint by consensus one of the members referred to in subsection (3) or (5) to be the Deputy Chairperson of the Board.

(7) The members appointed to the Board must have professional skills and expertise in one or more of the following areas:

(a) assessment of quality in education and care services or other relevant services;

(b) early childhood development;

(c) labour market and workforce participation and development;

(d) best practice regulation;

(e) financial management and corporate governance;

(f) research, evaluation and performance;

(g) any other areas of skill determined by the Ministerial Council.

(8) In appointing members of the Board, the Ministerial Council must have regard to the need for the Board to have an appropriate balance of skills and expertise among its members.

Subdivision 2—Members

233—Terms of office of members

(1) Subject to this Subdivision, members of the Board hold office on the terms and conditions determined by the Ministerial Council.

(2) Subject to this Subdivision, a member of the Board holds office for a period, being not more than 3 years, specified in the member's appointment.

(3) A member may be reappointed for a further period of not more than 3 years.

(4) The maximum consecutive period of appointment of a member is 2 terms.

234—Remuneration

The remuneration and allowances (if any) to be paid to members of the Board are to be determined from time to time by the Ministerial Council.

235—Vacancy in the office of member

(1) The office of a member of the Board becomes vacant if the member—

(a) completes a term of office; or

(b) resigns the office by instrument addressed to the Chairperson of the Board; or

(c) is removed from office by the Ministerial Council under this section; or

(d) in the case of the Chairperson of the Board, is absent, without leave first being granted by the Chairperson of the Ministerial Council, from 3 or more consecutive meetings of the Board; or

(e) in the case of any other member, is absent, without leave first being granted by the Chairperson of the Board, from 3 or more consecutive meetings of the Board of which reasonable notice has been given to the member personally or by post; or

(f) dies.

(2) The Chairperson of the Ministerial Council may remove a member of the Board from office if—

(a) the member has been found guilty of an offence (whether in a participating jurisdiction or elsewhere) that, in the opinion of the Chairperson of the Ministerial Council, renders the member unfit to continue to hold the office of member; or

(b) the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration for their benefit; or

(c) the Board recommends the removal of the member, on the basis that the member has engaged in misconduct or has failed, or is unable, to properly carry out the member's functions as a member.

(3) The Chairperson of the Board may resign by written notice addressed to the Chairperson of the Ministerial Council.

(4) A resignation takes effect on the day that it is received by the Chairperson of the Board or the Chairperson of the Ministerial Council (as the case requires) or a later day specified in the notice of resignation.

(5) If the office of a member of the Board becomes vacant, the Chairperson of the Board must notify the Chairperson of the Ministerial Council of the vacancy.

(6) If the office of the Chairperson of the Board becomes vacant, the Deputy Chairperson of the Board must notify the Chairperson of the Ministerial Council of the vacancy.

236—Acting positions

(1) The Deputy Chairperson of the Board is to act as the Chairperson of the Board—

(a) during a vacancy in the office of Chairperson; or

(b) during any period that the Chairperson—

(i) is absent from duty; or

(ii) is, for any reason, unable to carry out the duties of that office.

(2) While the Deputy Chairperson of the Board is acting in the office of Chairperson—

(a) he or she has all the powers and functions of the Chairperson; and

(b) this Law and other laws apply to the Deputy Chairperson as if he or she were Chairperson.

(3) Anything done by or in relation to the Deputy Chairperson when purporting to act in the office of Chairperson is not invalid merely because the occasion for the Deputy Chairperson to act had not arisen or had ceased.

(4) The Ministerial Council may, by consensus, appoint a member of the Board to be the Deputy Chairperson of the Board—

(a) during a vacancy in the office of Deputy Chairperson; or

(b) during any period that the Deputy Chairperson—

(i) is acting as the Chairperson; or

(ii) is absent from duty; or

(iii) is, for any reason, unable to carry out the duties of that office.

(5) A person nominated by a Minister on the Ministerial Council may, with the approval of the Chairperson of the Board, act as a member of the Board in the place of the member appointed on the nomination of that Minister if that member is unable to attend a meeting of the Board.

237—Leave of absence

(1) The Chairperson of the Ministerial Council may grant the Chairperson of the Board a leave of absence on the terms and conditions determined by the Chairperson of the Ministerial Council.

(2) The Chairperson of the Board may grant leave of absence to any other member of the Board on the terms and conditions determined by the Chairperson of the Board.

(3) The Chairperson of the Board must notify the Chairperson of the Ministerial Council if the Chairperson of the Board grants to a member a leave of absence of more than 6 months.

(4) If a member of the Board has been granted a leave of absence of 3 months or more, the Ministerial Council may appoint a person nominated by the Minister who nominated the member to act as a member of the Board in the place of the member during that leave of absence.

238—Disclosure of conflict of interest

(1) If—

(a) a member of the Board has a direct or indirect pecuniary or other interest in a matter being considered or about to be considered at a meeting of the Board; and

(b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

(2) Particulars of any disclosure made under subsection (1) must be recorded by the Board.

(3) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Ministerial Council or the Board otherwise determines—

(a) be present during any deliberation of the Board with respect to the matter; or

(b) take part in any decision of the Board with respect to the matter; or

(c) be provided with any written material in relation to the matter.

(4) For the purposes of the making of a determination by the Board under subsection (3), a member who has a direct or indirect pecuniary or other interest in a matter to which the disclosure relates must not—

(a) be present during any deliberation of the Board for the purpose of making the determination; or

(b) take part in the making of the determination by the Board.

(5) A contravention of this section does not invalidate any decision of the Board.

Subdivision 3—Procedure of Board

239—General procedure

(1) The Board must hold such meetings as are necessary for it to perform its functions.

(2) Subject to this Law, the procedure for the calling of meetings of the Board and for the conduct of business at those meetings is to be as determined by the Board.

(3) The Chairperson of the Board may convene any meetings of the Board that are, in his or her opinion, necessary for the efficient performance of the functions of the Board.

(4) The Chairperson of the Board must convene a meeting of the Board at the written request of the Ministerial Council.

(5) The Board must keep minutes of its meetings.

240—Quorum

The quorum for a meeting of the Board is 9 members of whom—

(a) one must be the Chairperson or Deputy Chairperson; and

(b) five must be members appointed on the nomination of State and Territory Ministers; and

(c) one may be a member appointed on the nomination of the Commonwealth Minister.

241—Chief executive officer may attend meetings of the Board

(1) The chief executive officer of the National Authority, subject to the policies and procedures of the Board, may attend meetings of the Board and participate in its deliberations but—

(a) is not a member of the Board; and

(b) is not entitled to vote at a meeting of the Board.

(2) Section 238 applies to the chief executive officer in relation to attendance at meetings of the Board as if the chief executive officer were a member of the Board.

242—Presiding member

The Chairperson (or, in the absence of the Chairperson, the Deputy Chairperson) is to preside at a meeting of the Board.

243—Voting

(1) At a meeting of the Board each member will have a deliberative vote.

(2) A decision supported by a majority of the votes cast at the meeting of the Board at which a quorum is present is the decision of the Board.

(3) In the event of an equality of votes the Chairperson (or the Deputy Chairperson if the Chairperson is not present), will have a second or casting vote.

(4) The Board must keep a record of all decisions made at a meeting.

(5) If a decision of the Board to recommend a matter to the Ministerial Council is not arrived at unanimously, the Chairperson of the Board must advise the Ministerial Council of the reasons for and extent of the minority opinions.

244—Defects in appointment of members

A decision of the Board is not invalidated by any defect or irregularity in the appointment of any member (or acting member) of the Board.

245—Transaction of business by alternative means

(1) The Board may, if it thinks fit, transact any of its business by the provision of papers to all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of the members constituting a quorum of the Board is taken to be a decision of the Board.

(2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

(3) For the purposes of—

(a) the approval of a resolution under subsection (1); or

(b) a meeting held in accordance with subsection (2),

the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Board.

(4) Papers may be circulated among the members for the purposes of subsection (1) by facsimile, email or other transmission of the information in the papers concerned.

246—Delegation by Board

(1) The Board may, in writing, delegate any of its functions, powers or duties to—

(a) a Regulatory Authority; or

(b) the chief executive of an entity or the head of a government department of a participating jurisdiction nominated by the member of the Ministerial Council who represents that jurisdiction; or

(c) the chief executive officer of the National Authority; or

(d) a committee established by the Board; or

(e) any other entity with the approval of the Ministerial Council.

(2) Subject to the delegation under subsection (1), a chief executive of an entity or head of a government department may subdelegate a delegated function, power or duty to a member of staff of the entity or department.

(3) The chief executive officer of the National Authority may subdelegate a delegated power, function or duty to a member of the staff of the National Authority.

247—Committees

(1) The Board may establish committees to assist it in carrying out its functions.

(2) The Board must determine—

(a) the membership and functions of a committee; and

(b) the procedure at or in relation to meetings of the committee including—

(i) the convening of meetings; and

(ii) the quorum for meetings; and

(iii) the selection of a committee member to be the chairperson of the committee; and

(iv) the manner in which questions arising at meetings of the committee are to be decided; and

(c) the procedures for reporting to the Board.

(3) A committee must give the Board any reports, documents and information relating to the committee's functions and activities that the Board requests.

(4) The Board must report to the Ministerial Council on any committees it establishes.

Subdivision 4—Chief executive officer of the National Authority

248—Chief executive officer

(1) Subject to this section, the Chairperson of the Board is to appoint a person as chief executive officer of the National Authority.

(2) The appointment may only be made after the Ministerial Council has first endorsed the appointment on the recommendation of the Board.

249—Functions of chief executive officer

(1) The chief executive officer is responsible for the day to day management of the affairs of the National Authority.

(2) The chief executive officer has any other functions given to him or her or delegated to him or her under this Law.

(3) Subject to this Law, the chief executive officer must comply with the directions and policies of the Board in carrying out his or her functions.

(4) The chief executive officer is to report to the Board.

(5) The chief executive officer must manage the affairs of the National Authority in a way that—

(a) promotes the effective use of the resources of the National Authority; and

(b) is consistent with this Law.

(6) The chief executive officer must work collaboratively with the Regulatory Authorities and the relevant Commonwealth Department to support and promote the National Quality Framework.

250—Terms and conditions of appointment

(1) The chief executive officer of the National Authority is to be appointed for a period, not more than 3 years, specified in the officer's appointment, but is eligible for reappointment.

(2) A member of the Board cannot be appointed as chief executive officer.

(3) Subject to this Law, the chief executive officer holds office subject to any terms and conditions that are decided by the Board.

(4) The chief executive officer must not engage in paid employment outside the duties of his or her office without the approval of the Chairperson of the Board.

(5) The Chairperson of the Board must notify the Chairperson of the Ministerial Council of any approval given under subsection (4).

(6) The chief executive officer of the National Authority is taken, while holding that office, to be a member of the staff of the National Authority.

251—Remuneration

The chief executive officer is to be paid the remuneration and allowances decided by the Board.

252—Vacancy in office

The office of the chief executive officer of the National Authority becomes vacant if—

(a) the chief executive officer resigns from office by written notice addressed to the Chairperson of the Board; or

(b) the appointment of the chief executive officer is terminated by the Board under this Law; or

(c) the chief executive officer dies.

253—Resignation

(1) The chief executive officer may resign the office by written notice addressed to the Chairperson of the Board.

(2) The resignation takes effect on the day that it is received by the Chairperson of the Board or a later day specified in the notice of resignation.

(3) The Chairperson of the Board must notify the Ministerial Council of that resignation.

254—Termination of appointment

(1) The Board may terminate the appointment of the chief executive officer—

(a) for misconduct or for physical or mental incapacity that significantly impacts on the ability of the chief executive officer to perform the role; or

(b) if the Board is satisfied that the performance of the chief executive officer has been unsatisfactory; or

(c) if the chief executive officer engages in paid employment outside the duties of his or office without the approval of the Chairperson of the Board; or

(d) if the chief executive officer has been found guilty of an offence (whether in a participating jurisdiction or elsewhere) that, in the opinion of the Board, makes the chief executive officer unfit to continue to be appointed.

(2) The Board must terminate the appointment of the chief executive officer if the chief executive officer—

(a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the chief executive officer's creditors or makes an assignment of the chief executive officer's remuneration for their benefit; or

(b) is absent, except on a leave of absence approved by the Chairperson of the Board, for 14 consecutive days or for 28 days in any period of 12 months; or

(c) fails, without reasonable excuse, to comply with section 256.

(3) The Chairperson of the Board must notify the Chairperson of the Ministerial Council of the termination of the appointment of the chief executive officer.

255—Acting chief executive officer

(1) The Board may appoint a person to act as the chief executive officer—

(a) during any vacancy in the office of chief executive officer; or

(b) during any period that the chief executive officer—

(i) is absent from duty; or

(ii) is, for any reason, unable to perform the duties of that office.

(2) The period of the acting appointment must not exceed 6 months.

256—Disclosure of interests

The chief executive officer must give written notice to the Chairperson of the Board as soon as possible of any direct or indirect personal or pecuniary interest that the chief executive officer has, or acquires, or may acquire, that conflicts or could conflict with the proper carrying out of the chief executive officer's functions.

Subdivision 5—Staff, consultants and contractors

257—Staff of National Authority

(1) The National Authority may, for the purpose of carrying out its functions, employ staff.

(2) The staff of the National Authority are to be employed on the terms and conditions determined by the National Authority from time to time.

(3) Subsection (2) is subject to any relevant industrial award or agreement that applies to the staff.

258—Staff seconded to National Authority

The National Authority may, in consultation with the relevant Regulatory Authority or the relevant Commonwealth Department, make arrangements for the secondment of staff.

259—Consultants and contractors

(1) The National Authority may engage persons with suitable qualifications and experience as consultants or contractors.

(2) The terms and conditions of engagement of consultants or contractors are as decided by the National Authority from time to time.

Part 12—Regulatory Authority

260—Functions of Regulatory Authority

The Regulatory Authority has the following functions under this Law in relation to this jurisdiction:

(a) to administer the National Quality Framework;

(b) to assess approved education and care services against the National Quality Standard and the national regulations and determine the ratings of those services;

(c) to monitor and enforce compliance with this Law;

(d) to receive and investigate complaints arising under this Law;

(e) in conjunction with the National Authority and the relevant Commonwealth Department, to educate and inform education and care services and the community in relation to the National Quality Framework;

(f) to work in collaboration with the National Authority to support and promote continuous quality improvements in education and care services;

(g) to undertake information collection, review and reporting for the purposes of—

(i) the regulation of education and care services; and

(ii) reporting on the administration of the National Quality Framework; and

(iii) the sharing of information under this Law;

(h) any other functions conferred on the Regulatory Authority under this Law.

261—Powers of Regulatory Authority

(1) The Regulatory Authority has the power to do all things that are necessary or convenient to be done for, or in connection with, or that are incidental to the carrying out of its functions under this Law.

(2) Without limiting subsection (1), the Regulatory Authority has the following powers under this Law in relation to this jurisdiction:

(a) to collect, hold and use information obtained under this Law by the Regulatory Authority or the National Authority about the provision of education and care to children including information about outcomes for children and information about providers of education and care services in each participating jurisdiction;

(b) subject to the *Privacy Act 1988* of the Commonwealth, to collect, hold and use information about providers of education and care services, family day care educators and certified supervisors;

(c) to maintain and publish registers of approved providers, approved education and care services and certified supervisors;

(d) to publish information about the National Quality Framework, including ratings and prescribed information about compliance with this Law;

(e) to collect, waive, reduce, defer and refund fees (including late payment fees) and enter into agreements in relation to fees;

(f) to enter into agreements relating to fees and funding with the National Authority;

(g) to exercise any other powers conferred on it by this Law.

262—Delegations

(1) The Regulatory Authority may in writing delegate any of its functions and powers under this Law (other than this power of delegation) to—

(a) any person employed under a public sector law of this jurisdiction; or

(b) a prescribed person or a person in a prescribed class of persons.

(2) A delegate of the Regulatory Authority must disclose to the Regulatory Authority, at the request of the Authority, any direct or indirect personal or pecuniary interest the delegate may have in relation to the delegated functions and powers.

Part 13—Information, records and privacy

Division 1—Privacy

263—Application of Commonwealth Privacy Act

(1) The Privacy Act applies as a law of a participating jurisdiction for the purposes of the National Quality Framework.

(2) For the purposes of subsection (1), the Privacy Act applies—

(a) as if a reference to the Office of the Privacy Commissioner were a reference to the Office of the National Education and Care Services Privacy Commissioner; and

(b) as if a reference to the Privacy Commissioner were a reference to the National Education and Care Services Privacy Commissioner; and

(c) with any other modifications made by the national regulations.

(3) Without limiting subsection (2)(c), the national regulations may—

(a) provide that the Privacy Act applies under subsection (1) as if a provision of the Privacy Act specified in the national regulations were omitted; or

(b) provide that the Privacy Act applies under subsection (1) as if an amendment to the Privacy Act made by a law of the Commonwealth, and specified in the national regulations, had not taken effect; or

(c) confer jurisdiction on a tribunal or court of a participating jurisdiction.

(4) In this section—

Privacy Act means the *Privacy Act 1988* of the Commonwealth, as in force from time to time.

Division 2—Application of Commonwealth FOI Act

264—Application of Commonwealth FOI Act

(1) The FOI Act applies as a law of a participating jurisdiction for the purposes of the National Quality Framework.

(2) For the purposes of subsection (1), the FOI Act applies—

(a) as if a reference to the Office of the Freedom of Information Commissioner were a reference to the Office of the National Education and Care Services Freedom of Information Commissioner; and

(b) as if a reference to the Freedom of Information Commissioner were a reference to the National Education and Care Services Freedom of Information Commissioner; and

(c) with any other modifications made by the national regulations.

(3) Without limiting subsection (2), the national regulations may—

(a) provide that the FOI Act applies under subsection (1) as if a provision of the FOI Act specified in the national regulations were omitted; or

(b) provide that the FOI Act applies under subsection (1) as if an amendment to the FOI Act made by a law of the Commonwealth, and specified in the national regulations, had not taken effect; or

(c) confer jurisdiction on a tribunal or court of a participating jurisdiction.

(4) In this section—

FOI Act means the *Freedom of Information Act 1982* of the Commonwealth, as in force from time to time.

Division 3—Application of New South Wales State Records Act

265—Application of State Records Act

(1) The State Records Act applies as a law of a participating jurisdiction for the purposes of the National Quality Framework except to the extent that this Law applies to a Regulatory Authority and the records of a Regulatory Authority.

(2) The national regulations may modify the State Records Act for the purposes of this Law.

(3) Without limiting subsection (2), the national regulations may—

(a) provide that the State Records Act applies under subsection (1) as if a provision of the State Records Act specified in the national regulations were omitted; or

(b) provide that the State Records Act applies under subsection (1) as if an amendment to the State Records Act made by a law of New South Wales, and specified in the national regulations, had not taken effect; or

(c) confer jurisdiction on a tribunal or court of a participating jurisdiction.

(4) In this section—

State Records Act means the *State Records Act 1998* of New South Wales, as in force from time to time.

Division 4—Registers

266—Register of approved providers

(1) The National Authority must keep a register of approved providers.

(2) The register must contain—

(a) the name of each approved provider; and

(b) any other prescribed information.

(3) The register of approved providers may be inspected at the office of the National Authority during normal office hours without charge.

(4) A person may obtain a copy of, or extract from, the register of approved providers on payment of the prescribed fee.

267—Register of education and care services

(1) The Regulatory Authority must keep a register of approved education and care services operating in the participating jurisdiction.

(2) The register of approved education and care services must contain the following information:

(a) the name of each service;

(b) the name of the approved provider of each service;

(c) except in the case of a family day care service, the address of each education and care service premises;

(d) in the case of an approved family day care service, the address of the principal office of the service;

(e) the rating levels for each service;

(f) any other prescribed information.

(3) The register of approved education and care services may be inspected at the office of the Regulatory Authority during normal office hours without charge.

(4) A person may obtain a copy of, or extract from, the register of approved education and care services on payment of the prescribed fee.

(5) The Regulatory Authority must provide a copy of the register of approved education and care services (as updated from time to time) to the National Authority and the relevant Commonwealth Department.

268—Register of certified supervisors

(1) The National Authority must keep a register of certified supervisors.

(2) The register of certified supervisors must contain the following information:

(a) the name of each certified supervisor or the prescribed class of person to which the supervisor belongs;

(b) any other prescribed information.

(3) The register of certified supervisors may be inspected at the office of the National Authority during normal office hours without charge.

(4) A person may obtain a copy of, or extract from, the register of certified supervisors on payment of the prescribed fee.

269—Register of family day care educators

(1) The approved provider of a family day care service must keep at its principal office a register of each family day care educator and any other person engaged by or registered with a family day care service to educate and care for a child.

(2) The register must contain the prescribed information in respect of each family day care educator engaged by or registered with a family day care service to educate and care for children.

(3) The approved provider must provide any information on the register of family day care educators and any changes to that information to the Regulatory Authority on request.

Division 5—Publication of information

270—Publication of information

(1) The National Authority and the Regulatory Authority may publish the following information about approved providers, approved education and care services and certified supervisors:

(a) the name of each provider, service or supervisor;

(b) except in the case of approved family day care services, the address of each education and care service premises;

(c) in the case of approved family day care services, the address of the principal office of each service;

(d) the rating levels of each approved education and care service;

(e) other prescribed information in respect of approved education and care services.

(2) The National Authority—

(a) must publish on its website—

(i) the register of approved providers; and

(ii) the register of certified supervisors; and

(b) may publish on its website the register of approved education and care services as kept by a Regulatory Authority.

(3) The Regulatory Authority must publish on its website the register of approved education and care services kept by the Regulatory Authority.

(4) The relevant Commonwealth Department is authorised to publish the register of approved education and care services on a website kept by that department.

(5) The Regulatory Authority may publish the prescribed information about—

(a) enforcement actions taken under this Law, including information about compliance notices, prosecutions, enforceable undertakings, suspension or cancellation of approvals or certificates; and

(b) any prescribed matters.

(6) Information published under this section must not include information that could identify or lead to the identification of an individual other than—

(a) an approved provider or certified supervisor; or

(b) a person who is being prosecuted for an offence against this Law.

Division 6—Disclosure of information

271—Disclosure of information to other authorities

(1) The Regulatory Authority and any government department, public authority and local authority may disclose information in respect of education and care services to each other for the purposes of this Law.

(2) The Regulatory Authority may disclose information in respect of education and care services to the National Authority or a Regulatory Authority of a participating jurisdiction or a person acting for that Authority—

(a) for the purposes of this Law; or

(b) for the purposes of research and the development of national policy with respect to education and care services.

(3) The Regulatory Authority may disclose information in respect of education and care services to the relevant Commonwealth Department or a person acting for the relevant Commonwealth Department—

(a) for the purposes of this Law; or

(b) for the purposes of research and the development of national policy with respect to education and care services; or

(c) for a purpose relating to the funding of education and care services; or

(d) for a purpose relating to the payment of benefits or allowances to persons using education and care services.

(4) The Regulatory Authority must disclose to the Regulatory Authorities of other participating jurisdictions the suspension or cancellation of a working with children check, working with children card or teacher registration of a nominated supervisor or certified supervisor of which it is notified under this Law.

(5) The Regulatory Authority may disclose to the head of the government department responsible for the administration of a working with children law, any prohibition notice issued under this Law as applying in any participating jurisdiction in respect of the person.

(6) A disclosure of information under this section is subject to—

(a) Division 1; and

(b) any protocol approved by the National Authority for the purposes of this section.

(7) Information provided under this section must not include information that could identify or lead to the identification of an individual other than—

(a) an approved provider or a certified supervisor; or

(b) a family day care educator who has been suspended from providing education and care to children as part of a family day care service; or

(c) a person to whom a prohibition notice applies; or

(d) a person who is being prosecuted for an offence against this Law.

272—Disclosure of information to education and care services

(1) If requested by an approved provider, the Regulatory Authority may disclose the following information:

(a) whether a person named in the request is subject to a prohibition notice issued under this Law as applying in any participating jurisdiction;

(b) whether a family day care educator named in the request has been suspended from providing education and care to children as part of a family day care service.

(2) A disclosure of information under this section is subject to—

(a) Division 1; and

(b) any protocol approved by the National Authority for the purposes of this section.

273—Duty of confidentiality

(1) An individual who is, or who has been, a person exercising functions under this Law must not disclose to another person protected information.

Penalty: $5,000.

(2) However, subsection (1) does not apply if—

(a) the information is disclosed in the exercise of a function under, or for the purposes of, or in accordance with, this Law; or

(b) the disclosure is authorised or required by any law of a participating jurisdiction, or is otherwise required or permitted by law; or

(c) the disclosure is with the agreement of the person to whom the information relates; or

(d) the information relates to proceedings before a court or tribunal and the proceedings are or were open to the public; or

(e) the information is, or has been accessible to the public, including because it was published for the purposes of, or in accordance with, this Law; or

(f) the disclosure is otherwise authorised by the Ministerial Council.

(3) In this section—

protected information means information—

(a) that is personal to a particular individual and that identifies or could lead to the identification of the individual; and

(b) that comes to a person's knowledge in the course of, or because of, the person exercising functions under this Law.

Part 14—Miscellaneous

Division 1—Finance

274—Australian Children's Education and Care Quality Authority Fund

(1) The Australian Children's Education and Care Quality Authority Fund is established.

(2) The Authority Fund is a fund to be administered by the National Authority.

(3) The National Authority may establish accounts with any financial institution for money in the Authority Fund.

(4) The Authority Fund does not form part of the consolidated fund or consolidated account of a participating jurisdiction or the Commonwealth.

275—Payments into Authority Fund

There is payable into the Authority Fund—

(a) all money provided by a participating jurisdiction or the Commonwealth for the purposes of the Fund; and

(b) the proceeds of the investment of money in the Fund; and

(c) all grants, gifts and donations made to the National Authority, but subject to any trusts declared in relation to the grants, gifts or donations; and

(d) all money directed or authorised to be paid into the Fund by or under this Law, any law of a participating jurisdiction or any law of the Commonwealth; and

(e) any other money and property prescribed by the national regulations; and

(f) any other money or property received by the National Authority in connection with the exercise of its functions.

276—Payments out of Authority Fund

Payments may be made from the Authority Fund for the purpose of—

(a) paying any costs or expenses, or discharging any liabilities, incurred by the National Authority in the administration or enforcement of this Law or in the performance of its functions or duties or the exercise of its powers; and

(b) paying any remuneration or allowances payable under this Law by the National Authority; and

(c) allocating, transferring or reimbursing money to a participating jurisdiction in accordance with the national regulations; and

(d) any other payments recommended by the National Authority and approved by the Ministerial Council.

277—Investment of money in Authority Fund

The National Authority may invest money in the Authority Fund in accordance with the national regulations.

278—Financial management duties of National Authority

The National Authority must—

(a) ensure that its operations are carried out efficiently, effectively and economically; and

(b) keep proper books and records in relation to the Authority Fund; and

(c) ensure that expenditure is made from the Authority Fund for lawful purposes only and, as far as possible, reasonable value is obtained for money expended from the Fund; and

(d) ensure that its procedures, including internal control procedures, afford adequate safeguards with respect to—

(i) the correctness, regularity and propriety of payments made from the Authority Fund; and

(ii) receiving and accounting for payments made to the Authority Fund; and

(iii) prevention of fraud or mistake; and

(e) take any action necessary to ensure the preparation of accurate financial statements in accordance with Australian Accounting Standards for inclusion in its annual report; and

(f) take any action necessary to facilitate the audit of those financial statements in accordance with this Law; and

(g) arrange for any further audit by a qualified person of the books and records kept by the National Authority in relation to the Authority Fund, if directed to do so by the Ministerial Council.

Division 2—Reporting

279—Annual report

(1) The Board must, within 4 months after the end of each financial year, submit an annual report of the National Authority for the financial year to the Ministerial Council.

(2) The annual report must include—

(a) an audited financial statement for the period to which the report relates; and

(b) a report about the National Authority's performance of its functions under this Law during the period to which the annual report relates; and

(c) an assessment of the implementation and administration of the National Quality Framework; and

(d) all directions given to the National Authority by the Ministerial Council and the Authority's response; and

(e) all directions given to the Regulatory Authorities by the Ministerial Council and the Regulatory Authorities' responses; and

(f) a report on any committees established by the Board; and

(g) any other matter determined by the Ministerial Council.

(3) The financial statement is to be prepared in accordance with Australian Accounting Standards.

(4) The financial statement is to be audited by a public sector auditor and a report is to be provided by the auditor.

(5) The Ministerial Council may extend, or further extend, the period for submission of an annual report to the Council by a total period of up to 3 months.

(6) In this section—

public sector auditor means—

(a) the Auditor-General (however described) of a participating jurisdiction or the Commonwealth; or

(b) an auditor employed, appointed or otherwise engaged by an Auditor-General of a participating jurisdiction or the Commonwealth.

280—Tabling and publication of annual report

(1) The Ministerial Council must make arrangements for the tabling of the annual report of the National Authority, and the report of the public sector auditor with respect to the financial statement in the report, in the Parliament of a participating jurisdiction determined by the Ministerial Council.

(2) As soon as practicable after the annual report has been tabled in the Parliament determined under subsection (1), the National Authority must publish a copy of the report on its website.

281—Other reporting

(1) The National Authority may make any reports to the Ministerial Council that it considers necessary in the performance of its functions.

(2) The Chairperson of the Board must provide to the Ministerial Council any other reports and documents and information relating to the operations of the National Authority that the Ministerial Council requires.

(3) The Chairperson of the Board may provide to the responsible Minister of a participating jurisdiction and the Commonwealth Minister any reports and documents and information relating to the operations of the National Authority that the responsible Minister requires.

(4) The reports, documents and information referred to in subsection (2) must be provided within the time set by the Ministerial Council.

Division 3—Application of Commonwealth Ombudsman Act

282—Application of Commonwealth Ombudsman Act

(1) The Ombudsman Act applies as a law of a participating jurisdiction for the purposes of this Law except to the extent that this Law applies to a Regulatory Authority and the employees, decisions, actions and records of a Regulatory Authority.

(2) For the purposes of subsection (1), the Ombudsman Act applies—

(a) as if a reference to the Commonwealth Ombudsman were a reference to the Education and Care Services Ombudsman; and

(b) with any other modifications made by the national regulations.

(3) Without limiting subsection (2), the national regulations may—

(a) provide that the Ombudsman Act applies under subsection (1) as if a provision of the Ombudsman Act specified in the regulations were omitted; or

(b) provide that the Ombudsman Act applies under subsection (1) as if an amendment to the Ombudsman Act made by a law of the Commonwealth, and specified in the regulations, had not taken effect; or

(c) confer jurisdiction on a tribunal or court of a participating jurisdiction.

(4) In this section—

Ombudsman Act means the *Ombudsman Act 1976* of the Commonwealth, as in force from time to time.

Division 4—Legal proceedings

283—Who may bring proceedings for an offence?

(1) The following persons may bring proceedings for an offence under this Law:

(a) the Regulatory Authority;

(b) a person authorised by the Regulatory Authority;

(c) a police officer.

(2) In a proceeding for an offence against this Law or the regulations it must be presumed, in the absence of evidence to the contrary, that the person bringing the proceeding was authorised to bring it.

284—When proceedings may be brought

Proceedings for an offence under this Law must be commenced within 2 years of the date of the alleged offence.

285—Offences by bodies corporate

(1) If a body corporate commits an offence against this Law, any person with management or control of the body corporate who failed to exercise due diligence to prevent the contravention that is the subject of the offence also commits that offence and is liable to the penalty for that offence.

(2) The penalty for an offence referred to in this section is the penalty applicable to an individual.

286—Application of Law to partnerships and eligible associations and other entities

(1) If this Law would otherwise require or permit something to be done by a partnership, the thing may be done by one or more of the partners on behalf of the partnership.

(2) If this Law would otherwise require or permit something to be done by an eligible association, the thing may be done by one or more of the members of the executive committee on behalf of the association.

(3) If this Law would otherwise require or permit something to be done by a prescribed entity, the thing may be done by one or more of the persons with management or control of the entity on behalf of the entity.

(4) An offence against this Law that would otherwise be committed by the partnership is taken to have been committed by each partner who is a person with management or control of the partnership.

(5) An offence against this Law that would otherwise be committed by an eligible association is taken to have been committed by each person who is a person with management or control of the association.

(6) An offence against this Law that would otherwise be committed by a prescribed entity is taken to have been committed by each person who is a person with management or control of that entity.

(7) The penalty for an offence that is taken to be committed under this section is the penalty applicable to an individual.

287—Multiple holders of an approval

If more than one person holds a provider approval or service approval under this Law each holder of the approval is jointly and severally responsible for compliance with this Law.

288—Double jeopardy

If a person has been convicted or found guilty in another participating jurisdiction for an offence against this Law as it applies in that jurisdiction, proceedings cannot be brought in this jurisdiction against the same person in respect of an offence concerning the same subject-matter.

289—Immunity

(1) A member of the Board of the National Authority, a committee of the Board or a Ratings Review Panel is not personally liable for anything done or omitted to be done in good faith—

(a) in the exercise of a power or the performance of a function under this Law; or

(b) in the reasonable belief that the action or omission was in the exercise of the power or the performance of the function under this Law.

(2) Any liability resulting from an act or omission that would, but for subsection (1), attach to an individual referred to in that subsection attaches instead to the National Authority.

(3) The Regulatory Authority (if an individual) or a member of the governing body of the Regulatory Authority is not personally liable for anything done or omitted to be done in good faith—

(a) in the exercise of a power or the performance of a function under this Law; or

(b) in the reasonable belief that the action or omission was in the exercise of the power or the performance of the function under this Law.

(4) Any liability resulting from an act or omission that would, but for subsection (3), attach to an individual referred to in that subsection attaches instead to the State.

290—Immunity—education law

(1) This section applies if the Regulatory Authority becomes aware of misconduct by a registered teacher or other person who could be subject to disciplinary action under an education law of a participating jurisdiction.

(2) The Regulatory Authority may refer the matter to the relevant disciplinary body under the education law.

(3) If the Regulatory Authority refers a matter under subsection (2), a prosecution cannot be brought under this Law for an offence in relation to that matter.

291—Infringement offences

(1) An authorised officer or other person authorised by the Regulatory Authority may serve an infringement notice on a person for a contravention of—

(a) section 172, 173 or 176; or

(b) offences against the national regulations that are prescribed for the purposes of this section.

(2) The infringement penalty for an offence for which an infringement notice may be served on a person is the amount which is 10 per cent of the maximum penalty that could be imposed on the person in respect of that offence.

(3) An infringement notice must be in the form prescribed or contain the information prescribed by the infringements law of this jurisdiction.

(4) Subject to this section, the infringements law of this jurisdiction applies to infringement notices served under this section in this jurisdiction.

(5) The payment of an infringement penalty expiates the offence and is not to be considered in—

(a) assessing whether a person is a fit and proper person to be involved in the provision of, or to be a supervisor of, an education and care service; or

(b) assessing an approved education and care service under Part 5.

292—Evidentiary certificates

A certificate purporting to be signed by the chief executive officer of the National Authority or by a Regulatory Authority and stating any of the following matters is prima facie evidence of the matter:

(a) a stated document is one of the following things made, given, issued or kept under this Law:

(i) an appointment, approval or decision;

(ii) a notice, direction or requirement;

(iii) a supervisor certificate;

(iv) a register, or an extract from a register;

(v) a record, or an extract from a record;

(b) a stated document is another document kept under this Law;

(c) a stated document is a copy of a document mentioned in paragraph (a) or (b);

(d) on a stated day, or during a stated period, a stated person was or was not an approved provider or a certified supervisor;

(e) on a stated day, or during a stated period, an education and care service was or was not an approved education and care service;

(f) on a stated day, or during a stated period, an approval was or was not subject to a stated condition;

(g) on a stated day, an approval or supervisor certificate was suspended or cancelled;

(h) on a stated day, or during a stated period, an appointment as authorised officer was, or was not, in force for a stated person;

(i) on a stated day, a stated person was given a stated notice or direction under this Law;

(j) on a stated day, a stated requirement was made of a stated person.

Division 5—Service of notices

293—Service of notices

(1) If this Law requires or permits a notice to be served on a person, the notice may be served—

(a) on an individual by—

(i) delivering it to the individual personally; or

(ii) leaving it at, or by sending it by post to, the address notified to the sender by the individual as an address at which service of notices under this Law will be accepted or otherwise the address of the place of residence or business of the individual last known to the person serving the document; or

(iii) sending it by facsimile transmission to a facsimile number notified to the sender by the individual as an address at which service of notices under this Law will be accepted; or

(iv) sending it by email to an internet address notified to the sender by the individual as an address at which service of notices under this Law will be accepted; or

(b) on a person other than an individual by—

(i) leaving it at, or by sending it by post to, the address notified to the sender by the person as an address at which service of notices under this Law will be accepted or otherwise the address of the head office, a registered office or the principal place of business of the person; or

(ii) sending it by facsimile transmission to a facsimile number notified to the sender by the person as an address at which service of notices under this Law will be accepted; or

(iii) sending it by email to an internet address notified to the sender by the person as an address at which service of notices under this Law will be accepted.

(2) Subsection (1) applies whether the word 'deliver', 'give', 'notify', 'send' or 'serve' or another expression is used.

(3) Subsection (1) does not affect the power of a court or tribunal to authorise service of a notice otherwise than as provided in that subsection.

294—Service by post

If a notice authorised or required to be served (whether the word 'deliver', 'give', 'notify', 'send' or 'serve' or another expression is used) on a person is served by post, service of the notice—

(a) may be effected by properly addressing, prepaying and posting a letter containing the document; and

(b) in Australia or in an external Territory—is, unless evidence sufficient to raise doubt is adduced to the contrary, taken to have been effected on the fourth day after the letter was posted; and

(c) in another place—is, unless evidence sufficient to raise doubt is adduced to the contrary, taken to have been effected at the time when the letter would have been delivered in the ordinary course of the post.

Division 6—False or misleading information

295—False or misleading information or documents

(1) A person must not give the Regulatory Authority or an authorised officer under this Law any information or document that the person knows is false or misleading in a material particular.

Penalty:

(a) $6,000, in the case of an individual.

(b) $30,000, in any other case.

(2) Subsection (1) does not apply in respect of the giving of a document, if the person when giving the document—

(a) informs the Regulatory Authority or authorised officer, to the best of the person's ability, how it is false or misleading; and

(b) gives the correct information to the Regulatory Authority or authorised officer if the person has, or can reasonably obtain, the correct information.

Division 7—Protection from reprisal

296—Definitions

In this Division—

protected disclosure means a disclosure of information or provision of documents to the Regulatory Authority—

(a) pursuant to a request under this Law; or

(b) where the person making the disclosure has a reasonable belief that—

(i) an offence against this Law has been or is being committed; or

(ii) the safety, health or wellbeing of a child or children being educated and cared for by an education and care service is at risk;

serious detrimental action includes dismissal, involuntary transfer, loss of promotion and demotion.

297—Protection from reprisal

(1) A person must not take serious detrimental action against a person in reprisal for a protected disclosure.

Penalty:

(a) $10,000 in the case of an individual.

(b) $50,000 in any other case.

(2) A person takes serious detrimental action in reprisal for a protected disclosure if—

(a) the person takes or threatens to take the action because—

(i) a person has made, or intends to make, a protected disclosure; or

(ii) the person believes that a person has made or intends to make the protected disclosure; or

(b) the person incites or permits another person to take or threaten to take the action for either of those reasons.

(3) In determining whether a person takes serious detrimental action in reprisal, it is irrelevant whether or not a reason referred to in subsection (2) is the only or dominant reason as long as it is a substantial reason.

298—Proceedings for damages for reprisal

(1) A person who takes serious detrimental action against a person in reprisal for a protected disclosure is liable in damages to that person.

(2) The damages may be recovered in proceedings as for a tort in any court of competent jurisdiction.

(3) Any remedy that may be granted by a court with respect to a tort, including exemplary damages, may be granted by a court in proceedings under this section.

(4) The right of a person to bring proceedings for damages does not affect any other right or remedy available to the person arising from the serious detrimental action.

299—Application for injunction or order

A person who believes that serious detrimental action has been taken or may be taken against him or her in reprisal for a protected disclosure may apply to the superior court for—

(a) an order requiring the person who has taken the serious detrimental action to remedy that action; or

(b) an injunction.

300—Injunction or order

(1) If, on receipt of an application under section 299, the superior court is satisfied that a person has taken or intends to take serious detrimental action against a person in reprisal for a protected disclosure, the court may—

(a) order the person who took the serious detrimental action to remedy that action; or

(b) grant an injunction in any terms the court considers appropriate.

(2) The superior court, pending the final determination of an application under section 299, may—

(a) make an interim order in the terms of subsection (1)(a); or

(b) grant an interim injunction.

Division 8—National regulations

301—National regulations

(1) The Ministerial Council may make regulations for the purposes of this Law.

(2) The national regulations may provide for any matter that is required or permitted to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Law.

(3) Without limiting subsection (1), the national regulations may provide for the following:

(a) fees (including application fees and annual fees) for approvals and certificates and other things done under this Law;

(b) the indexation of fees;

(c) standards for education and care services;

(d) requirements for educational programs, including the quality of those programs and their development, documentation and delivery;

(e) requirements and standards to be complied with for the safety, health and wellbeing of children being educated and cared for by an education and care service;

(f) requirements and standards to be complied with for safety, security, cleanliness, comfort, hygiene and repair of premises, outdoor spaces, fencing, gates, resources and equipment used for providing education and care services;

(g) requirements and standards about the premises to be used to provide an education and care service including siting, design, layout, space, security and entitlement to occupy;

(h) requirements and standards for the staffing of education and care services including the recruitment (and conduct of criminal history or other security checks) and the appointment of staff, performance improvement, professional standards, professional development, numbers and qualifications of educators (including minimum age and requirements concerning groups of children of different ages and composition) and staffing rosters and arrangements;

(i) requirements and standards about educators' relationships with children, interactions and behaviour guidance and inclusion policies and practice for education and care services;

(j) requirements and standards for partnerships between education and care services and the community in which they are located and the families of children being educated and cared for by education and care services, including requirements for services to link to other support services for children and families;

(k) requirements and standards as to the leadership and management of education and care services including governance and fitness and propriety of all staff members and volunteers, management of grievances and complaints and the provision of information to families;

(l) the records, policies and procedures to be kept by approved providers and family day care educators including enrolment and attendance information;

(m) requirements and standards about first aid and management of children's medical conditions including—

(i) the training of educators and staff members; and

(ii) plans, policies and procedures used to manage medical conditions and first aid; and

(iii) the keeping and storage of first aid kits and medications;

(n) information required to be submitted for applications made under this Law;

(o) requirements and standards for the provision and display of information by approved providers;

(p) the publication of information about enforcement actions taken under this Law, including notice and review of proposals to publish information;

(q) matters relating to the application of this Law to partnerships, eligible associations or prescribed entities;

(r) requirements relating to the receipt and payment and distribution of fees and monetary penalties payable under this Law.

(4) The national regulations—

(a) may be of a general or limited application; and

(b) may differ according to differences in time, place (including jurisdiction) or circumstances; and

(c) may differ according to the type or class of education and care service and the ages of children being educated and cared for by a service; and

(d) may exempt any education and care service or any type or class of education and care service from complying with all or any of the regulations; and

(e) may leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by a Regulatory Authority; and

(f) may apply, adopt or incorporate by reference any document either—

(i) as in force at the date the national regulations come into operation or at any date before then; or

(ii) wholly or in part or as amended by the national regulations; and

(g) may impose penalties not exceeding $2,000 for offences against the national regulations.

302—Publication of national regulations

(1) The national regulations are to be published on the NSW Legislation website in accordance with Part 6A of the *Interpretation Act 1987* of New South Wales.

(2) A regulation commences on the day or days specified in the regulation for its commencement (being not earlier than the date it is published).

303—Parliamentary scrutiny of national regulations

(1) The member of the Ministerial Council representing a participating jurisdiction is to make arrangements for the tabling of a regulation made under this Law in each House of the Parliament of the participating jurisdiction.

(2) A committee of the Parliament of a participating jurisdiction may consider, and report to the Parliament about, the regulation in the same way the committee may consider and report to the Parliament about regulations made under Acts of that jurisdiction.

(3) A regulation made under this Law may be disallowed in a participating jurisdiction by a House of the Parliament of that jurisdiction in the same way, and within the same period, that a regulation made under an Act of that jurisdiction may be disallowed.

304—Effect of disallowance of national regulation

(1) If a regulation ceases to have effect under section 303 any law or provision of a law repealed or amended by the regulation is revived as if the disallowed regulation had not been made.

(2) The restoration or revival of a law under subsection (1) takes effect at the beginning of the day on which the disallowed regulation by which it was amended or repealed ceases to have effect.

(3) A reference in this section to the repeal or amendment of a law or a provision of a law extends to the revocation or variation of a regulation or a provision of a regulation.

Part 15—Transitional provisions

Division 1—Introductory

305—Definitions

In this Part—

declared approved family day care service, in relation to a participating jurisdiction, means an education and care service that is declared by a law of that jurisdiction to be a declared approved family day care service for the purposes of this Law;

declared approved family day care venue, in relation to a participating jurisdiction, means a place other than a residence that is declared by a law of that jurisdiction to be a declared approved family day care venue for the purposes of this Law;

declared approved provider, in relation to a participating jurisdiction, means a person or a person in a class of persons declared by a law of that jurisdiction to be a declared approved provider for the purposes of this Law;

declared approved service, in relation to a participating jurisdiction, means an education and care service that is declared by a law of that jurisdiction to be a declared approved service for the purposes of this Law;

declared certified supervisor, in relation to a participating jurisdiction, means a person or a person in a class of persons declared by a law of that jurisdiction to be a declared certified supervisor for the purposes of this Law;

declared compliance notice, in relation to a participating jurisdiction, means an order or notice under a former education and care services law that is declared by a law of that jurisdiction to be a declared compliance notice for the purposes of this Law;

declared enforceable undertaking, in relation to a participating jurisdiction, means an undertaking entered into under a former education and care services law that is declared by a law of that jurisdiction to be a declared enforceable undertaking under this Law;

declared nominated supervisor, in relation to a participating jurisdiction, means a person or a person in a class of persons declared by a law of that jurisdiction to be a declared nominated supervisor for the purposes of this Law;

declared out of scope service, in relation to a participating jurisdiction, means an education and care service—

(a) for which a former approval was not required under a former education and care services law; and

(b) that is declared by a law of that jurisdiction to be a declared out of scope service for the purposes of this Law;

former approval, in relation to a participating jurisdiction, means an approval, licence or other authorisation under a former education and care services law that is declared by a law of that jurisdiction to be a former approval for the purposes of this Law;

scheme commencement day means the day on which Part 2, 3 and 4 of this Law commence.

Division 2—Education and care services

306—Approved provider

(1) Any person who immediately before the scheme commencement day was a declared approved provider is taken to be an approved provider under this Law.

(2) Subsection (1) does not apply if the declared approved provider is a prescribed ineligible person.

(3) Subsection (1) does not apply to a declared approved provider whose former approval was suspended under the former education and care services law immediately before the scheme commencement day because the provider was not a fit and proper person (however described) to operate the declared approved service.

(4) If a declared approved provider is a trust, the trustee or trustees of the trust are taken to be an approved provider under this Law.

(5) The trust must, within 30 days after the scheme commencement day, notify the Regulatory Authority of the identity of the trustees of the trust.

(6) If a notice is not given under subsection (5) within the required period, each trustee of the trust ceases to be an approved provider under this Law at the end of that period.

(7) If a person is taken under this section to be an approved provider, the person is taken to be the holder of a provider approval for the purposes of this Law.

(8) If a person is taken under this section to hold a provider approval, any conditions of the former approval relating to that person are taken to be conditions of the provider approval unless they are inconsistent with this Law.

(9) The Regulatory Authority must, on or before 30 June 2012, provide each person who is taken under this section to be the holder of a provider approval with a copy of the provider approval setting out the relevant matters in section 20.

307—Service approvals

(1) Any person who immediately before the scheme commencement day held a former approval in respect of a declared approved service (other than a declared approved family day care service) is taken to hold a service approval in respect of that service under this Law.

(2) Any person who immediately before the scheme commencement day held a former approval with respect to a declared approved family day care service is taken to hold a service approval for that family day care service under this Law.

(3) Subsections (1) and (2) do not apply if the person is a prescribed ineligible person.

(4) If subsection (1) or (2) applies, the declared approved service is taken from the scheme commencement day to be an approved education and care service.

(5) This section does not apply to a former approval that was under suspension under the former education and care services law immediately before the scheme commencement day because the person who held that approval was not a fit and proper person (however described) to operate the declared approved service.

(6) If a former approval was under suspension under the former education and care services law immediately before the scheme commencement day for a reason other than the reason in subsection (5), the service approval for the education and care service under this Law is taken to be suspended under this Law for the period of the suspension.

(7) The Regulatory Authority must determine before the expiry of the period of suspension referred to in subsection (6) (other than for a voluntary suspension) whether—

(a) the suspension should be cancelled or a further period of suspension should be imposed; or

(b) the service approval should be cancelled.

(8) Any conditions imposed on the former approval under the former education and care services law are taken to be conditions on the service approval unless the conditions are inconsistent with this Law.

(9) The Regulatory Authority must, on or before 30 June 2012, provide each person who is taken under this section to hold a former approval in respect of a declared approved service with a copy of the service approval for the service setting out the relevant matters in section 52.

308—Approved family day care venues

A declared approved family day care venue existing under a former education and care services law immediately before the scheme commencement day is taken on and after the scheme commencement day to be an approved family day care venue under this Law.

309—Approval of declared out of scope services

A person who operated a declared out of scope service immediately before the scheme commencement day is taken under this Law to hold a provider approval and a service approval for the declared out of scope service for the period from and including 1 January 2012—

(a) to 30 June 2012, unless paragraph (b) applies; or

(b) if the person applies under this Law to the Regulatory Authority for a provider approval and for a service approval and the applications are received by the Regulatory Authority on or before 30 June 2012, to the date on which those applications are finally determined under this Law.

310—Application for service waiver or temporary waiver

(1) This section applies to an education and care service that was exempt under a former education and care services law from a requirement of that law.

(2) The education and care service is taken to comply with an equivalent requirement under this Law for the period from and including 1 January 2012—

(a) to 31 March 2012, unless paragraph (b) applies; or

(b) if the provider of the education and care service applies to the Regulatory Authority under this Law for a temporary waiver or service waiver under this Law in respect of that requirement and the application is received by the Regulatory Authority on or before 31 March 2012, to the date on which the application is finally determined under this Law.

311—Existing applicants

(1) This section applies if a person has made an application for a former approval under a former education and care services law in respect of an education and care service before the scheme commencement day.

(2) The applicant is taken to be an applicant for a provider approval and a service approval under this Law.

(3) The Regulatory Authority may—

(a) ask the applicant for more information; and

(b) inspect—

(i) the premises of the service and the offices of the applicant; and

(ii) any documents relating to the applicant; and

(c) exercise any power under section 14 or section 46 in relation to the application.

(4) This section does not apply if the applicant is a prescribed ineligible person.

312—Existing multiple approvals to merge

(1) If the holder of a former approval held more than one former approval in respect of the same premises, the former approvals are taken to be one service approval in respect of those premises for the purposes of this Law.

(2) This section does not apply to a former approval for a family day care service.

(3) This section does not apply to a former approval to which section 311 applies.

313—Display of accreditation and rating

(1) This section applies to a declared approved service that is taken under this Part to be an approved education and care service.

(2) The approved provider must display the provisional rating of that approved education and care service in accordance with section 172 until a first rating assessment is completed and a rating level given to the service after that assessment is published under Part 5.

(3) If the education and care service was accredited by the National Child Care Accreditation Council before the scheme commencement day, the approved provider of the education and care service must continue to display that accreditation at the service together with the provisional rating until a first rating assessment is completed and a rating (other than a provisional rating) given to the service after that assessment is published under Part 5.

314—Effect of non-compliance in 3 years before scheme commencement day

(1) In determining whether to suspend or cancel under Part 2 a provider approval referred to in section 306, the Regulatory Authority—

(a) may take into account any non-compliance by the approved provider with a former education and care services law that occurred in the period of 3 years immediately preceding the scheme commencement day; but

(b) must not suspend or cancel the provider approval solely on the basis of that non-compliance.

(2) In determining whether to suspend or cancel under Part 3 a service approval referred to in section 307(1), the Regulatory Authority—

(a) may take into account any non-compliance by the approved provider with a former education and care services law that occurred in the period of 3 years immediately preceding the scheme commencement day; but

(b) must not suspend or cancel the service approval solely on the basis of that non-compliance.

315—Certified supervisors

(1) A person who was a declared certified supervisor immediately before the scheme commencement day is taken to be a certified supervisor under this Law.

(2) The Regulatory Authority must, on or before 30 June 2012, provide each person who is taken under this section to be a certified supervisor with a copy of the supervisor certificate setting out the relevant matters in section 116.

(3) Subsection (1) applies even if the declared certified supervisor was suspended immediately before the scheme commencement day but the person's supervisor certificate under this Law is taken to be suspended for the remaining period that the person was suspended as a declared certified supervisor.

316—Nominated supervisors

(1) A person who immediately before the scheme commencement day was a declared nominated supervisor for a declared approved service that is taken under section 307 to be an approved education and care service is taken to be the nominated supervisor for that approved education and care service.

(2) Subsection (1) ceases to apply if—

(a) the approved provider does not confirm the nomination within a time specified by the Regulatory Authority after being requested in writing to do so by the Regulatory Authority; or

(b) the person advises the Regulatory Authority in writing that the person does not consent to being the nominated supervisor of the education and care service.

317—Notices and undertakings

(1) A declared compliance notice in force under a former education and care services law immediately before the scheme commencement day is taken on and after the scheme commencement day to be a compliance notice under this Law.

(2) A declared enforceable undertaking in force under a former education and care services law immediately before the scheme commencement day is taken on and after the scheme commencement day to be an enforceable undertaking under this Law.

318—Offences

The Regulatory Authority may bring or continue a prosecution for any offence under a former education and care services law in relation to a service that is taken to be an education and care service.

Division 3—National Authority

319—First meeting of National Authority

Despite section 239, the Ministerial Council is to convene the first meeting of the Board of the National Authority.

320—First chief executive officer of National Authority

(1) Despite section 248, the first chief executive officer of the National Authority is to be appointed by the Chairperson of the Ministerial Council on the basis of a consensus recommendation of the Ministerial Council.

(2) The appointment is to be on the remuneration and other terms and conditions set out in the appointment.

(3) Any amount payable to the first chief executive officer under the appointment is payable from the Authority Fund.

321—First annual report of National Authority

Despite section 279, the first annual report of the National Authority—

(a) is to be made within 4 months after the end of the financial year ending 30 June 2012; and

(b) is to cover the period from the first meeting of the National Authority until 30 June 2012.

Division 4—General

322—Information retention and sharing

(1) The Regulatory Authority must, in accordance with the national regulations, keep all prescribed information held by the Regulatory Authority (or any regulatory body under the former education and care services law) in relation to—

(a) the licensing or approval of education and care services under the former education and care services law; and

(b) the monitoring and enforcement of the former education and care services law in relation to education and care services.

(2) Information referred to in subsection (1) may be—

(a) used for information purposes under this Law; and

(b) held by the Regulatory Authority in any form; and

(c) made available to the Regulatory Authorities of other participating jurisdictions and the National Authority.

(3) A provider of an education and care service existing immediately before the scheme commencement day must, in accordance with the national regulations—

(a) continue to keep all documents required under the former education and care services law to be kept in respect of the service; and

(b) make those documents available to the Regulatory Authority on request.

Penalty:

(a) $4,000 in the case of an individual.

(b) $20,000 in any other case.

323—Approved learning framework

A declared approved learning framework is taken to be an approved learning framework under this Law.

324—Savings and transitional regulations

(1) The national regulations may contain provisions (*savings and transitional provisions*) of a savings or transitional nature—

(a) consequential on the enactment of this Law in a participating jurisdiction; or

(b) to otherwise allow or facilitate the change from the operation of a former education and care services law of a participating jurisdiction to the operation of this Law.

(2) Savings and transitional regulations may have retrospective operation to a day not earlier than the day on which section 1 of this Law commences.

Schedule 1—Miscellaneous provision relating to interpretation

(Section 6)

Part 1—Preliminary

1—Displacement of Schedule by contrary intention

The application of this Schedule may be displaced, wholly or partly, by a contrary intention appearing in this Law.

Part 2—General

2—Law to be construed not to exceed legislative power of Legislature

(1) This Law is to be construed as operating to the full extent of, but so as not to exceed, the legislative power of the Legislature of this jurisdiction.

(2) If a provision of this Law, or the application of a provision of this Law to a person, subject matter or circumstance, would, but for this clause, be construed as being in excess of the legislative power of the Legislature of this jurisdiction—

(a) it is a valid provision to the extent to which it is not in excess of the power; and

(b) the remainder of this Law, and the application of the provision to other persons, subject matters or circumstances, is not affected.

(3) This clause applies to this Law in addition to, and without limiting the effect of, any provision of this Law.

3—Every section to be a substantive enactment

Every section of this Law has effect as a substantive enactment without introductory words.

4—Material that is, and is not, part of this Law

(1) The heading to a Part, Division or Subdivision into which this Law is divided is part of this Law.

(2) A Schedule to this Law is part of this Law.

(3) Punctuation in this Law is part of this Law.

(4) A heading to a section or subsection of this Law does not form part of this Law.

(5) Notes included in this Law (including footnotes and endnotes) do not form part of this Law.

5—References to particular Acts and to enactments

In this Law—

(a) an Act of this jurisdiction may be cited—

(i) by its short title; or

(ii) by reference to the year in which it was passed and its number; and

(b) a Commonwealth Act may be cited—

(i) by its short title; or

(ii) in another way sufficient in a Commonwealth Act for the citation of such an Act;

together with a reference to the Commonwealth; and

(c) an Act of another jurisdiction may be cited—

(i) by its short title; or

(ii) in another way sufficient in an Act of the jurisdiction for the citation of such an Act,

together with a reference to the jurisdiction.

6—References taken to be included in Act or Law citation etc

(1) A reference in this Law to an Act includes a reference to—

(a) the Act as originally enacted, and as amended from time to time since its original enactment; and

(b) if the Act has been repealed and re-enacted (with or without modification) since the enactment of the reference—the Act as re-enacted, and as amended from time to time since its re-enactment.

(2) A reference in this Law to a provision of this Law or of an Act includes a reference to—

(a) the provision as originally enacted, and as amended from time to time since its original enactment; and

(b) if the provision has been omitted and re-enacted (with or without modification) since the enactment of the reference—the provision as re-enacted, and as amended from time to time since its re-enactment.

(3) Subclauses (1) and (2) apply to a reference in this Law to a law of the Commonwealth or another jurisdiction as they apply to a reference in this Law to an Act and to a provision of an Act.

7—Interpretation best achieving Law's purpose

(1) In the interpretation of a provision of this Law, the interpretation that will best achieve the purpose or object of this Law is to be preferred to any other interpretation.

(2) Subclause (1) applies whether or not the purpose is expressly stated in this Law.

8—Use of extrinsic material in interpretation

(1) In this clause—

extrinsic material means relevant material not forming part of this Law, including, for example—

(a) material that is set out in the document containing the text of this Law as printed by the Government Printer; and

(b) a relevant report of a Royal Commission, Law Reform Commission, commission or committee of inquiry, or a similar body, that was laid before the Parliament of this jurisdiction before the provision concerned was enacted; and

(c) a relevant report of a committee of the Parliament of this jurisdiction that was made to the Parliament before the provision was enacted; and

(d) a treaty or other international agreement that is mentioned in this Law; and

(e) an explanatory note or memorandum relating to the Bill that contained the provision, or any relevant document, that was laid before, or given to the members of, the Parliament of this jurisdiction by the member bringing in the Bill before the provision was enacted; and

(f) the speech made to the Parliament of this jurisdiction by the member in moving a motion that the Bill be read a second time; and

(g) material in the Votes and Proceedings of the Parliament of this jurisdiction or in any official record of debates in the Parliament of this jurisdiction; and

(h) a document that is declared by this Law to be a relevant document for the purposes of this clause;

ordinary meaning means the ordinary meaning conveyed by a provision having regard to its context in this Law and to the purpose of this Law.

(2) Subject to subclause (3), in the interpretation of a provision of this Law, consideration may be given to extrinsic material capable of assisting in the interpretation—

(a) if the provision is ambiguous or obscure—to provide an interpretation of it; or

(b) if the ordinary meaning of the provision leads to a result that is manifestly absurd or is unreasonable—to provide an interpretation that avoids such a result; or

(c) in any other case—to confirm the interpretation conveyed by the ordinary meaning of the provision.

(3) In determining whether consideration should be given to extrinsic material, and in determining the weight to be given to extrinsic material, regard is to be had to—

(a) the desirability of a provision being interpreted as having its ordinary meaning; and

(b) the undesirability of prolonging proceedings without compensating advantage; and

(c) other relevant matters.

9—Effect of change of drafting practice and use of examples

If—

(a) a provision of this Law expresses an idea in particular words; and

(b) a provision enacted later appears to express the same idea in different words for the purpose of implementing a different legislative drafting practice, including, for example—

(i) the use of a clearer or simpler style; or

(ii) the use of gender-neutral language;

the ideas must not be taken to be different merely because different words are used.

10—Use of examples

If this Law includes an example of the operation of a provision—

(a) the example is not exhaustive; and

(b) the example does not limit, but may extend, the meaning of the provision; and

(c) the example and the provision are to be read in the context of each other and the other provisions of this Law, but, if the example and the provision so read are inconsistent, the provision prevails.

11—Compliance with forms

(1) If a form is prescribed or approved by or for the purpose of this Law, strict compliance with the form is not necessary and substantial compliance is sufficient.

(2) If a form prescribed or approved by or for the purpose of this Law requires—

(a) the form to be completed in a specified way; or

(b) specified information or documents to be included in, attached to or given with the form; or

(c) the form, or information or documents included in, attached to or given with the form, to be verified in a specified way,

the form is not properly completed unless the requirement is complied with.

Part 3—Terms and references

12—Definitions

(1) In this Law—

Act means an Act of the Legislature of this jurisdiction;

adult means an individual who is 18 or more;

affidavit, in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration and promise;

amend includes—

(a) omit or omit and substitute; or

(b) alter or vary; or

(c) amend by implication;

appoint includes reappoint;

Australia means the Commonwealth of Australia but, when used in a geographical sense, does not include an external Territory;

business day means a day that is not—

(a) a Saturday or Sunday; or

(b) a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done;

calendar month means a period starting at the beginning of any day of one of the 12 named months and ending—

(a) immediately before the beginning of the corresponding day of the next named month; or

(b) if there is no such corresponding day—at the end of the next named month;

calendar year means a period of 12 months beginning on 1 January;

commencement, in relation to this Law or an Act or a provision of this Law or an Act, means the time at which this Law, the Act or provision comes into operation;

Commonwealth means the Commonwealth of Australia but, when used in a geographical sense, does not include an external Territory;

confer, in relation to a function, includes impose;

contravene includes fail to comply with;

country includes—

(a) a federation; or

(b) a state, province or other part of a federation;

date of assent, in relation to an Act, means the day on which the Act receives the Royal Assent;

definition means a provision of this Law (however expressed) that—

(a) gives a meaning to a word or expression; or

(b) limits or extends the meaning of a word or expression;

document includes—

(a) any paper or other material on which there is writing; or

(b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for a person qualified to interpret them; or

(c) any disc, tape or other article or any material from which sounds, images, writings or messages are capable of being reproduced (with or without the aid of another article or device);

electronic communication means—

(a) a communication of information in the form of data, text or images by means of guided or unguided electromagnetic energy, or both; or

(b) a communication of information in the form of sound by means of guided or unguided electromagnetic energy, or both, where the sound is processed at its destination by an automated voice recognition system;

estate includes easement, charge, right, title, claim, demand, lien or encumbrance, whether at law or in equity;

expire includes lapse or otherwise cease to have effect;

external Territory means a Territory, other than an internal Territory, for the government of which as a Territory provision is made by a Commonwealth Act;

fail includes refuse;

financial year means a period of 12 months beginning on 1 July;

foreign country means a country (whether or not an independent sovereign State) outside Australia and the external Territories;

function includes a power, authority or duty;

Gazette means the Government Gazette of this jurisdiction;

gazetted means published in the Gazette;

Gazette notice means notice published in the Gazette;

Government Printer means the Government Printer of this jurisdiction, and includes any other person authorised by the Government of this jurisdiction to print an Act or instrument;

individual means a natural person;

information system means a system for generating, sending, receiving, storing or otherwise processing electronic communications;

insert, in relation to a provision of this Law, includes substitute;

instrument includes a statutory instrument;

interest, in relation to land or other property, means—

(a) a legal or equitable estate in the land or other property; or

(b) a right, power or privilege over, or in relation to, the land or other property;

internal Territory means the Australian Capital Territory, the Jervis Bay Territory or the Northern Territory;

Jervis Bay Territory means the Territory mentioned in the *Jervis Bay Territory Acceptance Act 1915* of the Commonwealth;

make includes issue or grant;

minor means an individual who is under 18;

modification includes addition, omission or substitution;

month means a calendar month;

named month means 1 of the 12 months of the year;

Northern Territory means the Northern Territory of Australia;

number means—

(a) a number expressed in figures or words; or

(b) a letter; or

(c) a combination of a number so expressed and a letter;

oath, in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration or promise;

office includes position;

omit, in relation to a provision of this Law or an Act, includes repeal;

party includes an individual or a body politic or corporate;

penalty includes forfeiture or punishment;

power includes authority;

prescribed means prescribed by, or by regulations made or in force for the purposes of or under, this Law;

printed includes typewritten, lithographed or reproduced by any mechanical means;

proceeding means a legal or other action or proceeding;

property means any legal or equitable estate or interest (whether present or future, vested or contingent, or tangible or intangible) in real or personal property of any description (including money), and includes things in action;

provision, in relation to this Law or an Act, means words or other matter that form or forms part of this Law or the Act, and includes—

(a) a Chapter, Part, Division, Subdivision, section, subsection, paragraph, subparagraph, subsubparagraph or Schedule of or to this Law or the Act; or

(b) a section, clause, subclause, item, column, table or form of or in a Schedule to this Law or the Act; or

(c) the long title and any preamble to the Act;

record includes information stored or recorded by means of a computer;

repeal includes—

(a) revoke or rescind; or

(b) repeal by implication; or

(c) abrogate or limit the effect of this Law or instrument concerned; or

(d) exclude from, or include in, the application of this Law or instrument concerned any person, subject matter or circumstance;

sign includes the affixing of a seal or the making of a mark;

statutory declaration means a declaration made under an Act, or under a Commonwealth Act or an Act of another jurisdiction, that authorises a declaration to be made otherwise than in the course of a judicial proceeding;

statutory instrument means an instrument (including a regulation) made or in force under or for the purposes of this Law, and includes an instrument made or in force under any such instrument;

swear, in relation to a person allowed by law to affirm, declare or promise, includes affirm, declare or promise;

word includes any symbol, figure or drawing;

writing includes any mode of representing or reproducing words in a visible form.

(2) In a statutory instrument—

the Law means this Law.

13—Provisions relating to defined terms and gender and number

(1) If this Law defines a word or expression, other parts of speech and grammatical forms of the word or expression have corresponding meanings.

(2) Definitions in or applicable to this Law apply except so far as the context or subject matter otherwise indicates or requires.

(3) In this Law, words indicating a gender include each other gender.

(4) In this Law—

(a) words in the singular include the plural; and

(b) words in the plural include the singular.

14—Meaning of 'may' and 'must' etc

(1) In this Law, the word *may*, or a similar word or expression, used in relation to a power indicates that the power may be exercised or not exercised, at discretion.

(2) In this Law, the word *must*, or a similar word or expression, used in relation to a power indicates that the power is required to be exercised.

(3) This clause has effect despite any rule of construction to the contrary.

15—Words and expressions used in statutory instruments

(1) Words and expressions used in a statutory instrument have the same meanings as they have, from time to time, in this Law, or relevant provisions of this Law, under or for the purposes of which the instrument is made or in force.

(2) This clause has effect in relation to an instrument except so far as the contrary intention appears in the instrument.

16—Effect of express references to bodies corporate and individuals

In this Law, a reference to a person generally (whether the expression 'person', 'party', 'someone', 'anyone', 'no-one', 'one', 'another' or 'whoever' or another expression is used)—

(a) does not exclude a reference to a body corporate or an individual merely because elsewhere in this Law there is particular reference to a body corporate (however expressed); and

(b) does not exclude a reference to a body corporate or an individual merely because elsewhere in this Law there is particular reference to an individual (however expressed).

17—Production of records kept in computers etc

If a person who keeps a record of information by means of a mechanical, electronic or other device is required by or under this Law—

(a) to produce the information or a document containing the information to a court, tribunal or person; or

(b) to make a document containing the information available for inspection by a court, tribunal or person,

then, unless the court, tribunal or person otherwise directs—

(c) the requirement obliges the person to produce or make available for inspection, as the case may be, a document that reproduces the information in a form capable of being understood by the court, tribunal or person; and

(d) the production to the court, tribunal or person of the document in that form complies with the requirement.

18—References to this jurisdiction to be implied

In this Law—

(a) a reference to an officer, office or statutory body is a reference to such an officer, office or statutory body in and for this jurisdiction; and

(b) a reference to a locality or other matter or thing is a reference to such a locality or other matter or thing in and of this jurisdiction.

19—References to officers and holders of offices

In this Law, a reference to a particular officer, or to the holder of a particular office, includes a reference to the person for the time being occupying or acting in the office concerned.

20—Reference to certain provisions of Law

If a provision of this Law refers—

(a) to a Part, section or Schedule by a number and without reference to this Law—the reference is a reference to the Part, section or Schedule, designated by the number, of or to this Law; or

(b) to a Schedule without reference to it by a number and without reference to this Law—the reference, if there is only one Schedule to this Law, is a reference to the Schedule; or

(c) to a Division, Subdivision, subsection, paragraph, subparagraph, subsubparagraph, clause, subclause, item, column, table or form by a number and without reference to this Law—the reference is a reference to—

(i) the Division, designated by the number, of the Part in which the reference occurs; and

(ii) the Subdivision, designated by the number, of the Division in which the reference occurs; and

(iii) the subsection, designated by the number, of the section in which the reference occurs; and

(iv) the paragraph, designated by the number, of the section, subsection, Schedule or other provision in which the reference occurs; and

(v) the paragraph, designated by the number, of the clause, subclause, item, column, table or form of or in the Schedule in which the reference occurs; and

(vi) the subparagraph, designated by the number, of the paragraph in which the reference occurs; and

(vii) the subsubparagraph, designated by the number, of the subparagraph in which the reference occurs; and

(viii) the section, clause, subclause, item, column, table or form, designated by the number, of or in the Schedule in which the reference occurs,

as the case requires.

21—Reference to provisions of this Law or an Act is inclusive

In this Law, a reference to a portion of this Law or an Act includes—

(a) a reference to the Chapter, Part, Division, Subdivision, section, subsection or other provision of this Law or the Act referred to that forms the beginning of the portion; and

(b) a reference to the Chapter, Part, Division, Subdivision, section, subsection or other provision of this Law or the Act referred to that forms the end of the portion.

Example—

A reference to 'sections 5 to 9' includes both section 5 and 9.

It is not necessary to refer to 'sections 5 to 9 (both inclusive)' to ensure that the reference is given an inclusive interpretation.

Part 4—Functions and powers

22—Performance of statutory functions

(1) If this Law confers a function or power on a person or body, the function may be performed, or the power may be exercised, from time to time as occasion requires.

(2) If this Law confers a function or power on a particular officer or the holder of a particular office, the function may be performed, or the power may be exercised, by the person for the time being occupying or acting in the office concerned.

(3) If this Law confers a function or power on a body (whether or not incorporated), the performance of the function, or the exercise of the power, is not affected merely because of vacancies in the membership of the body.

23—Power to make instrument or decision includes power to amend or repeal

If this Law authorises or requires the making of an instrument or decision—

(a) the power includes power to amend or repeal the instrument or decision; and

(b) the power to amend or repeal the instrument or decision is exercisable in the same way, and subject to the same conditions, as the power to make the instrument or decision.

24—Matters for which statutory instruments may make provision

(1) If this Law authorises or requires the making of a statutory instrument in relation to a matter, a statutory instrument made under this Law may make provision for the matter by applying, adopting or incorporating (with or without modification) the provisions of—

(a) an Act or statutory instrument; or

(b) another document (whether of the same or a different kind),

as in force at a particular time or as in force from time to time.

(2) If a statutory instrument applies, adopts or incorporates the provisions of a document, the statutory instrument applies, adopts or incorporates the provisions as in force from time to time, unless the statutory instrument otherwise expressly provides.

(3) A statutory instrument may—

(a) apply generally throughout this jurisdiction or be limited in its application to a particular part of this jurisdiction; or

(b) apply generally to all persons, matters or things or be limited in its application to—

(i) particular persons, matters or things; or

(ii) particular classes of persons, matters or things; or

(c) otherwise apply generally or be limited in its application by reference to specified exceptions or factors.

(4) A statutory instrument may—

(a) apply differently according to different specified factors; or

(b) otherwise make different provision in relation to—

(i) different persons, matters or things; or

(ii) different classes of persons, matters or things.

(5) A statutory instrument may authorise a matter or thing to be from time to time determined, applied or regulated by a specified person or body.

(6) If this Law authorises or requires a matter to be regulated by statutory instrument, the power may be exercised by prohibiting by statutory instrument the matter or any aspect of the matter.

(7) If this Law authorises or requires provision to be made with respect to a matter by statutory instrument, a statutory instrument made under this Law may make provision with respect to a particular aspect of the matter despite the fact that provision is made by this Law in relation to another aspect of the matter or in relation to another matter.

(8) A statutory instrument may provide for the review of, or a right of appeal against, a decision made under the statutory instrument, or this Law, and may, for that purpose, confer jurisdiction on any court, tribunal, person or body.

(9) A statutory instrument may require a form prescribed by or under the statutory instrument, or information or documents included in, attached to or given with the form, to be verified by statutory declaration.

25—Presumption of validity and power to make

(1) All conditions and preliminary steps required for the making of a statutory instrument are presumed to have been satisfied and performed in the absence of evidence to the contrary.

(2) A statutory instrument is taken to be made under all powers under which it may be made, even though it purports to be made under this Law or a particular provision of this Law.

26—Appointments may be made by name or office

(1) If this Law authorises or requires a person or body—

(a) to appoint a person to an office; or

(b) to appoint a person or body to exercise a power; or

(c) to appoint a person or body to do another thing,

the person or body may make the appointment by—

(d) appointing a person or body by name; or

(e) appointing a particular officer, or the holder of a particular office, by reference to the title of the office concerned.

(2) An appointment of a particular officer, or the holder of a particular office, is taken to be the appointment of the person for the time being occupying or acting in the office concerned.

27—Acting appointments

(1) If this Law authorises a person or body to appoint a person to act in an office, the person or body may, in accordance with this Law, appoint—

(a) a person by name; or

(b) a particular officer, or the holder of a particular office, by reference to the title of the office concerned,

to act in the office.

(2) The appointment may be expressed to have effect only in the circumstances specified in the instrument of appointment.

(3) The appointer may—

(a) determine the terms and conditions of the appointment, including remuneration and allowances; and

(b) terminate the appointment at any time.

(4) The appointment, or the termination of the appointment, must be in, or evidenced by, writing signed by the appointer.

(5) The appointee must not act for more than 1 year during a vacancy in the office.

(6) If the appointee is acting in the office otherwise than because of a vacancy in the office and the office becomes vacant, then, subject to subclause (2), the appointee may continue to act until—

(a) the appointer otherwise directs; or

(b) the vacancy is filled; or

(c) the end of a year from the day of the vacancy,

whichever happens first.

(7) The appointment ceases to have effect if the appointee resigns by writing signed and delivered to the appointer.

(8) While the appointee is acting in the office—

(a) the appointee has all the powers and functions of the holder of the office; and

(b) this Law and other laws apply to the appointee as if the appointee were the holder of the office.

(9) Anything done by or in relation to a person purporting to act in the office is not invalid merely because—

(a) the occasion for the appointment had not arisen; or

(b) the appointment had ceased to have effect; or

(c) the occasion for the person to act had not arisen or had ceased.

(10) If this Law authorises the appointer to appoint a person to act during a vacancy in the office, an appointment to act in the office may be made by the appointer whether or not an appointment has previously been made to the office.

28—Powers of appointment imply certain incidental powers

(1) If this Law authorises or requires a person or body to appoint a person to an office—

(a) the power may be exercised from time to time as occasion requires; and

(b) the power includes—

(i) power to remove or suspend, at any time, a person appointed to the office; and

(ii) power to appoint another person to act in the office if a person appointed to the office is removed or suspended; and

(iii) power to reinstate or reappoint a person removed or suspended; and

(iv) power to appoint a person to act in the office if it is vacant (whether or not the office has ever been filled); and

(v) power to appoint a person to act in the office if the person appointed to the office is absent or is unable to discharge the functions of the office (whether because of illness or otherwise).

(2) The power to remove or suspend a person under subclause (1)(b) may be exercised even if this Law provides that the holder of the office to which the person was appointed is to hold office for a specified period.

(3) The power to make an appointment under subclause (1)(b) may be exercised from time to time as occasion requires.

(4) An appointment under subclause (1)(b) may be expressed to have effect only in the circumstances specified in the instrument of appointment.

29—Delegation of functions

(1) If this Law authorises a person or body to delegate a function, the person or body may, in accordance with this Law and any other applicable law, delegate the function to—

(a) a person or body by name; or

(b) a specified officer, or the holder of a specified office, by reference to the title of the office concerned.

(2) The delegation may be—

(a) general or limited; and

(b) made from time to time; and

(c) revoked, wholly or partly, by the delegator.

(3) The delegation, or a revocation of the delegation, must be in, or evidenced by, writing signed by the delegator or, if the delegator is a body, by a person authorised by the body for the purpose.

(4) A delegated function may be exercised only in accordance with any conditions to which the delegation is subject.

(5) The delegate may, in the performance of a delegated function, do anything that is incidental to the delegated function.

(6) A delegated function that purports to have been exercised by the delegate is taken to have been properly exercised by the delegate unless the contrary is proved.

(7) A delegated function that is properly exercised by the delegate is taken to have been exercised by the delegator.

(8) If, when exercised by the delegator, a function is dependent on the delegator's opinion, belief or state of mind, then, when exercised by the delegate, the function is dependent on the delegate's opinion, belief or state of mind.

(9) If—

(a) the delegator is a specified officer or the holder of a specified office; and

(b) the person who was the specified officer or holder of the specified office when the delegation was made ceases to be the holder of the office,

then—

(c) the delegation continues in force; and

(d) the person for the time being occupying or acting in the office concerned is taken to be the delegator for the purposes of this clause.

(10) If—

(a) the delegator is a body; and

(b) there is a change in the membership of the body,

then—

(c) the delegation continues in force; and

(d) the body as constituted for the time being is taken to be the delegator for the purposes of this clause.

(11) If a function is delegated to a specified officer or the holder of a specified office—

(a) the delegation does not cease to have effect merely because the person who was the specified officer or the holder of the specified office when the function was delegated ceases to be the officer or the holder of the office; and

(b) the function may be exercised by the person for the time being occupying or acting in the office concerned.

(12) A function that has been delegated may, despite the delegation, be exercised by the delegator.

(13) The delegation of a function does not relieve the delegator of the delegator's obligation to ensure that the function is properly exercised.

(14) Subject to subclause (15), this clause applies to a subdelegation of a function in the same way as it applies to a delegation of a function.

(15) If this Law authorises the delegation of a function, the function may be subdelegated only if the Law expressly authorises the function to be subdelegated.

30—Exercise of powers between enactment and commencement

(1) If a provision of this Law (the *empowering provision*) that does not commence on its enactment would, had it commenced, confer a power—

(a) to make an appointment; or

(b) to make a statutory instrument of a legislative or administrative character; or

(c) to do another thing,

then—

(d) the power may be exercised; and

(e) anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment, instrument or other thing into effect;

before the empowering provision commences.

(2) If an instrument, or a provision of an instrument, is made under subclause (1) that is necessary for the purpose of—

(a) enabling the exercise of a power mentioned in the subclause; or

(b) bringing an appointment, instrument or other thing made or done under such a power into effect,

the instrument or provision takes effect—

(c) on the making of the instrument; or

(d) on such later day (if any) on which, or at such later time (if any) at which, the instrument or provision is expressed to take effect.

(3) If—

(a) an appointment is made under subclause (1); or

(b) an instrument, or a provision of an instrument, made under subclause (1) is not necessary for a purpose mentioned in subclause (2),

the appointment, instrument or provision takes effect—

(c) on the commencement of the relevant empowering provision; or

(d) on such later day (if any) on which, or at such later time (if any) at which, the appointment, instrument or provision is expressed to take effect.

(4) Anything done under subclause (1) does not confer a right, or impose a liability, on a person before the relevant empowering provision commences.

(5) In the application of this clause to a statutory instrument, a reference to the enactment of the instrument is a reference to the making of the instrument.

Part 5—Distance, time and age

31—Matters relating to distance, time and age

(1) In the measurement of distance for the purposes of this Law, the distance is to be measured along the shortest road ordinarily used for travelling.

(2) If a period beginning on a given day, act or event is provided or allowed for a purpose by this Law, the period is to be calculated by excluding the day, or the day of the act or event, and—

(a) if the period is expressed to be a specified number of clear days or at least a specified number of days—by excluding the day on which the purpose is to be fulfilled; and

(b) in any other case—by including the day on which the purpose is to be fulfilled.

(3) If the last day of a period provided or allowed by this Law for doing anything is not a business day in the place in which the thing is to be or may be done, the thing may be done on the next business day in the place.

(4) If the last day of a period provided or allowed by this Law for the filing or registration of a document is a day on which the office is closed where the filing or registration is to be or may be done, the document may be filed or registered at the office on the next day that the office is open.

(5) If no time is provided or allowed for doing anything, the thing is to be done as soon as possible, and as often as the prescribed occasion happens.

(6) If, in this Law, there is a reference to time, the reference is, in relation to the doing of anything in a jurisdiction, a reference to the legal time in the jurisdiction.

(7) For the purposes of this Law, a person attains an age in years at the beginning of the person's birthday for the age.

Part 6—Effect of repeal, amendment or expiration

32—Time of Law ceasing to have effect

If a provision of this Law is expressed—

(a) to expire on a specified day; or

(b) to remain or continue in force, or otherwise have effect, until a specified day,

this provision has effect until the last moment of the specified day.

33—Repealed Law provisions not revived

If a provision of this Law is repealed or amended by an Act, or a provision of an Act, the provision is not revived merely because the Act or the provision of the Act—

(a) is later repealed or amended; or

(b) later expires.

34—Saving of operation of repealed Law provisions

(1) The repeal, amendment or expiry of a provision of this Law does not—

(a) revive anything not in force or existing at the time the repeal, amendment or expiry takes effect; or

(b) affect the previous operation of the provision or anything suffered, done or begun under the provision; or

(c) affect a right, privilege or liability acquired, accrued or incurred under the provision; or

(d) affect a penalty incurred in relation to an offence arising under the provision; or

(e) affect an investigation, proceeding or remedy in relation to such a right, privilege, liability or penalty.

(2) Any such penalty may be imposed and enforced, and any such investigation, proceeding or remedy may be begun, continued or enforced, as if the provision had not been repealed or amended or had not expired.

35—Continuance of repealed provisions

If an Act repeals some provisions of this Law and enacts new provisions in substitution for the repealed provisions, the repealed provisions continue in force until the new provisions commence.

36—Law and amending Acts to be read as one

This Law and all Acts amending this Law are to be read as one.

Part 7—Instruments under Law

37—Schedule applies to statutory instruments

(1) This Schedule applies to a statutory instrument, and to things that may be done or are required to be done under a statutory instrument, in the same way as it applies to this Law, and things that may be done or are required to be done under this Law, except so far as the context or subject matter otherwise indicates or requires.

(2) The fact that a provision of this Schedule refers to this Law and not also to a statutory instrument does not, by itself, indicate that the provision is intended to apply only to this Law.

Part 8—Application to coastal sea

38—Application

This Law has effect in and relation to the coastal sea of this jurisdiction as if that coastal sea were part of this jurisdiction.

Schedule 2—Powers of entry by search warrant

1—Application for warrant

(1) An authorised officer may apply to a magistrate of a participating jurisdiction for a search warrant in relation to premises if the officer believes on reasonable grounds that—

(a) a person is or has been operating an education and care service at the premises in contravention of this Law; or

(b) documents or other evidence relevant to the possible commission of an offence against this Law are present at the premises.

(2) The authorised officer must prepare a written application that states the grounds on which the warrant is sought.

(3) The written application must be sworn.

(4) The magistrate may refuse to consider the application until the authorised officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

2—Issue of warrant

(1) The magistrate may issue the warrant in respect of premises only if the magistrate is satisfied there are reasonable grounds to believe that—

(a) a person is operating an education and care service at the premises in contravention of this Law; or

(b) documents or other evidence relevant to the possible commission of an offence against this Law are present at the premises.

(2) The warrant must state—

(a) that a stated authorised officer may, with necessary and reasonable help and force—

(i) enter the premises and any other premises necessary for entry; and

(ii) exercise the authorised officer's powers under this Schedule; and

(b) the matter for which the warrant is sought; and

(c) the evidence that may be seized under the warrant; and

(d) the hours of the day or night when the premises may be entered; and

(e) the date, within 14 days after the warrant's issue, the warrant ends.

3—Application by electronic communication

(1) An authorised officer may apply for a warrant by phone, facsimile, email, radio, video conferencing or another form of communication if the authorised officer considers it necessary because of—

(a) urgent circumstances; or

(b) other special circumstances, including the authorised officer's remote location.

(2) The application—

(a) may not be made before the authorised officer prepares the written application under clause 1(2); but

(b) may be made before the written application is sworn.

(3) The magistrate may issue the warrant (the *original warrant*) only if the magistrate is satisfied—

(a) it was necessary to make the application under subclause (1); and

(b) the way the application was made under subclause (1) was appropriate.

(4) After the magistrate issues the original warrant—

(a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the authorised officer, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the authorised officer; or

(b) otherwise—

(i) the magistrate must tell the authorised officer the date and time the warrant is issued and the other terms of the warrant; and

(ii) the authorised officer must complete a form of warrant including by writing on it—

(A) the magistrate's name; and

(B) the date and time the magistrate issued the warrant; and

(C) the other terms of the warrant.

(5) The copy of the warrant referred to in subclause (4)(a), or the form of warrant completed under subclause (4)(b) (in either case the *duplicate warrant*), is a duplicate of, and as effectual as, the original warrant.

(6) The authorised officer must, at the first reasonable opportunity, send to the magistrate—

(a) the written application complying with clause 1(2) and (3); and

(b) if the authorised officer completed a form of warrant under subclause (4)(b), the completed form of warrant.

(7) The magistrate must keep the original warrant and, on receiving the documents under subclause (6), file the original warrant and documents in the court.

(8) Despite subclause (5), if—

(a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this clause; and

(b) the original warrant is not produced in evidence,

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.

(9) This clause does not limit clause 1.

4—Procedure before entry under warrant

(1) Before entering premises under a warrant, an authorised officer must do or make a reasonable attempt to do the following:

(a) identify himself or herself to a person present at the premises who is an occupier of the premises by producing the authorised officer's identity card;

(b) give the person a copy of the warrant;

(c) tell the person the authorised officer is permitted by the warrant to enter the premises;

(d) give the person an opportunity to allow the authorised officer immediate entry to the premises without using force.

(2) However, the authorised officer need not comply with subclause (1) if the authorised officer reasonably believes that immediate entry to the premises is required to ensure the effective execution of the warrant is not frustrated.

5—Powers after entering premises

(1) This clause applies if an authorised officer enters premises under clause 4.

(2) The authorised officer may for the purposes of the investigation do the following:

(a) search any part of the premises;

(b) inspect, measure, test, photograph or film, or make audio recordings of, any part of the premises or anything at the premises;

(c) take a thing, or a sample of or from a thing, at the premises for analysis, measurement or testing;

(d) copy, or take an extract from, a document, at the premises;

(e) take into or onto the premises any person, equipment and materials the authorised officer reasonably requires for exercising a power under this Schedule;

(f) require the occupier of the premises, or a person at the premises, to give the authorised officer reasonable help to exercise the authorised officer's powers under paragraphs (a) to (e);

(g) require the occupier of the premises, or a person at the premises, to give the authorised officer information to help the authorised officer in conducting the investigation.

New schedule inserted.

Schedules 1 and 2 and title passed.

Bill reported with amendment.

The Hon. J.W. WEATHERILL (Cheltenham—Minister for Education, Minister for Early Childhood Development, Minister for Science and Information Economy) (22:00): I move:

That this bill be now read a third time.

Mr HAMILTON-SMITH (Waite) (22:00): I thank the minister for his answers, and I speak to the bill as it has come out of committee to hammer home, if you like, a couple of points before it goes to the other place. I do have some concerns, as a result of my conversations with the private sector, in that they would have liked a bit more time with consultation (particularly on the regulations) before this comes into force, which I understand to be around 1 January. They feel there should have been wider community consultation and significantly more outcomes-focused collaborative solutions, rather than the process that was followed.

They hope the government will ensure that with the implementation of the regulations no families are worse off than they are under the current system. I must say, as the bill has come out of committee, I am not confident that families will not be worse off; I am quite certain, in fact, that they will be worse off financially. I take the minister's point that children may be better cared for if their parents can afford to keep them in the long day care service, but I think this will cause children to be pushed into backyard care and that is the danger of this bill.

Until the commitment that no family will be worse off can be guaranteed, a cloud will hang over this bill. As the bill has come out of committee, we have heard a different answer to the question of what the extra cost will be from the minister, from stakeholders and from proprietors. I

re-emphasise to the house that in the view of private childcare providers there is a burdensome additional cost impost as a result of this bill and the confluent regulations of some $3,000 to nearly $6,000 per child depending on the service involved, and that implementation of the reforms that we are passing here will impose significant imposts on working Australian families.

The government should consider the wide-ranging social, cultural and economic impacts that these reforms are going to have on working families, families that play a vital role in the economy and the intelligence of our nation. Their children should not be forced into a position of disadvantage. I think, as the bill has come out of committee, there is such a risk.

I have read Treasury working papers dated 2010 that show that there is a tight human resources supply market for workers in this industry and that reforms will categorically drive working mothers out of employment, adding significant pressure to the current state budget and to our economic wellbeing.

The industry advises that it is critical that the sector and the government find a solution to meeting further unmet need for trained educators. We heard that during the committee debate. The government needs to consider a proper funding model to enable our state's future educators, so as to break the deepening skills and staff retention crisis faced within the early childhood industry, currently exacerbated by the federal government's own policy commitment to give all four year olds universal access to a tertiary qualified teacher. We need to consider reinstating a commitment to work constructively with the private childcare sector, the key sector for day care, and we must ensure and remember that child care is for working families; it is not only a vehicle for education.

I put to the house that members can consider between the houses where we are with the bill now that it has come out of committee. One option that the minister might like to consider is whether, when this goes to the other place, it should be referred to committee so that there can be further consultation with stakeholders, and, similarly, whether the minister can consider delaying the implementation date of this, because this is going to descend upon working families in January at considerable cost, and it will hurt small business.

I understand that the Queensland government has pushed back part of the regulations that provide that they must maintain their new qualified staff ratios at all times until 2018. This is a significant precedent. Perhaps the minister could consider whether or not we could do something similar in the way of a stop, if you like, to the implementation of some aspects of this to enable time for the TAFE system to adjust and to provide the educators that will be needed. There is no point in implementing this if we do not have trained and qualified staff. All that will happen is that the minister will have to write exemption after exemption; the kids will be no better off, businesses will be no better off, and we will have new regulations in name only.

Another way to deal with it would be to postpone in time the implementation dates of those aspects of the bill and the regulations. For South Australia, a more gradual phase-in of the increased ratios for two to three year olds in particular would be a very good result. What we are saying to childcare centres is that we are going to increase the number of staff they need for two to three year olds from one staff as to 10 to one staff as to five. That is a doubling of your wages bill for that age group, and it can only result in a drop in the number of children that child care can make or a drop in the viability of that business or tremendous additional cost for the families involved.

If only we could postpone that aspect of the staff ratios implementation until January 2016, for example, or January 2017 or January 2019, instead of January 2012, to enable childcare centres to have time to adjust. I think there needs to be a consideration by the government for some transitional provisions. We are going to ram the shutters down on childcare centres and the families who use their services in January. We are going to make these dramatic changes to their costs and the viability of their businesses, and we have not really given them enough time to prepare. I think the government is going to have trouble making this work. So, I will certainly be talking to my friend, the member for Unley, who is managing this bill between the houses, about what position we take when the matter goes to the upper house.

In the period between the houses, I would ask the minister to consider my suggestions in regard to the timetable for implementation and some of the other aspects that I have raised, because I think this is a very important matter. I am very surprised that this bill has not received more community and media scrutiny. I am very surprised that this is not on the front page of the paper, to be perfectly frank, because this is going to impact on hundreds and probably thousands of childcare centre families who are going to walk into their childcare centre in January and be told

that their fees have gone up 20 per cent because of these new staffing requirements, and they are going to say, 'What?' I am just amazed that this has not had more media coverage and more scrutiny. It is a very, very significant change to the lives of a lot of families, and it is going to affect a lot of women, in particular, who are struggling to be in the workforce as well as provide high-quality child care for their kids.

In closing, I will just say that I think the minister's goals are commendable. We are trying to turn what are already excellent childcare services into, I would argue, perfect childcare centres, or even more perfect childcare centres. All that is fine, but as the minister himself said, it is a matter of balance. We have to get the balance right between the affordability of childcare for families, the viability of the business for the small family businesses that run them and the quality of the care that we are providing.

I put it to the house, as this bill has come out of committee, that we may not have that balance right. I think we might have skewed the balance a bit too far on the side of perfection, without due consideration as to whether or not the mums and dads of South Australia can afford to pay the bill.

I make the point that we have no guarantee from the commonwealth that it will chip in anything extra in the way of additional family benefit payments to help those struggling families pay. The rich parents will not care; they can afford it. Families in crisis who are entitled to the full extent of federal childcare benefit will also be helped to a degree.

The families that are going to suffer as a result of this change—the minister would argue that they are going to benefit because they will get better childcare—are the ones in the middle, the middle income families that are not getting the full benefit of childcare assistance and who are not rich. A mum and dad each earning $50,000 a year working in a shop, or whatever the case may be, with a joint income of $100,000, are not wealthy people. If they have two kids in childcare at the moment it would be costing them $60, $70 or $80 a week. They are going to wake up some time in early January and are going to be told that because of this bill passed here tonight their childcare bills have gone up by somewhere between 13 per cent and 20 per cent.

I think that is something that this house has not adequately considered. I would make an appeal to members opposite: please, in the period between the houses, if you have a meeting, if you could really think about this again. If we cannot change the fundamentals then let us at least give the families and the childcare centres a bit more time on the implementation, but we have to do something because these people, in many cases, are suffering.

I remind the house that, as the bill has come out of committee, the result will be that a large number of families will find that they cannot afford it anymore and those kids will go into people's backyards, it will be the neighbour or a relative, it will be someone who will do it for $20 or $30 a day and what quality of childcare will the kids have then?

The ones who can afford it will be fine, they will still be there; the ones who cannot will be left to their own devices. This has been a very important bill. I thank the minister for the quality of the debate and the way in which he has managed the bill, but I think we need to reflect between now and the matter being dealt with in the other place.

Bill read a third time and passed.

At 22:13 the house adjourned until Wednesday 19 October 2011 at 11:00.