HOUSE OF ASSEMBLY

Wednesday 17 October 2012

The SPEAKER (Hon. L.R. Breuer) took the chair at 11:02 and read prayers.

STATUTES AMENDMENT (NATIONAL ENERGY RETAIL LAW IMPLEMENTATION) BILL

The Hon. T.R. KENYON (Newland—Minister for Employment, Higher Education and Skills, Minister for Science and Information Economy, Minister for Recreation and Sport) (11:02): I move:

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

Motion carried.

STATUTES AMENDMENT AND REPEAL (TAFE SA CONSEQUENTIAL PROVISIONS) BILL

The Hon. T.R. KENYON (Newland—Minister for Employment, Higher Education and Skills, Minister for Science and Information Economy, Minister for Recreation and Sport) (11:02): I move:

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

Motion carried.

GRAFFITI CONTROL (MISCELLANEOUS) AMENDMENT BILL

The Hon. T.R. KENYON (Newland—Minister for Employment, Higher Education and Skills, Minister for Science and Information Economy, Minister for Recreation and Sport) (11:02): I move:

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

Motion carried.

VISITORS

The SPEAKER: I welcome a very colourful group of young students up there today from St Jakobi Lutheran School, in the Barossa I presume, guests of the member for Schubert. Lovely to see you here, and I hope you enjoy your time here this morning.

PORT AUGUSTA POWER STATIONS

Mr VAN HOLST PELLEKAAN (Stuart) (11:03): I move:

That this house establish a select committee to investigate into and report upon the effects of the proposal by national group Beyond Zero Emissions and local group Repowering Port Augusta that the Northern and the Playford coal-fired power stations at Port Augusta (which are owned and operated by Alinta Energy) be replaced by a concentrated solar thermal power station when the coal supply from the Leigh Creek mine is no longer viable and in particular, consider—

(a) the full cost of implementation of this proposal and how it may be met;

(b) the impact on household and business electricity prices;

(c) the impact on employment in the region;

(d) the ability of solar thermal technology to provide a reliable power supply;

(e) comparable other mainstream technologies; and

(f) any other relevant matters.

This is a very important matter for Port Augusta, our state and potentially our nation. I say at the outset that I acknowledge Alinta's role as the owner and operator of the two power stations at Port Augusta and the Leigh Creek coal mine, and everything I say from hereon includes recognition of the fact that they are a key player and what they would like to do is vital to this whole issue.

But, of course, it is also vital to the government, and the government, both state and federal, has a very important role to play in this. Funding for any potential solar thermal power generating facility would be very expensive and would include contributions, I am sure, from both state and federal governments.

I also acknowledge that the Minister for Energy has had meetings on this issue with various people, including myself, the Mayor of Port Augusta and the CEO of Port Augusta Council, and I understand that he has met with other interested parties and that he has also been to Nevada to look at one of these power plants firsthand.

The Hon. A. Koutsantonis: California.

Mr VAN HOLST PELLEKAAN: California, thank you minister. So I thank him for the work that he has done already to look into this issue. I also thank all members and staff who attended the briefing held here in Parliament House several months ago, and it was terrific that they turned up. There is some knowledge of this issue among members already, particularly in the minister's office.

I also acknowledge that many responsible organisations are advocating on behalf of solar thermal, including Doctors for the Environment Australia, Beyond Zero Emissions, and Repower Port Augusta, which is a local Port Augusta group with a very broad cross-section of people supporting them. This is not just one section of the Port Augusta community getting behind this issue, and they have worked very hard and very responsibly to put this issue forward, and certainly so have others.

I would also like to make very clear to this house that this proposal is in no way in conflict with the operation of the existing power stations in Port Augusta. The power stations in Port Augusta are incredibly important. They employ about 500 people between the power stations and the coal mine at Leigh Creek in our region in the north of the state—so, they are very important—and those jobs are vital. Leigh Creek, as well as being a very important community in its own right which needs employment in the coal mine to survive, is also a very important community that supports the whole of the north-east of outback South Australia. In much the same way as Coober Pedy is a focal hub for the north-west, Leigh Creek is a focal hub for the north-east and so plays a very important role.

The coal at Leigh Creek is going to run out. None of us knows exactly when and, like all mining operations, the coal will deteriorate in quality and become more expensive to access over time. At some point in time the mining company will decide that it is not economically viable to continue to use that coal and send it to Port Augusta. It is going to run out, and there are estimates anywhere from five to 25 years (my estimate is that there is 10 to 15 years worth of viable coal there), but it is a fact that the coal will run out and that we will come to a day when we do not have coal for the Port Augusta power stations.

I am not suggesting for a second that we would generate electricity in Port Augusta in any other way before the coal runs out, but we have to start thinking today about what the solution to the problem is going to be when the coal runs out. We have to pick a solution and we have to start to work towards it straightaway, otherwise it will not be up and running and in place and be useful in 10 to 15 years' time, or whenever the coal is not available; we need to start that transition now. This is a statewide issue, not just a Port Augusta and north of the state issue, because the Port Augusta power stations supply 30 to 40 per cent of our state's electricity at the moment, so this is an issue for the whole state.

In regard to my position on this issue, I have been very clear with everybody I have met. I cannot tell you and I do not stand here to say that solar thermal technology is the right idea, but I do stand here to say very firmly that it must be investigated and that it must be given every opportunity to find out whether it is as good as people honestly believe it is, and I take that role very seriously—to really push that it gets the opportunity to do that.

I have also said to strong proponents of solar thermal that the three key issues for me are, obviously: the jobs that come out of any proposal like this, as we need to know that there will be good, strong employment in the north of the state, in Port Augusta; we need to know what the cost is, and there are a lot of varying cost estimates and they are all very high, and we need to know whether it is economically viable; and, very importantly, we need to know about the reliability. We need to know whether this technology is really as reliable as people believe it is and, if so, I am fully behind it—I am absolutely behind it if those three things can be established.

This is a proposal that I think would be irresponsible not to fully investigate. It cannot be ruled out. I know there are other options like gas that should also be considered, but you cannot rule out that this new technology might be the one that we should replace the power stations with in approximately 10 years up at Port Augusta.

There are enormous potential opportunities here. One is the fact that, as I have said, when the coal runs out, when the existing power stations are forced to stop operating, we are going to need to do something. We cannot avoid that fact, but this solar thermal seems to provide an exceptional opportunity for our state to reduce greenhouse gas emissions and to reduce pollution. Regardless of where anybody's views are with regard to greenhouse emissions and climate change and all of that sort of thing, I am confident that every single member here believes that reducing pollution is a good thing. It is incontrovertible, and this proposal would do that.

Health issues are extremely important. It is a fact that Port Augusta has a higher incidence of smoking than most other towns in South Australia, but it is also a fact that it has an even higher incidence of lung cancer than other towns in South Australia. Doctors tell me that there should be a direct linear relationship between increase in smoking and increase in the incidence of lung cancer. In Port Augusta there is more lung cancer than we should have and many people believe that that is directly linked to emissions from the power station. Reducing pollution and improving people's health are very important.

Is this technology right? Is it affordable? That is what we need to look at, but what we know already is that Port Augusta is the perfect place to locate this technology, if it is just right. We already have transmission lines in place from Port Augusta supplying electricity. We have an abundance of solar energy through the sun; we have an abundance of land. We already have a very highly-skilled workforce in place at the existing power stations which could be transitioned over years. Today they are all working in coal and coal-fired electricity generation. Perhaps over 10 to 15 years there could be a steady change, so that those people all end up working in solar thermal. We have the workforce there, they are already skilled and, over time, their skills could be transitioned into this new form of energy.

There would be significant employment generated in Port Augusta during the building of any new power station, so it is exceptionally important to me as the member for Stuart that this new power station is in Port Augusta. A gigantic employment opportunity will be generated by solar thermal when the plant is built—if it is built—and of course there will be many jobs in running, maintaining and operating the plant from then on, which is very important.

Potentially there will even be a new manufacturing industry for our state. If this technology is proven and if it is worth doing in Port Augusta, it will be worth doing in many other places around our state, so it is a very important opportunity for a new manufacturing industry in our state. I know that all members of parliament from both sides of this chamber would certainly welcome that.

The terms of reference that I have suggested are flexible. I am certainly willing to discuss potential changes with members if they think that is warranted. I think they are appropriate. I would also like to just address one opinion that has been put to me and that is that the terms of reference in my motion were set up so that an investigation would fail. I put very clearly on the record that that is not the case. There are some very serious tests that this technology would have to pass before it could be taken seriously into a full proposal phase, but I would be as happy as anybody else if it succeeds. I think that would be absolutely wonderful.

What we have here is a tremendous concept. We need to know whether it is workable. We need to know whether it can actually be put into practice and we need to answer the questions that I have put in my motion. I think that is a very important process and I suggest that all members of parliament would be pleased if any new non-polluting technology could jump those hurdles and be proven to be effective. That would be a very important thing.

Something else that is important to say is that we need a bipartisan position on whatever we are going to do with future electricity generation in our state. We need that for several reasons. We need a bipartisan approach because there will be an enormous cost involved, a gigantic cost, so of course it is going to be something that we all need to agree on. There will also be many years of building and many years of operation. If solar thermal is the way to go in Port Augusta and the way to go in South Australia, then we would be setting ourselves up for the way that we will generate electricity into the middle of this century. Any decision that big of course requires both sides of parliament and both sides of politics to come to an agreement on it.

I think a select committee is the best way to do that. There have been suggestions that one of parliament's standing committees could look into this issue; I do not think that is appropriate. I know from personal experience that getting a select committee and getting the government to agree to a select committee to look into an issue can take years before it actually happens. Ten years down the track seems like a long time, but if we do not get working on this now we will not

get a solution in place in 10 years' time, and waiting for a standing committee to look into this in a year or two, or potentially more, is not soon enough. This is a big enough issue on its own that I believe this house should establish a select committee to look into it now.

Let me say again that, in principle, I think everyone would agree that this is exceptionally attractive technology. What we need to know is: is it viable, what is the cost, can we afford it, how can we fund it, is it an economically viable way to produce electricity, is there job security for the region in this form of electricity and, very importantly, is it reliable enough, is it as good as people believe? We really need to do a very thorough investigation. If those issues are not dealt with then we certainly cannot move ahead

I think a select committee is the way to go to find out if this technology is the right one, if it jumps those hurdles, and I certainly hope it does, and I urge the government to support this motion and establish a select committee, on behalf of this house, to investigate this very important proposal.

The Hon. A. KOUTSANTONIS (West Torrens—Minister for Manufacturing, Innovation and Trade, Minister for Mineral Resources and Energy, Minister for Small Business) (11:17): I just point out to the house that at no stage has the member for Stuart approached the government seeking support for this motion other than his motion today in the parliament. That is his right, but generally there is usually a bit of wheeling and dealing going on in the parliament: 'Let's have a bipartisan committee. Let's try to work out the problem. This is very important for Port Augusta,' the general relationship I used to have with the member for Goyder, a very good working relationship. We worked well together, we got compromises, we had an inquiry in the Economic and Finance Committee and the outcome of that was the Small Business Commissioner, something I know he is very proud of. It is just a shame that he got booted out of the ministry by Steven Marshall.

However, the government supports the establishment of a select committee. The government will be supporting this motion; the government wants to have this committee established today. We are ready to go, our members are ready to go, and I hope that the opposition has its members ready to go so that we can establish this committee to operate immediately.

This is a good idea, and I am very pleased to finally hear a member of the opposition talking about the importance of renewable energy. I consistently hear the shadow energy minister talking about the evils of renewable energy and how they are pushing power prices up. In fact, the Leader of the Opposition said recently that she did not care if investments in turbines and such things fell over, because they were highly inefficient and a waste of money. Finally we have a member of the opposition who is standing up in favour of renewable energy, a member of the opposition who is saying, 'I disagree with my party.' It is the flavour of the month, I think; it is the term de jour. The future is renewable energy and one member of the opposition understands that.

Solar thermal has captured the imagination of the people of Port Augusta, captured the imagination of their hardworking mayor, captured the imagination of the young people in Port Augusta and, I think, captured the imagination of the member for Stuart—and I congratulate him. I met up with the Walk for Solar volunteers, who were a cross-section of young people and older Australians walking from Port Augusta to Adelaide to make their point and show their commitment for solar thermal in Port Augusta. I met with them, I spoke with them, I thanked them for their labour, I thanked them for their efforts, I thanked them for making the journey, and I met with them after they arrived in Adelaide.

I think this is a good idea. The government thinks this is a good idea, and I commend the member for Stuart for moving this motion. I commend him because the usual path is that the government would move its own motion not to give the member for Stuart any credit, but I want to give him all the credit in the world for this. What a good idea supporting renewable energy! He is going to become my new pin-up boy. He is the poster boy for renewable energy in the Liberal Party.

Mr VAN HOLST PELLEKAAN: Point of order, Madam Speaker. I am particularly concerned that I might become the poster pin-up boy for the Minister for Energy.

The SPEAKER: I am not sure that there is a point of order there.

The Hon. A. KOUTSANTONIS: Trust me, it's probably not the same way that you are thinking about it that I am thinking about it because we come from very different points of view on these matters. I want to make the member for Stuart famous because, quite frankly, given the

comments made by his leader, his deputy leader and members of the opposition about the evils of renewable energy, he is what I think you can call a star in the making, someone who is shining brighter than the naysayers, someone who is standing up and saying no to the voices of doom, someone who is saying, 'I disagree,' someone who is saying, 'Yes, we can.' Perhaps he is a potential leader, perhaps a potential aspirant, perhaps someone who wants to make a difference to change their community.

While we support what Alinta is doing, we support the people of Port Augusta, and we support what Beyond Zero is talking about, I did fly to California to see a solar thermal plant. I have to say they are remarkable structures. It is a relatively new technology, and the interesting thing about new technologies is that they often transform: they start off in one aspect of development, then they transform and evolve over time into different forms of technology. Even while they are constructing a new solar thermal plant, there are learnings from that plant that will improve the construction of future solar thermal plants.

I think it is important to note that what Alinta is asking for and looking for is a demonstrator, to prove up that demonstrator and then obviously try to scale it up. Ultimately, what we are looking at here is a breakthrough technology. Breakthrough technologies are the way we are going to find new advances in electricity, not because we are going to run out of coal or gas but because we are going to look for cheaper and new forms of energy.

This breakthrough technology could be in solar, it could be in a form of hybrid technology or it could be geothermal. What we do know is that in the last decade of this state's history this state has led the nation, if not the world, in the development of its renewable energy, and for the first time in that decade a member of the opposition has stood up and said, 'I want to be a part of that revolution. I want to join the renewables revolution that is taking over South Australia.'

I notice with great eagerness the member for Newland's support for renewable energy. Indeed, I understand he is one of the fathers of our feed-in tariff, so I congratulate him on his forward thinking while an adviser for the Hon. Paul Holloway. If South Australia were a nation in its own right, we would be No. 2 to Denmark in terms of our capability to generate electricity from wind. In fact, the amount of wind energy has lessened the impact of the carbon tax in South Australia. That is a good thing for South Australia. Indeed, on some days the majority of electricity generated in this state can come from wind. These are good things. The next step, of course, is solar, perhaps with a form of storage, perhaps some sort of hybrid—

An honourable member interjecting:

The Hon. A. KOUTSANTONIS: What's wrong, mate? Are you in a bit of a hurry, are you? Beware an old man in a hurry; that is what I have always said. The breakthrough technology could be solar or some sort of hybrid technology, but ultimately what a lot of proponents are asking for today are feed-in tariffs and government subsidies. The government's view is that the people of South Australia have done their bit in terms of feed-in tariffs.

This committee, which will be established today, will have the members for Little Para, Port Adelaide and Ramsay representing the government, and hopefully two members of the opposition. I am hoping it will be the member for Stuart and, for a bit of sensible policy development, the member for Goyder, who is a very experienced, thoughtful thinker in the Liberal Party who has unfortunately been replaced by the shouters in the Liberal Party. However, as I said to him, whenever the shouters replace the thinkers it always leads to disaster, and the thinkers always make a comeback because the party needs thinkers—long-term thinking—so he will be back.

We support this select committee. I urge the opposition not to attempt to adjourn the motion. The state government will not let the motion be adjourned today; we want it to be established here and now. Our members are clear. We want a five-person committee to be made up of Labor members for Little Para, Ramsay and Port Adelaide. I hope the member for Stuart will be on the committee as the local member. Obviously, it is up to the opposition as to who it will put on there—that is its choice—but I would like to see a good bipartisan committee. This is bipartisanship at its best. Establishing the committee quickly after two speeches is a good idea, an idea whose time has come, and I am glad that the member for Stuart has seen the light.

Mr GRIFFITHS (Goyder) (11:25): I have enjoyed listening to both contributions, especially the one from the minister, and I thank him for his relatively kind words. This is a key issue so I am exceptionally pleased that the government has indicated its preparedness to establish the committee today.

I attended the briefing that the member for Stuart convened in Parliament House, and I have also had an individual meeting with, I think, a university student associated with it who is a proponent behind options such as this. I must admit that I am attracted to innovation and, clearly, this is an opportunity for South Australia to be innovative, to bring in a level of investment that will be significant in providing a surety of employment opportunity for regional areas and, as a regional MP, that is a key issue for me.

Importantly, it allows us to ensure that we have a security of electricity supply. There are many challenges facing South Australia and the world in the future. We have an opportunity as a parliament and as a chamber to establish a committee that will look very seriously at the issue to ensure that it is flushed out, so that full costs are known and that other options that might exist are also developed. Importantly, we can get people involved—and I know that they will; I am impressed by the members that the Labor Party has announced will be members of the committee and I will be very pleased indeed when the member for Stuart stands up to confirm the nominees from the Liberal Party—people who will work cooperatively to ensure that we get a positive outcome and that the chamber and the parliament is better informed and, as a state, therefore, we can hopefully drive some investment opportunities and move forward on this absolutely most critical of issues.

Water is the other one, and there is no doubt about that—it has been debated many times in this chamber and will continue to be talked about—but electricity is a most basic need of our society and it is important that our state look at all options. I look forward to the passage of this notice of motion and the establishment of the committee. Indeed, I hope that its work, which I have no doubt will take some time, is presented before the rising of the parliament in late November of 2013.

Mr VAN HOLST PELLEKAAN (Stuart) (11:27): I rise to thank the minister and thank the government for supporting this motion, and I thank those who have spoken to it. The community of Port Augusta and many people far more broadly around the state and our nation appreciate the support that the government has given to this motion.

Motion carried.

Mr VAN HOLST PELLEKAAN: I move:

That a committee be appointed consisting of Ms Bettison, Dr Close, Mr Whetstone, Mr Odenwalder and the mover.

Motion carried.

Mr VAN HOLST PELLEKAAN: 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 28 November 2012.

Motion carried.

Mr VAN HOLST PELLEKAAN: 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 thinks fit of any evidence presented to the committee prior to such evidence being reported to the house.

The SPEAKER: There not being an absolute majority present ring the bells.

A quorum having been formed:

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

Motion carried.

PUBLIC WORKS COMMITTEE: EVANSTON LAND RELEASE—MAIN NORTH AND TIVER ROAD INTERSECTION

Mr ODENWALDER (Little Para) (11:32): I move:

That the 455th report of the committee, entitled Evanston Land Release—Main North and Tiver Road Intersection, be noted.

The Urban Renewal Authority will upgrade and signalise the intersection at Main North Road and Tiver Road, Evanston, which is within its Evanston land release. The estimated cost of $13.7 million includes additional expenditure of $9.2 million and a contribution from adjoining landowners of $4.5 million. The aim of the work is to deliver the upgrade and signalisation at that

intersection and to enable the urban development of that locality in accordance with the 30-year plan. The project is expected to be complete in 2013. Given this, and pursuant to section 12C of the Parliamentary Committees Act 1991, the Public Works Committee reports to parliament that it recommends the proposed public works.

Mr PENGILLY (Finniss) (11:33): The opposition supports the project. End of story.

Motion carried.

PUBLIC WORKS COMMITTEE: MODBURY HOSPITAL REDEVELOPMENT

Mr ODENWALDER (Little Para) (11:33): I move:

That the 456th report of the committee, entitled Modbury Hospital Redevelopment, be noted.

The Public Works Committee has been presented with a proposal for the Modbury Hospital redevelopment stage 1, which comprises the redevelopment of the emergency department and a new building to accommodate 36 rehabilitation beds and associated treatment facilities. The total capital cost budgeted for the project is $46.37 million, GST exclusive.

The proposed solution will provide for a complete reconfiguration, refurbishment and expansion of the existing ED area on the ground floor of the existing main building complex, the existing covered ambulance set-down area to be replaced and enlarged to accommodate increased ambulance activity and to cater for larger ambulances, and the installation of earthquake structural bracing within the refurbished area of the existing building consistent with a progressive upgrade approach to the existing buildings—it is on a fault line.

The construction of the emergency department is expected to be completed by December 2013, with the rehabilitation building to be completed by December 2018. Given this, and pursuant to section 12C of the Parliamentary Committees Act 1991, the Public Works Committee reports to parliament that it recommends the proposed public works.

Ms BEDFORD (Florey) (11:35): I would like to say how welcome this development is to the people of the north-eastern area, not only in my seat of Florey but also in the seats of Torrens and Newland (whose member is in here at the moment). We welcome the refurbishment of the emergency section; however, we note that the rehab section will be delayed for some time. In the north-eastern suburbs we have worked really hard to make sure that the Modbury Hospital remains the much-loved institution that it is. The Modbury Hospital local action group did a great deal of work at the time of privatisation to make sure that it remained a public hospital. We acknowledge the work of all the staff over the years who have made it the wonderful place that it is who will enjoy enormously the refurbishment and the new amenities of the emergency section.

Mr PENGILLY (Finniss) (11:36): The opposition in the committee was pleased to support the project. It was also pleased to assist the member for Florey in the issue which is a most important project for her area. Having said all that, I will sit down because we support it.

Motion carried.

LEGISLATIVE REVIEW COMMITTEE: CRIMINAL CASES REVIEW COMMISSION BILL

Mr SIBBONS (Mitchell) (11:36): I move:

That the report of the committee, on Criminal Cases Review Commission Bill 2010, be noted.

On 10 November 2010 the Hon. Ann Bressington introduced the Criminal Cases Review Commission Bill into the Legislative Council. The bill was modelled on the legislation which established the Criminal Cases Review Commission in the United Kingdom. In June 2011 the bill was referred to the Legislative Review Committee for inquiry and report along with a number of other matters including alternative approaches to rectifying issues with the prerogative of mercy and the possibility of establishing a national criminal cases review commission.

The committee reviewed 29 written submissions and heard oral evidence from eight witnesses. Submissions to the inquiry covered three main areas: firstly, an examination of the current mechanisms for an appeal against a conviction; secondly, the need for reform in this area; and thirdly, an exploration of different criminal cases review models proposed in the bill and in interstate and overseas jurisdictions. Submissions raised concern about the limited opportunity and statutory rights available to a person who believes that they should not have been convicted of an offence or where new offences come to light which may cast doubt over their conviction.

Currently, a person has a right of appeal against their conviction on limited grounds provided by statute. The court has determined that it will not reconsider evidence already adduced at the trial and will not allow an appeal simply because it disagrees with the decision of a jury. A convicted person has no right to a further appeal on any grounds after this one right of appeal has been exhausted. This is known as the principle of finality. The only other option for a person wanting to challenge their conviction is to petition the Governor for a pardon in the exercise of the prerogative of mercy. This is an entirely discretional exercise of power by the Governor and does not result in a conviction being quashed. Petitions to the Governor from convicted persons are usually referred to the Attorney-General for consideration under section 369 of the Criminal Law Consolidation Act 1935.

Submissions were critical of current appeal mechanisms, the operation of the royal prerogative of mercy and section 369 investigations undertaken by the Attorney-General as being too difficult to establish, extensive and lacking independence. They submitted that royal commissions were a rare and expensive way of reviewing criminal cases. The submission from the Australian Human Rights Commission cast doubt on whether South Australia's current appeal system complies with international legal obligations under the international covenant on civil and political rights.

There are a variety of factors which may cast doubt over a person's conviction. The committee heard, in evidence, about the nature of the adversarial trial and the propensity for wrongful convictions to occur as a result of the presentation of forensic evidence. Witnesses and submissions expressed concerns that the changing nature of forensic science and the development of new technologies may allow evidence to be retested, the results of which may show that a convicted person is innocent or cast reasonable doubt on the safety of the conviction.

Concerns were also expressed about the method by which scientific expert evidence is adduced at trial, and submissions outlined that forensic evidence may be misunderstood or misused due to the question and answer format in which it is adduced in an adversarial trial. Forensic evidence is very complex and some submitted it may be too complex for a jury to understand. Some witnesses described the so-called 'CSI effect' where juries may put more weight on forensic evidence than they ought as a result of the presentation of forensic evidence in TV shows. The committee was also concerned that there was no formal opportunity for a jury to ask questions and seek clarification if they did not understand certain matters.

I now turn to the Criminal Cases Review Commission Bill, which the committee examined in some detail. The purpose of the bill is to establish an independent body in South Australia which would provide convicted persons with the opportunity to have any claims about the safety of their conviction investigated and referred to the court if the commission concluded it was a reasonable possibility that the conviction would be overturned. The bill provides for a five-member commission, with membership including legal practitioners and those with particular knowledge of the criminal justice system.

Under the bill, the commission would have the power to investigate applications on behalf of a person convicted of both summary and indictable offences, and sentences. The commission's terms of reference under the bill are threefold: first, they must consider that there is a reasonable possibility of the conviction or sentence not being upheld; secondly, this must be as a result of an argument, evidence or information not raised in the original proceedings; and, thirdly, that an appeal against the conviction or sentence must already have been refused by the court. The bill provides the commission with a number of powers of investigation and the ability to assist both the courts and the Attorney-General in their conviction, appeal and review functions.

Concerns were expressed in submissions and evidence about the operation of such a commission, including the scope to hear new evidence, its consideration of the outcome of the trial rather than a person's innocence, and the lack of provision for informing and engaging victims of crime. The committee also heard evidence about the effectiveness of the UK CCRC, which has been in operation since 1997. The committee investigated and heard evidence about the way in which CCRCs in other jurisdictions operated and also other methods of post-conviction review. The United Kingdom, Scotland and Norway all have criminal cases review commissions. North Carolina has an Innocence Inquiry Commission, which forms part of the courts. Canada has statutory provisions for the further right of appeal against a conviction to the federal Attorney-General, who undertakes a review and then refers the matter back to the court for hearing.

The committee also considered a national approach to post-conviction reviews in Australia. New South Wales has been the only Australian jurisdiction to address post-conviction review in any

way other than through the courts. They have an extended statutory appeal section whereby a person can apply to the court, the Attorney-General or the Governor for a review of their conviction. They have also established a DNA review panel which can organise the testing of DNA evidence where an applicant is of the view that such evidence may prove their innocence.

In light of the evidence and the committee's consideration of the terms of reference, it made seven recommendations. The first was that there should not be a permanent CCRC in South Australia, as established by the bill introduced by the Hon. Ann Bressington. The committee is concerned that a permanent CCRC would not be an adequate use of resources given the size of its jurisdiction and the number of matters it would review.

The committee has also considered the national criminal cases review model as required by the inquiry terms of reference. It is also of the view that there may be jurisdictional issues with a national body directing a state court. The committee is also mindful of the need for all states to consent to participate in such a scheme, and that there would be difficulties for a national commission applying laws, caused by a lack of uniformity of the criminal law throughout Australia. It therefore recommends that the Attorney-General not pursue the establishment of a CCRC at the national level. However, the committee considers that the current mechanisms for the consideration of potential wrongful convictions are in need of reform. It is also of the view that such reform should be addressed through amendments to existing legislation, rather than through establishing a CCRC.

Time expired.

Ms THOMPSON (Reynell) (11:46): Part 10 of the Criminal Law Consolidation Act provides several exceptions to the double jeopardy rule. A person acquitted of an offence may be tried again where the acquittal was tainted (that is, where someone has committed perjury or another administration of justice offence), or where fresh and compelling evidence comes to light. However, there is no opportunity for a retrial or review of a person convicted of an offence on these same grounds.

To that end, the committee recommends that a person convicted of a serious offence should be allowed a further appeal against where the court finds that the conviction is tainted, or where there is fresh and compelling evidence in relation to the offence which may cast reasonable doubt on the guilt of the convicted person.

The committee was particularly interested to hear that the majority of concerns about the safety of convictions centred around the nature and presentation of scientific evidence. The committee is of the view that, if the process by which scientific and forensic evidence were more rigorously controlled, the propensity for wrongful convictions would be greatly reduced. The committee therefore recommends that the Attorney-General liaise with the courts in undertaking a review of all current rules and procedures for the admission of expert evidence in criminal trials.

The committee would like to see the presentation of prosecution and defence expert evidence simplified and agreed between both parties if possible, instead of presented in an adversarial way, as is currently the case. This would allow those parts of scientific evidence, in particular, which are not in contention to be agreed and presented to the jury as such. It is hoped that this agreed evidence will streamline arguments about expert evidence, and limit argument in court to the differences in expert testimony. The committee also recommends that there be an opportunity for jurors or the judge to ask questions and seek clarification from expert witnesses during trial.

In addition, the committee recommends that the Attorney-General considers establishing a forensic science review panel to enable the testing or retesting of forensic evidence which may cast reasonable doubt on the guilt of a convicted person, and for those results to be referred to the Court of Criminal Appeal. This panel would be similar in constitution and operation to the New South Wales DNA Review Panel, and would allow a convicted person to raise questions and ask for the re-examination of existing evidence, or consideration of new evidence not available at the time of their trial. The panel would then have the power to refer such new evidence to the court of appeal for consideration.

Many witnesses to the inquiry were critical of the operation of the exercise of the royal prerogative of mercy, submitting that it was entirely at the discretion of the Executive and, if granted, did not actually result in a conviction being quashed. The committee recommends that there be a mechanism in South Australian legislation to allow for a conviction to be quashed, or to be considered quashed if a convicted person is granted a pardon.

The committee notes that, in the process of considering the rights of the convicted person to a review, there should also be consideration of the rights of the victims of crime. Many submissions to the inquiry expressed the view that victims often feel disempowered and that the legal system is skewed in favour of the defendant, and that any further conviction review may have a detrimental effect on the victims' needs for finality and their efforts to recover from the effects of the crime.

The committee is keen to ensure that victims' rights are protected and that victims are not only notified of but are able to participate in any post conviction review if they so choose. It therefore recommends that the Commissioner for Victims' Rights and victims of crime be notified of any post-conviction review to be undertaken under any act, be able to make submissions to any such review proceedings, either through written submissions or through representation by the Commissioner for Victims' Rights, and be entitled to information about the progress of such a review.

On behalf of the committee, I would like to thank all those who made submissions and gave evidence to the inquiry. I would like to thank the members of the committee, the Presiding Member, the Hon. Gerry Kandelaars; the Hon. John Darley; the Hon. Stephen Wade; the member for Mitchell; and the member for Morialta, Mr John Gardner. I would also like to thank the committee staff secretary, Mr Adam Crichton, and our research officer, Ms Carren Walker, for their work in relation to the report.

Unfortunately for the committee, our research officer, Ms Carren Walker, has left our committee to enhance her career and meet greater challenges with employment with parliamentary counsel. Carren has been a wonderful and highly respected researcher and will be missed by all on the Legislative Review Committee. Speaking on behalf of the committee, I wish Carren well for the future.

I do commend the report to the house, but in five minutes I would like to make some of my own remarks. I think members can see that it was a very comprehensive review by the fact that we were not able to get through the official report of the noting of the committee in the usual time. It was a very interesting review. There was a wide range of submissions and witnesses, with people not always having the same view.

However, the committee had extensive discussions in which we explored our knowledge and understanding. Most of us are not lawyers, and we were therefore helped greatly by Carren Walker, who made a number of the legal documents quite understandable to those of us who were not lawyers, and thus we were able to benefit from the expertise of those who did have some law qualifications.

I think one of the important points that was made towards the end of the report was the issue of the victims of crime. Unfortunately, some of the submissions (which are on the website, and everybody can have a look at them) did seem to indicate that the person who was the victim of the crime was the person who was convicted of the crime despite a series of appeals and very comprehensive review processes. It was necessary to remind some of the witnesses that there was another victim of the crime—the person whose loved one had been killed, injured or whatever— and that it was necessary to consider their feelings.

In fact, I think at one stage I was admonished by a witness for referring to the victim of the crime has being the person who had suffered injury. This indicates that not all the legal profession is on the same page. I have to say that those who did not seem to understand the role we now place on victims of crime were those who had been practising for not so much time, since the victims of crime have had articulated rights given by this parliament to victims of crime.

In terms of the suggestions that have been made, we found it very useful to have some assistance from Dr Bill Tilstone, who was head of the forensic science division in South Australia for quite some years and who then went on to the US, where he developed a number of review processes to look at the integrity of forensic processes in that area. I think we need to give particular thanks to Dr Tilstone, who, from the look of his entry on Wikipedia, could have commanded a considerable sum for the advice he gave us completely free of charge and in a way that we could understand well. For those who want to do some more research, he pointed to Malta as a jurisdiction which combines the inquisitorial method of justice together with our adversarial system. He believes that this has been of great assistance to juries and other parties involved in very serious cases involving complex scientific facts.

Something else that came through was that, whilst some parties talked about the jurors not necessarily understanding scientific evidence, there was a fair bit of indication that the lawyers did not always understand the scientific evidence, either. After all, that is not what their degree is about; they are bush scientists, just the same as jurors are bush scientists. We were very keen that there should not be ambushing in court; that there should be an emphasis on agreed facts relating to scientific matters as much as possible; and that there should be notice of any witnesses who are coming forward with an expert opinion, so that the other party had time to consider how to handle that matter.

The point I would like to make in the remaining time is that we will seriously miss Carren Walker. She has been a model of how a research officer can really enhance the work of the committee and enable the committee members to bring the various views of the life they have and the perspectives from their electorate in a way that combines legal issues and our undoubted common sense. I commend the report.

The Hon. R.B. SUCH (Fisher) (11:56): I commend the Legislative Review Committee on what they did, and I think they came to the right conclusion. Overall, we have a very good justice system; things can go wrong but, in the main, I think it gets things pretty right.

What the committee, in effect, has recommended is that it is not necessary to set up a permanent criminal cases review commission, and that is partly because of the population size in South Australia and the amount of work they would have to consider. The United Kingdom has one, but obviously it has a much larger population. What the committee recommended, in effect, is that the laws relating to consideration of matters arising out of the courts should be modified, and I think it makes a lot of sense to do that.

I want to highlight something, based on my own experience. People say, 'That was a traffic matter.' Yes, that is true, but it did give me an insight into how the courts can malfunction, if you like. The first lawyer I had was well meaning and prepared to help me, but he became ill. Unfortunately, a lot of the key material he had, which would have helped my case, was never presented to court because he became ill.

I understood that it had been given to the second lawyer. In actual fact, it had not and was not, so it was never presented to court. So, that was one problem. The second lawyer made a very big error in not objecting to the certificate of accuracy relating to the laser; the certificate of accuracy had been altered with white-out and biro. He should have objected in court—he admits that—but he did not. The problem is that, when you have legal representation, you are basically voiceless in court; the lawyer acts on your behalf.

Likewise, in the appeal to the Supreme Court, the lawyer said, 'I don't normally do these, but I'll do it at a reduced fee.' It was a mistake on my part to accept that because I know now that, when you appeal to the Supreme Court, you appeal on every possible ground, but that did not happen. The judge in the Supreme Court, the Hon. Justice Timothy Anderson, for whom I have great respect, said during the hearing, 'It's possible to have another trial.'

The lawyer sat silent; he did not say a thing. If he had said at the time, 'My client has been disadvantaged because key evidence was not provided in the initial Magistrates Court hearing,' I am sure the judge would have granted a second trial. Then on appeal to the Full Court, the Full Court said, 'It's been looked at; we're not going to look at it.' End of story.

We do need mechanisms. I know my case is minor compared to more serious cases, but we do need a mechanism where issues can be reviewed. The introduction of new material has always been contentious. We know some of the more dramatic cases, like that of Timothy Evans in England, who was wrongfully hung and later pardoned. Well, that did not do much for him because he was wrongfully hung on the basis of an accusation of murder.

Mistakes can be made. I know from my experience, which was at a minor level compared with something like that, that things can go wrong with the system, so you do need a mechanism whereby things can be revisited, particularly if new material comes to light and there is new evidence. I commend the Legislative Review Committee on what they have done. I think all members should be now urging the government to modify our existing law to allow for a review of serious criminal cases.

Motion carried.

CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) (R18+ COMPUTER GAMES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 20 September 2012.)

The Hon. M.J. ATKINSON (Croydon) (12:02): Sometimes in politics, what one prevents is as significant as what one does. I am pleased that, for the past 10 years, I have prevented the introduction of an R18+ category for interactive games, in the absence of any adjustment of the classification guidelines to take account of the higher impact of interactivity. I am pleased to see in the guidelines that this bill is intended to ratify this new section which reads:

> Interactivity is an important consideration that the Board must take into account when classifying computer games. This is because there are differences in what some sections of the community condone in relation to passive viewing or the effects passive viewing may have on the viewer (as may occur in a film) compared to actively controlling outcomes by making choices to take or not take action.
>
> Due to the interactive nature of computer games and the active repetitive involvement of the participant, as a general rule computer games may have a higher impact than similarly themed depictions of the classifiable elements in film, and therefore greater potential for harm or detriment, particularly to minors.
>
> Interactivity may increase the impact of some content: for example, impact may be higher where interactivity enables action such as inflicting realistically depicted injuries or death or post-mortem damage, attacking civilians or engaging in sexual activity. Greater degrees of interactivity (such as first-person gameplay compared to third-person gameplay) may also increase the impact of some content.
>
> Interactivity includes the use of incentives and rewards, technical features and competitive intensity.

I am pleased that it is now included in the guidelines and, had I been attorney-general after the March 2010 election, this is exactly the kind of compromise which would have led to my supporting the creation of the new category. Indeed, I canvassed just such a thing on the Leon Byner radio program at the time.

Over the years of my preventing this category I have been subjected to a great deal of online abuse, spamming, threatening material being placed under my door at 2 o'clock in the morning and, of course, a bit of abuse from the Leader of the Opposition's son, but this is what one has to cop when one holds public office.

When I was attending meetings of the Standing Committee of Attorneys-General I was, of course, the lightning rod for the gamers on this issue, but I was certainly not the only attorney-general who opposed the introduction of the category without adjustment to the guidelines. In fact, there were at least two other attorneys-general who shared my position and told me so but were happy for me to take the running.

Over the years, I have considered the statistics. I am well aware that many game players are adults; indeed, a whole generation has now grown up with computer games. It is not surprising that those who enjoyed gaming as children go on playing into adult life and, indeed, play electronic games with their own children. Added to this, games grow ever more sophisticated, challenging and entertaining and, accordingly, more attractive to adult players.

My three sons regularly play computer games at home, and one of them is now 25 years old. However, it is important not to confuse the classification rating of a game with the game's sophistication or the challenge or interest to the player. I know that the Wii console has been phenomenally successful for Nintendo, and that system provides many games to challenge and develop skills physically and intellectually without depraved sex, gore and cruelty.

Depending on tastes and interests, adult gamers will find something challenging to play in all of the categories of games now available. It does not follow that a game is more interesting to an adult simply because it contains extreme violence, explicit sexual material, or highly offensive language. Some of the games that I expect would have been available on the Australian market under an R18+ classification without the modification of the guidelines include *Blitz the League*, an American football game, where illegal performing enhancing drugs can be dispensed by the gamer to football players and fake urine samples can be used so that players avoid positive drug tests—a topical matter just at this time.

Another is *NARC* (as in narcotics), which allows a gamer to choose that his or her game character take illegal drugs, including heroin, speed, LSD, marijuana and ecstasy. The gamer can have his character take ecstasy so it is immune to attack and the character can escape. Further, when given speed the character can run faster and catch opponents. You may recall a few years

back in media reports that Amazon decided it would not allow a third-party merchant to sell *RapeLay*, a Japanese video game, on its site. It was reported that the gamer could simulate rape in the game.

It was also reported that the game manufacturer had other game titles, including *Battle Raper* and *Artificial Girl*. Although I expect this game studio would never seek an Australian classification, there have been other studios that have tried their luck with titles that have been restricted for sexual references and nudity. For instance, *Leisure Suit Larry: Magna Cum Laude* was refused classification in September 2004 and was reported to include implied sexual activity, nudity and sexual references.

The 2003 Classification Board report of *The Getaway* gives details about electric shock torture to a person suspended from a roof. The decision paints sadistic imagery of the body swaying and crying. The Classification Board's decision about *Dark Sector*, which resulted in refused classification, describes that the violence in the game includes decapitation, dismemberment of limbs accompanied by large blood spurts, neck-breaking twists and exploded bodies with post-action twitching body parts. The report explains that when a circular three-bladed weapon is used to cut off limbs, blood spray and screams accompany it. The Classification Board's decision to refuse classification for *Soldier of Fortune: Payback* states:

> Successfully shooting an opponent results in the depiction of blood spray. When the enemy is shot from close range, the blood spray is substantial, especially when a high-calibre weapon is used, and blood splatters onto the ground and walls in the environment. The player may target various limbs of the opponents and this can result in the limb being dismembered. Large amounts of blood spray forth from the stump with the opponent sometimes remaining alive before eventually dying from the wounds.
>
> Blood remains on the ground as do the dead bodies. Dead bodies on the ground may be repeatedly attacked. The limbs may be shot off, resulting in large amounts of blood spray and the depiction of torn flesh and protruding bone from the dismembered limb. Shooting the head of a body will cause it to explode in a large spray of blood, leaving a bloody stump above the shoulders. Bodies will eventually disappear from the environment.

Interactive Australia 2007, a report prepared by Bond University for the Interactive Entertainment Association of Australia, surveyed 1,606 Australian households randomly. The report found that 79 per cent of Australian households have a device for computer and video games. Further, 62 per cent of Australians in these gaming households say the classification of the game has no influence on their buying decision.

Given this data, I cannot fathom what state-enforced safeguards could exist to prevent R18+ games being bought by households with children and how children can be stopped from using these games once the games are in the home. Parents rely on the state in these matters. Access to electronic games, once in the home, cannot be policed, as I know, and therefore the games are easily accessible to children. If adults think they can devise a lockout system to defeat children, tell 'em they're dreaming.

What the present law does is to keep the most extreme material off the shelves. It is true that this restricts adult liberty to a small degree, however, I am prepared to accept this infringement in the circumstances. I am concerned about the level of violence in society and the widespread acceptance of simulated violence as a form of entertainment. I am particularly concerned about the impact of this extreme content on children and vulnerable adults. On balance the rejection of less than a handful of games each year has a trifling impact on the choices available to Australian adult gamers compared with the impact extremely violent and sexually-explicit games would have on at-risk adults and minors.

It has been suggested that games that would otherwise have been classified R18+ are instead slipping through as MA15+ and becoming accessible to children. That is the argument. The argument does not support, in my view, an R18+ classification for games. There may be games that some people consider too violent for the MA15+ classification, but the solution is not to create a classification to permit even more violent games in Australia without, of course, these modifying guidelines.

MA15+ games are restricted to children over 15, and if younger children access the games it further justifies complete protection from R18+ games. It is up to parents and responsible adults to ensure that a game is appropriate for a minor, whatever age he or she is. It is up to members of the classification board to apply the guidelines correctly and not to try to defeat the guidelines because they disagree with the outcome of the deliberations of elected officials in a democratic rule of law society.

Of course, we know that some members of the classification board and the classification review board go on to serve in the pornography industry having served the pornography industry during their period on the boards. In 2009 I was fortunate to meet American researcher and professor of psychology Craig Anderson who has produced studies about the impact of violence in the media. I was interested to hear his views about how the interactivity of computer games increases the impact of the graphics. I understood his argument to be that interaction in violent activities on screen can heighten the player's aggression.

A study co-authored by Professor Anderson caused me concern. This study looked at the impact of violent media on people's capacity to help others in need. The research, 'Comfortably Numb: Desensitizing Effects of Violent Media on Helping Others' observed how 320 tertiary students reacted to a posed violent event after playing a computer game. Some subjects played a violent game and others played a non-violent game. After gaming they answered questions in a room. During this time a recorded mock fight (which resulted in injury) was played outside. Interestingly, the researchers observed a difference between how the two groups responded. The students engaged in the violent game thought that the fight was less serious than those who played the non-violent game. The violent game players took longer to provide assistance to the victim and were less likely to pay attention to the incident.

I am conscious that the game industry is a multimillion dollar industry. It is able to recruit commentators in the media to push its line. Parents, who have a generalised interest in protecting their children from depictions of gratuitous violence, really have no friends in the political arena—or very few friends—because that general interest in reducing violence in society, the general interest in parents protecting their children, is not shared by the commercial sphere and therefore is not shared by the political sphere.

During my time as a minister there was a political party set up in opposition to my position—

The Hon. C.C. Fox: Gamers for Croydon.

The Hon. M.J. ATKINSON: —as the member for Bright interjects, Gamers for Croydon—which contested the March 2010 general election in response to my challenge to them to come to my electorate and argue the case for extremely violent and explicitly-sexual computer games. And they did that. I must say that for some 18 or 19 year olds, it was a thrill to vote against an old fuddy-duddy like me; indeed, Gamers for Croydon had people on the polling booths dressed up as characters from computer games, which I thought added a great deal of colour to the election in Croydon. We had a record number of candidates, I think seven, which is more than we have normally. But the final result was that Gamers for Croydon obtained a derisory vote, not just in Croydon but in each of the electorates they contested; they did not change the result in any assembly district—

Ms Chapman: More's the pity.

The Hon. M.J. ATKINSON: 'More's the pity,' says the member for Bragg. She is obviously in the camp of Master Redmond—

Mr Pengilly: Who?

The Hon. M.J. ATKINSON: Master Redmond.

The DEPUTY SPEAKER: Can we get back to the subject, please? Members on my left will not interject.

The Hon. M.J. ATKINSON: They did not alter the result in any electorate, nor were they successful in obtaining any decent vote in the upper house, which they also contested. My message to Gamers for Croydon was that I did not think their issue would have any traction with my constituents, who are more concerned with real life issues than home entertainment in imaginary worlds.

But I have to say that they were a pretty unpleasant crew, trespassing on my property in the middle of the night on more than one occasion. Indeed, an African refugee decided to participate in Australian politics by placing my corflute posters on his fence, and they ripped down the posters on his fence in the middle of the night and pulled out the palings of his fence, damaging it and of course filmed themselves doing so—a most unpleasant development in Australian politics, but one that will not endure.

Ms CHAPMAN (Bragg) (12:22): The Classification (Publications, Films and Computer Games) (R18+ Computer Games) Amendment Bill 2012 has had a gestation period of, I think, the aggregate equivalent of 10 elephants. It was, however, finally tabled in this house on 19 September 2012, and the Attorney-General provided myself and others, including the Hon. Stephen Wade, with a briefing on 27 September 2012.

I acknowledge the attendance of members at that briefing, at which a number of issues were raised and discussed. I note today that my office has just received the answers to questions I raised at that briefing. I thank them for providing them, at the eleventh hour, minute, second or whatever. However, I do appreciate that at least they have provided that information, but certainly the information provided at the briefing was most helpful in our deliberations.

I indicate that the opposition will ultimately consent to the bill and support the amendment foreshadowed, which is only a brief amendment, the effect of which I will explain shortly. It is acceptable to the opposition. However, we will seek to amend clause 17 to remove the ability to reference external code standards and documents and, having just heard the contribution made by the member for Croydon, I am absolutely amazed that he would not be insisting, as we will be, that there will be an incorporation of guidelines which have so elevated him into the status of now wanting to support this piece of legislation. He, too, would not be seeking to have that in a proper form; that is, to ensure that it be incorporated in the bill or regulations directly and not relying on some guidelines that could change at any time out in the ether of stakeholder preparation.

However, censorship and classification in Australia is managed under a commonwealth and state cooperative scheme. As legislative power rests with the states, it is a requirement that all states agree to the scheme. There are various models of how we operate the development of law in this country, and I think that this is in the minor areas where there is a federal/state cooperation either required or desirable. We have model legislation models, we have transfers of power and the like, so there are various models.

This is one where we have direct responsibility with the states and, therefore, whilst that is maintained—and I have no reason to suggest that that would not be maintained—it has the direct effect that, if one party does not sign up, then if does not occur. In some other models, there is the capacity for some states to proceed, to go ahead, for others to join up and sign up to pieces that they are happy with, but, in this instance, the state that might be dissenting from any proposed development has the effective right of veto.

The current laws regarding the purchase of computer games restrict the sale of games to persons who would be eligible to play the relevant game. For example, only persons aged 15 and over can buy or access MA15+ content, and the new R18+ classification is consistent with this. At present, computer games that exceed the MA15+ classification are rated as refused classification. Previous attempts, as we know, to introduce an R18+ classification for computer games were regularly blocked by the member for Croydon in his former role.

There is no question that there were people in the community—as I am sure all members who were here during the pre-2010 period would acknowledge—who wrote to us and emailed us in relation to their concern that the introduction of a R18+ classification would attract the accessibility of inappropriate material to children, break down family life, etc. We all had those.

As the member for Croydon has identified, on the other side there was a very strong movement from industry, so much so that the development of a political party, Gamers for Croydon, was registered and contested the 2010 state election in a number of seats, most notably Croydon. Of course, had that been another time, it might have been the Gamers for Spence, if, of course, the member for Croydon had not objected to the important name of his electorate, named after Catherine Helen Spence, and insisted that it be a geographical name of Croydon. But, in any event, we have been there many times—

The Hon. M.J. Atkinson: You don't doorknock there so you don't have to explain to the them what Spence means.

Ms CHAPMAN: What an insult to your constituency that you would have to—

The DEPUTY SPEAKER: Members!

Ms CHAPMAN: —doorknock them to explain what Spence meant. Goodness me.

The DEPUTY SPEAKER: I would appreciate it if both members on my left and my right would stick to the issue.

Ms CHAPMAN: In any event, the—

The Hon. M.J. Atkinson: They ask what it means.

Ms CHAPMAN: You should have answered with pride what it meant. However—

The DEPUTY SPEAKER: Member for Bragg.

Ms CHAPMAN: I am sorry.

The DEPUTY SPEAKER: I made a ruling.

Ms CHAPMAN: I am sorry.

The Hon. M.J. Atkinson interjecting:

The DEPUTY SPEAKER: Member for Croydon, do you wish to leave the chamber?

The Hon. M.J. Atkinson: No.

The DEPUTY SPEAKER: In that case I suggest you sit there quietly.

Ms CHAPMAN: The member for Croydon, however, in his role as attorney-general, attended the standing councils, or, as it was at that stage, I think, the standing council of Attorneys-General, now the Standing Council on Law and Justice. His attendances at these, and I will refer in a moment to some of those, had a direct effect in his objective of ensuring that there was no change to the law across the country and that the games available in most jurisdictions internationally of course were not allowed into the Australian market. That was as a direct result of his regime and his attendances on this.

The 2011 and 2012 standing council meetings, however, proceeded with the new Attorney-General, our current Attorney-General, in some new period of enlightenment which was then consistent with other jurisdictions and the situation has changed where a compromise has been reached over computer game classification standards that has, as best we can assess, satisfied the concerns of the majority of the stakeholders, including some of the issues raised by other Liberal attorneys-general in Western Australia, Victoria, New South Wales and Queensland. It is interesting to hear the member for Croydon now say that he had two other allies in this at subsequent and perhaps even the lead-up to previous—

The Hon. M.J. Atkinson: And a Liberal ally.

Ms CHAPMAN: Yes. What is concerning to me, though, and I will refer to some of these quotes shortly, is that even though the then attorney-general suggests that there were other attorneys-general who at least had concerns, I think his words were, and they were 'happy to let me take the lead' or words to that effect, it is rather curious that he would be out there in some sort of limelight on his own without these others speaking up. It just does not seem to gel. Not that he would not take the limelight: that is a given. What is rather unusual is that he would surely be saying to these colleagues who had this apparent residual reserve to this arrangement that they should be encouraged to speak up as well.

There was a deafening silence from the others. They apparently meekly went along to these meetings and voted for it but were telling him in the corridor, 'Great concerns about this. You get on there, Michael, and you sort this out,' and 'You tell them,' and so on. I find that hard to believe, to be frank. However, it may be that they were in a position where they were not prepared to make a statement, as he says, and to be public about this and to champion the cause.

Attorneys-general obviously have a very important role in government on the part of the people of South Australia. They are the first law officers of the state and to think that they would go along to ministerial council meetings and sign up without a squeak, I think is just unbelievable. I do not doubt for one moment that in meetings, compromises are often negotiated and each and every attendance at these meetings would not be going in there with one proposal never to have it shattered.

Of course, there are occasions on which there would be compromise. That is what happens at meetings when people meet from all across Australia. That is expected, but the suggestion is that they would be signing up for what I think would have to be said to be, at least in the debates that were in South Australia, a quite controversial piece of proposed legislation but they would not be championing the cause back in their electorate if they had such adverse views and lack of sympathy for the proposal. In any event, that is what the former attorney-general

claims, that he was the shining light, the lightning bolt for the residual objectors when it came to the 2010 election, and he took it on the chin on behalf of all these other dissenters around the county.

The Hon. M.J. Atkinson: It's what you do in politics.

Ms CHAPMAN: Yes, well, we'll see. Fortunately, we have moved to the era of enlightenment and we now have the new Attorney-General. He has a few issues, of course, that I have complained about; nevertheless, on this issue it seems that he has gone along with the mature approach and done what his predecessor could have done, that is, negotiated a compromise that, as the former attorney-general says, was needed to persuade him to now come into the chamber and seem to make some glowing endorsement, notwithstanding his critique of all the gruesome acts that could be perpetrated when people are undertaking these games and interactivity. That now seems to be a sort of threshold definition for him but, suddenly, with these guidelines, everything is fine.

One could hardly be criticised for perhaps taking the view that a very strong sentiment was expressed by the former attorney-general; that is, it was his personal view that this was the wrong direction in which to go, and it is quite likely that it is still his view. However, he is taking it on the chin, smiling away, and obviously he has decided that he will fold; notwithstanding what must be a decade of fighting against this, he is just going to crumble into this. I would like to think that on the Barton Terrace issue he might crumble as well. It is curious, isn't it? For all the years he had a Labor member for Adelaide—

The DEPUTY SPEAKER: Member for Bragg, you are sailing very close.

Ms CHAPMAN: Thank you. Nevertheless, to conclude on that, I note that some issues of passion of the former attorney-general are taken up and maintained to the end. In this instance, what appeared to be a very passionate personal view and commitment, this dissent, has now evaporated.

I will get back to the bill. In respect of the Attorney-General's agreements, as concluded from the 2011-12 Standing Council on Law and Justice, now to implement the agreement by this bill, which will enable an R18 classification level to be implemented. It is worth noting that the commonwealth legislation enabling the R18 classification level passed the Senate on 18 June 2012 with bipartisan support, and New South Wales passed its enabling legislation on the 19th of last month.

There has been extensive consultation. I have viewed, and had briefings in respect of, the national consultation in May 2011 on the draft guidelines, which are now the tablets of stone, to be our protector for the introduction of the R18 regime. There were some 10,334 responses; 71 per cent of those supported the introduction of an R18 classification, 63 per cent supported having an R18 classification and also supported the guidelines, 8 per cent supported the introduction of an R18 classification but did not support the guidelines, and 27.4 per cent did not support either.

The interactive games association and the Australian National Retail Association were consulted on the bill. Each had raised concerns with Family First about the strict liability offences contained in the act. We note that the bill proposes that R18 computer games have the same display and demonstration restrictions as films, including having a separate part of the retailer or hirer stores demarcated for those products.

A number of industry concerns were conveyed to the Attorney-General. In response, the government is proposing a further defence to be created whereby, if a store is complying with the industry code, then they would provide a defence against the offence for films and computer games. There has been some consideration given to ways that this new regime will be strengthened, and I will come shortly to some of the offences. There have been some contributions in the consultation to improve the legislation, in particular, certain protections—that is, the guidelines and the applicability of those, even though they are not currently proposed to be in the regulations, which we think they should be—given the concerns raised.

I will speak briefly in respect of the aspect of children and their involvement in the criminalisation of activity. This bill proposes that children can also be liable to sell and supply offences contained in the act. For example, if a child supplies another child with an R18 game they will be liable for a $5,000 fine. However, the current exemption for minors from the offence of producing false identification continues to apply for instances where they use false ID to access adult material or products, such as purchasing R18 games.

The member for Croydon, when he was the former attorney-general, will remember the debates in this house about granting an exemption for minors from prosecution in circumstances where they used false ID cards to go into licensed premises. The debates and discussion in this house were particularly acute, at a time when a certain nightclub in the north-west corner of the city, as I recall, in particular came under scrutiny as a result of persons under 18, apparently in quite significant numbers, entering these premises. To do so, they issued false ID cards, and of course they were consuming alcohol and, on the face of it, were getting access to other activity—party drugs and so on—which was of great concern in the community at the time.

Certain legislation was introduced, and there was another period of debate, as I recall, where we considered the whole question of identity theft and identity fraud when someone else's ID cards were either constructed or used for the benefit of the recipient. In both of those debates it is my recollection that the government was insisting upon keeping children quarantined from prosecution.

Certainly at the time in this house I made the observation and comment that, in my view, there was no basis to protect children from that. If children were wilfully and deliberately obtaining, procuring, making up, developing or printing a false identity card, or borrowing someone else's card, for the purposes of breaking the law—namely, to enter licensed premises—and expose themselves to all of the risks that we know about, and/or obtaining alcohol or any other illegal substance for them to partake in, then that was something that should occur.

However, the then attorney-general (the member for Croydon now) was insisting that there would be no change to that and that they were not going to prosecute 16 and 17 year olds. I made the observation at the time that the only possible reason for the government not doing that was to protect it against a backlash of future voters. It was an entirely political decision.

We had these arguments here in this house. The member for Croydon could smirk all he liked back in those days about his justification for not exposing children to prosecution and yet here we are today, under an umbrella of legislation which is proposed, which he is now signing up to after having a decade of objection, and in that supporting legislation which will introduce the prosecution of children. I do not disagree with that. I think it is a good initiative of the government in this legislation, but it is curious to me at best that the member for Croydon should now come into this house and be signing up to this.

However, thank goodness the government has not listened to him or clearly did not take any notice of the justifications for his conduct in previous legislation which still today, in my view, leaves children vulnerable to abusive circumstances in an environment where they clearly and legally should not be, because they have access to false identity passes. There is absolutely no deterrent to them in not having them. It is one thing for a child to get on a bus and show an ID card to suggest that they are a school student and get a cheaper bus fare, but it is another thing to use a false ID to procure or purchase alcohol or to enter premises where they might be the victim, for example, of some other predatory behaviour in that environment. The absolute inconsistency of the member for Croydon in relation to his now acquired acquiescence and, indeed, almost glowing endorsement of this legislation is just spellbinding to be honest.

I come to clause 17 which proposes that regulations produced under the current 1985 act be allowed to refer to or incorporate:

> ...wholly or partially and with or without modification a code standard or other document prepared or published by a prescribed body, either as in force at the time of the regulations are made or as in force from time to time.

This, of course, would allow for an industry code of conduct to be prescribed by regulation without it being promulgated by regulations. That is of concern to the opposition as it is; I am stunned that it is not of concern to the member for Croydon, but he flip-flops on all of these things, so it seems as though he is not too fussed about it. However, to accommodate access the government proposes that such a code or document be accessible 'for public inspection without charge and during ordinary office hours at an office or offices specified in the regulations'.

I do not think in the time I have been here in parliament that we have had a bill that relates to what I would describe as such a sloppy, tracking-down process of what is to be complied with. In fact, just recently I was reading a TAFE bill for our tertiary education reform—the government's reform—in which it was so wanting to ensure that provisions of current legislation are covered by a new regime, which I will call a sort of privatisation of TAFE—I think there is some new word for it called 'socialising' or some other clever word which avoids the word 'privatisation'—but in any

event, the government is so intent on ensuring that it captured all of the important essence of previous legislation (to refer to it as we do now in many other bills or say we will put it in the regulations) that it actually incorporated it into the new act.

Yet, here we are with a bill and clause 17, which does not say to comply with regulations as promulgated, or words to that effect, it actually makes provision for incorporation of all of these other potential documents: a code, standard or other document prepared or published by a prescribed body either as in force at the time the regulations are made or as in force from time to time. I see that as totally inconsistent, compared to other legislation we have most recently had here. It is very difficult to expect that law will be followed accurately and properly unless it is clear.

It is not acceptable to the opposition that governments have this hidden off in some other code, which could change at any time, and that it is not clearly visible to the person who is inquiring as to what obligations they would have. In any event, why should this be, in this particular instance, an area of standard, guidelines that are set or codes that are set by another body, just by the minister signing off on a regulation to say, 'Well, this group over here is a group that we will now rely on to set the standards on this. It could change at any time, but Mr, Mrs, Ms or Master X (the person who might be affected) has to trawl through all of that process and then find out if that body has promulgated their guidelines, introduced modification and the like', and just say, 'Well, we are going to help you, as a government, by giving you free access to this information.'

It relies on, firstly, the prescribed body remaining at all times an appropriate body to even set guidelines, it remains on the recipient even understanding what the process is to get that, even though they say it is free, and it seems to me it has no supervision by the minister, other than the minister having the power to prescribe that the body is no longer on the list, and that could take some time. So, all of that is important, not just when there is a civil obligation or duty, but critical when you introduce legislation that actually has criminal sanctions in it. It is very important that consumers, suppliers, friends who might buy things for other people, children who might buy for others, etc., know what the rules are.

The opposition says by all means have codes or standards that are developed with stakeholder interests, the people who work in the industry or consumer groups that are familiar with the obligation, but also understand the traps and things that need to be contemporised regularly and understand that is a process that is important but must have, in my view and the opposition's view, at least ministerial supervision which can then be brought to the parliament; that is, the regulation powers that we have. Let that be in the regulation. The process is quite simple, as in almost all other legislation. Ministers have a role to play, they have specific provision in each of the legislation where regulations are necessary, and there are plenty of them.

There are generally three sets of legislation: the act itself, the subordinate legislation with the regulation, and there can be rules that are promulgated by authorised bodies, as in rules of court that judges set in addition to those prescribed by regulation. That is the normal process. The normal process is that the consumer knows if they have certain obligations: they can read the act, they can go to the regulations and they can see what the obligations are that we have in regulatory form so that it is able to be relatively easily amended—that is important.

The flexibility of regulations is a key component of that process, and it is one that is used in almost every other act, yet here we are going to some other body that is going to deal with it all. To me, that is slack, unacceptable and we need to remove the ability to reference external codes, standards or documents and do this properly. We owe that to the many people who will be affected by this and to those who have raised quite legitimate claims during the development of this legislation to ensure that there is a level of protection. We are not here just to satisfy the member for Croydon: we are here to make good law for the whole of the state.

The government has proposed an amendment which I said I would refer to briefly. This is to include computer games within the definition of 'matter unsuitable for minors' in section 75A of the act. That part of the act deals with the provision of online services and online advertising and this amendment would fix, as I understand it, an oversight in the original drafting of the bill that meant that online sales, supply and advertising of R18 games would not be subject to the offences that currently apply to the provision of adult films or advertisements online or the provision of the game in physical format. This amendment will provide consistency between media within the same classification rating.

So, consistent with our support for the introduction of R18 classification for games as applies to films, obviously we need to ensure that all of this information and access to material of

computer games is covered, and that is just the real world we live in, so that needs to be dealt with. The government, without the member for Croydon telling them what they should be doing, has now come to the realisation of the importance of this legislation. The standardisation of an R18 rating for games enhances the consistency of classification across all media and provides parents, children and other consumers a clear intention of what is portrayed in that content.

The proposed guidelines apparently—and I say that because I have not read them—strike a balance between the protection of children from adult content and access to that content by adults. I seek leave to continue my remarks.

Leave granted; debate adjourned.

SELECT COMMITTEE ON THE PORT AUGUSTA POWER STATIONS

The Hon. C.C. FOX (Bright—Minister for Transport Services) (12:59): I move:

That the Select Committee on Port Augusta Power Stations have leave to sit during the sitting of the house today.

Motion carried.

[Sitting suspended from 12:59 to 14:00]

VISITORS

The SPEAKER: Members, before we go on to the proceedings, I would like to welcome today a group of students from the intensive English language course at Flinders University who are guests of the Minister for Transport.

We also have a group of people from the Northern Territory who are guests of the member for Unley. They are students from the Northern Territory who are attending Bellevue Heights Primary School as part of a program with Flinders University. I understand one of them is the first person to graduate. It is lovely to see you here today and I hope you have a nice time.

I think there is a community group that may be guests of the member for Norwood. I am sure all our members will be very well behaved for all of you.

LEGISLATIVE COUNCIL VACANCY

The SPEAKER (14:04): I lay on the table the minutes of the assembly of members of the two houses held today for the election of a member to fill the vacancy in the Legislative Council caused by the resignation of the Hon. Robert Kenneth Sneath.

ANSWERS TO QUESTIONS

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

AUSTRALIAN CENTRE FOR SOCIAL INNOVATION

169 Mrs REDMOND (Heysen—Leader of the Opposition) (17 July 2012). With respect to 2012-13 Budget Paper 4, vol. 4, p. 37—

1. Is the Australian Centre for Social Innovation no longer funded by government and is this continuing without taxpayer support?

2. What did the government get for its investment?

The Hon. J.W. WEATHERILL (Cheltenham—Premier, Minister for State Development): I have been advised of the following:

1. The government will not be investing any further core operating or seed funding into the Australian Centre for Social Innovation (TACSI). However funding either through project partnerships or sponsorship arrangements may occur from time to time, as is normal practice with any non-government organisation delivering specific services or projects for government.

2. The Australian Centre for Social Innovation (TACSI) exists to identify and support innovative ideas, methods and people to accelerate positive social change. Its establishment was a key recommendation of Adelaide Thinker in Residence, Geoff Mulgan.

An overview of their major projects is available at http://www.tacsi.org.au/our-projects/.

CARNEGIE MELLON UNIVERSITY

In reply to **Mr PISONI (Unley)** (26 October 2010) (First Session).

The Hon. J.W. WEATHERILL (Cheltenham—Premier, Minister for State Development): I have been advised of the following:

According to information provided by Carnegie Mellon University-Australia, total enrolments for 2011 were 115.

MITSUBISHI WORKERS

In reply to **Mr PISONI (Unley)** (29 June 2011) (Estimates Committee B).

The Hon. T.R. KENYON (Newland—Minister for Employment, Higher Education and Skills, Minister for Science and Information Economy, Minister for Recreation and Sport): Employment outcomes for the Mitsubishi Assistance Package are collected by the Commonwealth Government, through the Department of Education, Employment and Workplace Relations (DEEWR).

The most recent data (June 2012) on employment outcomes for Mitsubishi Tonsley Workers who were retrenched in 2008 indicated that of the 805 people identified as having registered with former Job Network providers, 660 were placed into employment (81%).

The data records employment outcomes through Job Services Australia Providers and former Job Network Providers. The data does not record employment secured outside the Commonwealth providers, nor does it indicate how many employees retired or are no longer in employment.

SURPLUS EMPLOYEES

In reply to **Mr PEDERICK (Hammond)** (29 June 2011) (Estimates Committee B).

The Hon. T.R. KENYON (Newland—Minister for Employment, Higher Education and Skills, Minister for Science and Information Economy, Minister for Recreation and Sport): At 30 June 2011, the Department of Further Education, Employment, Science and Technology had 72 excess employees.

The list of excess positions is attached showing the classification, title and gross salary.

Gross Annual

Classification	Salary	FTE	Substantive Title
ASO2	48,143.00	1.0	PACS Administration Officer
ASO2	46,969.00	1.0	Administrative Officer
ASO2	46,969.00	1.0	Marketing Support Officer
ASO2	23,484.50	0.5	Administrative Services Officer
ASO2	19,257.20	0.4	Personal Assistant
ASO2	44,705.00	1.0	Administrative Officer
ASO2	45,823.00	1.0	E-Learning Support Officer
ASO3	54,112.00	1.0	HR Consultant
ASO3	54,112.00	1.0	Assistant Employment Broker
ASO3	54,112.00	1.0	ESOS Compliance Officer
ASO3	52,323.00	1.0	Coordinator, Food Store
ASO3	54,112.00	1.0	Personal Assistant
ASO3	54,112.00	1.0	Administrative Officer
ASO3	55,465.00	1.0	Administrative Officer
ASO3	54,112.00	1.0	Skills Recognition Consultant
ASO3	21,644.80	0.4	OHS Consultant
ASO4	60,426.00	1.0	Client Services Officer
ASO4	59,092.00	1.0	Marketing Officer
ASO4	60,426.00	1.0	Events Officer
ASO4	60,426.00	1.0	Office Coordinator
ASO4	48,340.80	0.8	Executive Assistant
ASO4	60,426.00	1.0	Project Officer

Classification	Salary	FTE	Substantive Title
ASO5	72,155.00	1.0	Marketing Consultant
ASO5	43,293.00	0.6	HR Consultant
ASO5	73,959.00	1.0	Campaigns Officer
ASO6	79,198.00	1.0	Manager Marketing Services
ASO6	79,198.00	1.0	Snr Marketing Consultant
ASO6	79,198.00	1.0	Accommodation Officer
ASO6	79,198.00	1.0	Administrative Officer
ASO6	79,198.00	1.0	Senior Communications Officer
ASO8	96,506.00	1.0	Manager, Assets & Procurement
EMA	96,953.00	1.0	Education Manager
EMA	96,953.00	1.0	Education Manager
EMB	106,957.00	1.0	Education Manager
EMC	114,527.00	1.0	Education Manager
Lecturer 4	34,677.50	0.5	Lecturer, Adult & Community Education
Lecturer 6	79,034.00	1.0	Lecturer,
Lecturer 7	69,216.80	0.8	Senior Lecturer, Information Technology
Lecturer 7	86,521.00	1.0	Lecturer
MAS3	98,260.00	1.0	Manager, Marketing Unit
MAS3	98,260.00	1.0	National Project Director
MAS3	98,260.00	1.0	Manager, Human Resources
OPS4	60,426.00	1.0	Operations Coordinator
OPS5	65,997.00	1.0	Operational Services Officer
ASO1	40,811.00	1.0	Administrative Officer
ASO2	43,394.00	1.0	Program Support Officer
ASO2	46,969.00	1.0	Desktop Publisher
ASO3	54,112.00	1.0	Theatre Manager
ASO3	54,112.00	1.0	Administrative Officer
ASO4	60,426.00	1.0	Butchery Storesperson
ASO5	72,155.00	1.0	Senior Project Officer
ASO5	69,518.00	1.0	Senior Graphic Designer
ASO5	72,155.00	1.0	Manager, Regency Bookshop
ASO5	72,155.00	1.0	Team Leader, Infrastructure & Desktop Support
ASO5	72,155.00	1.0	Team Leader, Infrastructure & Desktop Support
ASO7	89,414.00	1.0	Team Leader, Employment Programs
ASO7	87,049.00	1.0	Team Leader, Human Resources
Lect Assist 1	60,820.00	1.0	Lecturer's Assistant
Lecturer 4	69,355.00	1.0	Lecturer, IT Studies
Lecturer 5	76,045.00	1.0	Lecturer, Hospitality
Lecturer 5	76,045.00	1.0	Lecturer Hospitality
Lecturer 5	76,045.00	1.0	Lecturer
Lecturer 5	76,045.00	1.0	Lecturer, Hospitality
Lecturer 7	86,521.00	1.0	Lecturer, IT Studies
Lecturer 7	86,521.00	1.0	Senior Lecturer, Mechanical Engineering
Lecturer 7	82,011.00	1.0	Lecturer, Mechanical Engineering
Lecturer 7	86,521.00	1.0	Senior Lecturer, Mechanical Engineering
Lecturer 7	86,521.00	1.0	Senior Lecturer, Mechanical Engineering
Lecturer 8	91,425.00	1.0	Principal Lecturer
M9	51,401.90	1.0	Engineering Tradesperson
PE6	44,749.00	1.0	Proof Reader
TGO3	66,877.00	1.0	Technical Officer

PAPERS

The following paper was laid on the table:

By the Minister for Police (Hon J.M. Rankine)—

Death of—Robyn Eileen Hayward and Edwin Raymond Durance Report of actions taken in response to the Deputy Coroner's Recommendations

ABORIGINAL LANDS PARLIAMENTARY STANDING COMMITTEE

The Hon. P. CAICA (Colton—Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:06): I bring up the report of the committee, being the Annual Report 2011-12.

Report received.

LEGISLATIVE REVIEW COMMITTEE

Mr SIBBONS (Mitchell) (14:07): I bring up the 15th report of the committee, entitled Subordinate Legislation.

Report received.

QUESTION TIME

MARINE PARKS

Mrs REDMOND (Heysen—Leader of the Opposition) (14:07): My question is to the Minister for Sustainability, Environment and Conservation. How many jobs in regional South Australia and the state seafood industry are expected to be lost due to the establishment of the marine parks no-take zones and what is the government doing to find these people alternative employment in their communities? The fishing industry alone employs over 4,200 people in regional South Australia and is often the largest employer in regional coastal communities. The minister has advised that the economic impact of the proposed marine parks on the fishing industry would be no more than 5 per cent statewide.

The Hon. J.W. WEATHERILL (Cheltenham—Premier, Minister for State Development) (14:08): As Minister for State Development, I have great pleasure in answering this question about marine parks because marine parks—

Members interjecting:

The SPEAKER: Order!

The Hon. J.W. WEATHERILL: —are about the future health of the South Australian economy. It has always been—

Members interjecting:

The SPEAKER: Order!

The Hon. J.W. WEATHERILL: It is also about every person who has ever gone fishing with their young son, grandson or granddaughter, making sure that they can continue to do that into the future.

Members interjecting:

The SPEAKER: Order!

The Hon. J.W. WEATHERILL: That is what this has always been about. It has always been about having a healthy environment so that we can have a healthy fishing industry in the future, so that we can have a healthy tourism industry—

Members interjecting:

The SPEAKER: Order! You will listen to the Premier!

The Hon. J.W. WEATHERILL: —so that we can protect the lifestyle that South Australians have grown up with and loved. What passed for entertainment in my family in the early years of my life was going down and unearthing some tube worms down at the Port River, and actually—

Members interjecting:

The SPEAKER: Order!

The Hon. J.W. WEATHERILL: —or using slightly more skill by going to Sellicks Beach and finding beachworms. It takes a lot of skill to get those things.

Members interjecting:

The SPEAKER: Order! Member for Bragg, order!

The Hon. J.W. WEATHERILL: They are about as thick as your little finger and they are great bait as well, I can tell you. There is no policy that will be implemented under any government I lead that will devastate the fishing industry, in particular the recreational fishing industry that is a—

Members interjecting:

The SPEAKER: Order!

The Hon. J.W. WEATHERILL: —much loved pastime for many people in South Australia. It's part of my heritage. I know it's part of the heritage of the Minister for Environment and Conservation. Indeed, he is a decorated fisherman.

Members interjecting:

The SPEAKER: Order!

Mr WILLIAMS: Point of order.

The SPEAKER: Point of order. What is your point of order?

Members interjecting:

The SPEAKER: Order!

Mr WILLIAMS: Standing order 98: relevance. The question was about jobs—

The SPEAKER: Thank you.

Mr WILLIAMS: —given that the minister said that the—

The SPEAKER: You've made your point, member for MacKillop.

Mr WILLIAMS: —job loss would be no more than 5 per cent.

The SPEAKER: You've made your point, member for MacKillop. The answer is certainly in relation to the question, so I do not have any problems with it.

The Hon. J.W. WEATHERILL: The question proceeds from a false premise. The false premise is that this is about job losses. This is about sustaining jobs. It is about—

Members interjecting:

The SPEAKER: Order!

The Hon. J.W. WEATHERILL: They are out of touch with community opinion. Community opinion is that you need a healthy marine environment to have a healthy economy. That's what wise fishermen will tell you and that's what wise fishermen are advancing to us. For the last almost 10 years, we've been advancing this agenda—before we were actually in government. When the member for Davenport was in the role where he was advancing—

Members interjecting:

The SPEAKER: Order!

The Hon. J.W. WEATHERILL: —the Howard government agenda around marine parks, he was saying the same things we were saying about having a healthy marine environment sustaining a healthy economy. We have done the hard work in discussing this community by community, region by region, to make sure that we get—

Mr Pengilly: Yes, and you haven't listened to any of them.

The SPEAKER: Order!

The Hon. J.W. WEATHERILL: —a world-class—

Mr Pengilly: You haven't listened to any of them.

The SPEAKER: Member for Finniss, order!

The Hon. J.W. WEATHERILL: —that we get a system of world-class marine parks that we will be proud of. Just look at the devastation that's occurred off Gulf St Vincent here. That could be the future in our pristine regions around our state if we do not take these steps now.

Members interjecting:

The SPEAKER: Order!

The Hon. J.W. WEATHERILL: This is an opportunity to promote—

Members interjecting:

The SPEAKER: Order! The Minister for Transport and the Treasurer, order!

The Hon. J.W. WEATHERILL: I make this prediction: once these marine parks are settled in, people will be marketing the produce that's harvested from our waters as coming from our clean green pristine waters. It will be a competitive advantage for this state.

Members interjecting:

The SPEAKER: Order! If this question time continues in this vein, then I will either call it to a halt or a lot of people will leave.

Members interjecting:

The SPEAKER: Order!

Members interjecting:

The SPEAKER: Order! The member for Torrens.

WEST END BREWERY

Mrs GERAGHTY (Torrens) (14:12): My question is to the Premier. Can the Premier advise the house about the investments by Lion into the West End Brewery?

The Hon. J.W. WEATHERILL (Cheltenham—Premier, Minister for State Development) (14:12): Can I thank the honourable member for her important question. Just a few hours ago, Lion announced that they would be investing over $70 million to modernise the West End Brewery on Port Road. The redevelopment will include a new beer processing room, new refrigeration system, a boiler upgrade, cellar automation and a new brew house.

Once completed, production at the brewery will increase by around 30 per cent to 130 million litres every year. This will mean the creation of additional full-time jobs in Adelaide and help stimulate South Australia's construction and transport sector, creating more jobs for tradespeople, truckies and specialist staff.

This decision reflects the confidence that Lion has in the economic future of South Australia. Now, I know there are those opposite that are seeking to talk down the economic confidence in South Australia.

Members interjecting:

The Hon. J.W. WEATHERILL: There is a certain urgency about addressing levels of confidence within the South Australian community about our economy—there is no doubt about that. The only contribution those opposite make—

Mr WILLIAMS: Point of order, Madam Speaker.

The SPEAKER: Order! What is your point of order?

Mr WILLIAMS: The Premier is definitely debating this issue.

Members interjecting:

Mr WILLIAMS: I was not interjecting; you started it.

The SPEAKER: Order!

Mr WILLIAMS: You are debating it.

The SPEAKER: Sit down. There is no point of order. Premier.

The Hon. J.W. WEATHERILL: Apparently, the offence I caused was to talk about some good news for the South Australian economy. I know how that grieves them so, but this is great news. The reason Lion chose South Australia is for the same reason KPMG rates South Australia as the most competitive Australian city in the survey of doing business, beating Melbourne, Sydney and Brisbane.

Members interjecting:

The Hon. J.W. WEATHERILL: Well, you can scoff, but KPMG, not some dodgy sort of right-wing organisation that assesses South Australia, but KPMG—

Members interjecting:

The SPEAKER: Order!

The Hon. J.W. WEATHERILL: Are you casting—

Members interjecting:

The SPEAKER: Order!

The Hon. J.W. WEATHERILL: DMITRE has of course been case managing the long-term development of this site, and as a result of today's suite of other announcements the brewery will be making Swan and Emu for the Western Australian market, as Lion has announced its intention to close its Swan Brewery in Perth. Of course, while this is good news for South Australia, it is obviously sad news for some of those workers in the Swan Brewery, so obviously our thoughts are with them; but it is a great opportunity for the West End Brewery.

It has been part of the history of our state since 1859. Many of us would have gone down there to see the wonderful display they have at the brewery. I am hoping that as part of this arrangement there will be many more occasions when there is a black and white listed at the top of the brewery site. I am not sure if that is a term of the arrangement, but it would be nice if it was. This is a great vote of confidence in the South Australian economy, and it is a great opportunity for South Australian workers to get well-paid jobs in a secure and growing sector.

MARINE PARKS

Mrs REDMOND (Heysen—Leader of the Opposition) (14:16): My question is to the protected species, the Minister for Sustainability, Environment and Conservation.

The Hon. A. Koutsantonis interjecting:

Mrs REDMOND: Can the minister explain—

Members interjecting:

Mrs REDMOND: —when they're settled.

The SPEAKER: Order! Can we have some order? I didn't hear that comment, and I think it's a good job I didn't.

Mrs REDMOND: It wasn't worth it. Can the minister explain what the total cost of the proposed marine park management plans will be to South Australia and how this will be afforded? There is no money budgeted in the forward estimates to pay for displaced fishing compensation, the initial establishment or the ongoing management, monitoring and research costs associated with the marine parks.

The Hon. P. CAICA (Colton—Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:17): I think it is incredible—a protected species. I just hope they don't club you like Adrian wants to club the seals, but anyway—

Members interjecting:

The SPEAKER: Order!

The Hon. P. CAICA: —let me make this point if I can, Madam Speaker.

Mr Pederick interjecting:

The SPEAKER: Order! What is your point of order?

Mr PEDERICK: The only people who are talking about clubbing seals are the Minister for Mineral Resources and the Minister for Sustainability.

The SPEAKER: I don't think that was a point of order; I think it was probably a personal opinion. Minister, I refer you back to the question.

The Hon. P. CAICA: Yes, Madam Speaker. I was just making a point about protected species, and I will not deviate again.

The SPEAKER: Thank you.

The Hon. P. CAICA: What this government has always said is that South Australia's marine environment supports an incredible array of plants and animals, many of which are found nowhere else in the world. The marine parks program, as the Premier has said, is essentially about taking the next step to ensure that we can strike a balance between protecting the environment and ensuring that its commercial and recreational values can be sustained in the long term.

Mr WILLIAMS: Point of order: standing order 98. The question was about what it is going to cost and how it is going to be funded.

The SPEAKER: Thank you. A minister can answer a question. If the substance of the minister's answer relates to the question, then there is no issue about debate. So, minister, it is part of your explanation, I understand.

The Hon. P. CAICA: Yes, Madam Speaker, it is putting it in context. I will also say this: the government also took the view that it is an issue that must be addressed now, that is, the marine parks system must be addressed now before it is too late—

Members interjecting:

The SPEAKER: Order!

The Hon. P. CAICA: —and future generations are left with marine issues which will be much more difficult to fix and prevent in the future. And, by the way, the government has been consistent with this approach from before we actually became government. What I have been quoting from is the Liberal's press release from—

Members interjecting:

The SPEAKER: Order!

The Hon. P. CAICA: This was your script from 6 December 2001 and we have been consistent with respect to—

An honourable member: Who was the minister?

The Hon. P. CAICA: The then minister Evans. We have, with respect to their response, a contingency, with respect to the commitments that we—

Members interjecting:

The SPEAKER: Order!

The Hon. P. CAICA: —have made.

Members interjecting:

The SPEAKER: Order!

The Hon. I.F. Evans interjecting:

The SPEAKER: Member for Davenport, order!

The Hon. P. CAICA: I am also aware of some of the outrageous claims being made about the cost of marine parks.

Mrs REDMOND: Point of order.

The SPEAKER: Order! What is your point of order?

Mrs REDMOND: Relevance of the answer. The question was clearly that they haven't budgeted anything to pay for this new marine park management strategy. How is he going to pay for it?

The SPEAKER: I heard the minister say they had some contingency plans.

The Hon. P. CAICA: That is true, Madam Speaker, and in reality marine parks will pay for themselves in the longer term because of the benefit that will accrue—

Members interjecting:

The SPEAKER: Order!

The Hon. P. CAICA: —to South Australia—

Members interjecting:

The SPEAKER: Order!

The Hon. P. CAICA: —in this generation—

Members interjecting:

The SPEAKER: Order!

The Hon. P. CAICA: —and future generations. There has been some blatant scaremongering that has been undertaken by the opposition. We have kept to every commitment we have made with respect to marine parks and will continue to do so and, in fact, our sanctuary zones that are being proposed are for only 6 per cent of the state's waters. What I say is this, in the role that government plays, we have provided for contingencies with respect to the costs involved in marine parks.

Members interjecting:

The SPEAKER: Order!

ALCOHOL-FUELLED VIOLENCE

Ms BEDFORD (Florey) (14:21): My question is to the Premier. Can the Premier advise the house of measures the government is taking to address alcohol-fuelled violence?

The Hon. J.W. WEATHERILL (Cheltenham—Premier, Minister for State Development) (14:21): I thank the honourable member for her question. We have all been, of course, shocked by recent appalling acts of violence linked to licensed venues, including the tragic deaths of Henk van Oosterom and Christopher Hatzis, and, of course, the serious assault on Jason Lindsley, whose father, I understand, is with us today.

Earlier today, I released for public consultation a draft late night trading code of practice, and I would like to thank the Attorney for all his hard work on preparing that document. We are going to consult widely on the code. What has been urged upon us by both Nat Cook from the Sammy D Foundation and, of course, Doug Lindsley, is that they want to see a consensus in the South Australian community about this—not just because they want to see it pass the South Australian parliament, and we know these things have got into trouble before when we have tried to advance them in the upper house—but because crucially there is a public awareness and education role here about the choices people make when they go out to these late night premises, choices which should be about going out and having a great night and having some fun, but we know that it can end in tragedy when things get out of control.

This is only one part of a very significant policy response to this question. It is probably also worth saying that the police minister just the other day released some crime statistics which demonstrate that, in the last 12 months and, indeed, over the last 10 years, we've seen a continuing fall in victim reported crime here in this state. Indeed, serious assaults are down by 60 per cent over the last 10 years. There is no room for complacency because there are some very unsafe places in our community. Perhaps some of the most unsafe places are late at night around our licensed premises where too many of our young people are coming home, or not coming home at all indeed, after a serious assault.

Today we will be consulting widely on a code that will be engaging South Australians—the hospitality sector, traders, a range of groups—everyone has to play their role in getting the answers here. Crucially, we will also be talking to the young people who make these decisions. Young people, we know when you engage them, and you talk to them, come up with sensible solutions and they are also more likely to be part of the solution if you do ask them about that. The Sammy D Foundation is going to help us in that regard. They already have a fine network of young people who are used to speaking with other young people and we are confident that their work will allow us to get the answers.

Under the late night code, there will be a staggered set of responses depending on the lateness of the evening, or the earliness of the morning, and the size of the venue. So it is a differentiated response; there are escalating responses. We have got to get this balance right between making sure you that you can go out and have a great time without having unnecessary restrictions on how you enjoy yourself, and also making sure we get the balance right of making sure that venues can operate without unnecessary burdens. We do not want to discourage these small venues that we think will add to the liveliness of our cities.

The sorts of things we are talking about include general applications, making sure that there are taxi ranks available for everyone around licensed premises. After 2am there will be further restrictions: venues that remain open will be required to implement measures including using non-glassware, not serving discounted or free alcohol and not supplying more than four drinks at a time. After 2am they will be restricted to not serving drinks commonly known as shots, and not serving drinks with more than 30 ml of spirits.

After 3am we propose that entrance of new customers will not be permitted into venues. That means if you are in a venue you can stay there, but new patrons cannot enter. We know that there are a lot of people who drift around between venues and who hang around outside venues who become a real part of the problem, so this is targeted at that.

Venues that trade after 2am with more than 200 patrons, in prescribed areas, will have to have high definition CCTV in entrances and exits as well as metal detectors and drink marshals. These—

Mr WILLIAMS: Point of order, Madam Speaker. I understand that the Premier has used his four minutes and a little bit more.

The SPEAKER: Yes; Premier, time has expired. Have you nearly finished?

The Hon. J.W. WEATHERILL: I will wind up, Madam Speaker. I was trying to supply some important information to the house—

Members interjecting:

The SPEAKER: Order!

The Hon. J.W. WEATHERILL: This is all directed—

Mrs REDMOND: Madam Speaker, a point of order please. The rules introduced by the government specifically state that the four minute rule is to be applied, and the only discretion rests where there has been interjection. There has been none on this answer.

The SPEAKER: That is the standing order, so I ask the Premier to sit down.

ALCOHOL-FUELLED VIOLENCE

Ms BEDFORD (Florey) (14:26): I have a supplementary question. Could the Premier elaborate on those measures for me?

The Hon. J.W. WEATHERILL (Cheltenham—Premier, Minister for State Development) (14:26): Thank you to the quick-thinking member for Florey. I can say that in addition to the measures concerning CCTVs and the drink marshals—

Members interjecting:

The SPEAKER: Order!

The Hon. J.W. WEATHERILL: —we are also proposing that the Liquor and Gambling Commissioner have the opportunity to police these codes. There will also be a consequence for licences. This will become part of the licence, so venues that do not do the right thing will be closed down.

I was very gratified to see the police commissioner announce the efforts associated with the new legislative powers that we have given him to bar patrons from premises. There is a substantial increase in the number of barrings that are occurring, and that is an important new tool given to police to assist them to manage behaviour in and around venues.

I would like to thank all those who have brought us to this day, to Nat Cook and her Sammy D Foundation, to Doug Lindsley and the efforts he has made. The efforts we are making today and the further things we will do stand testament to the love of these parents for their children. They do not want to see this happen to anyone else. They could have dealt with this in a range of ways, but they are dealing with this issue in the most constructive way possible.

Honourable members: Hear, hear!

The SPEAKER: Thank you. I point out that I will count that as a question rather than as a supplementary, member for Florey. Premier and ministers, if you can keep your answers to four minutes because we do have that sessional order.

MARINE PARKS

Mr MARSHALL (Norwood) (14:28): My question is again to the Minister for Sustainability, Environment and Conservation. Will the government rule out using NRM levies or fishing licence revenue to cover the management costs of the new marine park sanctuary zones? The Great Barrier Reef Marine Park management costs exceed $17 million per year. In a previous answer in this question time the minister gave no advice to the house on how South Australia's marine park costs will be met. He simply said, 'They will pay for themselves.' Will he rule out NRM levies and fishing licence revenue covering these costs?

The Hon. P. CAICA (Colton—Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:28): The marine parks program is one of the most significant conservation programs ever undertaken by any government. We have gone through a process of the development of the draft management plans, and those draft management plans have included a significant input from the South Australian people.

I think what is important to note, and the point that needs to be made, is that this process, in fact the outcome from this process, is going to be both pro the environment and pro the economy. I do question the environmental credentials of those opposite, but in answer—

Members interjecting:

The SPEAKER: Order!

Mr WILLIAMS: Point of order, Madam Speaker.

The SPEAKER: What is your point of order?

Mr WILLIAMS: Madam Speaker, question time does not give the minister the opportunity to throw gratuitous insults across the chamber, under standing order 98. What is the point of us coming in here and asking a question when the minister refuses to go anywhere near the substance of the question? The question asks the minister specifically: will he rule out NRM levy increases or the introduction of fishing licence fees to fund marine parks?

The SPEAKER: You have made your point, thank you. Minister, I refer you back to the question.

The Hon. P. CAICA: The answer to both questions is yes and yes.

FISH STOCKS

Mr PEDERICK (Hammond) (14:30): Can the Minister for Sustainability, Environment and Conservation outline to the house which fish stocks are threatened and which stocks will improve through the implementation of marine parks, and why does he not agree with former fisheries minister Michael O'Brien, who told parliament last year (on 6 April 2011) that all but two of the state's fisheries were already being sustainably fished?

Members interjecting:

The SPEAKER: Order!

The Hon. P. CAICA (Colton—Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:31): This marine park system is not a fisheries management tool, notwithstanding the fact—

Members interjecting:

The SPEAKER: Order!

Members interjecting:

The SPEAKER: Order! Do you want to hear the minister?

An honourable member: No.

The SPEAKER: Well, leave.

The Hon. P. CAICA: It is an environmental management tool, and we—

Members interjecting:

The SPEAKER: Order!

Members interjecting:

The SPEAKER: Order, member for Norwood, and member for Chaffey also!

The Hon. P. CAICA: Marine parks in South Australia will be multiple use, but they will have some core protection areas, no different than what was the former Liberal government's position back in 2000-01. They knew then that the benefits that accrue to the environment from this level of protection benefits all species. In fact, if we draw an analogy—it is a very good analogy—with the Murray-Darling Basin plan, what we know is that the consumptive use of the waters of the River Murray system and the Darling system, those activities are only going to be as healthy as the environment in which that occurs. The same applies with respect to marine parks, so what we would say—

Members interjecting:

The SPEAKER: Order!

The Hon. P. CAICA: —is that all species that inhabit our marine environment will benefit from the establishment of marine parks. It is part of an ecosystem, and we are protecting and preserving that ecosystem, which benefits—

Members interjecting:

The SPEAKER: Order!

The Hon. P. CAICA: —all creatures that inhabit that particular environment. That was the case with then Liberal government in 2000-01: they understood then the importance of ensuring that this occurred—

Members interjecting:

The SPEAKER: Order!

The Hon. P. CAICA: What we say is that the economic and social wellbeing of this state is going to be better served and underpinned by the establishment of the marine parks system, which is proposed to have 6 per cent of state waters covered by sanctuary zones. Scientific evidence from around the world says that marine park systems without core sanctuary zones are like cracking an egg without a yolk in it. It is as simple as that. That is not really scientific terminology; that is my analogy again. However, what I would say is that—

Members interjecting:

The SPEAKER: Order!

The Hon. I.F. Evans interjecting:

The Hon. P. CAICA: What I understand from the interjection there, Madam Speaker, is that if the Liberals had gained government in 2002 they would have finalised this process by now in line with what they were suggesting at that time. I have been very much heartened by the level of input from the South Australian community with respect to the development of these marine parks and, in fact, the majority of South Australians support what this government is doing.

STANDING COUNCIL ON LAW AND JUSTICE

The Hon. S.W. KEY (Ashford) (14:35): My question is directed to the Attorney-General. Attorney, can you inform the house about the recent Standing Council on Law and Justice meeting in Brisbane and what was on the agenda for that meeting?

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Business Services and Consumers) (14:35): Yes, and I thank the honourable member for her question. Members of the house may be interested to know that there was recently a meeting in Brisbane of the state and territory attorneys, followed up by a meeting of all attorneys including the commonwealth Attorney. The State and Territory Attorneys-General (STAG) meet as a result of an initiative that we put forward some time ago in South Australia because many of the things that are of concern to us in South Australia are also of great concern for people in other parts of the country, and attorneys-general around the country from the territories and states have a great deal in common, irrespective of whatever political affiliation might be attached to their particular government.

Indeed, we make a regular practice of discussing things that might be of assistance to one another, and I have to say the level of cooperation between the state and territory attorneys has improved considerably since we have been having these STAG meetings. What has happened is that we are receiving very useful assistance and advice from other states and they are receiving and gratefully accepting it from us.

Just to give you some idea of some of the issues that were dealt with at the STAG and subsequent SCLJ meeting, they include topics such as antisocial behaviour and its management; ways of minimising alcohol fuelled violence, which is a matter of concern to all of us and people here may be interested to know that New South Wales has done a lot of interesting work in that area; ways to combat the use of social media that facilitates antisocial behaviour; organised crime, and in particular interjurisdictional issues relating to that; domestic violence; and the prevalence of synthetic drugs, and in particular synthetic cannabinoids.

The attorneys also discussed how the justice system can better respond to the considerable challenges presented by new technology and the new media when this coincides with antisocial behaviour such as gatecrashing, cyber trolling, hate groups and also the impact it has on the capacity of the courts to deal with things like suppression orders. I am sure that most people here would be aware of the difficulties that Victoria was presented with a few weeks ago when that appalling murder occurred and social media meant that there was a whole range of things put in the public domain which may ultimately make it difficult for a person to get a fair trial, but that is a matter we will see in due course.

These meetings have been very productive and the across-jurisdiction cooperation is excellent and it has been very useful, and South Australia benefits from this because we do actually receive assistance from our colleagues in other states, irrespective of their political colour.

MARINE PARKS

Mr PENGILLY (Finniss) (14:38): My question is to the Minister for Sustainability, Environment and Conservation. Did the minister consult with the Minister for Tourism over the closure of Seal Bay Beach to tourism under the marine parks sanctuary zone proposal? The draft zones on the government's own website clearly show Seal Bay Beach as a restricted access area for researchers only. It is the department's major source of income on the island with almost $2 million in revenue generated from this site alone per year. The government is targeting a doubling of visitors through its KI Futures Authority under the direction of the Deputy Premier.

Members interjecting:

The SPEAKER: Order!

The Hon. P. CAICA (Colton—Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:39): Marine parks are an investment in the future of our state. Indeed, there is a great parallel between what we do on the land and what we are trying to achieve in the oceans as well, the multiple use of those particular zones. But why on earth—and I try my best to ignore the member for Finniss, but what I would say this is and I spoke earlier about blatant scaremongering—why on earth would we restrict access to a beach that provides a significant amount—

Mr Pengilly interjecting:

The SPEAKER: Order!

The Hon. P. CAICA: —of income to our department and the benefit to people of—

Members interjecting:

The SPEAKER: Order! Minister, can you sit down a moment please? The member for Finniss will behave. You will not be shouting across the floor.

Mr Pengilly interjecting:

The SPEAKER: Order, member for Finniss! Minister.

The Hon. P. CAICA: Quite simply, just to summarise it, the assertions made by the member for Finniss are nonsensical.

Mr Pengilly interjecting:

The SPEAKER: Order! Member for Finniss, take a walk for 10 minutes. You will leave the chamber for 10 minutes.

The honourable member for Finniss having withdrawn from the chamber:

RHEINMETALL DEFENCE

Mr PICCOLO (Light) (14:40): My question is to the Treasurer. Can the minister inform the house about the recent announcement involving the German company Rheinmetall Defence?

The Hon. J.J. SNELLING (Playford—Treasurer, Minister for Workers Rehabilitation, Minister for Defence Industries, Minister for Veterans' Affairs) (14:40): I thank the member for Light for his strong interest in defence industries in South Australia. As members will be aware, I have recently returned from an official visit to Europe where I met with a number of major defence industry companies, including Rheinmetall Defence and Simulation Australia, to promote investment in South Australia's defence industry.

I am pleased to tell the house about my meeting with Rheinmetall Defence, who have announced that they are expanding their presence in Australia with a newly founded subsidiary, Rheinmetall Simulation Australia, which will set up its headquarters here in our state. This is a fantastic result. Rheinmetall Defence is one of Europe's leading companies for combat systems, electronic solutions and wheeled vehicles. Rheinmetall also has significant capability in maritime and power plant simulation, and surface and subsurface control simulators. The state government is committed to the modelling and simulation sector.

Success in achieving a large share of national and global high-value modelling and simulation activities cannot be assumed: we have to work very hard to achieve it. It has been demonstrated in the US and Europe that the combination of strong research capabilities, responsive industry and government support can lead to the creation of a sustainable knowledge-intensive industry that contributes to the success of innovative and agile resources and manufacturing industries.

In South Australia, we are working hard to bring together all aspects of the simulation sector—users, providers, suppliers, trainers, developers, researchers, facilitators—so we can truly understand and maximise our capabilities to ultimately deliver a more innovative, effective and productive Australia. South Australia's defence sector has grown at a rapid pace, now directly and indirectly employing close to 27,000 people, an increase of 18 per cent over the last four years.

The government would like to welcome Rheinmetall Defence's decision to establish its regional headquarters in South Australia, further reinforcing our position as the defence state and helping to secure advanced manufacturing jobs for South Australians for decades to come.

MARINE PARKS

Mr GRIFFITHS (Goyder) (14:43): My question is to the Minister for Sustainability, Environment and Conservation. Can the minister explain to the house why he has not yet met with the community of Port Wakefield to discuss his plan for restricting fishing opportunity by the introduction of a large sanctuary zone in Marine Park 14? The community of Port Wakefield and the Adelaide Plains stands to be dramatically affected by the proposed sanctuary or no-take zones but, despite repeated pleas to meet with the minister to discuss the social and economic consequences for the community, they are yet to be granted a face-to-face meeting.

The Hon. P. CAICA (Colton—Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:43): It is true what the now—or the former deputy leader says: we have been consulting for a long period of time on this.

Members interjecting:

The Hon. P. CAICA: Just by way of interest, Madam Speaker (because I know, at the very least, you are interested in this), only today, at 12.30, I met with the mayor and the CE of the Port Wakefield council on issues—

Members interjecting:

The SPEAKER: Order!

The Hon. P. CAICA: —associated with that particular proposed sanctuary zone. I am assuming, just as it is the case with the elected representatives opposite, that His Worship and the

CE are representing faithfully the views of their constituency, which I listened to. In addition to that, I promise not to raise my voice to try to speak over those interjections that are occurring on the other side. Quite simply, this is the fact. We have had our department deal with and meet with people across South Australia with respect to the proposed zoning. That has been an intrinsic part of the statutory consultation period, the eight weeks' statutory consultation period, which concludes on 22 October. I encourage others to still put in submissions before that particular time. We have been listening—

Members interjecting:

The SPEAKER: Order!

The Hon. P. CAICA: We have been listening for a long time. We will continue to listen to those people who put forward views.

Members interjecting:

The SPEAKER: Order!

The Hon. P. CAICA: When we talk about the environmental credentials of the opposition—

Members interjecting:

The SPEAKER: Order! Minister, can you sit down again for a minute, until we have some order.

The Hon. P. CAICA: Yes, Madam Speaker.

The SPEAKER: The Deputy Leader of the Opposition will behave; talk about Foghorn Leghorn.

The Hon. P. CAICA: We know that the member for Norwood was elected on a platform of banning duck hunting. We know that he also wants to create a situation where, from an environmental perspective, the ability to consumptively use and extract species from a healthy environment will be limited under their proposal; if not, it will be a slow death for our marine environment.

I have met with and I continue to meet with people. The member for Goyder is a very decent bloke and was unfairly treated by the Leader of the Opposition, but not withstanding that, he is a very decent man. He represents his electorate very well, and just as I have been getting feedback from a variety of people—

Members interjecting:

The SPEAKER: Order!

The Hon. P. CAICA: —I have been getting feedback from the outstanding member for Goyder, who admirably represents his constituents. It has been a broad consultation process. It will conclude on 22 October. This government is committed to making sure that this state accrues multiple benefits from the implementation of a marine parks system that is proposed to include around 6 per cent sanctuary zones.

MARINE PARKS

Mr GRIFFITHS (Goyder) (14:47): I have a supplementary question for the Minister for Sustainability, Environment and Conservation. Will he undertake to meet with the Port Wakefield community before the end of the consultation period? Not just the mayor and CEO of the Wakefield Regional Council, but representatives of the community.

The Hon. P. CAICA (Colton—Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:47): I am happy to check my diary, but what I will—

Members interjecting:

The SPEAKER: Order! Minister, have you finished?

The Hon. P. CAICA: No, I haven't, Madam Speaker. I sat down because of their unruliness. I am happy to meet with the people from Port Wakefield after question time.

Members interjecting:

The SPEAKER: Order! The member for Mawson.

ELECTIVE SURGERY

Mr BIGNELL (Mawson) (14:47): My question is to the Minister for Health and Ageing. Can the minister update the house on new national elective surgery statistics released yesterday?

The Hon. J.D. HILL (Kaurna—Minister for Health and Ageing, Minister for Mental Health and Substance Abuse, Minister for the Arts) (14:48): I am very pleased to advise the house that the latest statistics which were released yesterday show that South Australia topped the nation when it comes to treating people for elective surgery in relation to the number of people who had to wait longer than 12 months. We were ranked No. 1 in Australia, with only 1.5 per cent of our patients waiting longer than 365 days for surgery. That is about half the national average, which was 2.7 per cent.

We were ranked No. 3 in Australia for having a median wait time for elective surgery of 34 days. That compares more than favourably with 38 days the previous year and is better than the national average by two days; so 50 per cent of our patients are seen and have their elective surgery within 34 days, which I think everybody would agree is a pretty good outcome.

The 90th percentile wait, or the time at which 90 per cent of people have their surgery, was 191 days in our state, and that is 60 days better than the national average. So 90 per cent of patients in South Australia who need elective surgery received that within 191 days. Madam Speaker, 65,199 elective surgical operations were performed in our hospitals in 2011-12. That is 2,695 more procedures, or 4.3 per cent more, than in the previous year. In our metro hospitals, we performed over 9,600 more procedures in 2011-12 than in 2001-02, which was the year that we came to government.

The national report released yesterday shows that South Australia has the highest rate of elective surgery admissions per 1,000 people in the nation; that means fewer people have to wait and more people are getting the work done. There was just one patient, in fact, overdue for surgery at the end of June 2012—just one person who was overdue for surgery as of that date. That's in stark contrast to 2003-04, which was soon after we came to government, when 2,551 patients were overdue for elective surgery. So, there has been a huge turnaround, a vast improvement, in the elective surgical procedures in our state.

At the last election, we committed $88.6 million over four years to give more South Australians quicker access to elective surgery. That was part of our Every Patient Every Service strategy, and that is working very well. These results are outstanding and demonstrate once again the commitment of surgeons, nurses and all the others who work in our hospitals to meeting those targets. They have had to change in some ways the way they worked, some overtime has been done, work on weekends and so on.

The results follow another AIHW report, released on 28 September, which showed that we topped the nation in three of the four indicators for emergency department care. In 2011-12, South Australia had the shortest median wait in the nation to see a doctor or nurse in the emergency department, the equal highest proportion of patients who are seen in time and the shortest 90th percentile waiting time.

I am very proud of the performance of the health department and I can assure all members of the house that we will continue to work to improve further the outstanding performance we have reached so far.

MARINE PARKS

Mr TRELOAR (Flinders) (14:51): My question is to the Minister for Sustainability, Environment and Conservation. Does the minister concede that the introduction of no-take sanctuary zones around Kangaroo Island and the West Coast will result in a loss of exports of sustainably fished abalone and rock lobster which currently bring in over $180 million a year through exports to China alone?

The Hon. P. CAICA (Colton—Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:51): No, I don't subscribe to that view. The view I do subscribe to, of course, is that the establishment of marine parks and associated sanctuary zones is going to actually be a benefit to the export potential of South Australia for those who market that produce as being that that is caught, and sustainably caught, out of South Australia's marine park system.

What I would say is that I don't believe that we will see any difference with respect to the 88 per cent of seafood that currently finds its way out of this state and out of this nation that is caught here in South Australia. In fact, as we have said, and as I will continue to say, the benefits of marine parks are multiple benefits, and those benefits will accrue not only to recreational anglers but commercial fishermen. They will benefit regional South Australia, they will benefit this state and, as a consequence of that, will benefit our nation.

MARINE PARKS

Mr TRELOAR (Flinders) (14:53): Madam Speaker, I have a supplementary question. Given the minister's answer, does he then concede that a reduced area available for quota fisheries will result in overfishing of that remaining water?

The Hon. P. CAICA (Colton—Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:53): We as a government have always made sure that we've fulfilled our commitments. Our commitment has been to ensure that marine parks will have less than a 5 per cent economic impact on the state's fishing industry, and that is measured as impact on the statewide annual gross value of production.

What we have attempted to do is zone in such a way that we would minimise displacement. In fact, the first process was to avoid displacement and, secondly, then zone in such a way that, where there was displacement, there was activity that would be able to replace that currently being undertaken in a sanctuary zone; from there, there would be buyback. Finally, there would be compulsory acquisition which I hope we never get to.

We have met every commitment to date. Of course, part and parcel of this process is to ensure that there is fair and reasonable return for those fisheries that are impacted upon because, in the medium to long term, what we still know is that the benefits will be multiple. In fact, the benefits, as I said, will be felt not only by recreational anglers, which in its own way is as big an industry and as valuable an industry to South Australia as the commercial fishing industry, but they will also accrue to the commercial sector.

POLICE PHOTO IDENTIFICATION

Mr SIBBONS (Mitchell) (14:55): My question is to the Minister for Police. Can the minister advise the house of responses to SAPOL's briefings regarding the use of photographs as a means of identification and their progress in garnering support for this proposal?

The Hon. J.M. RANKINE (Wright—Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety, Minister for Multicultural Affairs) (14:55): I thank the member for Mitchell for his question, and I appreciate his unwavering and consistent support for SAPOL and the use of modern policing techniques. In 2011 SAPOL provided briefings to parliamentarians explaining existing procedures as well as the benefits of using photographic boards for identifying suspects.

> It is my political judgement that it would be a distortion of the science and reckless lawmaking. With a photo board there is no safeguard against police suggestion. One thing is clear from the briefings from SA Police: SAPOL practice does not follow best practice. It would be bizarre for us to treat lightly an area of law which is like a bagful of seeds for potential miscarriages of justice.

These are the contributions of the shadow attorney-general last year when the government had this legislation in the parliament.

On 19 September this year, SAPOL contacted my office with very positive news that the opposition may be reconsidering their view on this proposal and offered to further brief the shadow attorney-general, the Hon. Stephen Wade. The shadow attorney-general's office was contacted that very day, and on 20 September we were advised that their position was unchanged and no briefing would be required. Given the importance of this issue, a further offer was made for a police briefing, even if the opposition policy had not changed. I am advised that a response was received on 21 September rejecting any and all discussion on the issue.

I want to commend SAPOL for their ongoing effort to educate policymakers about this issue. You can imagine my pleasant surprise yesterday at the Police Association conference, as the Leader of the Opposition embraced this policy as her own and stated, 'Line-ups consume up to 60 hours of work by 10 police officers,' the precise argument put forward by Labor at the 2010 election and the Attorney-General in the 2010 election. By coincidence, this is the same argument lambasted by the shadow attorney-general; but today the shadow attorney-general—

Members interjecting:

The SPEAKER: Order!

The Hon. J.M. RANKINE: —is reported as saying:

It is not a change of direction. The section that allows for this type of evidence would only become operative when regulations are in place that provide adequate police resources to make sure the procedure is properly conducted.

I would be very pleased to hear a commitment about police resources and police numbers. We have had nothing but silence on this issue. Nothing at estimates and nothing said yesterday about police numbers—

Mr GARDNER: Point of order.

The SPEAKER: Order! Minister, sit down. Point of order.

Mr GARDNER: Madam Speaker, I haven't been timing, but it feels like this answer has been going for at least 15 minutes. Can you please end it?

The SPEAKER: No; she has 37 seconds left.

The Hon. J.M. RANKINE: Thank you, Madam Speaker. It just goes to show how convincing SAPOL can be, particularly when the leader is facing a police conference.

The SPEAKER: Time can pass very slowly in this chamber, member for Morialta. Fifteen years for me feels like 137. The minister was well within her time. The member for Davenport.

WORKCOVER

The Hon. I.F. EVANS (Davenport) (14:59): My question is to the Treasurer. Does the Treasurer accept that the government's 2008 legislative reform package to WorkCover has been a failure and, if not, why not?

The Hon. J.J. Snelling interjecting:

The SPEAKER: Order! I can't hear.

The Hon. I.F. EVANS: Oh, didn't you write this one?

The Hon. J.J. Snelling: Sometimes I think I have.

The Hon. I.F. EVANS: My question to the Treasurer is: does the Treasurer accept that the government's 2008 legislative reform package to WorkCover has been a failure and, if not, why not? WorkCover's unfunded liability has increased to $1.4 billion. It has the worst return-to-work rate in Australia and the highest premium rate in Australia.

The Hon. P.F. CONLON: Before the Treasurer, who is very keen to answer this, does so, standing order 97: it is an argument to ask if you accept something is a failure. It is just an argument, it is against standing order 97, and I would suggest it gives the Treasurer some significant leeway.

The SPEAKER: I will uphold that point of order. There was a lot of argument in that question. Treasurer, do you wish to respond to it?

The Hon. J.J. SNELLING (Playford—Treasurer, Minister for Workers Rehabilitation, Minister for Defence Industries, Minister for Veterans' Affairs) (15:00): Very gladly, ma'am. WorkCover's financial performance for the year ended 30 June 2012, as has been reported yesterday in the Auditor-General's Report, resulted in an overall loss of $437 million, with WorkCover's unfunded liability rising to $1.389 billion as at June 2012. But, despite this, strong operational cash flows were maintained with a positive cash flow result of $229 million for the year, building on the $151 million generated in 2010-11. So, if you look at the operational cash flows of the WorkCover Corporation, we have seen significant—

The Hon. I.F. Evans interjecting:

The SPEAKER: Order!

The Hon. J.J. SNELLING: —improvement. Now, it is the case that the unfunded liability has increased, and there have been two factors that have resulted in that, the first being, of course, the change to the discount rate. The change to the discount rate has had a similar impact on our unfunded superannuation liabilities. Our unfunded superannuation liabilities, from memory, have

moved from $8 billion to roughly $11 billion on the basis of a 1 per cent change in the discount rate. Changes to the discount rate can have massive impacts, actuarial impacts, on the unfunded liability. The other factor is, of course, that there have been reduced earnings on the assets that WorkCover has invested—

Mrs Redmond interjecting:

The SPEAKER: Order! Leader of the Opposition, order!

The Hon. J.J. SNELLING: —from memory, just under $2 billion in assets that WorkCover has invested to pay for its ongoing and future liabilities. Of course, when the share market is doing badly, as it has, then of course the earnings on those assets are going to be a lot less, and that is going to have an impact on the unfunded liability.

Members interjecting:

The SPEAKER: Order!

The Hon. J.J. SNELLING: The simple fact is that the best measure of the impact of the 2008 reforms, built upon by the reforms that I introduced into the parliament last year—reforms that were supported in a bipartisan way by the opposition—and I would like to acknowledge the bipartisan support from the opposition on those reforms—

The Hon. P.F. Conlon: Except for one.

The Hon. J.J. SNELLING: No. No, the member for Davenport got up during—

Members interjecting:

The SPEAKER: Order!

The Hon. J.J. SNELLING: —that debate and said that those reforms had the opposition's full support, and I appreciate that. So, those reforms, building on the 2008 reforms, have in fact seen a massive turnaround in the ongoing operational performance of WorkCover and, as I say, a $229 million positive result for the financial year ending 30 June—something that I am very proud of.

Members interjecting:

The SPEAKER: Order! Member for Davenport and the member for MacKillop, behave!

VICTIMS OF CRIME FUND

Ms CHAPMAN (Bragg) (15:03): My question is to the Attorney-General. Has the Attorney provided any advice, either directly or from the Crown Solicitor's Office, to the Minister for Police in respect of disqualifying herself from all meetings, briefings and decisions involving the alleged million dollar Victims of Crime Fund fraud? Last Friday, Andrea Lowe appeared in the Adelaide Magistrates Court facing multiple charges of using government information for personal benefit, deception and attempting to impede a police investigation. Ms Lowe, as is well known to you, Attorney, was the personal assistant to the Minister for Police for several years until 10 August this year.

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Business Services and Consumers) (15:04): As I understand the question, when you condense it down you are asking if I have provided advice to my ministerial colleague regarding these matters. The answer is no.

NORTHERN AREA COMMUNITY AND YOUTH SERVICES

Mrs VLAHOS (Taylor) (15:04): My question is to the Minister for Education and Child Development. Can the minister inform the house what the government is doing to support children and families affected by the fire at the Northern Area Community and Youth Services facility in the north of Adelaide?

The Hon. G. PORTOLESI (Hartley—Minister for Education and Child Development) (15:05): I would like to thank the member for Taylor for this very important question. Like the member for Taylor, I was also concerned when I heard of the devastating arson attack at the Northern Area Child and Youth Services' childcare centre recently. Established in 1981, the centre has a focus on community capacity building, which it does through services such as crisis

intervention, social development, adult education and early child development, very strong focuses of this government and of my work.

It has grown very proudly from two part-time staff members when it opened, to more than 40. Amongst its services the centre also provides a long day care service, which is utilised by more than 100 families in the northern suburbs, and a day care service for newborns to five year olds as well as after school care.

I am pleased to inform the house that everything is being done to support this service to continue operating while insurance issues are being sorted out. My department has worked very closely with the community and with the staff of the centre to find interim accommodation to allow the childcare service to continue to operate. I was also very pleased to learn that the regulatory authority, the relatively new Registration and Standards Board, has worked with the service to very promptly provide the interim service approvals to allow the centre to continue to operate from the temporary accommodation.

Perhaps the greatest aspect of this matter is the way in which the community has rallied around the service. Families have established Facebook pages to garner support, local businesses have donated supplies to keep the service running, and volunteers have assisted in clean-up and salvage efforts. No doubt many others will be making significant contributions as well.

The director of the centre, Clare Dilliway, has advised that on the morning after the fire an elderly woman—not a client of the service, just a community member—arrived with some fruit and biscuits, saying it was all she could offer but that she wanted to make a contribution. It is heartening to see that this community is rallying together.

I would like to acknowledge the work of Clare Dilliway, the early childhood services manager Sharone Mutch, and the Swallowcliffe Primary School principal Grant Small—

Mrs Vlahos interjecting:

The Hon. G. PORTOLESI: —he is a great principal—together with the generous assistance of the local community, which has worked tirelessly to ensure that the community continues to have access to this service. I wish them all the very best, and I ask the member for Taylor to give the community all our best wishes for the future.

GRIEVANCE DEBATE

MARINE PARKS

Mr MARSHALL (Norwood) (15:08): I rise to continue our discussion in this house on the important issue of marine parks. I can say, up-front, that the Liberal Party strongly supports marine parks in South Australia. In fact, it was the Liberal Party, back in the 1990s, that floated the idea of establishing marine parks. Going to the 2002 election, it was a Liberal Party commitment to establish marine parks.

The government has also made a long-term commitment to marine parks. They made that commitment leading up to the 2002 election but here we are, a full 10 years later, and we still do not have the zone arrangements in place in South Australia in our marine parks. It has been an absolutely shambolic management of this process by this hopeless, incompetent government. More than that, it is not just their hopelessness; they are affecting the lives of people in regional and rural South Australia, people who derive their income, their entire livelihoods, from fishing activities in regional communities.

Not only is the Liberal Party fully in favour of marine parks, it is fully in favour of sanctuary zones. It is a complete furphy that the minister puts forward that somehow the Liberal Party is against sanctuary zones. The Liberal Party is for them, the commercial fishing sector is for them, regional communities are for them; we are just not for this government's hopeless sanctuary zones, the zones that it has put in place. We reject those zones that the government has suggested to the people and on which consultation closes off next week. We reject them because the process to determine those sanctuary zones is fundamentally flawed. It is fundamentally flawed because it has not followed the established protocol for arranging protection zones within marine parks.

The simple fact of the matter is that throughout the entire world—and, in fact, as part of the COAG agreement—marine park protection zones need to be based upon identified, scientifically evaluated threats to marine biodiversity. This is not the approach that the state government has had. It has simply done the lazy thing and said, 'We want to create a representative sample of our

state waters.' Well, I put it to you that this will not have any positive environmental outcome whatsoever and, more than that, it just flies in the face of what the rest of the world is doing and it flies in the face of the agreement that South Australia signed up to as part of the COAG agreement on managing marine parks in Australia. We have gone out on a limb because this minister cannot stand up to his department and put the lives of hard-working people in regional communities first.

The government's plans for sanctuary zones will have a huge effect on regional communities. The minister seemed to somehow refuse to acknowledge his own government department's reports on this issue. In fact, he repeatedly said today, 'I think this is going to have a positive outcome for South Australia.' Well, read your report, minister, and you will actually see that there is going to be significant social and economic impacts right across the regions here in South Australia because of your hopeless policies.

I also raise the point that this will have a devastating effect on South Australia's exports. Our fisheries in South Australia are amongst the most sustainable in the world. There is no reason whatsoever that the government should be using marine parks and sanctuary zones to control fishing. When minister O'Brien, the very hard-working former minister for fisheries, stood up in this place, he made it very clear that the people who should be managing our fishing zones in South Australia are those in the fisheries department, which sits within PIRSA. But no, not this Premier, not Premier Weatherill—he wants to talk about going down to the beach 25 years ago and finding a couple of tubeworms. The simple fact of the matter is that there is an important industry in South Australia and it is under threat by this government. If there are identified marine biodiversity threats, the government should use the aquatic reserve provisions within the Fisheries Act to control any single threat that exists.

The Liberal Party is for marine parks, for sanctuary zones and for sustainable fishing, and we want the government to start to address the issue of sanctuary zones on a threat basis, not just these hopeless lines on a page—representative samples for South Australia. It is going to cost us jobs, it is going to cost the regional communities, it is going to cost exports, and it is going to cost our recreational and our commercial fishing sector. It is not good enough. The government needs to sit up and take notice. Fishermen are not going to go away; they feel very passionately about that, and that is because their entire livelihoods are in jeopardy at the moment because of this government. Sit up, Mr Weatherill, take note of what people are saying, listen to their concerns, involve the local advisory groups and make some sensible decisions on behalf of South Australians.

ENERGY PROVIDERS

Dr CLOSE (Port Adelaide) (15:13): My office has been helping people in the Port Adelaide area to deal with the consequences of bad practice by some door-to-door energy salespeople, and I want to warn others of some of these practices. While I am sure that there are many good salespeople who are able to assist consumers to choose energy supplier contracts that suit their needs and minimise their costs, I am horrified at some of the stories that we are hearing in my office.

For example, some salespeople start off saying that they are not there to sell anything in order to get through the door but, before long, the conversation tries to get people to sign up to a new contract. Some sales people imply that the existing contractor has made an error in their zoning and that a new contract will bring a cheaper price when in fact that is not correct. In this case, it was only through the intercession of my office that the retailer restored the original contract for a hardworking Vietnamese businesswoman who was persuaded to sign a contract that would have vastly increased her electricity costs.

People who do not fully or explicitly inform the customer about the costs of ending their contracts; salespeople who deal with consumers who do not speak English well and do not make sure that they understand the terms of the proposed deal; or people who have mental health issues but are nonetheless pressed to make decisions with expensive consequences without sufficient time to get advice—these are examples that have come through the door of my electorate office.

I am sorry to say that while these salespeople are contractors—and I understand that the energy providers are challenged in ensuring their practices are ethical—the energy retailers themselves do not always make it easy for customers to deal with issues that have arisen as a result of these practices. All too often it takes a call from my office for the retailers to accept that the customer needs to be shown some flexibility. I ask that the retailers go out of their way to respond

to customers who feel that they have been pressured into contracts by unethical door-to-door salespeople.

The law protects people who have been demonstrably misled but there are too many occasions when door-to-door salespeople use techniques that put people who are vulnerable or in some way unequal to dealing with their sales techniques under pressure to sign up to a contract that is not in their best interests. I urge anyone who find themselves in this situation to seek assistance, first from the retailer and, in the event that it is not sufficient, from consumer affairs. I urge anyone who works in this field to reflect that they have an ethical obligation to the people whose homes and businesses they are visiting to treat them with respect and to fully and completely explain the terms of any contract they are proposing.

AGRICULTURE SECTOR

Mr VENNING (Schubert) (15:16): The Premier has repeatedly stated that a clean, green, competitive food edge is one of the government's priorities. This was again detailed in the Governor's opening speech for this parliament earlier this session. We have also heard this government say, following the cancellation of the Olympic Dam expansion, that agriculture will be our state's economic saviour.

If that is the case, the Weatherill government should take notice of a new report by the Organisation for Economic Cooperation and Development (OECD) published last month that revealed that there is less investment in food production in Australia than anywhere else in the developed world. I would not have believed that if I had not read it and if it wasn't an OECD report, but that is what it said. It is shocking.

According to the report, the Australian agriculture industry receives 0.16 per cent of the Australian gross domestic product. That report shows that high income countries like Australia and the US have seen agriculture productivity growth drop in line with reduced spending in research and development. The report shows in contrast that middle income countries including China, Brazil and India have increased spending in research and development and the productivity has grown. We must realise that a cut in funding takes 10 years to take the full effect. Likewise, when you decide to crank it up, it takes 10 years to get it fully operational and benefits maximised.

In 1960-62 Australia was ranked eighth in the world for research and development funding and in 2007-09 we had dropped to 16th place, and South Australia is one of the poorest performing states in Australia. South Australia has a large role to play in our country's agricultural productivity. Primary industries contribute $6 billion yearly to the South Australian economy and, despite its being an alleged priority from the Weatherill government, all we are seeing is repeated cuts through research and development, jobs slashed, declining budgets, and regional offices downgraded and many closed.

Professor Kym Anderson, an economics professor from the University of Adelaide, was recently reported in *InDaily* on 2 October as saying that the global trend towards reduced funding for agriculture R&D is mirrored in South Australia and that the government's approach to SARDI is an example:

> The Government's been fiddle-faddling with SARDI—it's basically trying to offload it onto the university. Maintenance costs of those facilities are very high which is why the Government wants to get rid of it, because they can't be bothered paying for it.

The risk is that other countries will continue to increase their research and development spending and increase their agricultural output, and we will continue to fall further and further behind. We will grow less, we will import more. It should be the other way around.

I was at Struan last week, sir, as were you, to see that beautiful research centre half empty. I go to the Nuriootpa research centre and I see phone numbers on a closed door. I go to Jamestown, a thriving hub of agricultural research, and there is nothing left. So, enough of this hypocrisy. We all agree with the Premier's statement that a clean, green, competitive food edge is one of the government's priorities. Well, it is time to do as you say; if we don't, we could face food shortages in the future.

The current world population is approximately seven billion and is growing at the rate of the city of Adelaide every five days. At the same time, arable land per capita is decreasing. It is important now, more than ever, to support our primary producers. Farmers in the United States, China and Japan all receive more than six times the farm spend in Australia, while Turkish farmers get more than 2 per cent of Turkey's GDP. The Treasurer said that we will be turning to agriculture

in the wake of the Olympic Dam cancellation. It is time for the Weatherill government to put its money where its mouth is and give our primary producers the support they need to compete on the world stage.

We see the season right now at a crossroads. We have had a recent rain but not very much. A lot of the state—about a quarter of the state—is not going to get a viable crop this year because of the vagaries of the weather. Particularly anything north of, say, Jamestown is in serious condition. The Upper Eyre Peninsula and, certainly, the Riverland is in serious trouble. The economy depends on our farmers. All I can say is that the government—as you would have seen, sir, from the two select committees you have served on—has to turn this around before it is too late.

WOMEN'S SPORT

Ms BEDFORD (Florey) (15:21): Today, I would like to acknowledge some special achievements in sport. Firstly, I would like to quote from the article on page 57 in *The Advertiser* on 9 October—not a full back-page coverage but, rather, the bottom right-hand corner of page 57, with a photo not much bigger than a postage stamp. The article was headlined, 'Aussies on Top of the World'.

It is an article about the Australian women's cricket team winning the world Twenty20 title for the second time straight, beating England (the old enemy) by four runs in the final. Skipper Jodie Fields was rightly proud of her team, saying, 'England played a really good match but we had the belief in our team.' Jess Cameron top scored and left-arm spinner Jess Jonassen picked up a career-best three for 25. Off-spinner Lisa Sthalekar and seamer Julie Hunter picked up two wickets each.

Our congratulations go to this outstanding team following a great tradition in Australian women's cricket, and it is a shame we do not hear more about them and their endeavours—or even half as much as we hear of men's cricket. Sport has never been an even game, with men's sponsorship, particularly, also being way beyond that of women's sport. That is something I have pondered for many years, as have many others here with me now and before me.

Another truly inspiring team I had the privilege of watching (albeit rather briefly because of dreadful weather setting in) was the initial game of the Indigenous softball program, on behalf of the Premier and in the company of the members for Hindmarsh and Morphett. James Harris and Softball SA are to be commended for their work with the SANFL administration (represented by Tim Stewart and David Hutton on the night) and the APY Lands Council.

They all support the ongoing development of the Far North West Sports League on the APY lands. The league runs an eight-team softball competition, which has been instrumental in building the sustainability of the participating Indigenous communities. The competition has been successful in providing community members, particularly women, with an increased sense of self-worth, leadership opportunities as coaches and team officials, as well as delivering the social, physical and health benefits associated with playing an active team sport.

The coaching, scoring and umpiring training provided by Softball South Australia in 2011 resulted in 17 umpires, eight coaches and three scorers achieving nationally recognised accreditation. The Far North West Sports League is close to achieving self-sufficiency, with most communities now having the capacity and capability of running their own competitions. That is to be absolutely commended.

Indigenous women's sport plays a secondary role to the important participation of Indigenous men in football, often meaning that girls do not have similar opportunities as boys, so it is wonderful to see them participating here in Adelaide against our top teams. Under very difficult circumstances on the night, I witnessed a great hit which resulted in three home runs, the APY team having held Port Adelaide to one home run as the weather closed in.

I commend everybody involved in helping make Indigenous sport continue to thrive, providing a way for better outcomes in communities where it is fostered. We all know how important good role models are in reducing problem behaviour at a time when we as a community are concerned by alcohol-fuelled violence.

Today's activities on the steps of Parliament House remind us of another problem experienced by all too many—domestic violence. Another South Australian woman died recently as the result of domestic violence. These deaths are both unacceptable and preventable and must not be written off as just 'domestic disturbances'. The state government has worked on a Right to

Safety strategy, and it is up to each and every one of us to remind all in our circle of influence that no level of violence is acceptable. We must spread the word, 'Not one more,' and do all we can to change community attitudes to violence of any kind and the ultimate violent act—that is, one that causes death.

This change of attitude can be influenced by actions and language, for words are a really powerful tool in changing behaviour for the better. Highlighting bad language plays a leading role in promoting debate, and the recent 2012 Ernie Awards for sexist behaviour highlighted some examples. The Silver Ernie went to Basketball Australia for flying the women's Olympic basketball team to London economy class while the male team flew business class. Their excuse was that women chose to spend the money that way, when in actual fact I think a close examination would find they had less money to spend in any case.

I would like to highlight the Good Ernie for good men's behaviour, which went to Stephen Smith, one of our federal ministers, who said in reference to ongoing issues in the Defence Force that inappropriate conduct will not be tolerated. We all know the difficulties he has faced in trying to change that behaviour.

The overall Gold Ernie and Silver Media Ernie went to broadcaster Alan Jones for his comments that 'women are destroying the joint, Christine Nixon in Melbourne, Clover Moore in Sydney. Honestly, there is no chaff bag big enough for these people'. Of course, we know Alan's efforts this year deserve more than their own full five minutes in this place. Unfortunately, I have run out of time, so that will be something for another day.

GOODWOOD AND TORRENS RAIL PROJECT

Ms CHAPMAN (Bragg) (15:26): As the shadow minister for transport, I take a great interest in transport and infrastructure projects in this state: when they are good, I support them; when they are bad and wasteful, of course I object to them; and when they do not tell us the whole truth, I expose them. Today, I want to refer to the Goodwood and Torrens rail junctions project, which is a $443 million project, essentially to provide grade separation between domestic and freight rail at two intersections, and other projects.

In May this year, the federal government announced in its budget that South Australia would receive $232 million in 2015-16, which is on a fifty-fifty arrangement between the state and federal governments towards the Goodwood and Torrens junctions project. In this year's state budget, the South Australian government committed $110 million this year for the Goodwood component, that is, the first grade separation.

I should also point out that $110 million is still missing from the total value of the project. The government said straightaway, 'We are going to start developing, repairing, and so forth, the Goodwood part of the project; the rest, obviously is going to have to wait.' There is still $110 million missing. This is very important. We received the Auditor-General's Report yesterday and for the first time in the time I have been here that I can recall (I may be wrong) the transport department actually received a qualified approval from the Auditor-General. The information there relates to how the government has treated its federal money.

We will obviously follow a number of these issues up at the appropriate time, if and when we ever get questions in relation to the Auditor-General's report, but in December 2011 Mr Rod Hook, the CEO, provided the Budget and Finance Committee with the following breakdown of costs in respect of this project: Goodwood Junction, $104.6 million; Leader Street, $51.6 million; Keswick, $45.8 million; Mike Turtur Bikeway overpass, $10.5 million; and Torrens Junction, Bowden and Park Terrace, $230.6 million.

When the Goodwood component went to the Public Works Committee recently, which I attended, Mr Hook attended with his staff to give evidence and, when asked about whether these figures were still applicable, they appeared to be somewhat confused about the budget figures that were presented, and they indicated that they would provide some updated material in relation to that. To date, to the best of my knowledge, that information has not been forthcoming, and I have since had a meeting with one of the senior officers in relation to this project and other matters.

What was very telling at that meeting of the Public Works was, firstly, that the submission that was presented by the Department of Transport no longer includes the $10.5 million bike overpass (on Ride to Work Day, it is rather a disappointing thing to have to be announcing today), and it is of concern that that was missing. The state government had not funded the Leader Street upgrade, which has completely disappeared from the work to be undertaken at this stage.

Apparently, that is to be done at some later date with the Torrens interchange. If anyone knows the geography of Adelaide, they will know it is at the other end of the area concerned.

The honourable member for Ashford, in fact, gave evidence. To her credit, she described the traffic conditions in that area as 'a nightmare' in respect of the importance of having the Leader Street upgrade done. Given the increased traffic on the Seaford rail line after the electrification and extension, it is critical that we fix the level crossings that go with it.

It is a concern to me that that has slipped off the net, but here is another thing: we have lost the bike overpass, Leader Street has disappeared and now we have the state government not funding a $45.8 million upgrade for the build of a station for the Keswick site. They are only going to provide approximately $18 million for Keswick, which is not even happening at the same time as the current Goodwood project.

These are all very concerning matters. We have got a $110 million shortfall on a major project which is not in the budget anywhere from any government, we have got queries raised in the Auditor-General's Report and we have got public works material coming through which now highlights multimillion dollar parts of the project which have disappeared—just completely disappeared.

We will be wanting some answers. We will look forward to the answers that are provided by Mr Hook and/or his staff, in due course, to the Public Works Committee and the ultimate report to the parliament on these matters, but it is not acceptable that the government promote and propose major projects or smaller ones, for that matter, and then rip the guts out of them before they are actually out there for public consideration. This is a matter we will be taking further.

COUNTRY HOSPITALS

Mr BIGNELL (Mawson) (15:31): I rise today to update the house on some of the recent travels I have undertaken as parliamentary secretary to the Minister for Health and Ageing. As I have mentioned in this house before, it has been a great honour for me to be able to get around the state to almost 50 country hospitals so far in the past year, to go on tours of the hospitals and talk to local people and staff at those hospitals and management to find out what it is that is important and what we can improve, but also to bring them up to date with where we are as a state, how our health system is operating and how important the work that they are doing is in fitting into the wider picture.

There are some great stats, as the Minister for Health mentioned today. We keep picking up very good commendations from national surveys that are undertaken that measure various aspects of our health system. In terms of emergency department waiting times and elective surgery waiting times, we are leading the nation, which is great to see. In country areas, the hospitals in our regions are doing particularly well, so it is great to get out there and talk to people and thank them.

Recently, back in August, I was up in the Riverland and came down through the Mallee, then did Mount Pleasant and Gumeracha and then went up to Woomera and Roxby Downs. In September, I spent some time at Murray Bridge and Mannum. It was great to get down to Murray Bridge. They have some new imaging equipment down there which is really fantastic. The staff were so enthusiastic and there are so many things that they can do now at Murray Bridge so they no longer have to send patients into the metropolitan area for tests and so on, and we are finding that more and more as we get out throughout the state.

Country people are now getting access to telemedicine, so they can consult with a specialist on the other end of a line. They just walk into the hospital or local surgery and appear in front of the camera and there will be a specialist or doctor waiting at the other end of that. So, someone in Ceduna can present their wound to them, have that wound checked and it is all over in 15 minutes.

Without telemedicine, that same person might have had to spend at least the whole day, possibly a day and a half, out of their community. They would have had to organise babysitters or people to pick up their kids from school perhaps, so it is a real inconvenience, not just for the individual but also for the community that loses a person for a day for a procedure that can take just 15 minutes. We are seeing a lot of that.

Murray Bridge obviously serves a very wide area of the Mallee and the northern Coorong area, and patients can go there rather than all the way into Adelaide. We are also seeing, with the increase in dialysis and chemotherapy services that are available in country hospitals, that we are making it a lot easier for people. We are seeing slower growth in presentations to metropolitan

hospitals and an increase in presentations to country hospitals, and that is exactly what we want to see. We want to see that when people need to have medical procedures, or when they need to see specialists, they can do that as close to home as possible.

I also visited Mannum District Hospital on the same day that I went to Murray Bridge, and it was terrific. I must say to anyone who is driving through Mannum to look out for the hospital auxiliary shop in the main street; it is terrific. They have great homemade sauces and relishes. I need to make a return trip because we have run out, despite stocking up on the day—they are just sensational sauces and relishes. The money goes to the auxiliary, which then funds lots of upgrades to rooms and so on in the local Mannum District Hospital, where everyone is doing a terrific job.

Last week, I went to Port Lincoln and Cummins. Port Lincoln is one of our four country general hospitals. We are spending about $30 million on each of these hospitals to upgrade them and to put more and more services and more and more equipment in the hospitals. It was good to see the plans, which will be finalised soon and which will come back to the government for approval. From Port Lincoln I then went on to Cummins, where we opened an accident and emergency service area, which received $570,000 from the state government. I also got to open the medical centre upgrade, which is providing great services to the people of Cummins.

I would really like to thank the local member, Peter Treloar, who was born in the Cummins Hospital, for a terrific job. I would like to thank Trish Clarke, who is the Director of Nursing at Cummins Hospital and who is about to retire. Thank you for all your great work.

ADVANCE CARE DIRECTIVES BILL

The Hon. J.D. HILL (Kaurna—Minister for Health and Ageing, Minister for Mental Health and Substance Abuse, Minister for the Arts) (15:37): Obtained leave and introduced a bill for an act to enable a person to make decisions and give directions in relation to their future health care, residential and accommodation arrangements and personal affairs; to provide for the appointment of substitute decision-makers to make such decisions on behalf of the person; to ensure that health care is delivered to the person in a manner consistent with their wishes and instructions; to facilitate the resolution of disputes relating to advance care directives; to provide protections for health practitioners and other persons giving effect to an advance care directive; to make related amendments to the Consent to Medical Treatment and Palliative Care Act 1995, the Coroners Act 2003, the Fair Work Act 1994, the Guardianship and Administration Act 1993, the Health and Community Services Complaints Act 2004 and the Wills Act 1936; and for other purposes. Read a first time.

The Hon. J.D. HILL (Kaurna—Minister for Health and Ageing, Minister for Mental Health and Substance Abuse, Minister for the Arts) (15:39): I move:

That this bill be now read a second time.

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

Leave granted.

This Bill seeks to:

- enable competent adults to make decisions and give directions in relation to their future health care, residential and accommodation arrangements and personal affairs;
- provide for the appointment of substitute decision-makers to make such decisions on behalf of the person;
- ensure that health care is delivered to the person in a manner consistent with their wishes and instructions;
- facilitate the resolution of disputes relating to advance care directives;
- provide protections for health practitioners and other persons giving effect to an advance care directive;
- make related amendments to the *Consent to Medical Treatment and Palliative Care Act 1995*, the *Coroners Act 2003*, the *Fair Work Act 1994*, the *Guardianship and Administration Act 1993*, the *Health and Community Services Complaints Act 2004* and the *Wills Act 1936*;
- and for other purposes.

The aim of this Bill is to create a single form of Advance Care Directive to replace the existing Enduring Power of Guardianship, Medical Power of Attorney and the Anticipatory Direction.

The provisions in the Bill aim to make it easier to complete and apply Advance Care Directives and will assist people to express their views and preferences and to have confidence they will be known and respected in the future.

Importantly, the Bill contains protections for those who complete and apply Advance Care Directives, particularly Substitute Decision-Makers and health practitioners.

The Bill sets out a simple dispute resolution process for application in situations of uncertainty or if there is a dispute.

In April 2007, I as Minister for Health, the then Attorney-General and the then Minister for Families and Communities jointly launched the Advance Directives Review with the release of an Issues Paper titled *Planning ahead: Your health, your money, your life* for public comment.

An independent Advance Directives Review Committee was established with former Health Minister, the Hon Martyn Evans, as Chair. The 11 member Review Committee was supported by a panel of experts across a broad range of areas.

Over 120 submissions were received on the Issues Paper from health, aged care and community care professionals, lawyers, community organisations, consumers, Aboriginal communities, government agencies and financial institutions.

After 18 months of deliberations the Advance Directives Review Committee reported to the Attorney General in two stages:

- Stage 1 Report made 36 recommendations for changes to law and policy and
- Stage 2 Report made 31 recommendations for implementation and communication strategies.

I would like to take this opportunity to commend the Review Committee for its work and to thank members of the Expert Advisory Panel for assisting the Review Committee in its deliberations.

I would now like to point out some of the key aspects of the Bill.

The Advance Directives Review found that the current legislation, forms and guidelines can be confusing and intimidating, and recommended that any new laws, forms or guidelines be written in simple, lay persons language. This will also assist those for whom English is a second language and Aboriginal and Torres Strait Islander Peoples.

The Bill has been drafted in simple language and the definitions used are contemporary and reflect current practice.

To ensure consistency between the three relevant Acts, the same definitions have been reflected in the amendments to the *Guardianship and Administration Act 1993* and the *Consent to Medical Treatment and Palliative Care Act 1995*.

The term Substitute Decision-Maker is used in the Bill to distinguish between a person appointed of one's own choosing to make substitute decisions on their behalf, and a Guardian appointed for a person by the Guardianship Board to look after and manage their affairs.

The concepts of competence and capacity are central to the two critical stages, being the completion and the application of Advance Care Directives, which may occur years apart.

The Bill requires that an adult must be competent to make or revoke an Advance Care Directive. As a legal document, an adult completing the form must understand what an Advance Care Directive is and the consequences of completing one. It is presumed that an adult is competent to complete an Advance Care Directive unless there is evidence to the contrary.

An Advance Care Directive takes effect when the person's decision-making capacity is impaired. For the first time in South Australian legislation, the Bill contains a clear description of what is and what is not deemed *impaired decision-making capacity*. Decision making capacity relates to the ability to consider information, weigh up options, make a decision based on the information provided and communicate thoughts about that in some way.

Importantly, it is not necessarily related to a diagnosis or condition. The definition in the Bill accommodates temporary and fluctuating decision-making capacity. In particular, it accommodates the needs of people with a mental illness or dementia whose capacity to make decisions may fluctuate.

The Bill recognises that different decisions require varying levels of decision-making capacity. For example, a person may be able to make many simple health care and personal decisions but may not be able to make higher level decisions such as whether to undergo surgery or not. The Bill seeks to support lower level decisions for as long as a person is able, before requiring others to step in and take over their life and decision-making unnecessarily.

If Substitute Decision-Makers or others are unsure whether a person has the capacity to make a decision, the Office of the Public Advocate can provide advice. Alternatively, a medical assessment can be instituted.

The objects of the Bill provide the framework for the intent of the Act which is to enable competent adults to give directions about their future health care, residential and accommodation arrangements and personal affairs and other matters.

This Bill is underpinned by a set of overarching principles.

The principles in the Bill apply in the administration, operation, and enforcement of the legislation, including in the resolution of disputes. The principles apply to all parties including Substitute Decision-Makers, health practitioners and others who may be making decisions under or in relation to an Advance Care Directive.

The framework is contemporary, aligns with a rights based approach, and is consistent with person-centred care and common law.

The Ethics Health Advisory Council assisted to refine the principles in the Bill. I would like to take this opportunity to thank members for their advice and assistance.

The Bill takes a broad view of health and well-being which extends beyond just medical treatment instructions at the end of life.

Submissions to the Advance Directives Review and subsequent consultations with consumers, in particular mental health consumers and older people, indicated that people want the option to be able to write down their wishes, preferences and instructions for matters beyond medical treatment decisions at the end of life, without appointing Substitute Decision-Makers. Reasons for this included:

- no-one to appoint or could not choose who to appoint
- did not want to burden family/friends with such decisions
- complicated family relationships such as second or third marriages or families
- religious reasons for example Jehovah Witnesses refusing blood transfusions.

The Bill has been drafted to enable as much flexibility as possible for those completing an Advance Care Directive and allows for three options:

- written instructions, preference and wishes and the appointment of one or more Substitute Decision-Makers
- only written instructions and preferences
- the appointment of one or more Substitute Decision-Makers without written preferences.

The Bill makes it clear that a relevant provision or instruction in an Advance Care Directive or the decision of a Substitute Decision-Maker is as effective as if it were the person themselves making such decisions.

Under the Bill, an Advance Care Directive does not have to be legally or medically informed to be valid, merely that they understand the implications of their direction. An Advance Care Directive Do-it-yourself Kit will be developed to support people in making an Advance Care Directive.

To maximise uptake, it will be important that the Kit is designed so that individuals can complete the form without the assistance (and expense) of a lawyer or a doctor.

Having said this, if an individual has strong views or complicated affairs, the accompanying guidelines to the Advance Care Directive form will encourage them to seek medical or legal advice to ensure that their Advance Care Directive will achieve its intended purpose.

To be valid, the Advance Care Directive form approved by the Minister for Health and Ageing will be the only form that may be used and for standing as a legal document, it must be witnessed.

Rather than prescribing the form in legislation, the Do-it-yourself Advance Care Directive Kit will comprise the Advance Care Directive form, accompanied by guidelines. The guidelines will be developed in consultation with stakeholders and tested by focus groups which will include consumers including older people, Aboriginal people and people from culturally and linguistically diverse backgrounds, and health practitioners and others such as aged care staff.

The guidelines will clearly set out, in lay terms, the rights and responsibilities of all parties involved in the completion and application of an Advance Care Directive, including for the person completing the form, Substitute Decision-Makers, witnesses, health practitioners and other prescribed professions. This will ensure that all parties are aware of each others' rights and responsibilities under the Advance Care Directive.

One of the problems and common criticisms associated with the current Medical Power of Attorney and Anticipatory Direction is the legal requirement for people to list medical treatments they do, or do not, consent to in advance of illness.

This requirement has proven difficult for many people and reports suggest that these types of instructions are not helpful to health practitioners having to interpret them at a later stage. Instructions are often either too specific or not specific enough, or crucially do not relate to the current circumstance or condition.

The Advance Care Directive form will be developed to allow people to write down their values and goals of care, what is important to them when decisions are being made for them by others, what levels of functioning would be intolerable, and where and how they wish to be cared for when they are unable to care for themselves.

Growing numbers of South Australians live alone. Being able to include instructions in an Advance Care Directive about health care, residential, accommodation and personal matters such as not being transferred from a care home to hospital to die or who should look after their dog or cat often brings peace of mind.

The Bill does not however prevent people specifying health care they do not wish to receive, including refusals of life-sustaining measures, such as CPR, artificial hydration, nutrition or ventilation (i.e. life support) and the circumstances under which such refusals would apply.

The Bill provides that refusals of health care are binding if the person intended the refusal to apply to the current circumstance—this is consistent with common law.

Instructions and expressed preferences other than refusals of health care, whether related to health care, accommodation, residential and personal matters, must guide decision-making but are not binding on others. For example, an instruction which directs that the person never wants to live in a nursing home may be impossible to comply with, particularly if that is the only option for ensuring the person receives appropriate care and support.

The Bill provides that the following would be void and of no effect if contained in an Advance Care Directive:

- unlawful instructions or instructions which would require an unlawful act to be performed such as voluntary euthanasia or aiding a suicide
- refusals of mandatory treatment such as compulsory mental health treatment under the *Mental Health Act 2009*
- actions which would result in a breach of a professional code or standard, for example a Code or Standard issued by the Medical or Nursing and Midwifery Boards of Australia. It does not mean a hospital code or standard.

If a non valid matter is contained within an Advance Care Directive, this does not void the Advance Care Directive in its entirety.

A person is not able to demand specific healthcare be provided in an Advance Care Directive, consistent with the common law. If a person has indicated in their Advance Care Directive specific healthcare that they consent to, this would be a guide to health practitioners rather than a demand. What is appropriate healthcare to be offered in particular circumstances is to be determined by health practitioners according to their clinical expertise and judgment. This is consistent with a well accepted common law principle of health care that a person can consent to treatment that is offered, and refuse treatment that is offered, but cannot demand treatment that is not offered.

The witnessing provisions in the Bill have been designed to be a protective measure for both those completing an Advance Care Directive, and those having to apply it at a later stage such as Substitute Decision-Makers, health practitioners, aged care workers or paramedics.

To be valid, a suitable witness must sign a statement on the Advance Care Directive form to confirm that they are satisfied, to the best of their knowledge, that the person completing the Advance Care Directive understands the nature and effect of the Advance Care Directive and is completing it free of coercion.

The Bill includes offences for knowingly giving false or misleading statements and for fraud and undue influence, including for inducing another to give an Advance Care Directive.

The guidelines for witnesses will point out that if the person's competence to complete an Advance Care Directive is questionable, the witness should refuse to sign the form or request a medical certificate before they witness the document.

Those relying on a valid Advance Care Directive in good faith and without negligence will be protected from civil or criminal liability.

The categories of persons who can be a witness are expansive and similar to that for witnessing Commonwealth documents.

Importantly, to avoid conflicts of interest or duty, witnesses cannot be:

- Substitute Decision-Makers appointed under the Advance Care Directive
- persons with a direct or indirect interest in the estate of the person giving the Advance Care Directive
- health practitioners responsible for the health care of the person giving the Advance Care Directive
- persons in a position of authority in a hospital, nursing home or other similar facility in which the person resides.

The Bill provides that competent adults can appoint one or more Substitute Decision-Makers of their own choosing who they trust to make decisions for them when they have impaired decision-making capacity.

Subject to any contrary provisions contained in an Advance Care Directive, an appointed Substitute Decision-Maker can make all the health care, residential, accommodation and personal decisions the person could lawfully make if they had decision-making capacity.

Under the Bill, a decision of a Substitute Decision-Maker has the same legal effect as if it were a decision of the person themselves.

The Bill requires that Substitute Decision-Makers must:

- be competent adults

- act in good faith, without negligence and in accordance with the wishes and values of the person for whom they were appointed, and are afforded legal protections for doing so, and
- make decisions using the substituted judgement decision-making standard.

To ensure that appointed Substitute Decision-Makers do not have a conflict of interest or duty, the Bill prevents the following from being Substitute Decision-Makers:

- health practitioners directly or indirectly responsible for the persons health care
- paid carers. The paid carer captured by this clause is a professional carer such as a Director of Nursing, not a close friend or relative in receipt of Carers Allowance
- any other class of persons prescribed by the regulations.

The Bill does not prevent individuals appointing different Substitute Decision-Makers for different decision-making areas. The person could also direct how they want Substitute Decision-Makers to make decisions, for example in consultation with others.

The Bill requires Substitute Decision-Makers to make the decision they believe the person would have made in the current circumstances, if they had access to the same information.

As is currently the case with Medical Power of Attorney, the Bill prevents Substitute Decision-Makers from refusing health care for the relief of pain or distress and the natural provision of food and water.

Substitute Decision-Makers can seek advice from the Office of the Public Advocate if they are unsure of their role.

Upon application, the Guardianship Board can revoke the appointment of a Substitute Decision-Maker if the Guardianship Board is satisfied that the Substitute Decision-Maker:

- is a person who must not be a Substitute Decision-Maker under the Advance Care Directive Act
- is no longer willing to act as a Substitute Decision-Maker
- is no longer appropriate. For example if the appointment was made years ago and the relationship with the Substitute Decision-Maker no longer exists
- has been negligent in the exercise of their powers under the Advance Care Directive. This includes wilfully making decisions which are not consistent with the person's Advance Care Directive.

If a Substitute Decision-Maker is revoked and more than one Substitute Decision-Maker has been appointed, the Advance Care Directive will remain valid and the remaining Substitute Decision-Maker/s can still act under it.

The Bill sets out provisions for the revocation of an Advance Care Directive for both a competent and also an incompetent adult who is, as a result, not able to complete a new Advance Care Directive.

Under the Bill, a competent adult can revoke their Advance Care Directive at any time, in accordance with the Regulations. The Regulations could include provisions whereby a person must sign, date and have witnessed a section on the form to make it clear that they have revoked the Advance Care Directive.

If a competent adult completes a new Advance Care Directive, any previously made instruments including existing Enduring Powers of Guardianship, Medical Powers of Attorney or Anticipatory Directions are automatically revoked. This means that the most recently dated and witnessed Advance Care Directive will be the one in force and can be relied upon in good faith.

In such a case, to ensure that all parties are aware of the revocation, the person must notify others who may have a copy, as soon as is reasonably practicable, of its revocation.

However, those acting on what they consider to be a current and valid Advance Care Directive in good faith will be afforded protection from liability.

The introduction of electronic health records will enable the most recent Advance Care Directive to be scanned and included as part of the person's electronic health record so that it can be accessed when needed.

The Bill sets out a process for the revocation of an Advance Care Directive by the Guardianship Board if a person is not competent to complete a new Advance Care Directive and they indicate a wish to revoke.

When considering the matter the Guardianship Board must:

- apply the principles in the Advance Care Directives Act
- only revoke the Advance Care Directive if the Guardianship Board is satisfied that:
  - the person understands the nature and effect of revoking the Advance Care Directive, and
  - the revocation genuinely reflects the wishes of the person to whom it relates, and
  - it is appropriate to do so in the circumstances.

However, the Guardianship Board should not revoke the Advance Care Directive if the Advance Care Directive contains provisions to the contrary.

The Bill also sets out the rights and responsibilities of health practitioners in relation to Advance Care Directives.

Health practitioners have been defined as persons who practice a registered health profession within the meaning of the Health Practitioner Regulation National Law (South Australia) Act 2010 which includes for example, medical practitioners, nurses and midwives, psychologists and pharmacists.

The Bill also provides for other professions or practice declared by the regulations to be included in the ambit of this definition. It is anticipated that the Regulations could for example include ambulance officers or aged care staff in the definition of health practitioner for the purposes of this Act.

Health practitioners are afforded protections from criminal and civil liability for acting on a valid Advance Care Directive in good faith and without negligence.

The Bill requires that a health practitioner providing health care to a person who is the subject of an Advance Care Directive and who is incapable of making the particular decision:

- must comply with binding refusals of health care
- should as far as is reasonably practicable to do so, comply with non-binding provisions
- must endeavour to seek to avoid an outcome or intervention that the person has indicated that they want avoided, for example being dependent on life support and will not recover, unable to undertake daily tasks of living for themselves or unable to communicate with family/friends
- must act in accordance with the principles set out in the Advance Care Directives legislation.

I will reiterate that a relevant provision in an Advance Care Directive, applicable to the current circumstance, is as effective as if it was the consent/refusal of the person themselves at the present time.

If a binding refusal is ignored and the particular health care is subsequently provided, this may amount to professional misconduct under the *Health Practitioner Regulation National Law (South Australia) 2010*. In these circumstances the relevant National Board would consider and decide the matter.

In addition, a health practitioner overriding a person's refusal of health care may not be afforded the relevant protections under the legislation, and in fact could be faced with a charge of assault and battery for providing health care without consent.

If a health practitioner is unsure of their obligations, they can seek advice from the Office of the Public Advocate.

Disputes or disagreements can sometimes arise about the application and interpretation of an Advance Care Directive.

Currently, under the *Consent to Medical Treatment and Palliative Care Act 1995* the only appeal mechanism is to the Supreme Court. Pursuant to the *Guardianship and Administration Act 1993,* if there is a dispute or disagreement in relation to the Enduring Power of Guardianship, the Guardianship Board can hear and decide the matter.

The Bill confers advisory and mediation functions on the Office of the Public Advocate as a less formal way of resolving a dispute.

Upon application, the Public Advocate (or delegate) can assist to resolve a matter by:

- ensuring that all parties are aware of their rights and obligations
- identifying issues which may be in dispute between the parties
- canvassing options that may obviate the need for further proceedings
- facilitating full and open discussion between the parties.

Mediation is entirely voluntary and would only be undertaken if all parties agree.

The Public Advocate may also give declarations regarding advice or mediation matters, but only in relation to:

- the nature and scope of a person's powers under the Advance Care Directive
- whether or not a particular act or omission is within the scope of the Advance Care Directive or
- whether the person who completed the Advance Care Directive has impaired decision-making capacity in respect of the particular decision.

These declarations are not binding, but may offer some certainty to those acting under an Advance Care Directive.

If a person is not satisfied with the outcome obtained from the Public Advocate's advice or declaration, or requires greater certainty about a matter, they can apply to the Guardianship Board for it to consider the matter.

Upon application, the Guardianship Board can:

- review a matter dealt with by the Public Advocate and the Board can confirm, cancel or revoke any resulting decision or declaration

- give a binding direction or declaration in relation to a matter relating to an Advance Care Directive whether or not it was a matter considered by the Public Advocate. There are penalties for failing to comply with a Guardianship Board direction or declaration.
- refer a matter to the Public Advocate if the Guardianship Board believes it should be resolved through mediation.

Currently, South Australia is one of the only Australian jurisdictions in which Advance Care Directives completed in other jurisdictions are not recognised.

To enable the legal recognition of interstate Advance Care Directives, the Bill sets out a process whereby the Governor can declare by regulation a class of instruments completed in other jurisdictions, as though completed under the Advance Care Directives legislation here in South Australia.

Provisions in an interstate Advance Care Directive considered unlawful in South Australia will be deemed void and of no effect, even if lawful interstate.

To ensure that the new legislation continues to be relevant and meets community needs and expectations into the future, the Bill requires a review of the Act five years after its commencement.

It is recognised that there will still be existing Enduring Powers of Guardianship, Medical Powers of Attorney or Anticipatory Directions which may still need to apply in the future, and will therefore require legal recognition of those prior instruments.

The Bill contains transitional provisions to this effect. The legal protections and dispute resolution process contained in the Advance Care Directives Bill will apply to these instruments.

The Bill contains related amendments to the *Consent to Medical Treatment and Palliative Care Act 1995* (Consent Act) and the *Guardianship and Administration Act 1993* (Guardianship Act) to recognise the new Advance Care Directive, update terminology and to ensure consistency between these three Acts.

Currently, the Guardianship Act sets out who can consent to health care in the case of persons with mental incapacity. The Guardianship Act specifies that, where there is no legally appointed representative such as a guardian, Enduring Guardian or Medical Agent, limited relatives can consent to health care on behalf of an adult with a mental incapacity.

Under the Guardianship Act, medical treatment is defined to include health care which can be provided by a medical practitioner or other health professional such as podiatrist, nurse and midwife, chiropractor, pharmacist, psychologist etc.

It is logical to have all of the consent provisions relating to health care contained in the Consent Act. This would leave the Guardianship Act to deal with the rare or extreme cases where it is appropriate for the state to step in.

The amendments to the Consent Act set out who can consent to health care on behalf of a patient with impaired decision-making capacity if there is no Advance Care Directive.

Under the Bill, the term *person responsible* is used and a hierarchy has been introduced.

The hierarchy is based on whether the person has a close and continuing relationship with the patient and is available and willing to make a decision.

In the absence of an appointed Substitute Decision-Maker or relevant provision under an Advance Care Directive, a person responsible for the patient can consent or refuse to consent to health care on the patient's behalf in the following order:

1. A guardian appointed by the Guardianship Board, provided that the guardian's powers do not exclude making health care decisions
2. If there is no guardian appointed, a prescribed relative of the patient can consent. Under this clause, a prescribed relative means:
   - a a legal spouse or domestic partner
   - b an adult related to the patient by blood, marriage or adoption
   - c an adult of Aboriginal and Torres Straight Islander descent who is related to the patient by Aboriginal or Torres Straight Islander kinship rules or is married to the patient according to Aboriginal tradition.

   The key to the hierarchy here is whether a person who fits into the above category has a close and continuing relationship with the patient.
3. If there is no guardian or prescribed relative, an adult friend with a close and continuing relationship can consent provided they are available and willing. A person envisaged by this category is a close friend or unpaid carer who is not a relative, but has been caring for the patient for many years and knows them well.
4. If there is no one who meets the previously mentioned categories of persons responsible, an adult charged with overseeing the ongoing day to day supervision, care and well-being of the patient who is available and willing can make a decision. Except for the Guardianship Board, this is the

category of last resort and is included to ensure that residents of care facilities for example receive timely treatment without having to go the Guardianship Board for consent each time simple treatment is proposed.

5. If there is no-one who meets the above criteria and who is available and willing to make a decision, upon application, the Guardianship Board can consent to the proposed treatment.

The provisions relating to prescribed treatment will remain in the Guardianship Act and this treatment is still only permitted with the authority of the Guardianship Board.

The amendments:

- require a person responsible to make a decision they honestly believe the person would have made in the current circumstance
- recognise that the consent or refusal to consent of a person responsible is as legally effective as if it were the consent or refusal of the patient themselves
- make it an offence for a person to knowingly hold themselves out as a person responsible if they are not
- protect health practitioners who rely on the consent/refusal of a person who holds themselves out as a person responsible, but is not.

These amendments seek to modernise and most importantly clarify consent arrangements for health care for people unable to consent themselves, and who do not have an applicable Advance Care Directive.

If an individual does not want the person responsible to be making decisions for them in the future, and they are competent, they should be encouraged to complete an Advance Care Directive.

The amendments to the Consent Act set out a similar dispute resolution process to that contained in the Advance Care Directives legislation, for consistency.

A party to a health care disagreement or dispute can apply to the Office of the Public Advocate for voluntary mediation to assist the parties to reach a mutually agreed decision. Under the Consent Act, the Public Advocate cannot issue declarations in relation to health care disputes, as the Public Advocate can under this Bill.

Alternatively, a person with an interest in the matter can apply directly to the Guardianship Board for a direction or declaration in relation to the health care decision.

In conclusion, the Advance Care Directives Bill 2012 replaces the Enduring Power of Guardianship, Medical Power of Attorney and Anticipatory Direction with one Advance Care Directive under which competent adults will be empowered to:

- express their wishes, preferences and instructions about future health care, residential, accommodation and other personal matters and/or
- appoint one or more substitute decision-makers who will be empowered to make health care, residential, accommodation and personal decisions on their behalf.

The Bill will apply to any period of impaired decision-making capacity whether temporary, fluctuating or permanent, as directed by the person in their Advance Care Directive.

The Bill:

- takes a broad view of health and well-being and is not restricted to medical treatment decisions at the end of life
- includes protections for Substitute Decision-Makers, health practitioners and others who give effect to Advance Care Directives in good faith and without negligence
- sets out clear processes for dispute resolution. Additional powers have been given to the Office of the Public Advocate to conduct voluntary mediation and to the Guardianship Board to hear unresolved disputes, review mediation outcomes, and give orders and directions to resolve matters and
- amends the *Consent to Medical Treatment and Palliative Care Act 1995* to clarify consent arrangements in the absence of an Advance Care Directive for patients unable to consent, and introduces a dispute resolution process, including voluntary mediation.

To realise the benefits of the new legislation, a comprehensive and collaborative approach to the Act's implementation will be critical. This will largely be based on the Advance Directives Review Stage 2 Report: *Recommendations for implementation and communication strategies*.

As a way of increasing public awareness about the benefits of completing an Advance Care Directive, it is intended to execute and launch an annual 'Life in Order Day' or similar to coincide with the Act's commencement.

The aim of this annual event would be to encourage all South Australians to think about putting their affairs in order, including completing or revising their Advance Care Directive and financial and legal affairs (Power of Attorney), as well as their organ donation wishes and their will.

I would encourage non-government organisations to participate and involve their consumers in the day. There is considerable support in the non-government sector for increasing uptake, and raising awareness about the importance of Advance Care Directives so that people can have a say in decisions affecting them before their capacity to do so is impaired or lost.

Advisory services for both the completion and application of Advance Care Directives will support the community and health, community care and aged care sectors with the new scheme.

This Bill, together with the proposed changes to the financial power of attorney being undertaken by the Attorney-General, will form a cohesive package that will reform South Australia's legislation on advance directives and make it easier for the community to plan ahead for future health, medical, residential, personal and financial matters in the event they are unable to make their own decisions, for whatever reason.

A simplified framework for Advance Care Directives and clarifying informal consent arrangements for people with impaired capacity will be welcomed by many South Australians.

I commend the Bill to the House.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal

3—Interpretation

This clause defines key terms used in the measure.

4—References to provision of health care to include withdrawal etc of health care

This clause clarifies that references to providing health care will also include withdrawing or withholding health care.

5—References to particular forms of health care in advance care directives

This clause provides that references in advance care directives to a particular form of health care will extend to other health care that is of substantially the same kind, so that people giving advance care directives are not required to be unduly technical in their descriptions of treatments.

The clause also provides that a reference to a particular illness etc extends to include a reference to any other illness etc that arises in the course of, or out of the treatment of, the original illness etc.

6—Health practitioner cannot be compelled to provide particular health care

This clause makes it clear that an advance care directive, a substitute decision-maker or an order of the Guardianship Board cannot compel doctors and other health practitioners to provide any particular form of treatment—those decisions remain for the doctor to decide.

However, that does not apply in the case of withdrawal or withholding of healthcare which would, because of the operation of clause 4 of the Bill, otherwise be caught by this proposed section.

Should a provision of an advance care directive etc purport to compel a health practitioner to provide particular treatment, the relevant provision will be void and of no effect.

7—Impaired decision-making capacity

This clause sets out when a person will be taken to have impaired decision-making capacity for the purposes of the measure.

8—Application of Act

This clause is formal.

Part 2—Objects and principles

9—Objects

This clause sets out the objects of the Act.

10—Principles

This clause sets out certain principles that must be taken into account in connection with the administration, operation and enforcement of this measure. The principles reflect the underlying values on which the Bill is predicated. Of particular note is the idea that people need to be allowed to make their own decisions about their health care, residential and accommodation arrangements and personal affairs to the extent that they are able, and then be supported to enable them to make such decisions for as long as they can.

Part 3—Advance care directives

Division 1—Advance care directives

11—Giving advance care directives

This clause sets out how an advance care directive must be given in order to be valid.

In particular, it requires that an approved form be completed and witnessed as required by the measure.

An advance care directive can cover the future health care, residential and accommodation matters and personal affairs of the person giving the advance care directive as he or she thinks fit-it is up to the person how detailed he or she wishes their instructions and wishes to be.

Proposed subsection (5) sets out a number of circumstances that may be present in respect of a person's advance care directive, but that will not, of themselves, invalidate the advance care directive. Again, this is intended to make it easier for people to give advance care directives, without being unduly restricted by technicalities.

12—Provisions that cannot be included in advance care directives

This clause sets out provisions that cannot be included in an advance care directive (and if they are, they will be void and of no effect).

In particular, an advance care directive cannot make a provision that is illegal, or requires an illegal act to be performed (for example a provision requiring voluntary euthanasia to be administered). But an advance care directive also cannot be relied on to thwart treatments required by the law, such as treatment orders under the *Mental Health Act 2009*.

13—Advance care directive not to give power of attorney

This clause provides that an advance care directive cannot give a person's power of attorney to another (that is, the power to deal with the legal and property affairs of the person). That can only occur under the *Powers of Attorney and Agency Act 1984*, or some other relevant law.

14—Giving advance care directives where English not first language

This clause sets out how a person can give an advance care directive if English is not his or her first language.

15—Requirements for witnessing advance care directives

This clause sets out the requirements for witnessing an advance care directive. The advance care directive will only be taken to have been witnessed in accordance with the measure if it complies with this proposed section.

The witness is required to certify to certain matters set out in proposed subsection (1)(b).

A person specified by proposed subsection (2) cannot be a witness under an advance care directive.

16—When advance care directives are in force

This clause sets out when an advance care directive takes effect, namely from the time it is witnessed in accordance with the Act (following completion of the advance care directive form and the witness complying with section 15). An advance care directive remains in force (that is, it continues to have effect) until the person who gave the advance care directive dies, it is revoked or it expires in accordance with its terms, whichever happens first.

17—Advance care directive revokes previous advance care directives

This clause provides that if a person gives an advance care directive, all previous advance care directives given by that person are revoked.

18—No variation of advance care directive

This clause clarifies that, subject to the power conferred on the Guardianship Board under Part 7 of the measure to make certain orders in relation to substitute decision-makers, an advance care directive cannot be varied.

19—Binding and non-binding provisions

This clause sets out what is a binding provision of an advance care directive (which must be complied with by health practitioners etc) and what are non-binding provisions (which should be given effect).

20—Advance care directive has effect subject to its terms

This clause provides that an advance care directive has effect according to its terms other than where this measure, or another Act or law, prevents a particular provision of an advance care directive from having effect.

Division 2—Substitute decision-makers

21—Requirements in relation to appointment of substitute decision-makers

This clause provides that a person who gives an advance care directive can appoint 1 or more substitute decision-makers to make decisions for the person.

The clause also sets out who cannot be a substitute decision-maker—basically a person who is either incompetent, or has duties that may conflict with the role of substitute decision-maker.

The regulations may also set out requirements that must be complied with in relation to the appointment of substitute decision-makers.

22—Substitute decision-makers jointly and severally empowered

This clause provides that, unless the person giving the relevant advance care directive specifies otherwise in the advance care directive, any substitute decision-makers appointed under the advance care directive will be able to act jointly or severally, that is any one of them can exercise any power by themself, or collectively with any or all of the others.

The person giving the advance care directive can, however, make provisions setting out how any powers conferred on substitute decision-makers are to be exercised, and those provisions will prevail.

23—Powers of substitute decision-maker

This clause sets out the powers of substitute decision-makers, namely that he or she can make decisions on behalf of the person who gave the relevant advance care directive in the areas listed in subsection (1).

However, the person giving the advance care directive can make provision in his or her advance care directive limiting or otherwise qualifying the powers of any or all of the substitute decision-makers, and those provisions will prevail.

A substitute decision-maker cannot exercise a power that the person who gave the advance care directive has as a trustee or personal representative of another, for example where the person is the guardian of another.

The clause also provides that (unless the advance care directive provides otherwise) the substitute decision-maker cannot refuse the provision of pain relief, or food and liquids by mouth, to the person who gave the advance care directive.

24—Exercise of powers by substitute decision-maker

This clause sets out requirements relating to how a substitute decision-maker can make a decision under an advance care directive. In particular, he or she must produce the advance care directive or a certified copy at the request of the relevant health practitioner.

25—Substitute decision-maker to give notice of decisions

This clause requires a substitute decision-maker to notify each other substitute decision-maker under an advance care directive if he or she makes a decision under the advance care directive.

26—Substitute decision-maker may obtain advice

This clause allows a substitute decision-maker to seek advice—professional or otherwise—in relation to performing his or her functions as substitute decision-maker.

27—Substitute decision-maker may renounce appointment

This clause sets out how a substitute decision-maker can renounce his or her appointment, namely by giving notice in writing to the person who gave the advance care directive. Of particular note is the fact that, if the person who gave the advance care directive is not competent, a substitute decision-maker can only renounce his or her appointment with the permission of the Guardianship Board.

28—Death of substitute decision-maker does not affect validity of advance care directive

This clause clarifies that the death of a substitute decision-maker does not, of itself, affect the validity of the relevant advance care directive. That is not to say that the operation of the advance care directive will not be affected (for example certain decisions may not be able to be made), but the death will not itself automatically invalidate the advance care directive in its entirety.

Division 3—Revoking advance care directives

Subdivision 1—Revoking advance care directive where person competent

29—Revoking advance care directive where person competent

This clause sets out how a competent person who understands the consequences of revoking their advance care directive can revoke it, and sets out requirements to be complied with if they do so.

Subdivision 2—Revoking advance care directive where person not competent

30—Application of Subdivision

This Subdivision applies to people who are not competent, or do not appear to understand the consequences of revoking an advance care directive.

31—Guardianship Board to be advised of wish for revocation

If any person becomes aware that a person in relation to whom this Subdivision applies wishes, or may wish, to revoke an advance care directive they must advise the Guardianship Board.

The Guardianship Board may give any directions to specified persons or bodies that the Guardianship Board thinks necessary or desirable, which must be complied with, with a criminal offence carrying a maximum penalty of 6 months imprisonment applying if they do not. A defence is available and is set out in subsection (4).

32—Revoking advance care directives where person not competent

This clause provides that the advance care directive of a person to whom the Subdivision applies can only be revoked by the Guardianship Board under this proposed section.

The Board should only revoke an advance care directive if it truly reflects the considered wishes of the person who gave it.

Part 4—Recognition of advance care directives from other jurisdictions

33—Advance care directives from other jurisdictions

This clause recognises and gives effect to advance care directives (whatever they may be called) from other jurisdictions within Australia. However, a provision of an interstate advance care directive that could not be made in this jurisdiction, for example a provision requesting the administration of euthanasia, is void and of no effect.

Part 5—Giving effect to advance care directives

34—When things can happen under an advance care directive

This clause sets out when decisions can be made by a substitute decision-maker, or health care provided, under an advance care directive.

Those things can only happen if the person who gave the advance care directive has impaired decision-making capacity in respect of a proposed decision. However, any provision of an advance care directive may be used in determining the wishes of the person who gave it.

35—Substitute decision-maker to give effect to advance care directive

This clause requires a substitute decision-maker to give effect to the matters set out in proposed subsection (1)(a), to make the decision that the substitute decision-maker reasonably believes the person who gave the advance care directive would have made, and to act with due diligence and in good faith.

36—Health practitioners to give effect to advance care directives

This clause requires a health practitioner who is providing, or is to provide, health care to a person who has given an advance care directive to give effect to the matters set out in subsection (1). In particular, he or she *must* comply with a binding provision of the advance care directive (that is, a provision refusing particular health care) and *should*, if it is reasonably practicable, comply with non-binding provisions.

The clause does allow a health practitioner to refuse to comply with a provision (other than a binding provision and a provision comprising instructions in relation to the withdrawal, or withholding, of health care) of an advance care directive if to give effect to the provision is not consistent with any relevant professional standards or does not reflect current standards of health care in the State.

A failure to comply with the proposed section by a health practitioner amounts to unprofessional conduct.

37—Conscientious objection

This clause allows a health practitioner to refuse to comply with a provision of an advance care directive (including a binding provision) on conscientious grounds. If they do so, the health practitioner must comply with the requirements under proposed subsection (2) including identifying, and referring the patient to, a health practitioner who they believe will not refuse.

38—Consent etc taken to be that of person who gave advance care directive

This clause provides that a consent given by a substitute decision-maker, or by a provision of an advance care directive, will be taken to be the consent of the person who gave the advance care directive (as if they were capable of giving such consent).

39—Consent taken to be withdrawn in certain circumstances

This clause provides that a consent granted under an advance care directive will be taken to have been withdrawn if the person who gave the advance care directive expressly or implicitly withdraws the relevant consent.

However, a person giving an advance care directive can override that presumption by express provision in the advance care directive, and the presumption will not apply in circumstances prescribed by regulation.

Despite the deemed withdrawal of consent, anything done in good faith, without negligence and in accordance with an advance care directive before consent was withdrawn under the section will be taken to be valid, and always to have been valid.

Part 6—Validity and limitation of liability

40—Presumption of validity

This clause provides that a person is entitled to presume that an apparently genuine advance care directive is valid and in force unless he or she knew, or ought reasonably to have known, that is was not.

41—Protection from liability

This clause removes criminal and civil liability for an act or omission of a person done or made in good faith, without negligence and in accordance with an advance care directive.

42—Validity of acts etc under revoked or varied advance care directive

This clause provides that things done pursuant to an advance care directive remain valid despite its revocation or variation.

Part 7—Dispute resolution, reviews and appeals

Division 1—Preliminary

43—Interpretation

This clause defines who is an eligible person in respect of an advance care directive, and hence able to access the dispute resolution processes under the proposed Part.

44—Application of Part

This clause sets out the matters to which the proposed Part applies (that is, those disputes and matters that can be resolved under the Part).

Division 2—Resolution of disputes by Public Advocate

45—Resolution of disputes by Public Advocate

This clause sets out the ways in which the Public Advocate can assist in the resolution of matters to which the Part applies.

In particular, the Public Advocate can mediate disputes, and can make declarations of the kind set out in subsection (5).

The clause also makes procedural provisions in relation to proceedings under the section.

46—Public Advocate may refer matter to Guardianship Board

This clause provides that the Public Advocate can refer certain matters to the Guardianship Board if he or she thinks it is more appropriate that the matter be dealt with by the Guardianship Board.

Division 3—Resolution of disputes by Guardianship Board

47—Resolution of disputes by Guardianship Board

This clause sets out the ways in which the Guardianship Board can resolve matters to which the Part applies.

This can occur by way of the Guardianship Board reviewing a matter dealt with by the Public Advocate under proposed section 45, or by the Board making certain declarations or directions in relation to a matter.

The clause also makes procedural provisions in relation to proceedings under the proposed section.

48—Guardianship Board may refer matter to Public Advocate

This clause provides that the Guardianship Board can refer certain applications under section 47(1)(b) to the Public Advocate if the Board is of the opinion that the matter is more appropriately dealt with by the Public Advocate.

49—Failing to comply with direction of Guardianship Board

This clause establishes an offence for a person to fail to comply with a direction of the Guardianship Board under the proposed Division, carrying a maximum penalty of 6 months imprisonment. A defence is available and is set out in subsection (2).

50—Orders of Guardianship Board in relation to substitute decision-makers

This clause allows an eligible person to apply to the Guardianship Board to revoke the appointment of a substitute decision-maker who cannot be a substitute decision-maker, who does not wish to be a substitute decision-maker or who has been negligent or is otherwise an inappropriate person to be a substitute decision-maker.

The clause also allows the Guardianship Board to vary the advance care directive to, amongst other things, appoint a new substitute decision-maker or (in cases where there is only one substitute decision-maker) to revoke the advance care directive.

The clause also provides guidance to the Guardianship Board in relation to the exercise of its powers under the section.

Division 4—Urgent review of decisions

51—Urgent review by Supreme Court

This clause provides for an urgent review in the Supreme Court of a matter specified in proposed subsection (1). The review is limited to ensuring that a substitute decision-maker's decision is in accordance with the relevant advance care directive and the Act.

Division 5—Miscellaneous

52—Question of law may be referred to Supreme Court

This clause allows the Public Advocate or the Guardianship Board to refer a question of law for the opinion of the Supreme Court.

53—Operation of orders pending appeal

This clause provides that a decision, direction or order of the Guardianship Board or a court continues to have effect despite an appeal against the decision being instituted (although the decision, direction or order can be suspended by the body that made it or the appellate court.)

Part 8—Offences

54—False or misleading statements

This clause creates an offence where a person knowingly makes a false or misleading statement in, or in relation to, an advance care directive. The maximum penalty is 2 years imprisonment.

55—Fraud, undue influence etc

This clause creates an offence where a person, by dishonesty or undue influence, induces another to give an advance care directive. The maximum penalty is 10 years imprisonment. A person found guilty of the offence may also forfeit any interest that the person has in the estate of the person who gave the relevant advance care directive.

The clause also allows a sentencing court to make certain orders relating to the disposition of the advance care directive.

Part 9—Miscellaneous

56—Giving notice to substitute decision-makers

This clause sets out how notice can be given to a substitute decision-maker, and further requires a substitute decision-maker given notice to then notify each other substitute decision-maker.

57—Prohibition of publication of reports of proceedings

This clause prevents publication of reports into proceedings under the proposed Act (except with the authorisation of the court or body conducting the proceedings or the consent of the person who gave the relevant advance care directive).

58—Service of documents

This standard clause sets out how documents under the Act can be served on a person.

59—Victimisation

This clause provides for acts of victimisation arising out of the doing of certain things under the measure to be dealt with as a tort, or under the *Equal Opportunity Act 1984* (but not both) and sets out procedural matters accordingly.

60—Confidentiality

This clause creates an offence for a person engaged or formerly engaged in the administration of this Act to divulge or communicate personal information obtained (whether by that person or otherwise) in the course of official duties except in the circumstances set out in proposed subsection (1).

61—Review of Act

This clause requires the Minister to cause a review of the proposed Act to be conducted before the fifth anniversary of its commencement. A report of the review must be prepared and laid before both Houses of Parliament.

62—Regulations

This clause is a standard regulation making power, allowing regulations to be made for the purposes of the Act.

Schedule 1—Related amendments and transitional provisions

Part 1—Preliminary

1—Amendment provisions

This clause is formal.

Part 2—Amendment of *Consent to Medical Treatment and Palliative Care Act 1995*

2—Amendment of section 3—Objects

This clause makes a consequential amendment.

3—Amendment of section 4—Interpretation

This clause makes consequential amendments and defines key terms to be used in the principal Act.

4—Insertion of sections 4A and 4B

This clause inserts new sections 4A and 4B into the principal Act as follows:

4A—References to provision of medical treatment etc to include withdrawal etc of medical treatment

This clause clarifies that where there is a reference in the *Consent to Medical Treatment and Palliative Care Act 1995* to medical treatment, that reference will include the withdrawal or withholding of treatment.

4B—Consent not required for withdrawal etc of medical treatment

This clause clarifies that the *Consent to Medical Treatment and Palliative Care Act 1995* does not operate to require consent to be given before any medical treatment can be withdrawn or withheld.

5—Repeal of section 5

This clause repeals section 5 of the principal Act.

6—Amendment of heading to Part 2

This clause makes a consequential amendment.

7—Repeal of Part 2 Divisions 2 and 3

This clause repeals Divisions 2 and 3 of Part 2 of the principal Act, anticipatory directions and medical agents having been replaced by advance care directives.

8—Amendment of section 13—Emergency medical treatment

This clause makes a consequential amendment.

9—Repeal of Part 2 Division 6

This clause makes a consequential amendment.

10—Insertion of Part 2A

This clause inserts new Part 2A into the principal Act as follows:

Part 2A—Consent to medical treatment if person has impaired decision-making capacity

14—Interpretation

New section 14 defines key terms used in the new Part 2A.

Of particular note is the definition of 'person responsible', which sets out a hierarchy of persons who, in respect of a particular patient, can make certain decisions regarding the patient's medical treatment. However, a person who is lower than another in the hierarchy will only be taken to be a person responsible if no higher person is available and willing to make the relevant decision.

New Part 2A applies to a broader range of health care than the usual limits of medical treatment. The 'medical treatment' contemplated by the new Part includes health care provided by a person practising any health profession (within the meaning of the *Health Practitioner Regulation National Law (South Australia)*, including areas such as optometry, podiatry and physiotherapy.

14A—Application of Part

New section 14A sets out matters or areas to which the new Part will not apply, namely the treatment of children, people who have given certain advance care directives and the provision of prescribed treatment under the *Guardianship and Administration Act 1993* (such as sterilisation of mentally incapacitated persons).

14B—Consent of person responsible for patient effective in certain circumstances

New section 14B enables a person responsible in respect of a patient with impaired decision-making capacity to make certain decisions relating to medical treatment on behalf of the patient. If they do so, any consent given will be taken to have been given by the patient. It is worth noting that a person responsible can refuse to consent to proposed medical treatment.

The new section also provides protection for medical practitioners, insofar as it deems the patient to have consented even where the person responsible was not, in fact, a person responsible for the patient, provided that the medical practitioner did not know and could not reasonably be expected to have known that the person was not, in fact, a person responsible for the patient.

14C—Person responsible for patient to make substituted decision

New section 14C requires a person responsible who is making a decision on behalf of a patient to make the decision that they believe the patient would have made in the circumstances.

14D—Person must not give consent unless authorised to do so

New section 14D creates an offence for a person to purport to make a decision, or represent him or her self, as a person responsible in respect of a patient if he or she is not, in fact, such a person. The maximum penalty is imprisonment for 2 years.

11—Amendment of section 17—The care of people who are dying

This clause substitutes section 17(2) of the principal Act to clarify some confusion about the ability of a patient's representative to demand the continuation of treatment to a dying patient in circumstances where to do so is futile. New subsection (2) makes it clear that medical practitioners and those under their supervision are under no duty to use or continue treatment in such circumstances, regardless of the whether the patient's representative has requested them to do so. However, the medical practitioner etc must withdraw life sustaining measures if directed to do so by the patient's representative.

12—Insertion of Part 3A

This clause inserts new Part 3A as follows:

Part 3A—Dispute resolution

Division 1Preliminary

18A—Interpretation

New section 18A defines key terms used in the new Part.

18B—Application of Part

New section 18B sets out the matters able to be subject to the dispute resolution processes under the new Part.

Division 2—Resolution of disputes by Public Advocate

18C—Resolution of disputes by Public Advocate

New section 18C sets out the Public Advocate's role in the dispute resolution processes of the new Part.

Importantly, the Public Advocate may mediate a dispute that has arisen in relation to a matter without prejudice to the parties' position in later proceedings.

18D—Public Advocate may refer matter to Guardianship Board

New section 18D allows the Public Advocate, if he or she has ended a mediation that would be more appropriately dealt with by the Guardianship Board, to refer the matter to the Board for determination.

It is proposed that the regulations will make the necessary procedural provisions in respect of the referrals.

Division 3—Resolution of disputes by Guardianship Board

18E—Resolution of disputes by Guardianship Board

New section 18E sets out the role of the Guardianship Board in terms of resolving disputes to which the new Part applies.

The Guardianship Board (on the application of an eligible person) can review matters the subject of mediation by the Public Advocate. The Guardianship Board can also make declarations and directions that it considers appropriate in a particular case.

The Guardianship Board can refuse to hear certain matters—those lacking substance, or that are frivolous or vexatious, for example. It can also refuse to hear a matter that it thinks should properly be the subject of legal proceedings.

18F—Guardianship Board may refer matter to Public Advocate

New section 18F enables the Guardianship Board to refer certain matters the subject of an application under new section 18E to the Public Advocate. Such matters would include those that would be open to mediation.

18G—Contravention of direction

New section 18G creates an offence for a person to fail to comply with a direction of the Guardianship Board under new Division 3. The maximum penalty is imprisonment for 6 months.

Division 4—Miscellaneous

18H—Question of law may be referred to Supreme Court

New section 18H allows the Public Advocate and the Guardianship Board to refer questions of law to the Supreme Court for an opinion.

18I—Operation of orders pending appeal

New section 18I provides that a decision, direction or order of the Guardianship Board or a court continues to have effect despite an appeal against the decision being instituted (although the decision, direction or order can be suspended by the body that made it or the appellate court).

13—Substitution of section 19

This clause substitutes section 19 of the principal Act, replacing it with a regulation-making power that reflects current legislative practice.

Part 3—Amendment of *Coroners Act 2003*

14—Amendment of section 3—Interpretation

This clause makes a consequential amendment to the *Coroners Act 2003*.

Part 4—Amendment of *Fair Work Act 1994*

15—Amendment of section 76—Negotiation of enterprise agreement

This clause makes a consequential amendment to the *Fair Work Act 1994*.

Part 5—Amendment of *Guardianship and Administration Act 1993*

16—Amendment of section 3—Interpretation

This clause makes consequential amendments to section 3 of the principal Act, and inserts new terms used in the Act.

17—Amendment of section 5—Principles to be observed

This clause makes a consequential amendment.

18—Repeal of Part 3

This clause repeals Part 3 of the principal Act (relating to the appointment of enduring guardians). That role is instead to be dealt with by way of an advance care directive.

19—Amendment of section 28—Investigations by Public Advocate

This clause extends the operation of section 28 of the principal Act (dealing with investigations of certain matters by the Public Advocate) to include the affairs of a person whose advance care directive has been revoked by the Guardianship Board under the measure.

20—Amendment of section 29—Guardianship orders

This clause extends the operation of section 29 of the principal Act (dealing with when the Guardianship Board can make a guardianship order) to include where a person's advance care directive has been revoked by the Guardianship Board under the measure.

The clause also inserts new subsection (7) into section 29, requiring that the terms of a guardianship order should, as far as is reasonably practicable, be consistent with the terms of any relevant advance care directive.

21—Insertion of section 31A

This clause inserts new section 31A into the principal Act, which requires a guardian to find out whether the person for whom they are a guardian has given an advance care directive (including certain advance care directives that have been revoked), and then to take steps to give effect to any wishes or instructions it may contain, particularly in terms of avoiding unwanted outcomes.

22—Amendment of section 32—Special powers to place and detain certain persons

This clause amends section 32 of the principal Act to include persons who have given an advance care directive under which a substitute decision-maker has been appointed among the persons who can be placed and detained under the section.

23—Amendment of section 33—Applications under this Division

This clause makes a consequential amendment.

24—Amendment of section 37—Applications under this Division

This clause makes a consequential amendment.

25—Amendment of heading to Part 5

This clause makes a consequential amendment.

26—Repeal of sections 58, 59 and 60

This clause repeals sections 58, 59 and 60 of the principal Act, those sections having been moved to new Part 2A of the *Consent to Medical Treatment and Palliative Care Act 1995*.

27—Amendment of section 61—Prescribed treatment not to be carried out without Board's consent

This clause makes a consequential amendment.

28—Repeal of section 79

This clause makes a consequential amendment.

29—Repeal of Schedule

This clause makes a consequential amendment.

Part 6—Amendment of *Health and Community Services Complaints Act 2004*

30—Amendment of section 24—Who may complain

This clause makes a consequential amendment to the *Health and Community Services Complaints Act 2004*.

Part 7—Amendment of *Wills Act 1936*

31—Amendment of section 7—Will of person lacking testamentary capacity pursuant to permission of court

This clause makes a consequential amendment to the *Wills Act 1936*.

Part 8—Transitional provisions

32—Transitional provisions relating to anticipatory directions under *Consent to Medical Treatment and Palliative Care Act 1995*

This transitional provision converts, on the day clause 6 of Schedule 1 comes into operation, a current direction under section 7 of the *Consent to Medical Treatment and Palliative Care Act 1995* to an advance care directive of corresponding effect and given in accordance with this Act, and makes consequential and procedural provisions accordingly.

The provisions of this measure will then apply to the advance care directive.

33—Transitional provisions relating to medical agents under *Consent to Medical Treatment and Palliative Care Act 1995*

This transitional provision converts, on the day clause 7 of Schedule 1 comes into operation, a current appointment of a medical agent under section 8 of the *Consent to Medical Treatment and Palliative Care Act 1995* to an advance care directive of corresponding effect and given in accordance with this Act, and makes consequential and procedural provisions accordingly.

The provisions of this measure will then apply to the advance care directive.

34—Transitional provisions relating to other instruments continued under *Consent to Medical Treatment and Palliative Care Act 1995*

This transitional provision converts, on the day Part 2 of Schedule 1 comes into operation, a current direction or enduring power of attorney continued in force under Schedule 3 of the *Consent to Medical Treatment and Palliative Care Act 1995* to an advance care directive of corresponding effect and given in accordance with this Act, and makes consequential and procedural provisions accordingly.

The provisions of this measure will then apply to the advance care directive.

35—Transitional provisions relating to enduring guardians under *Guardianship and Administration Act 1993*

This transitional provision converts, on the day clause 18 of Schedule 1 comes into operation, a current appointment of an enduring guardian under section 25 of the *Guardianship and Administration Act 1993* to an advance care directive of corresponding effect and given in accordance with this Act, and makes consequential and procedural provisions accordingly.

The provisions of this measure will then apply to the advance care directive.

36—Only 1 advance care directive to be created

This transitional provision provides that, even if 2 or more of the preceding transitional provisions have work to do, only 1 advance care directive will be created, covering all of the relevant provisions.

37—Disputes

This transitional provision extends the operation of Part 7 of this measure dealing with dispute resolution to include disputes arising out of the operation of Schedule 1 of the measure.

Debate adjourned on motion of Ms Chapman.

STATUTES AMENDMENT AND REPEAL (SUPERANNUATION) BILL

Consideration in committee of the Legislative Council's amendments.

The Hon. M.F. O'BRIEN: I move:

That the Legislative Council's amendments be agreed to.

The government concurs with the amendments; in fact, they are government amendments. I would like to speak briefly.

The CHAIR: That is helpful if we agree, if they are our amendments!

The Hon. M.F. O'BRIEN: I thought I would clarify that I am not at dispute with myself. The amendments are of some significance and what will ultimately flow from the first of the amendments, I think, will be of great benefit to low income earners. The first amendment to the bill has been moved at clause 13A to facilitate the introduction of the proposed new tax-exempt Public Sector Superannuation Scheme by 1 January 2013. This new fund is being introduced to ensure that employees of the state government, who are earning less than $37,000 per annum, will receive the new commonwealth Low Income Earners Government Superannuation Contribution. This commonwealth payment is not available to members of untaxed schemes such as the Triple S scheme.

In particular, the amendment provides a mechanism to ensure that, if a Triple S member elects to join the new taxed fund, the state government employer of that member will be required under section 21 of the Southern State Superannuation Act 2009 to contribute to that new fund only rather than to the Triple S scheme. The new tax fund operates under the same sphere as the Triple S scheme in respect of employer obligation under the Superannuation Guarantee Administration Act 1992, and we are now in the process of establishing this fund for low income earners employed by the state government.

The second amendment to the bill relates to the provisions dealing with the Electricity Industry Superannuation Scheme. The bill originally dealt with a proposal that a technical amendment be made to existing schedule 1B of the Superannuation Act 1988 to enable persons in receipt of a taxed source pension from the EISS scheme to be transferred to a tax fund administered by Super SA. As members may be aware, this was an issue of some concern to superannuants, and they have made representations to a large number of parliamentarians, including a large number in the House of Assembly.

On the basis of those representations, and the concern expressed, the government has agreed for a review to be undertaken into the benefit reduction formula, and a reference has been proposed to be sent to the Ombudsman to basically deal with the benefit reduction formula which reduced gross benefits of EISS members following this scheme's loss of constitutional protection and its consequential move into a taxed environment. That concludes my comments.

The Hon. I.F. EVANS: This deals with the amendments from the upper house regarding the superannuation bill. The minister's office has provided the opposition with a briefing. The opposition agrees with the matter in relation to low paid workers and access to the Commonwealth Superannuation Scheme or payment, and we will be supporting the relative amendment.

In relation to the amendments that deleted the Electricity Industry Superannuation Scheme, I thank the minister, as I did during the contribution in the original debate, for his assistance in relation to that matter. The members of the Electricity Industry Superannuation Scheme fund wanted those particular measures taken out until a potential investigation by the Ombudsman was completed. I think we are still awaiting the outcome of a vote in the other place on that particular matter, so the opposition agrees with the amendments.

Motion carried.

CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) (R18+ COMPUTER GAMES) AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

The DEPUTY SPEAKER: Member for Bragg, I understand you sought leave to continue your remarks.

Ms CHAPMAN (Bragg) (15:46): I did indeed. I think I was halfway through a sentence, but missed the words 'would be terminal', so I will add that in and hope that the grammar will be correct as it goes through.

I think I have outlined fairly comprehensively what we are prepared to support with the amendment to clause 17. One of the things I suppose we need to look at between houses is how we manage that because, whilst a set of guidelines has been provided by a body which may ultimately be one of the prescribed bodies approved to provide the guidelines, I expect that by simply deleting that provision out of clause 17 there will need to be some obligation in the principal

act requiring that there be compliance with certain standards. We will be suggesting that that needs to be in regulatory form, rather than simply regulating a prescribed body to set the rules.

I do not think it will be beyond the wit and capacity of our excellent parliamentary counsel to draft that, but I cannot come into the house and say that simply removing that would be the way to deal with it. So, those documents will be prepared between houses and presented in another place.

I know that the Attorney-General does not like that; he likes to be able to scrutinise things at that first instance in the debate. There is some merit in that argument; it simply means, though, that we need to be able to have sufficient time to reflect on the briefings and information we get, obtain answers and be able to have time to consult with the stakeholders in question. I simply indicate that that will be a matter for between the houses.

I also wish to make some further comment in relation to the member for Croydon who, of course, was the attorney-general during the development of this initiative at the national level, that is, the meeting of the federal and state Attorneys over many years in developing this. I was interested to hear from the former attorney that his implacable objection to this had waned; in fact, it appears to have completely evaporated and he is now on side and supportive of the legislation.

However, when the former attorney outlined his now glowing endorsement of this legislation, he spoke about other attorneys-general not being happy with this. I was keen to advise the house of statements made by the attorney on prior occasions in relation to both his objection and the apparent support of others, which does not appear to have ever reached the light of day. His objections go over many years, of course, but some rather important statements were made by him. For example, on 11 March 2008, he was interviewed on ABC radio by Mr Abraham, who said that he had been described as:

> South Australia's Attorney-General Michael Atkinson has become the Darth Vader of politics with his opposition to an R18+ rating for computer games.

I will summarise the former attorney's rather verbose answers in the interview that followed. He said, 'But what I argue is that no parental locks are going to work here on these machines because children are more technology savvy than their parents, so the parents won't really be able—they probably can't now regulate children's access to these kinds of games. But we would just make it worse by filling out video stores with R18 games.'

There were other occasions, back on 28 March 2007, when Mr Bevan questioned him about his position. Mr Bevan said:

> But if this R18+ classification is introduced, then these videos will be available, but if you hold out they would be classed as unclassified and therefore not available. They would be illegal.

Mr Atkinson said:

> That's correct. Ever since I was Attorney-General in 2002, I have been opposed to introducing R18+ classification for computer games and, because just one minister can veto changes to our censorship arrangement in Australia, they have not come in. By the way, I think there probably are other attorneys-general who agree with me, but they let me take the running on it.

Mr Bevan said, 'But at the moment you are the only one stopping this.' Mr Atkinson said:

> I am the only one speaking out against it because I take the view that it's all very well to have R18+ classification for films that are shown principally in cinemas, where the age of the people coming to watch can be regulated. It's quite another thing to have R18+ classification for computer games which are interactive, are high impact and which are in the home where they can be accessed by children.

Mr Abraham asked, 'So you're not going to change your position?' The attorney said, 'No, I don't think so. Haven't seen grounds to.'

The position as elaborated today by the member for Croydon illustrates the damage that he claims would be wreaked upon our community and particularly our children if they were exposed to, or had access to, this type of interactive activity. On 30 April 2008, he said:

> Because these games are interactive in a way that film isn't, they have a higher impact, particularly the violence, and that because they come into the home rather than being screened in a public place, it's more likely that children will get hold of R18+ rated games...And in Australia it's classified MA15+, which means it's suitable for children 15 years and over. If it were in the cinema, they would have to be accompanied by an adult, but I rather doubt that they'll be accompanied at home playing this game by their parents.

It seems that the former attorney was motivated on late-night radio during 2009 to repeat the rather gory details that he has described in today's debate: the description of the appalling level of violence and the rather despicable images of human beings being raped, slain or dissected.

I am not going to illustrate the detail that the member for Croydon had. I think there is enough grotesque image, torture and unacceptable conduct toward others in the world live that we see in other countries and on television without having to perpetuate that on any kind of entertainment facility. It does not do anything for me. I do not doubt that a number of members here probably feel the same. It is not the sort of thing that we want to relax in front of or receive some entertainment from. The real world is ugly enough, in my view, without having to see it repeated over and over again, let alone interacting with it in a real world way of causing that harm to others.

However, the former attorney-general made it very clear in his late night interactions, particularly on talkback radio, with a number of presenters. Bob Francis springs to mind as one of the commentators on late night radio whom the then attorney-general felt the need to ring up and make his contribution. I think with Bob Francis it was a bit of a love-hate relationship. I think sometimes he was led on and sometimes he was not.

On myriad occasions through that period 2008 to 2010, because after the election he was no longer required as the attorney-general, there was a concentration of occasions where he would go onto late night radio, outline the most gruesome and despicable images of games that were rape of women and the like that were unacceptable and unconscionable behaviour to be displayed anywhere, and he was absolutely clear in his objection to this material in any way coming into the presence of our households, particularly exposed to children.

I do not disagree with that. I have a different view, though, as to how that type of material should be managed. I have to say—and I could go through all the detail of it but I am sure that other members can read transcripts themselves—an amount of this sort of behaviour can receive a no classification and can be excluded. It is not as though our classification laws currently cannot deal with very severe and obscene material. I think the former member had made rather significant exaggerations of the type of material that would have been accessible to children with this legislation. I think it just totally exploited this as something that was his little vigilante approach on an issue. Of course, he attracted a number of objectors and he has outlined how he was even challenged at the 2010 election with the establishment of a political party opposing him.

In any event, I think members will appreciate that although he took the running on this publicly on his own, and he claims here today and at least on one other occasion that he thought he would have support from other attorneys. If he did, and he claims he did, they did not ever seem to see the light of day and certainly were not happy to speak out in his support of his concern on this. The government has worked under the current Attorney-General to try to manage this in a sensible way and I commend them for that. I inquired during the briefing that we received as to the supervision of this. As I said at the outset, the state has responsibility for both the legislation and the implementation.

There is a South Australian Classification Liaison Scheme coordinator. There is a group here, I understand from the briefing, that undertakes spot checks when they visit various establishments that currently provide films, DVDs and the like, and the police follow that up under our current procedure for enforcement. They, of course, will have a significant extra role as a result of this legislation and they will be undertaking that enforcement, as I say, at the state level. I think I have mentioned and covered the introduction of the defence though.

On the information that was provided, though, it does seem that we have a significant number of outlets. Of the top computer game retailers in South Australia, there are well over 100 of them that provide this, but there is also apparently no register of this because it is not a process where there is registration. Games and DVDs are also available at video stores, and there is a multitude of those, of course, across the metropolitan area and in country regions.

I am told the Classification Liaison Scheme comprises the CLS manager and three CLS officers who conduct compliance checks across Australia. The CLS officers visit South Australia three times a year for approximately 15 days, and they provide a report for the SA Classification Council. So they are the personnel, with the follow-up to police for them to act in respect of any reports of breach—or, presumably, potential breach—and investigate and prosecute, where appropriate.

I am also advised that, since 2011, the states and territories biennially provide data on that enforcement activity. It goes from SAPOL to the classification branch. Obviously, there is already a

significant educative role, and we recognise that and also expect that that will continue under the broader obligations that this will need to cover.

For those who are members of parliament for country areas, I place on the record that that inspection by the CLS staff is Australia-wide and they make regular visits. In the last three reports that I have been provided, these have included visits to places such as Burra, Clare, Edithburgh, Peterborough, Port Wakefield, Port Vincent, Port Pirie, Port Augusta, Port Lincoln, Stansbury, Warooka, Whyalla, Yorketown, Victor Harbor and Truro. There are many different country regions that have had those visits.

Notwithstanding that the world was going to fall in, according to the member for Croydon, who sees himself as the great reservoir of wit and wisdom in this parliament, that has not happened and we do not expect it will happen. Clearly, the government has seen through that hysteria and taken a more sensible approach to this. With the proper management under the regulatory procedure of the code of behaviour to be carried out by the suppliers, we see that this will be an effective piece of legislation. With those comments, it will otherwise have our support, with the amendment to be proposed by the government.

Mr ODENWALDER (Little Para) (16:04): I rise to briefly speak on this government bill regarding the classification of computer games. As has been well canvassed, it changes the classification scheme to introduce a Restricted 18+ classification. As the member for Croydon particularly noted, these changes are only possible because of the way the classification guidelines have been amended to recognise fundamental differences between films and computer games.

The interactive nature of computer games means their potential impact upon the viewer is greater, and that has been well canvassed as well. The new guidelines obviously recognise this and they split the film and game guidelines into separate documents. This follows a meeting of the Standing Committee of Attorneys-General in July 2011, following which the commonwealth Minister for Home Affairs and Justice announced new guidelines on 12 September.

Again, as the member for Croydon canvassed—and he read through quite a bit of the guidelines themselves—I want to focus a little on what was said in the guidelines about interactivity:

> Interactivity may increase the impact of some content: for example, impact may be higher where interactivity enables action such as inflicting realistically depicted injuries or death or post-mortem damage, attacking civilians or engaging in sexual activity. Greater degrees of interactivity (such as first-person gameplay compared to third-person gameplay) may also increase the impact of some content.
>
> Interactivity includes the use of incentives and rewards, technical features and competitive intensity. Except in material restricted to adults, nudity and sexual activity must not be related to incentives or rewards.

That is what the guidelines say and it is crucial. Incentivising behaviour to action surely has the potential to condition young minds. The impact tests create greater restrictions on games and are related to incentives and the frequency of adult content.

Ultimately, what these new guidelines and this legislation provide is additional guidance to parents. As the parent of a 12 year old who spends a great deal of his time playing computer games, this is quite important to me. There is a new threshold for an MA15+ game. This means that the levels of violence, sexual content, language, drug use and nudity must be lower than the existing levels for a game to be classified as MA15+.

Additionally, there are distinct differences in impact between an R18+ game and an R18+ film. An R18+ game, due to the interactive component, will need to jump through more hoops to be allowed classification (this is a good thing). Parents should remain reassured that the Refused Classification category, or RC, still exists. The introduction of the R18+ classification will not mean any game will now be able to get the new higher classification.

The new approach to classification in this bill works with the new guidelines at the commonwealth level to achieve the right result for computer game classification in South Australia, and I am happy to support the bill.

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Business Services and Consumers) (16:10): I want to thank everyone who has participated in the debate. Unfortunately for me, I was not able to hear all of it, but I understand there were some excellent contributions. I thank those people who made those very nice contributions and thoughtful contributions in this matter. I am only sad that I was not here to hear them because sometimes I hear other things and—

Ms Bedford: It's better live.

The Hon. J.R. RAU: It is better live. I will not labour that point, but they know who I am talking about. As I said, I would like to thank honourable members for their contribution; however, I need to address a couple of things that were apparently raised by the honourable member for Bragg in relation to clause 17, which the opposition indicates it will be amending because it is, apparently, sloppy. My advice about that, which I have sought, says basically that there appears to be some confusion about what the clause does.

Apparently, the honourable member said that the law should not be contained in a code that can change (I hope I am getting this right) and that civil duties and obligations must be made clear in legislation, especially where criminal sanctions attach, so that consumers, children and the public are aware of those obligations and sanctions. I understand that point, and it is one that people in another place often get quite excited about.

However, clause 17, I am advised, is consequential to the proposed amendment to section 40A(3) and to the new section 60A(3)(c). It is not relevant to any other provisions in the principal act. Where a provision of an act allows for such a code to be prescribed in regulations, it is standard practice for the provisions set out in clause 17 to be included in the act's regulation-making power, and the member will find many other examples across the statute book.

Sections 40A and the proposed 60A apply only to industry. Those sections set out how R18+ films and games must be displayed in retail and hire outlets. The code of conduct does not apply to or directly affect consumers. It does not impose any obligation or carry any sanction for consumers, nor is it mandatory for retailers. Retailers are not required to comply with the code but, if they do, it will be a defence to a prosecution under sections 40A and 60A respectively.

This is clarified in clause 60A(3)(c). In other words, retailers and hirers of games and films will be able to opt out of the requirements under sections 40A and 60A, if they choose, by complying with the code. So, it will be up to the industry to draft a code, be aware of the code and to decide whether they choose to adopt it.

With those few remarks, I again thank all the members who participated in the debate. I know this has been a long-running matter and a matter of considerable interest to many members. Can I say that I think this outcome we have now is actually a pretty good outcome because we have the R18+ classification for those people who wish to take advantage of it.

Ms Chapman: And the member for Croydon loves it.

The Hon. J.R. RAU: Yes, I know. I have to say that all along this process I have been advised by experts that the average gamer is a 35-year-old man. I am a year or two past that now, but when I go back a couple of years and think did I really want to spend all my time sitting in front of the television set playing with one of these games, the answer is, perhaps tragically for me, no. But, it does raise the point of how far we go to try to regulate what adult people are able to do in respect of these games. The answer is that this is probably a pretty good outcome, and refused classification material is still refused classification, so it does not mean within the R18+ bracket that it is open slather. There is still material that cannot be classified.

Some of those games have quite interesting names, but in the interest of good taste I will not mention any of them. The MA15+ classification has now been tightened so that some of the games that previously would have been MA15+ under this will move into the R18+, which I think is a good thing. It gives parents greater certainty about the material their children are watching, using or buying and gives more information to consumers. I thank everyone for their contribution and hope the bill has a fairly speedy passage.

Bill read a second time.

In committee.

Clauses 1 to 15 passed.

New clause 15A.

The Hon. J.R. RAU: I move:

Page 7, after line 4—Insert:

15A—Amendment of section 75A—Interpretation

Section 75A, definition of *matter unsuitable for minors*—after 'film' wherever occurring insert:

or computer game.

Clause passed.

Remaining clauses (16 and 17) and title passed.

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Business Services and Consumers) (16:18): I move:

That this bill be now read a third time.

Bill read a third time and passed.

SUMMARY OFFENCES (FILMING OFFENCES) AMENDMENT BILL

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Business Services and Consumers) (16:19): Obtained leave and introduced a bill for an act to amend the Summary Offences Act 1953. Read a first time.

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Business Services and Consumers) (16:20): I move:

That this bill be now read a second time.

The internet, and the growth of social media on it, has brought a growing and unwelcome phenomenon. The central example of this particular evil is that there is some kind of fight or other criminal conduct involving a victim, provoked or not, unwitting or not, but the point is that the assault is filmed and then screened on the internet somewhere, presumably on YouTube, Facebook or a social media internet home page. A major result, usually intended, is the indiscriminate, pictorial humiliation of a victim.

While there may be legal remedies against the assailants, it is unclear what can be done about those who further victimise the victim in this way. It is possible that some of this behaviour is caught by existing criminal offences. If a victim is hit, for example, it will at least be an assault. The publication of images may be caught by an indecent filming offence in section 23 of the Summary Offences Act 1953, but it may not be possible to catch the actual perpetrator, and the indecent filming offence only deals with part of the concerning behaviour.

This concerning practice is unhappily common and covers a number of examples. Many are listed by the Victorian Law Reform Commission in its 2010 Report on Surveillance in Public Places. The commission said:

> There has been a disturbing trend of people recording their own criminal conduct. In some cases this has involved activities that are especially cruel and violent.
>
> In a widely publicised Victorian example, a group of teenage boys lured a teenage girl to a park in Werribee and forced her to remove some of her clothing and perform oral sex. They then set fire to her hair and urinated on her. The young men responsible filmed the entire incident and produced a DVD that they distributed to a number of people. In another incident in Geelong, five men set upon two teenage girls, sexually assaulted them and filmed the incident on a mobile phone. In a recent case, a woman filmed her 14 year old daughter assaulting another girl. Footage of these types of incidents is commonly distributed among friends. There have also been some examples of footage having been posted on the internet.

The commission went on to make it clear that this kind of behaviour is potentially wider. At paragraph 4.55 the commission said:

> Recently the media have reported incidents in which individuals have used their mobile phones to film emergencies for the apparent purpose of entertainment. In Queensland after a runaway vehicle hit a backpacker, 'dozens' of bystanders apparently filmed the victim's final moments on their mobile phones. Similarly, in New South Wales, after a traffic accident in which children were killed, bystanders began filming the mother's pleas for assistance and the accident scene.

Similar behaviour overseas has caused some European jurisdictions to enact new criminal offences directed to this kind of behaviour. While reports are similar to those described above, an unusual variation was reported in Spain, where teenagers jumped in front of traffic while accomplices filmed the resulting panicked drivers for their own and others' entertainment. Can I tell the house that that very thing happened to me last night on the way home.

Ms Chapman: Jumping or filming?

The Hon. J.R. RAU: Both. A very silly young man jumped into the middle of the road—a dual carriageway—jumped around in a fairly bizarre fashion, and there was another young man

standing on the kerb filming him doing this as cars pulled up, their brakes screeched and so forth. It was absolutely clear that the whole purpose of that very dangerous activity was so that it could be captured on a mobile phone and, presumably, distributed to other people.

This bill comes to terms with some of this anti-social behaviour. It adds to the Summary Offences Act a new part 5A dealing with filming offences. It addresses two concerns: the first one might call an invasion of dignity and the second an invasion of privacy. Addressing the first concern, proposed new sections 26B and 26C would create new offences connected with the filming of a person being subjected to a humiliating or degrading act. There are three offences. First, it is to be an offence to take film of a person who is being subjected to or forced to engage in a humiliating or degrading act. Filming includes moving or still images taken by any means. Second, it is to be an offence to distribute such a film and, third, it is a more serious offence both to engage in the humiliating or degrading treatment of the victim and also either to film it or distribute it. In other words, a group of people acting in concert.

The law is meant to capture the subjection of one person to humiliating or degrading treatment by another. These offences will not capture things that happen by accident, such as where a person slips over in the street or suffers a stroke or a wardrobe malfunction or something else of that nature. It will not capture things that the person himself or herself does, such as being drunk in public or stealing from a shop, even if the taking and distribution of the film are very embarrassing.

It will not capture filming that merely exposes a person to scrutiny that he or she would rather avoid, such as a criminal defendant being filmed walking out of court after a hearing or a celebrity being followed by paparazzi. In these situations the person is not being subjected or forced to undergo humiliating or degrading treatment at the hands of another; they are simply doing what they are doing. This law is not meant to cover situations that are merely embarrassing.

The act to which the victim is subjected must be one that a reasonable adult would think was humiliating or degrading to that person. One might say that this new offence is aimed at invasions of human dignity; that is, at actions that all right-thinking people would consider unacceptable. A person might find it embarrassing to be lawfully stopped and questioned by police in a public place, for instance, but this is not a humiliating or degrading act because it is not one to which a reasonable adult could properly object.

An act is not humiliating or degrading just because the person subjected to it feels humiliated or degraded. The test is not subjective. This law does not seek to protect the over-sensitive; rather, the bill sets an objective test which requires the court to consider whether reasonable adult members of the community would consider such an act humiliating or degrading.

However, the characteristics of the victim are relevant. Reasonable adults might judge the same behaviour to be degrading to one person and not another. For example, suppose that a young man out with friends is wearing a baseball cap and one of his mates playfully knocks it off his head. Reasonable adults would probably judge that this was not humiliating or degrading to him. On the other hand, suppose that a woman wearing a hijab was approached on the street by a stranger who grabbed the hijab and pulled it off. Reasonable adults might well judge that to be a degrading act.

It is true that one cannot say exactly where the line is between embarrassment and humiliation or degradation. However, it is not unusual for criminal offences to use concepts that are not capable of precise definition. An example is possession; there are many others, hundreds of cases. Disorderly behaviour is another example, and dishonesty another.

The law often requires a court to apply community standards or the judgement of a reasonable person; for example, in laws about offensive material. The government sees no unfairness in this. No doubt prosecutorial discretion will be exercised in such a way that the court's time is not wasted on film of events that were merely embarrassing or annoying, or about which the victim has overreacted.

The bill does not intend to capture conduct for legitimate public purposes—and I underline this—that is, conduct in the public interest. The bill gives examples of matters the court should consider. For instance, it should look at whether the conduct was for the purpose of educating or informing the public; as an example, a film that aims to expose abuses, a film of police brutality, or film of degrading conditions in a detention centre would likely be considered to be taken for a legitimate public purpose. The same would be true of news broadcasts or documentary film depicting assaults, racial vilification or other matters of public concern.

The court should also consider whether the filming or distribution was for a purpose connected to law enforcement or public safety. Security camera film would be an example. Cameras commonly operate on public transport, at banks and in city streets as a way of detecting crime or threats to safety. This is in the public interest and it is not intended that the bill capture such filming even if, by chance, humiliating or degrading conduct is filmed. Operators of security cameras would also have the defence that they did not knowingly film relevant images. There is no knowing what security film may capture, and no-one is held responsible for that.

Third, the court must consider whether the filming or distribution occurred for medical, legal or scientific purposes. For example, a film might be evidence in legal proceedings and might be properly submitted to experts for analysis for the purposes of those proceedings. Fourth, the court should take account of any other factor it considers relevant in answering the question of whether the filming was in the public interest. That is the decisive question.

On the second matter, that is, invasion of privacy, the bill creates a new offence of distributing an invasive image. With the use of filming devices now commonly available, it is easy for people to film themselves or each other in any situation. Often, these images may be obtained by consent, as where two people in a relationship take consensual film of their sexual activity, or one may take pictures of himself or herself that are sent to the other perhaps using a mobile phone. In and of itself that is not unlawful, although if the person photographed is under 17, the images could be child pornography and in that case their possession or transmission would be seriously unlawful. Assuming the participants are adults, and assuming they send the images to one another privately and by consent, this law is not concerned with that. What this law is concerned with, however, is the wider distribution of those images without consent.

The bill proposes to make it an offence to distribute these invasive images in a situation where the distributor knows, or should know, that the person depicted did not consent to the distribution. That is likely to capture, for example, the boyfriend who, unknown to the girlfriend, passes on to his friends the pictures that the girlfriend may have sent him or may have posed for, intending them to be seen only by him. It is not intended that the offence capture third parties who distribute images without having any reason to know that the subject objects to that distribution.

The internet is replete with explicit images, many of which may be captured by classification or other existing laws. There is no intention to create a new offence of distributing such images where the distributor knows nothing of the circumstances in which the image was created and cannot tell whether or not the subject consented to the distribution. With these images, it will be rarely possible to know whether they are distributed with consent or not and this offence is not intended to capture that. I seek leave to have the remainder of the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Instead, what is intended is to capture the person who distributes an image when they know, or they reasonably ought to know, either that the person filmed does not consent to this particular distribution or does not consent to distribution in general. That will most commonly arise where the distributor knows who the subject is or knows the circumstances in which the images were taken.

After extensive consultation with large media organisations, the Bill says that it will be presumed in absence of proof to the contrary that the conduct is for a legitimate public purpose if the organisation concerned (or a person acting on behalf of the organisation) is regularly engaged in broadcasting and publishing activities, that this conduct was part of those activities and was in accordance with prescribed requirements. The last will be done by regulation.

The regulation in question has been drafted and will be provided to any interested member of the Parliament. The requirements are (in summary):

(1) In the case of broadcasting:

(a) the organisation held a licence to broadcast or was authorised by law to broadcast; and

(b) the conduct was in accordance with any legally applicable codes of practice; and

(c) the conduct was in accordance with the organisation's own publicly available privacy policy.

(2) In the case of publishing:

(a) the organisation was a member of the Australian Press Council or otherwise authorised by law to publish; and

(b) the conduct was in accordance with any legally applicable codes of practice; and

(c) the conduct was in accordance with the organisation's own publicly available privacy policy.

In addition, the Bill repeals and re-enacts the existing law against indecent filming. That law covers upskirting and other covert indecent filming. The substance of those offences is unchanged although drafting changes have been made.

These new laws are intended to better protect dignity and privacy against invasions that are made so easy by modern technology.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Summary Offences Act 1953*

4—Repeal of section 23AA

This clause consequentially repeals section 23AA (now to be included in proposed Part 5A as section 26D).

5—Insertion of Part 5A

This clause inserts a new Part as follows:

Part 5A—Filming offences

26A—Interpretation

This section defines certain terms used in the proposed new Part. In particular:

- a *humiliating and degrading act* is defined as an assault or other act of violence against the person or an act that reasonable adult members of the community would consider to be humiliating or degrading to that person (but does not include an act that reasonable adult members of the community would consider to cause only minor or moderate embarrassment);
- *humiliating and degrading filming* is filming images of another person while the other person is being subjected to, or compelled to engage in, a humiliating or degrading act, but does not include filming images of a person who consents to being subjected to, or engaging in, a humiliating or degrading act and consents to the filming of the act;
- *invasive images* are images of a person engaged in a sexual act of a kind not ordinarily done in public, using a toilet or in a state of undress such that the person's bare genital or anal region is visible (but does not include an image of a person under, or apparently under, the age of 16 years or an image of a person who is in a public place).

26B—Humiliating or degrading filming

This section creates new offences relating to humiliating and degrading filming (with a penalty of imprisonment for 1 year), distribution of images obtained by humiliating and degrading filming (with a penalty of imprisonment for 1 year) and taking part in a humiliating and degrading act and engaging in such filming or distribution (with a penalty of imprisonment for 2 years). The proposed section also sets out defences that are available in relation to a prosecution.

26C—Distribution of invasive image

This section creates an offence of distributing an invasive image (with a penalty of $10,000 or imprisonment for 2 years) and sets out defences to such a charge.

26D—Indecent filming

This section contains the current provisions from section 23AA of the Act.

26E—General provisions

This section contains provisions applicable in relation to all sections in the Part. The section covers issues of relating to what is an effective 'consent' for the purposes of the Part, the non-application of the Part to law enforcement personnel, legal practitioners and medical practitioners, or their agents, acting in certain circumstances and the power of the court, when dealing with an offence against the Part, to order forfeiture of equipment or items.

Debate adjourned on motion of Ms Chapman.

WILLS (INTERNATIONAL WILLS) AMENDMENT BILL

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Business Services and Consumers) (16:32): Obtained leave and introduced a bill for an act to amend the Wills Act 1936. Read a first time.

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Business Services and Consumers) (16:33): I move:

That this bill be now read a second time.

This bill amends the Wills Act 1936 to adopt into the act the uniform law contained in the UNIDROIT Convention providing a Uniform Law on the Form of an International Will 1973 (the Wills Convention). UNIDROIT, the International Institute for the Unification of Private Law, is an intergovernmental organisation that formulates uniform law instruments aimed at harmonising and coordinating private laws between countries. The Wills Convention is one such instrument. I know that members would like to read this themselves, so I seek leave to have the remainder of the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

The Wills Convention establishes an additional form of will, the 'international will'. The international will's use is optional and will not replace existing forms of wills. Its key benefit is to provide greater legal certainty for testators and beneficiaries where assets or beneficiaries are located in several foreign jurisdictions. The international will is valid as regards form, irrespective of the place where it is made, the location of the assets and of the nationality, domicile or residence of the testator, if it is made in compliance with the provisions set out in the Articles in the Annex to the Wills Convention.

Although Australia has been a member of UNIDROIT since 1973 it is not a signatory to the convention. The convention currently has 12 state parties including Canada, France and Italy and an additional eight signatories, including the United Kingdom and the USA. In July 2010 the Standing Committee of Attorneys-General agreed to adopt the uniform law into local legislation to allow Australia to formally accede to the convention. The Bill is based on a model bill which reproduces the text of the uniform law.

The formalities required for the international will are similar to the State requirements, for example, the will must be in writing and signed by the will maker in the presence of two witnesses. The main difference is that the uniform law contains an additional requirement that the will must be declared in the presence of an 'authorised person', who must attach to the will a certificate to the effect that the proper formalities have been permed. The certificate, in absence of contrary evidence, is conclusive evidence of the formal validity of the instrument as an international will. The convention allows contracting States to designate the authorised persons. Through SCAG, States and Territories agreed that authorised persons should be legal practitioners and public notaries—as persons who understand the local laws concerning wills and the uniform law's form requirements.

I stress that adopting the uniform law will not affect the State's laws, but simply allows a testator to choose to have an international will, and will eventually allow Australia's accession to the Wills Convention.

To date, Victoria, ACT and Tasmania have passed Bills to implement the model law and WA has introduced a Bill. Once all States and Territories have implemented the model Bill and have confirmed with the Commonwealth that implementation has occurred, the Commonwealth will commence the formal accession process. The convention provides for entry into force of the convention six months after accession.

I commend the Bill to the House.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause provides for the short title of the measure.

2—Commencement

The measure will be brought into operation by proclamation.

3—Amendment provisions

This clause is formal.

Part 2—Amendment of *Wills Act 1936*

4—Insertion of section 25E

Part 3 of the Act provides for the validity of wills made outside the State. New section 25E provides that Part 3 does not limit the operation of new Part 3A, which provides for international wills.

5—Insertion of Part 3A

This clause will insert a new Part in the Act which provides for international wills.

International wills are a separate form of will that will sit alongside existing forms of will recognised under the Act. New Part 3A of the Act will apply to international wills made in accordance with the requirements of the Convention's Uniform Law. Part 3 may continue to apply to a 'foreign will' that is not an international will, either because there was no intention for it to be made in the form of an international will or because the will has not been validly made as an international will. Article 1.2 of the Uniform Law provides that the invalidity of an international will does not affect its formal validity as a will of another kind. A detailed explanation of the provisions to be included in this new Part is as follows.

Part 3A—International wills

25F—Interpretation

New section 25F sets out the definitions of key terms used in the new Part.

The section defines *Convention* to mean the Convention providing for a Uniform Law on the Form of an International Will 1973, which was signed in Washington D.C. on 26 October 1973. A copy of the Convention can be found at—

http://www.unidroit.org/english/conventions/1973wills/main.htm

The definition of the term *international will* refers to a will made in accordance with the requirements of the Annex to the Convention as set out in a new Schedule to the Act (inserted by clause 6 of the Bill). This gives effect to Article I of the Convention, which requires a Contracting Party to reproduce the actual text of the Annex to the Convention. The Annex to the Convention contains the Uniform Law.

25G—Application of Convention

New section 25G provides that the Annex to the Convention, which sets out the Uniform Law requirements for an international will, has the force of law in South Australia.

25H—Persons authorised to act in connection with international wills

New section 25H designates the persons authorised to act in connection with an international will for the purposes of the law of South Australia. This gives effect to Article II of the Convention, which requires a Contracting Party to designate the persons who, in its territory, shall be authorised to act in connection with international wills. Under the Uniform Law, an authorised person is required to certify that the proper formalities for an international will have been performed.

The section also provides for the recognition of authorised persons who have been designated and operate in other Convention jurisdictions. This gives effect to Article III of the Convention, which provides that the capacity of an authorised person to act in connection with an international will, if conferred in accordance with the law of a Contracting Party, shall be recognised in the territories of other Contracting Parties.

25I—Witnesses to international wills

New section 25I provides that the requirements for acting as a witness to an international will in South Australia are governed by the law of South Australia. This new section gives effect to Article V of the Convention, which provides that the conditions requisite to acting as a witness to an international will are governed by local laws.

25J—Application of Act to international wills

For the avoidance of doubt, new section 25J provides that the provisions of the Act that apply to wills extend to international wills. While the new Schedule to the Act (the Uniform Law) sets out the specific form requirements for an international will and the process for its execution, the other provisions of the Act that apply to wills, such as those dealing with revocation or the construction of the terms of a will, also apply to international wills.

6—Insertion of Schedule 1

This clause inserts a Schedule at the end of the Act, which reproduces the Annex to the Convention. This gives effect to Article I of the Convention, which requires a Contracting Party to reproduce the actual text of the Annex to the Convention. The Annex to the Convention contains the Uniform Law.

In summary—

- Article 1 provides that a will shall be valid as regards its form, irrespective of the place where the will is made, of the location of the assets and of the nationality, domicile or residence of the testator, if it is made in the form of an international will that complies with Articles 2 to 5 of the Uniform Law. If an international will is invalid because it does not comply with Articles 2 to 5 of the Uniform Law, it may still be valid as a will of another kind. For example, it may be a will to which foreign laws apply, the validity of which can be determined under Part 3 of the Act.
- Article 2 provides that a joint will cannot be drawn up in the form of an international will.
- Article 3 requires an international will to be in writing. It can be written in any language, by hand or by any other means and it need not be written by the testator.

- Article 4 requires the testator to declare that a document is his or her will, and that he or she knows the contents of the will, before 2 witnesses and an authorised person. The testator does not have to inform the witnesses or authorised person of the contents of the will.
- Article 5 requires the testator to sign the international will in the presence of the 2 witnesses and the authorised person, or to acknowledge his or her signature if signed previously. If the testator is unable to sign the will, the authorised person must note on the will the reason for the incapacity.
- Article 6 requires the signatures of the testator, witnesses and authorised person to be placed at the end of the international will. If the will consists of several pages, each page of the will should be numbered and signed by the testator (or the person designated to sign on his or her behalf or the authorised person). However, an international will will not be rendered invalid if these requirements are not met.
- Article 7 provides that the date of the international will will be the date on which it was signed by the authorised person. The date should be noted at the end of the will by the authorised person. The will will not be rendered invalid if these requirements are not met. If the will is undated or wrongly dated, the date will have to be proved by some other means.
- In the absence of any mandatory rule about the safekeeping of a will, Article 8 requires the authorised person to ask the testator whether he or she wishes to make a declaration about the safekeeping of the international will. If the testator wishes to make such declaration, he or she can request that the certificate that the authorised person attaches to the will (under Article 9) mentions the place that he or she intends to have the will kept. The will will not be rendered invalid if this requirement is not met.
- Article 9 requires the authorised person to attach a certificate to the international will certifying that the obligations of the Uniform Law have been complied with.
- The form of the certificate is prescribed in Article 10. It is intended that the form allow small changes of detail to the certificate, for example where the form allows for the omission of particulars marked with an asterisk. However, the certificate must be in a substantially similar form to that set out in Article 10. In accordance with Article 13, an absence or irregularity of a certificate will not affect the formal validity of an international will.
- Article 11 requires the authorised person to keep a copy of the certificate and deliver another copy to the testator. As another copy of the certificate is attached to the international will, this means that the authorised person must make out three signed certificates. In accordance with Article 13, an absence or irregularity of a certificate will not affect the formal validity of an international will.
- Article 12 provides that in the absence of evidence to the contrary, the certificate will be conclusive of the formal validity of an international will. Any challenge to the validity of the will will be solved in accordance with the legal procedure applicable in the Contracting Party where the will and certificate are presented.
- As noted above, Article 13 provides that the absence or irregularity of a certificate will not affect the validity of an international will.
- Article 14 provides that an international will will be subject to the ordinary rules of revocation of wills under local laws.
- Article 15 requires that, when interpreting and applying the provisions of the Uniform Law, regard must be had to its international origin and to the need for uniformity in it interpretation.

Debate adjourned on motion of Ms Chapman.

TRUSTEE COMPANIES (TRANSFERS) AMENDMENT BILL

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Business Services and Consumers) (16:35): Obtained leave and introduced a bill for an act to amend the Trustee Companies Act 1988. Read a first time.

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Business Services and Consumers) (16:35): I move:

That this bill be now read a second time.

This bill makes amendments to the Trustee Companies Act 1988, which is hereafter referred to as the Trustee Companies Act, consequent on the enactment of amendments to the Corporations Act 2001 of the commonwealth, hereafter referred to as the Corporations Act. In deference to everybody, I seek leave to have the remainder of my second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

In 2010, South Australia amended the Trustee Companies Act, by way of the *Trustee Companies (Commonwealth Regulation) Amendment Act 2010*, to provide for the transfer of entity-level regulation of trustee companies to the Commonwealth. Enactment of the legislation was necessary to fulfil South Australia's obligations under the *National Partnership Agreement to Deliver a Seamless National Economy* (the *NPA*) to transfer to the Commonwealth the responsibility for entity-level regulation of trustee companies.

Under the Commonwealth trustee company provisions, traditional functions of trustee companies (administering charitable and other trusts, obtaining probate, acting as the executor of a deceased estate or under power of attorney) are deemed to be financial services for the purposes of the Corporations Act. This means a trustee company providing traditional trustee company services must hold an Australian Financial Services Licence and be subject to the conduct, disclosure, compensation and dispute resolution obligations in Chapter 7 of the Corporations Act.

For trustee companies that did not hold an Australian Financial Services Licence at the commencement of the Commonwealth legislation, transitional arrangements provided that such trustee companies are deemed to hold an Australian Financial Services Licence with authorisation to provide traditional trustee company services until the end of the transitional period. The transitional period expires on 31 December 2012.

In April 2011, further Commonwealth amendments to the trustee company provisions of the Corporations Act came into effect which included, among other things, provisions allowing the voluntary transfer of trustee business between companies.

The 2011 Commonwealth amendments to the Corporations Act provide for the voluntary transfer of trustee company business from one trustee company to another. Prior to the Commonwealth taking responsibility for entity-level regulation of trustee companies, many corporate groups operated subsidiaries in States and Territories to hold trustee company authorisation in that jurisdiction. The Commonwealth advised at the time of making its 2011 amendments that the trustee company industry is keen to rationalise operations by transferring estate management functions to one licensed trustee company within the same group. State and Territory legislation is required to make the regime effective by giving legal effect to the transfer of estate assets and liabilities, so that the receiving company will be taken to be the successor in law of the transferring company, to the extent of the transfer.

Voluntary transfers were not included in the earlier Commonwealth amendments to the Corporations Act but were expected by States and Territories. In January 2010, the Commonwealth advised that it would amend its legislation in due course to make provision for voluntary transfers. As the South Australian amendments had not yet been introduced due to the 2010 election, the South Australian Bill was able to include a regulation making power, which was in terms sufficiently broad to deal with the expected Commonwealth amendments to the Corporations Act providing for voluntary transfers.

The Commonwealth has recently advised South Australia that the provisions in South Australia's Trustee Companies Act to support the voluntary transfer of trustee company business from one entity to another (such as from a company with a deemed Australian Financial Services Licence to a company holding an Australian Financial Services Licence) do not operate as required by the Corporations Act following its amendment by the Commonwealth. After 31 December 2012, companies operating under a deemed Australian Financial Services Licence will cease to be deemed licence holders and must apply for their own Australian Financial Services Licence or apply to ASIC for a transfer determination. These companies will be unable to apply for a transfer determination without South Australian supporting legislation in place.

Urgent amendment to the Trustee Companies Act is therefore required to facilitate voluntary transfers so that companies operating with a deemed licence may apply for a transfer determination prior to the expiry of their deemed Australian Financial Services Licence on 31 December 2012. Such transfers will now be facilitated within the Trustee Companies Act itself rather than by supporting regulations, consolidating the transfer provisions—both compulsory and voluntary—in the Act.

The amendments will not make substantive changes to the Trustee Companies Act. The amendments are intended to change the mechanism by which the Trustee Companies Act facilitates the voluntary transfer of trustee company business from one trustee company to another. The amendments are to be considered consequential to the 2011 amendments made by the Commonwealth to the Corporations Act.

The relevant Commonwealth provisions are found in Part 5D.6 of the Corporations Act. Part 5D.6 of the Corporations Act provides that ASIC may, if certain conditions are satisfied, make a transfer determination that there is to be a transfer of estate assets and liabilities from the transferring company to the receiving company if ASIC has either cancelled the Australian Financial Services Licence of the transferring company, or the transferring company has applied for a determination. Again upon certain conditions being satisfied, ASIC issues a certificate of transfer under section 601WBG, to effect the transfer of estate assets and liabilities to the receiving company.

One of the conditions that must be satisfied before ASIC can make a transfer determination is that legislation to facilitate the transfer that satisfies certain requirements has been enacted in the State or Territory in which the transferring company is registered and the State or Territory in which the receiving company is registered.

The *Trustee Companies (Transfers) Amendment Bill 2012* makes the necessary amendments to facilitate the voluntary transfer requirements in the Corporations Act.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Amendment provisions

These clauses are formal. There being no commencement clause included, this measure will come into operation on the day on which it is assented to by the Governor.

Part 2—Amendment of *Trustee Companies Act 1988*

3—Repeal of heading to Part 3A Division 1

Part 3A is currently divided into Divisions, in particular, because that Part currently makes separate provision for compulsory transfers of estate assets and liabilities from 1 trustee company to another trustee company, and voluntary transfers of estate assets and liabilities from 1 trustee company to another trustee company, under Part 5D.6 of the *Corporations Act 2001* of the Commonwealth (the *Commonwealth Act*). Since the recent enactment of amendments to the Commonwealth Act, there is no longer any need in our legislation to separately deal with compulsory and voluntary transfers in as much detail as currently, and so, there is no longer any need to divide Part 3A into Divisions.

4—Amendment of section 25A—Interpretation

The proposed amendments to various definitions in this clause are consequential on doing away with Divisions under Part 3A.

5—Repeal of heading to Part 3A Division 2

This proposed amendment repeals the heading to Division 2 of Part 3A.

6—Amendment of section 25B—Purpose and application of Part

A number of the proposed amendments to section 25B are consequential on doing away with Divisions under Part 3A. The more substantial amendment proposes to repeal current subsection (2) and substitute a subsection that will provide that Part 3A applies if the Australian Securities and Investment Commission (*ASIC*)—

- makes a determination under section 601WBA of the Commonwealth Act that there is to be a transfer of estate assets and liabilities from a specified trustee company (the *transferring company*) to another trustee company (the *receiving company*); and
- issues a certificate of transfer under section 601WBG of the Commonwealth Act stating that the transfer is to take effect.

A note is to be inserted to the effect that section 601WBA of the Commonwealth Act enables ASIC to make a transfer determination if—

- ASIC cancels the licence of the transferring company (in which case the determination is a *compulsory transfer determination*); or
- the transferring company applies to ASIC for a transfer determination (in which case the determination is a *voluntary transfer determination*).

7—Amendment of section 25C—Transfer of transferring company's estate assets and liabilities

8—Amendment of section 25D—Certificates evidencing operation of Part

9—Amendment of section 25F—Exemption from State taxes

The proposed amendments to sections 25C, 25D and 25F are consequential.

10—Repeal of Part 3A Division 3

Division 3 currently provides for the making of regulations to facilitate the voluntary transfer of estate assets and liabilities from a transferring company to a receiving company where ASIC has made a determination allowing the transfer. This clause proposes to repeal Division 3 and is consequential.

11—Repeal of heading to Part 3A Division 4

This proposed amendment is consequential.

Debate adjourned on motion of Ms Chapman.

STANDING ORDERS SUSPENSION

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Business Services and Consumers) (16:36): I move:

That standing orders be and remain so far suspended as to enable Private Members Business, Bills, Order of the Day No. 12, set down for Thursday 18 October 2012, to be taken into consideration forthwith and be dealt with as an item of Government Business.

The ACTING SPEAKER (Hon. M.J. Wright): An absolute majority not being present, ring the bells.

An absolute majority of the whole number of members being present:

The ACTING SPEAKER (Hon. M.J. Wright): I have counted the house and, as there is an absolute majority of the whole number of members of the house, I accept the motion.

Motion carried.

SUMMARY OFFENCES (DRUG PARAPHERNALIA) AMENDMENT BILL

Second reading.

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Business Services and Consumers) (16:38): I move:

That this bill be now read a second time.

I rise today to speak on the second reading of the Summary Offences (Drug Paraphernalia) Amendment Bill. As previously indicated by the Hon. Mr Kandelaars in the other place, the government supported this legislation. The government appreciates the ongoing work that the Hon. Ms Bressington has undertaken on this important issue. As previously indicated, I have met with Ms Bressington on a number of occasions regarding this matter.

I have sought the advice of learned officers within my department, who assure me that this amendment as drafted will be sufficient such that any innovative and new items that come onto the market which are clearly designed to be used for purposes such as smoking cannabis or smoking methamphetamine crystals may be identified and then prescribed by way of regulations to be prohibited items under the Summary Offences Act.

This, in turn, means that the sale or supply of a prohibited item is an offence under the Summary Offences Act, attracting a maximum penalty of $50,000 for a body corporate and $10,000 or imprisonment for two years for a natural person. If the item is sold or supplied to a minor, this will attract a maximum penalty of $100,000 for a body corporate and $20,000 or imprisonment for two years for a natural person.

We have learned that there are people in our community who are very creative, who put their energies into circumventing our laws with scant regard for the harm they cause themselves and others in our community. I commend the Hon. Ms Bressington for her relentless pursuit of these people. The government welcomes this initiative and we believe that it is firmly in keeping with our law and order policy. We believe that no-one should profit from the sale of illicit substances.

This is reflected in many of the laws we have passed and, indeed, other pieces of legislation before the house presently. It is important that all levels of drug offending have strong measures against them. We know that previous laws had the clear intention of prohibiting the sale of drug-using paraphernalia, and they resulted in the closure of several stores that predominantly sold such items. It took pipes and bongs off the shelves of other retailers.

I note that the Hon. Ms Bressington in the other place spoke about the Magistrates Court ruling in the case of Police v Koutsoumidis. This, combined with the potential for some unscrupulous traders to identify new products that clearly are intended as drug paraphernalia that would not be covered by the existing legislation, means that we need new provisions to outlaw this trade. We want to make it as straightforward as possible for police to make the sale of any drug paraphernalia illegal.

This bill will allow the government to act swiftly when the police identify these new items that are apparently intended for drug use and will allow the government to quickly prescribe these items as prohibited, thereby ensuring that the item is outlawed. I believe the need for legislation that is able to respond swiftly was expressed with erudition by the Hon. Ms Bressington in the other place when she said:

Let's face it, these buggers who sell these things in shops know exactly how to get around the law. Mr Koutsoumidis seems to be quite innovative in his attempts to test this law to its utmost.

If they want to test this law to its utmost, it is our responsibility as a government to make it strong and responsive so it will stand up to the test. In closing, I would like to thank the Hon. Ann Bressington for her continued determination to work with SAPOL and this parliament to outlaw drug paraphernalia. The government, therefore, supports this bill.

Ms CHAPMAN (Bragg) (16:43): I have indicated to the Attorney-General that the opposition will be supporting this bill and, with that, I will just make a few comments. The Attorney-General has, quite properly, pointed out the need to have flexibility in enabling items that we describe as drug paraphernalia to be prohibited by regulation, that is, to prescribe by regulation these new and inventive pieces of equipment.

The information that I am aware of under the Police v Koutsoumidis case in 2009 was that, of the 14 prohibited items that were sold from a particular store, the proceedings found that 10 of

the 14 items did not sufficiently fall within the definition of a prohibited item under the act. It highlighted the need for flexibility. Clearly, the inventive criminal will think of more and more ways to create drugs.

I think the concern I would have, if any, is as we go into a proscription area, rather than identifying them specifically. It is like a number of our other pieces of legislation; if we expand this legislation to enable there to be a prohibition by regulation—that is, to that proscription—we need to be careful that we do not inadvertently capture ordinary household items which, of course, can be used to cook, bake, slice, prepare, separate in the making of drugs. With that caution, I am sure that the advice that we will receive is to make sure that we do not have drug paraphernalia, that we do not inadvertently add onto it mum's pressure cooker or anything else that could be trapped into that category.

I note also that when the Hon. Ann Bressington in another place on 2 May 2012 tabled her Summary Offences (Drug Paraphernalia) Amendment Bill 2012, she made comments to the effect that it was accepted by her, the Attorney-General and even the police that the prosecution case in the Koutsoumidis case was inadequate, rather than the laws. However, she argued that the lack of subsequent precedent or action by the Attorney-General had prompted the introduction of her bill to ensure the items are definitely prohibited under the act.

Any disappointment I express in this matter is that, meritorious as the bill is, in the contribution just made by the Attorney-General I seem to have either missed or not heard at all any explanation by the government as to why it has taken so long for them to introduce this, especially as in May this year a member in another place indicated her understanding to be that this was supported.

I think it would have been simply good manners for the Attorney-General to provide some explanation as to why this has taken so long to initiate so that this may be progressed. I think there is a level of goodwill from the Hon. Ann Bressington in indicating that her understanding was that it had the government's support. If it did not have the government's support at the time, and some new factor has come into it, I think it is reasonable that the government explains to the parliament what those factors may have been. Otherwise, I indicate that the opposition is supporting the bill.

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Business Services and Consumers) (16:47): I thought for one brief moment I was going to get through a whole contribution by the honourable member without being criticised, but again it has not happened.

Mr Marshall: I am sure you like some constructive criticism.

The Hon. J.R. RAU: She was relatively gentle with me today, which is nice, so that was good. I am delighted everyone is in agreement on this matter. I do not think any of us wants to see these sorts of people profit from their behaviour, and I am grateful to the honourable member for Bragg and other members of the house for indicating their support for the bill.

Bill read a second time.

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Business Services and Consumers) (16:48): I move:

That this bill be now read a third time.

Bill read a third time and passed.

CHARACTER PRESERVATION (BAROSSA VALLEY) BILL

Consideration in committee of the Legislative Council's amendments.

The Hon. J.R. RAU: I just want to say a few words about this at the outset. I know other members want to speak and that is good. This is one of two very important pieces of legislation which have been through the parliament. I think there are a number of members who would want to speak on this. I know the member for Mawson had a special interest in the one yesterday, but I think he has got something to say about this one as well.

What I intended to do, if it is alright with the parliament, is say a few words in general terms about it, and then I am not going to be too structured about the formal committee stuff, on the undertaking that, when everyone has had their good go, we do not then have a big blowout again every time we go through each amendment.

The ACTING CHAIR (Hon. M.J. Wright): I am sure the shadow minister will comply with your wishes, and I will give her the same opportunity that I am now offering to you.

The Hon. J.R. RAU: Thank you, I am grateful. I hope she does not get stuck into me again on this one, but anyway, we will see.

The situation is that we had two bills: the Barossa and the McLaren Vale bills. Yesterday, we dealt with the McLaren Vale bill and, obviously, a lot that has been said about the McLaren Vale bill can be equally said of the Barossa Valley bill because the motivation, in both cases, was the protection of agricultural land, the termination of endless sprawl for the city of Adelaide and to provide some confidence in those parts of South Australia, which are so very important from a whole range of points of view—not just from an economic point of view but also from a cultural, historic and almost definitional point of view—that they will be protected from the scourge of urban sprawl.

Again, the legislation in respect of the Barossa Valley is intended to provide one substantial effect and one alone; that is, that those areas within that protection zone, excluding the townships, cannot be subdivided further for residential subdivision purposes. I have to say that the Barossa did present in practice a more complex issue than McLaren Vale because (a) it is a bigger area and (b) there is a more interesting and diverse land use pattern in the Barossa than exists in McLaren Vale.

In particular, members might be familiar with the Cockatoo Valley area where there has already been some degree of—I am trying to find a neutral term but I am struggling—what I will call hobby farming-type subdivision that has occurred. It was very evident to me that, if we did not do something very soon in the Barossa Valley, what would happen is that that would become, in effect, the flashpoint for an explosion of subdivision applications which would then have completely changed the whole character of the Barossa Valley.

So, in some respects, the issue for the Barossa Valley was different from the issue for McLaren Vale because McLaren Vale was being threatened from its immediate boundaries. If we did not do what we were seeking to do in McLaren Vale, there could be incursions into McLaren Vale from the immediate north which would have had direct and significant impacts on McLaren Vale. In the case of the Barossa Valley, although there was some threat from longer term expansion of Gawler, the real flashpoint for the Barossa Valley, I always thought, was Cockatoo Valley, which would be an internal explosion rather than an external intrusion.

There were lengthy consultations about this legislation. I want to thank a number of people who were involved. Again, I want to mention the member for Mawson who, although he does not live in that area, has taken an interest and been of great support to people there. I would like to also mention people who are from the area who invited me up there to talk to them about their issues, and this goes back some time ago.

I would like in particular to mention people like Margaret Lehman, Jan Angas, Maggie Beer and people who were extremely hospitable to me and impressed me with their passion about the area in which they live, their determination to retain the character and the special atmosphere that attaches to that area, and their legitimate fears that that could be totally devastated by unregulated urban sprawl. In naming them, I do not wish to say they were the only ones, because there were many others I met with, but they were very, very passionate people about this project.

As with the McLaren Vale legislation, the initial legislation was a far more sophisticated beast than the one we are dealing with now. My personal preference is that I like the earlier version, but the fact is that we have consulted on this. The consultation has resulted in my attempting to accommodate as many legitimate interests as I possibly can whilst maintaining the same core objective, which is to protect this area from subdivision. Over time, the legislation has become a more streamlined document and, I believe, if passed will do a great service to the people of the Barossa Valley.

As with McLaren Vale, the interim DPA which accompanied the original introduction of legislation did cause some consternation. It is unfortunate that the interim DPA became confused, in the minds of some, with the legislation because they are two completely separate things. The operation of the interim DPA did create some complexities which we then did our best to resolve, and I think we have resolved them by and large.

However, in retrospect, if I had my time again I think I would have perhaps been more nimble with the drafting of the interim DPA, but you learn as you go along. It served its purpose, but

it was a blunter instrument than I intended it to be, let me just put it that way. Anyway, it does not matter; we have sorted that out. The problem is that, unfortunately, the debate got sidetracked into a debate about the interim DPA instead of a debate about the primary bill. That was unfortunate, but nevertheless we more or less got through that.

Barossa did present some other particular issues for me in that the Barossa Council is a very unique organisation, in my experience. They, in my experience, are able to hold several views, none of them consistent, some of them diametrically opposed, over this course of a relatively short space of time; so it is difficult to keep up with them. Much of the difficulty we have had is that it has been difficult to isolate what their real issues are and nail them down because, every time you reckon you have got there you go off and make a cup of tea and you come back, there are new issues on the table and the old issues are not relevant any more. Anyway, that is part of the excitement of the process, and we have got past that now.

I think by and large, in all seriousness, Barossa Council was trying to do good works, but the way they went about it made it more difficult for them and for us, as the people trying to put the legislation together and explain things to everybody; it made it more difficult for everybody. I contrast that with Onkaparinga council, where their position was crystal clear from day one. There was never a need for us to go back and reinvent the wheel with them. They were always on board. They were always clear. They were always extremely reliable people with whom to negotiate because if they said 'Black is black' it remained black for the whole time. If they said 'White is white' it remained white for the whole time.

I only go into that to try to emphasise that some of the complexity about this DPA, and the length of time it has taken to get this through, has resulted from a number of issues. As I said, I accept responsibility for the fact that the initial document turned out to be a cruder instrument than it should ideally have been, and that is my fault. But, thereafter, things were not assisted by shifting sands, let me put it that way.

Mr Venning: I think your officers set you up a bit.

The Hon. J.R. RAU: Well, it is funny because the same officers were dealing with Onkaparinga and I did not have any of those problems, so there is only one variable there; it is the same me, it is the same DPA, my office is the same, the only variable is which council we are dealing with, and I only had a problem with one. So let us just leave it there.

We get to the point where we now have this provision here. It does not take away from the Barossa Council's capacity to regulate land use in the region other than it stops them and me and my successors from turning that into residential real estate without the parliament agreeing to it. That is all it does. Within the townships they continue to be able to do what they could always do and, as I said yesterday, it is my intention that once this has settled down—this legislation has been hopefully passed—the land management regime in the Barossa will return to where it was prior to the initial interim DPA, so it will be as if nothing has happened, except that there will be no possibility of subdivision for residential purposes. That is the only change, otherwise it will be exactly the same as it was. Of course, the legislation does contemplate a review at some stage in the future, and that would obviously be conducted with the council and everybody else, so they are completely on board.

I can foreshadow that, as with the McLaren Vale legislation, there is one issue that I am not happy with in the version that has come back to this place, and that is the issue about creating this rather peculiar anomaly for the townships which is as a result of an amendment moved by the Hon. Mark Parnell in the other place. He moved it for both bills, so I am not saying now anything I did not say yesterday, really, but I do not support that amendment because it creates—

Mr Venning: That's for McLaren Vale not the Barossa.

The Hon. J.R. RAU: It is in the Barossa one as well. If it is not, everything I am about to say is completely irrelevant.

Mr Venning: I think you are right.

The Hon. J.R. RAU: My notes say it is in both. It is clause 6A. What I want to say to all the members who are present today, and I am happy, obviously, for this to appear on the official record, is that the Hon. Mark Parnell has raised systemic issues in the Development Act. He has raised issues of statewide application about which he has very strong feelings, and Mr Parnell, amongst other things, does know something about environmental law and does know something about planning law, so I do not take his remarks lightly in terms of his concerns. That does not

mean I am going to agree with every single proposition he puts up, but I do think he is worth listening to. What concerns me about his amendments is that he is sort of creating a little test tube where he tests out one of his ideas, but he is testing it out on real people in real townships.

Ms Chapman: You do that everyday in government.

The Hon. J.R. RAU: What an outrageous thing to say. He is testing out what might be a good idea—I do not know, I am not commenting on the merit of the idea—on these townships. I think he virtually said in his remarks that ideally he would like to see a change across the state. From my personal point of view, I would prefer that, if there were going to be change in the area Mr Parnell is concerned about, it should be across the board so that we have a system which everyone understands and which is not replete with anomalies.

My invitation to Mr Parnell and to the opposition is that I am happy, any time, to sit down and talk about Development Act issues. I can indicate that there will probably be a number of occasions in the next few months when minor matters will be considered under the Development Act, but I recognise that there is a period of time after which major pieces of legislation like the Development Act deserve to be at least looked at in a holistic fashion, not just looked at by picking a section out here and there and so forth.

I issue the invitation now to other members here and to Mr Parnell that I would be quite happy, informally, to start having conversations about how we can usefully advance that conversation, with a view to perhaps finding that the parliament has relative unanimity about a whole range of issues to do with modernisation or changes to the Development Act that we could all happily sign up for.

That may or may not turn out to be possible, I do not know, but I am certainly up for the discussion about that. That offer is made in the spirit of attempting to find out whether there is a whole range of concepts and ideas that, basically, everyone is sitting here privately having and not realising that the rest of us have the same ideas. If that were the case, it would be a pity if we did not do something about it, but that is a discussion for another day.

That explains why I do not support this now, and when I say 'this' I do not mean the whole bill, I just mean Mr Parnell's contribution. Aside from that, I think my position will be that all the amendments suggested in the other place are acceptable, and I foreshadow that that is the way we are going.

Mr Venning: It's turned you grey.

The Hon. J.R. RAU: It has. So, other than to answer specific questions as we go along, that is really all I wish to say.

Ms CHAPMAN: I indicate that the member for MacKillop, our deputy leader, is the lead speaker on this matter. I have made my position very clear on these bills in the McLaren Vale debate, and I will be brief on this bill. The Barossa Valley is a beautiful place, and full credit goes to the people of the Barossa Valley for that occurring. It does not need this bill and it certainly does not need your government to go in there and bugger it up.

Members interjecting:

The ACTING CHAIR (Hon M.J. Wright): Order!

Mr PICCOLO: I would like to pose two questions to the minister. To clarify, if and when this bill is passed and enacted and the interim DPA lifted, would it be correct to say that if you were permitted to build a house on an allotment in the Barossa Council area you could do so after?

The Hon. J.R. RAU: That is what they call the status quo antebellum question, and I think the answer is yes.

Mr PICCOLO: If all the other things are true, if someone wanted to have some sort of industrial activity near the townships, will this bill prevent that from occurring?

The Hon. J.R. RAU: No, this bill does not seek to regulate the management of industrial activities. That would be dealt with under the existing plan regime; it would either be okay or not, according to that regime. It would not be affected by this.

Mr VENNING: As the member representing this area, can I say that this has been a long saga. In September last year, the Minister for Planning announced with great fanfare that the government would move to protect the Barossa Valley and the McLaren Vale regions from urban

sprawl. It was obvious that the government was trying to recover from its poor handling of the Mount Barker development issues. I will remind the house that Mount Barker was never going to happen in the Barossa.

The concept was widely supported and it was presumed that generally development restrictions would be applied to the rural industry and agricultural areas of the region, not within towns. I attended the launch and supported the general principle of this. I thank the minister for including me in the function at Lehmann's Winery. There was a general feeling of support, not knowing exactly what was going to happen. However, I was cautious from the start because I was concerned about council losing some of its power.

In my 22 years here, I have learnt to be cautious of any legislation where a government is taking power away from another section of government, particularly if it is local government. That is what I was generally concerned about in the first place and I did take it up with the council. The council was in love with the idea in the first instance; I was not. Many a discussion and argument was had.

When the first draft legislation and DPA were released on 28 September, townships were included and would fall under the jurisdiction of this legislation. There were also some developments that were defined as non-desirable. They were fast food franchises, hobby farms, etc., and many in the community were very curious about why hobby farms were included as this was not something that had been raised at any of the previous meetings or in submissions as an issue. Interestingly, wind farms were not included in this list. So, effectively, in this first draft, the Barossa is being protected but wind farms across the Barossa ranges would be allowed, which I would never support.

The effect of the interim DPA was immediate, and the minister spoke at length about that just a few moments ago, and I agree with everything he said. It was a broad-brushed, hard-hitting effect and it did cause angst. New development applications and proposals ground to a halt and the Barossa Council (95 per cent of the council area was affected, much more than any other council), which was originally supportive of the intent to protect the Barossa, sought relief. The mayor made a public comment, and I will quote it:

> We advised the minister that while council completely supported the original intent of the bill and the DPA to protect the Barossa against urban sprawl and inappropriate industrial development, the draft bill and DPA had, in our view, gone too far.

That was Brian Hurn, Barossa Council mayor, on 17 November 2011. As the minister just said quite clearly, there was confusion with this and all of us—me included—saw this DPA as a real spook. It spooked the community big time, and people who were going through developments were told that they could not proceed. I think there was an overreaction on behalf of some people and I, as a member, really got hammered about what we were going to do about this.

We then saw the second edition of the DPA and the bill was released in April, when the realisation hit that the proposed legislation and planning restrictions were seriously flawed. I give the minister credit for that: it was changed, and I do not think there was too much politicking about that. It was done. I did not get on to the media and have a go at the minister for doing that.

The second iteration of the DPA saw some of the ridiculous restrictions of the first corrected but, for some, the damage was already done. I know of at least one large business associated with the building industry that had to close its doors and lay off workers due to the downturn in the industry. That is not an exaggeration. I know that some of these companies were pretty cautious because things were pretty tight, particularly in relation to the wine industry, and this was enough to say, 'That's it.'

The initial draft bill included Keyneton in the Barossa Valley district protection area, encompassing the historic Henschke Winery. However, when the second draft of the bill was released, Keyneton was no longer in the protection zone. If this is not an example of policy on the run, then I do not know what is.

I think defining character values is fraught with difficulty—different character values across the district. Character values will not always be black and white. I think this may cause some difficulties in the future as it is very much open to interpretation.

Another very interesting point regarding this whole flawed process is that the projects highlighted in the state government's own 30-year plan, particularly the area earmarked for residential development (Tanunda East), has been delayed and, even though it had approval and

was in the government's own plan, it still has not been signed off. I hope the minister will be able to do that; I assume you said you would. It has caused a fair bit of angst around the place. It is already done; the community accepts that. I know not everybody does but I think the majority does.

No-one is arguing that the region should be protected from urban sprawl. I am one of the first people to support the retention and preservation of primary agricultural farmland, but the way this whole process has been managed by the government would be laughable if it was not so serious and it did not have as much impact on people's lives as it does. I have no problem (and I never have) about protecting those farmlands. It was never an issue, but when they got into the encroachment of towns it caused all sorts of problems.

I commend the work of all the councillors involved. Two versions of the restrictive DPAs have placed enormous strain on the council's planning department and officers, and they have done a great job communicating at the coalface with residents and me as the MP. I pay credit to Louis Monteduro and Mark Mickan, the two planners of council.

As the minister has just said—and I will not repeat the words because I don't have the courage I suppose—it was difficult for them. They were the meat in the sandwich and they were getting instructions and it was a difficult time. But they got through it and I pay credit to them. I also want to pay credit to councillor Susie Reichstein. She is on my staff and she certainly was able to give me the shining light of what they were trying to do. It was a moving feast, minister, as you said.

In effect, all the government was trying to do with the interim DPA and bill was to protect itself from itself which, given the Mount Barker debacle, no-one can disagree with. We do not want to see what happened there happening to the historic Barossa region. Under the previous council's Barossa better development plan in its DPA, it certainly had a very strong hand in what was happening in the Barossa.

I have said before on the record, and I do not think it is dangerous to say, some years ago I saw an opportunity to buy a house in the Barossa and I saw some beautiful houses alongside the Para River and land behind. I thought what a waste that was and I should buy the house and do hammer head developments. Well, there was no way in the world; it was against the rules and there was no way in the world that was ever going to happen and never will, purely because of where it was. It was one question to the council and the answer was totally and definitely no.

It has been consistent. Nobody has ever done it and nobody ever will. That have been very consistent and very protective of what they have there. I pay tribute to the Barossa Council, although they did change tack somewhat, and particularly the four Barossa luminaries as I call them. The minister has named them. I understand that they were in here today. The problem I have with that, though, is that we have an elected body up there. People elect them, but when you have four prominent people get up there and make public comment, it makes it very difficult for the elected people to come out and counter the argument.

There were some interesting arguments going around. I got some very interesting phone calls. I noted the minister's response to the McLaren Vale bill yesterday the developments that would have been approved before legislation will be allowed to proceed. I want to quote that because I really appreciate this. I want to read it onto the record so that everyone can see it and know that this is what is going to happen:

> I can say that it is my intention that, once the legislation is passed, we will be able to revert to the pre-existing regime, and that would mean, to be quite particular about it, that, if prior to this legislation being introduced, you owned a parcel of land and you were able, under the then existing planning regime, to make an application to put a building on it—or any other activity, for that matter—you should have the opportunity to continue to make such an application, as you always did.

Well, that sums it up. That is a lot of the fear that has been there and it has been totally dispelled with just that comment. I also noticed that you referred to the interim DPA as a prophylactic measure. I think the term you used is to stop things happening. It certainly did stuff things up a bit. I cannot use the other word because it is unparliamentary. Yes, it is an interesting word.

Minister, I certainly appreciate that. This has been a fairly painful process and it has created precedents; already other regions are looking at it, as you would know. Planning has become a difficult and complicated process, and I hope this alleviates this somewhat. For the record, I do support a McDonald's or a derivative of it or other like business in the Barossa in a proper location.

I know the four luminaries do not agree with me—I have had phone calls about that. I have seen McDonald's in Paris, Nuremberg and Bordeaux, where it is not the normal big golden arch, but it is usually in a historic building and very appropriately placed. I cannot see any problem with having one in the Barossa. I know that is perhaps controversial but, as I said, I have seen it all over the world. The Barossa is a wonderful region and well worth preserving and protecting, but it has to be allowed to live and the local economy has to be sustainable.

Finally, it has been a long and drawn-out process. Yes, we have had a good go at this, and I thank the minister very much for his cooperation. I appreciate the minister's willingness to talk to us in and around this building at any time. Also, David Ridgway, my colleague, spent many hours on this issue. It is up to us now to make it work and ensure our constituents are aware of what the new law means and how it will affect them. I am a farmer and, as I said, I do not like to see farming land being lost because, as we know, we have more and more people to feed and every day we lose hundreds of acres of productive land in the world.

I again thank all those involved. I will even thank Mr Andrew Grear from the minister's department. He is a very strong character, and I appreciated the frankness and the briefings he gave us. He certainly is a Sir Humphrey, minister: I do not know whether you have any difficulty with him. Planning is a difficult issue, and I cannot criticise these people because it is a very involved business and it affects people's lives. I really think that things that divided us on this matter are overshadowed by those things we agree on. I, too, will have a look at section 6A: I was not quite sure. Somebody mentioned it and then I forgot about it. I will have a good look at that and, again, follow your cue—and, also, no doubt, council will have something to say about it.

So, we are over this. The Liberal Party would have liked our amendments passed, and the shadow minister will probably talk about in a minute, but I am sure the council is still a vital part of this process. I hope the minister can now address the Tanunda East issue.

Mr PICCOLO: I would like to make a few comments about this bill. As the minister indicated himself, the process perhaps could have been a little better. Having said that, though, I think both the government and the council could have done better.

The objective of this bill, as I understand it, is basically to preserve the character of the Barossa area for two primary reasons: first, to enable ongoing primary production in the area and to ensure that we do not lose valuable primary production land and, secondly, to recognise the character and the importance of tourism in that region for the economy and also for the people of the area.

In terms of making sure that we have productive land in the region, I note the potential for land use conflicts if we were to allow further urban and residential development, because I notice the minister has mentioned that industrial development can still occur. This is an issue that has been raised in the sustainable farming committee by a number of people, and this bill addresses some of the discussions we have already had in that committee.

I have talked about the process, and when people have differences of opinion there are two ways to tackle a difference of opinion: you can turn up the heat and make sure that your view is the only view that is heard and your view is the predominant view (which does not actually resolve the conflict), or you can actually shed some light on the issue, therefore hoping to get a resolution quickly rather than later. In this regard, I do not think the council response was one which helped shed light on it.

In fact, because part of the Barossa Council area is in my electorate, a number of people came to me concerned about the impact of this bill on their properties and livelihood in the longer term. One of the issues is that the Barossa Council, in one of its fliers that was sent out to the community, which was then sent to me by some ratepayers, failed to distinguish the difference between prohibited development and noncomplying development, so people read noncompliant to be prohibited; in other words, you just cannot do it. When you sat down with people and explained to them the difference, you also explained to them that, once the bill was enacted and the interim DPA lifted, the intention was that the pre-existing conditions would come to the fore again, and that if it was noncomplying then, it would be noncomplying, etc.

In fact, in the meantime, a number of people have actually applied, even with the provisions of the interim DPA in place, to build a home and do other things, and have gone through the process; some have been approved. Unfortunately, there was a lot of scaremongering in that area. I would not entirely agree with the member for Schubert's comments about who said what and who added fuel to the fire. Certainly, from what I read in the local paper—perhaps I read a

different edition to the member for Schubert—some of the comments he made at the time did not actually clarify this issue either. Perhaps he did not understand it. Perhaps as a government we did not explain it properly.

Mr Venning: Now or then?

Mr PICCOLO: Then. Yes, you would have to acknowledge that.

Mr Venning interjecting:

Mr PICCOLO: Yes. Well, you have to ask questions. I sought clarification at the time. I understood it. If I can understand it, surely everyone else can as well. Putting that aside, in fairness to the council, since that they have actually processed a number of applications for noncomplying developments and some have been approved, but there was a time there when confusion reigned.

I would say the comments made in this place by a number of members at the time did not help the issue at all. They actually inflamed the issue. I am not sure if it was deliberately to mislead the people, but it certainly misled the people, and as I said, when you sat down with people and explained to them what it meant, most of them said, 'Okay, not happy, but we can actually see a way through this issue,' and so they did.

The main concern raised with me in meetings which I arranged between various farmers and also government officials was (and the minister has responded today), 'Do I also have a right to build a home if I have an existing right to build a home on a separate title?' The minister basically said yes. The second concern was, 'I have some land, which is actually adjacent to an industrial area. I would like my area to be considered for industrial development. Can I do that?' Certainly you can apply to do that under the normal rules, the current rules which are in place.

The concerns which have been raised with me have, in the main, been addressed. What this will do is stop the urban sprawl, which I think everybody agrees to. One of the comments which has been made by a number of members of the opposition is that this government has run roughshod over local government in this regard. They talked about a whole range of examples and said that we do not care about local government. I just inform the house that the last ministerial DPA which was successfully challenged in the Supreme Court and knocked off was actually a Liberal government DPA; yes, a Liberal government DPA. In fact, it was in February 2002. The Supreme Court handed down its decision to knock out a DPA—

An honourable member interjecting:

Mr PICCOLO: That's right. In February 2002, the Supreme Court knocked out a DPA put in place by then minister Laidlaw on behalf of the then Kerin government, I think it would have been. So when it comes to evidence of riding roughshod over the local government, if you look at the court system and judicial adjudication, it was the Liberal Party which did that. I was actually mayor of the town at the time. We challenged the Liberal government over that, and the Supreme Court agreed with us. No other DPA, despite all the rhetoric in this place, has been knocked out by any court since then.

When you look at the record, it is the Liberal Party which has ignored local government and it is the Liberal Party which was held to account. The irony was that the Supreme Court handed down its decision on this DPA in February 2002 on the very same day that the Liberal government fell. I suppose to some extent that was justice served.

As I said, when you cut through what has been said here, this proposal does one thing and one thing alone: it prevents urban sprawl, it prevents people speculating in those areas in developing land and it also prevents land prices being pushed up in a very unhealthy way which makes farming unfinancial. When you have developers who push the boundaries further out, they actually make adjacent farming land much more expensive, which makes it also less viable.

With those comments, noting that the minister has addressed the concerns I have raised and noting what this bill intends to do, I think the bill will get some community support and I will support it.

Mr WILLIAMS: The member for Light has encouraged me to say more than I was going to say about this matter.

An honourable member: Heaven forbid!

Mr WILLIAMS: Heaven forbid! May I first of all point out to anybody who is reading this in the *Hansard* that I made some comments yesterday, which are on page 3118, with regard to the

very similar matter at McLaren Vale. I will try not to repeat those comments, but I do want to make a couple of general comments about planning and what it is about.

I was involved in local government between the years of 1981 and 1989. I think the Planning Act 1982 came into being whilst I was in local government, and I recall, as a young councillor, my shock and horror as we went about developing the first plan for the district in those days. I thought, 'What is this going to do to the people's rights?'

The Planning Act, and now the Development Act 1993, which subsumed the earlier planning legislation, has certainly impinged on the rights people enjoyed prior to that, but I think we have to ask ourselves, and should ask ourselves quite regularly, what we want to get from planning and orderly planning—and that is what the Development Act tries to achieve. If I just go to section 3—the objects of the Development Act 1993—and read some of the objects, I think it will give us an insight into what the parliament has, over the years, wanted the Development Act to achieve for the state.

Paragraph (a) states 'to establish objectives and principles of planning and development', and I do not think anybody would object or disagree with that; paragraph (b) states 'to establish a system of strategic planning governing development', and I think we would all want that to happen; paragraph (c) states 'to provide for the creation of Development Plans', with four subparagraphs; and I think paragraph (e) is quite important, that is, 'to provide for appropriate public participation in the planning process and the assessment of development proposals'.

It has always been my belief that the orderly development under the various legislation we have had in this state since the early 1980s—so, for about 30 years—was about assisting people by letting them know what would be what we call a 'complying development' and then, if somebody was proposing something which was complying, that it be approved in a speedy manner. It was also about setting up a regime to allow things which are not contemplated in the plan to be assessed on their merits ,and generally to allow these proposals to be assessed on their merits by the community. At the end of the day, it is the community that is affected, and surely the community should have a right to have that debate from time to time about what should be allowable within their community and within their environment.

I have never believed that planning should be about banning things. I do not believe that, at any point in time, any level of government should try to say to some future group of people, 'You cannot do this.' I think those decisions should be left to that future group of people, but what we have done in this piece of legislation has walked away from that principle. We have said today that we do not want something to happen and we do not want it to happen for ever in the future, not that we can actually ban it but we can make it difficult to happen. I think that flies in the face of what our planning law has said and done for the last 30 years.

Interestingly, the minister has not said that he wants to change the fundamental principle that sits behind our planning law: he wants to have the best of both worlds. He wants to cherrypick a couple of sites within the state and argue that they need to be treated differently from any other site. Politically I can understand why he is doing it, and this is politically driven, there is no doubt about that. Notwithstanding what the member for Mawson said yesterday, this is all about the seat of Mawson and preserving that seat in the hands of the Labor Party.

Mr Bignell: All you guys have got to do is turn up and listen to the people down there and you'll find out it's a decision by the community.

Mr WILLIAMS: I agree. I love to listen to the people, and that is what I am arguing. I am sorry, Mr Acting Chair, I am responding to the member for Mawson. I am making the argument that it is the people who should be making the decision. I am sure there are people in McLaren Vale who have another opinion as well. What we are doing is saying, 'You cannot consider any particular proposal on its merits as a local community because some of us have got the government of the day to say, no, this will never happen.'

I am just making the argument that I think that is poor use of planning law, just as the government introducing just on 12 months ago the DPA to allow wind farms to be developed where they had been knocked back, where proposals had been knocked back by the local community, as in the community of Allendale just outside of my electorate in the Lower South-East, where they had been through the planning process and the people, the community down there, said, 'We don't want this wind farm development to continue down parallel to the coast and come up cheek by jowl with a closely settled community.'

The government of the day said, 'Sorry, we don't believe that the community should have the right to have that say.' So they brought down a DPA which took away the right of the community to oppose the development. That is the complete opposite, I remind the member for Mawson, of what the government is doing in this case. In the case of the seat of Mawson the government has said, 'We will stop development for ever, or make it nigh on impossible for ever.'

However, in the case of my community, which had been through the process and won the day, the government said, 'Sorry, we will never win that seat so we will not only overturn the wishes of that community, we will give the wind farm developer the opportunity to go back and start the process again.' And lo and behold! What has happened in the meantime? They now have planning approval to build a wind farm just outside of the town of Millicent in my electorate, where I do not believe they would have got approval through the pre-existing process. I am making these points—

The Hon. J.R. Rau interjecting:

Mr WILLIAMS: No, this is not about Schubert; this is about Mawson. I am making this point because I think in both instances the government has abused the planning system; that is the point I am making. The opposition is very disappointed that the amendments that we moved in the other place were not adopted by the other house. I would much prefer to be here arguing the case for those amendments. I know that the government was fundamentally opposed to them, but I would much prefer to be here arguing for those amendments than the one we have; but the first thing you learn in this place is how to count. Notwithstanding that, I would like to make a couple of other points.

The member for Light just made some points and talked about urban sprawl making farming difficult because it forces up land prices, so he is arguing that this is good because we have stopped that from happening in the Barossa Valley. I think the member for Light was being a little disingenuous. Every house that you stop from being built on one site, you cause to be built on another site. If there is a demand to build a house, the house will be built.

If you make a rule that you cannot build a house on site A, surely it will be built at some time on site B. Yes, through this measure we will stop urban sprawl moving into the Barossa Valley, and there are probably good reasons to do that, but we are pushing that urban sprawl into somebody else's backyard and imposing on some other farming community, probably to the west of the Barossa Valley, certainly to the north of greater metropolitan Adelaide, and we will see urban sprawl continue in that way.

I made the point yesterday, in the debate about the similar McLaren Vale bill, that one of the reasons we are even having this debate is that over a long period of time we as a state have failed to address this issue of the sprawl of Greater Adelaide. We have failed to come up with a solution and we have failed to pick up the vision. I mentioned Don Dunstan's vision of building a satellite city at Monarto, and I said that I thought that that would have been a great idea and that it was something I had always lamented did not occur.

We have failed as a state to develop our rural communities. We had a city of Whyalla with a population of some 35,000 people at its maximum, and I think its population now is around 23,000 to 24,000. We had already developed the infrastructure on that site to house and have jobs etc., for about 35,000 people. We allowed that to shrink. We have allowed pretty well all our regional communities to stagnate, at best, and, in a lot of instances, to shrink. We have done nothing positive or proactively as a state to grow our population outside greater metropolitan Adelaide, apart from places like Mount Barker and possibly Murray Bridge.

I think the Mount Barker experience is another one of the drivers behind this piece of legislation because the government got that terribly wrong. As the minister conceded, that will not happen again under his watch. I am pleased to hear that and, again, Mount Barker went wrong because the government took away the decisions from the local community. Planning should be about the local community having its say about what it wants to happen in its backyard. It should not be about somebody sitting down here on North Terrace directing what will happen at Mount Barker, what will not happen at McLaren Vale, what will not happen in the Barossa Valley, what will happen at Buckland Park, and taking away those decisions and those choices from the local community.

That, I believe, is bad planning, and that is why this government, certainly with regard to Mount Barker, ended up in the mix that it did, and that is why this minister has said, 'That will not happen under my watch.' He has learnt the lesson, but the lesson I suspect he has failed to learn is

that good planning is about letting the local community make its own decisions about what it wants in its community.

One of the things that has always disturbed me about planning from way back in those days I mentioned in the early 1980s is that I always feared that, if you had a very strong planning system, you would end up with every community looking the same because they would all be driven by the same planning principles. I think that would be a disaster, too, but the thing this state has really missed out on is decentralising our wealth and our population, and I think that that is the answer to doing something about this urban sprawl of Greater Adelaide. It will be better for the environment, it will be much cheaper as a state, and I think we would get great economic benefit from doing it.

You do not go into any other state—except possibly Western Australia, certainly not in the Eastern States—and have the situation where you have one great big city and then just a small number of very small communities. That is what we have in South Australia. We have to drive for four hours north to get to Whyalla, around and through Port Augusta, to get to a decent-sized city of over 20,000 people or four hours almost into Victoria to get to Mount Gambier. They are our only two communities of over 25,000 people outside of greater metropolitan Adelaide.

I believe we will see that sort of population in the not too distant future, probably in Mount Barker, and we may end up seeing Mount Barker as just another satellite of Adelaide. But where is our plan to grow, say, the Port Lincoln area, the cities around the Upper Spencer Gulf, the communities in the Riverland, the lower Fleurieu into communities of 50,000 plus people? I think you can do that without getting the problems we are seeing in greater metropolitan Adelaide.

I remember getting some information many years ago, when we were in government. Di Laidlaw, who was the planning minister at the time, brought a paper to our party room that compared the costs, the imposts, of developing at a place like, say, Buckland Park by the time you put in the transport infrastructure, the power infrastructure, the telecommunications infrastructure as opposed to urban infill. That was 10 or 15 years ago, and we have not seriously addressed that issue.

I did say to a number of people that I was not going to speak very long about this, but planning is something I am passionate about and something that I have been passionate about for a long time. It disturbs me that in South Australia we still have this huge problem, that all our development is happening on the fringes of greater metropolitan Adelaide, and we do not seem to have come up with any answer. I do not think that the approach taken in this piece of legislation and the piece of legislation we were discussing yesterday has done anything to overcome that bigger problem. I conclude my remarks there.

Progress reported; committee to sit again.

VICTIMS OF CRIME FUND

The Hon. J.M. RANKINE (Wright—Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety, Minister for Multicultural Affairs) (17:49): I seek leave to make a ministerial statement.

Leave granted.

The Hon. J.M. RANKINE: In response to a question without notice from the member for Bragg to the Attorney-General during question time today, I would like to reiterate comments I have already made publicly.

A public servant worked in my office as my personal assistant until 10 August 2012. I understand this person is now on leave from her substantive position in the Public Service. This person appeared in the Adelaide Magistrates Court on 12 October 2012 charged with eight offences relating to an investigation of her husband, an employee of the Attorney-General's Department, involving the Victims of Crime Fund.

Let me assure the house, my office has no involvement in approving or administering payments under the Victims of Crime Fund. Also let me assure the house that I have no role in controlling or directing investigations or prosecutions, nor would I seek to do so.

To suggest otherwise is an attempt to cast aspersions not only on the Attorney and myself, but on the Crown Solicitor, prosecuting authorities and senior South Australian police. At all times I have acted on the advice of the Anti-Corruption Branch in dealing with this matter.

I have been both shocked and saddened by these events as was, no doubt, the deputy leader of the Liberal opposition in the Legislative Council upon learning recently that a member of her staff had been convicted of 74 counts of fraud.

I have been advised by Mr John Venditto, the officer in charge of SAPOL's Anti-Corruption Branch, that the investigation remains ongoing and I am unable, on his strict instruction, to make any further comment on any matter to do with the investigation.

STATUTES AMENDMENT (COURTS EFFICIENCY REFORMS) BILL

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

No. 1. Long title—After 'the *Domestic Partners Property Act 1996*,' insert:

the *Magistrates Act 1983*,

No. 2. Clause 9, page 4, lines 20 to 22—Delete all words after 'by this Part' and substitute:

—

(a) do not apply in relation to the sentencing of a person following the commencement of this Part if the proceedings for the relevant offence were commenced before that commencement (and such sentencing is to occur as if this Act had not been enacted); and

(b) apply in relation to the sentencing of a person following the commencement of this Part (including the sentencing of a person for an offence that occurred before that commencement) if the proceedings for the relevant offence were commenced on or after that commencement.

No. 3. Clause 11, page 5, after line 8 [clause 11(1)]—After subsection (1a) insert:

(1b) However, subsection (1a) does not apply if the Court determines, on its own initiative or on application by the appellant, that the appellant should be physically present in the courtroom.

No. 4. Clause 17, page 7, lines 14 to 16 [clause 17(2)]—Delete all words after 'section 14' and substitute:

—

(a) do not apply in relation to the sentencing of a person by the Magistrates Court following the commencement of this Part if the proceedings for the relevant offence were commenced before that commencement (and such sentencing is to occur as if this Act had not been enacted); and

(b) apply in relation to the sentencing of a person by the Magistrates Court following the commencement of this Part (including the sentencing of a person for an offence that occurred before that commencement) if the proceedings for the relevant offence were commenced on or after that commencement.

No. 5. New Part, page 7, after line 28—After Part 6 insert:

Part 6A—Amendment of *Magistrates Act 1983*

19A—Amendment of section 6—Appointment to administrative offices in magistracy

(1) Section 6—after subsection (2) insert:

(2a) A person is not eligible for appointment as the Chief Magistrate unless he or she is a legal practitioner of at least 7 years standing.

(2b) For the purpose of determining whether a legal practitioner has the standing necessary for appointment as the Chief Magistrate, periods of legal practice and (where relevant) judicial service within and outside the State will be taken into account.

(2) Section 6(3)—delete 'the Chief Magistrate or'

(3) Section 6(4)—delete 'shall' and substitute:

(other than an appointment as the Chief Magistrate) will

19B—Insertion of section 6A

After section 6 insert:

6A—Chief Magistrate to be magistrate and District Court Judge

(1) The Chief Magistrate will be taken to have been appointed as a magistrate and as a Judge of the District Court of South Australia (if he or she is not already a magistrate or a Judge of the District Court of South Australia).

(2) Section 6 of the *Judicial Administration (Auxiliary Appointments and Powers) Act 1988* applies to the Chief Magistrate and, for that purpose, the office of Judge of the District Court of South Australia will be taken to be the primary judicial office of the Chief Magistrate and service as Chief Magistrate will be regarded as if it were service as a Judge of the District Court of South Australia.

(3) However—

(a) the Chief Magistrate may not perform the duties, or exercise the powers, of a Judge of the District Court of South Australia while the Chief Magistrate holds an appointment as Chief Magistrate; and

(b) the Chief Magistrate may—

(i) resign from the office of Chief Magistrate without simultaneously resigning from the office of Judge of the District Court of South Australia; or

(ii) resign from the office of Judge of the District Court of South Australia and from the office of the Chief Magistrate without simultaneously resigning from office as a magistrate,

and such a resignation will not give rise to any right to pension, retirement leave or other similar benefit.

(4) The Governor may, by regulation, make provisions relating to existing entitlements, and recognition of prior service, of the person holding the office of the Chief Magistrate on the commencement of this section or a person appointed to the office after that commencement, including by making modifications to the application of an Act that deals with superannuation or pensions.

No. 6. New clause, inserted Part 6A—After inserted 19B insert:

19C—Amendment of section 9—Tenure of office

Section 9(1)(c)—delete 'sixty-five' and substitute: '70'

No. 7. Clause 20, page 7, line 33 [clause 20(1)]—Delete '$24,000' and substitute '$25,000'

No. 8. Clause 20, page 7, line 35 [clause 20(2)]—Delete '$12,000' and substitute '$25,000'

No. 9. Clause 20, page 7, line 38 [clause 20(3)]—Delete '$12,000' and substitute '$25,000'

No. 10. Clause 24, page 8, lines 30 and 31 [clause 24(2)]—Delete 'whether the relevant offence occurred before or after that commencement' and substitute:

(including the sentencing of a person for an offence that occurred before that commencement) only if the proceedings for the relevant offence were commenced on or after that commencement

No. 11. New clause, page 8, after line 31—After clause 24 insert:

24A—Review of certain amendments

(1) The Attorney-General must, as soon as practicable after the first anniversary of the commencement of section 20, conduct a review of the operation and impact of the amendments made to the *Magistrates Court Act 1991* by that section.

(2) The Attorney-General must prepare a report based on the review and must, within 12 sitting days after the report is prepared, cause copies of the report to be laid before each House of Parliament.

No. 12. Clause 38, page 11, lines 26 to 29 [clause 38(2)]—Delete all words after 'sections 33, 34 and 35' and substitute:

—

(a) do not apply in respect of the procedure to be followed after the commencement of this Part in proceedings commenced before that commencement (and such proceedings are to proceed as if this Act had not been enacted); and

(b) apply in respect of the procedure to be followed in proceedings commenced after that commencement.

No. 13. Clause 43, page 12, line 22—Delete 'whether the relevant offence occurred before or after that commencement' and substitute:

(including the sentencing of a person for an offence that occurred before that commencement) only if the proceedings for the relevant offence were commenced on or after that commencement

SOCIAL DEVELOPMENT COMMITTEE

The Legislative Council informed the House of Assembly that it had appointed the Hon. Carmel Zollo to the committee in place of the Hon. J.M. Gazzola (resigned).

PARLIAMENTARY COMMITTEE ON OCCUPATIONAL SAFETY, REHABILITATION AND COMPENSATION

The Legislative Council informed the House of Assembly that it had appointed the Hon. G.A. Kandelaars to the committee in place of the Hon. J.M. Gazzola (resigned).

ABORIGINAL LANDS PARLIAMENTARY STANDING COMMITTEE

The Legislative Council informed the House of Assembly that it had appointed the Hon. K.J. Maher to the committee in place of the Hon. J.M. Gazzola (resigned).

STANDING ORDERS COMMITTEE

The Legislative Council informed the House of Assembly that it had appointed the Hon. K.J. Maher to the committee in place of the Hon. R.K. Sneath (resigned).

PRINTING COMMITTEE

The Legislative Council informed the House of Assembly that it had appointed the Hon. K.J. Maher to the committee in place of the Hon. J.M. Gazzola (resigned).

JOINT PARLIAMENTARY SERVICE COMMITTEE

The Legislative Council informed the House of Assembly that, pursuant to section 5 of the Parliament (Joint Services) Act 1985, it had appointed the Hon. K.J. Maher as a member of the committee in place of the Hon. R.K. Sneath (resigned) and had appointed the Hon. G.A. Kandelaars as the alternate member to the President and the Hon. Carmel Zollo as the alternate member to the Hon. K.J. Maher.

At 17:54 the house adjourned until Thursday 18 October 2012 at 10:30.