HOUSE OF ASSEMBLY

Wednesday 11 September 2013

The SPEAKER (Hon. M.J. Atkinson) took the chair at 11:00 and read prayers.

SELECT COMMITTEE ON A REVIEW OF THE RETIREMENT VILLAGES ACT 1987

Mr SIBBONS (Mitchell) (11:01): I move:

That the committee have leave to sit during the sitting of the house today.

Motion carried.

SELECT COMMITTEE ON DOGS AND CATS AS COMPANION ANIMALS

Adjourned debate on motion of Dr Close:

That the report be noted.

(Continued from 24 July 2013.)

Mr PEDERICK (Hammond) (11:04): I rise to speak on the Select Committee on Dogs and Cats as Companion Animals and note this came about because of a proposed bill by the member for Fisher. There has certainly been a lot of interest over the years in how companion animals, especially dogs and cats, are treated, and how people perceive what it is necessary to do when you pick up a pet.

We see the wanton waste that happens and the tragic loss of life at times of pets when people think there is a cute little pup or kitten in the window. They take it home, and it might be a Christmas present or something like that, and then they realise that there is more to owning a pet than just having something cute and fluffy looking at you every morning. There is certainly a lot more to it.

One point I wanted to make during the establishment of this select committee was that we did not enforce any issues with regard to working dogs and especially with regard to the trade in farm animals, especially pups that could be bred for trade between neighbouring farmers, but also in relation to purpose-bred dogs like guide dogs and the like. I am pleased that the committee stuck to its core business of looking at companion animals and, in our definition, essentially, pets.

What happens in rural areas especially is that there is a lot of trading. When people know that someone has a good dog and a good bitch, and when they know that there is a litter of pups coming along, they want to be able to get hold of those pups so they can work their livestock. I did not want to see an impediment to that kind of trade, especially in rural areas, although we do acknowledge that the welfare of those animals is certainly high on the agenda.

Some interesting issues came up during the sitting of this committee. We saw a couple of breeders come under scrutiny, and rightly so, for their activities. I know there was one in the Riverland where there were some issues with the breeding of pets and also one, sadly, in my electorate, down towards Milang.

The problem we have is that, apart from the trade in animals that can be done through pet shops, some people do it from car boots and that sort of thing. Someone might respond to an advertisement for a pet, thinking, 'Yes, I will have one of those', and, because the breeder may not necessarily want the buyer to see how these pups or kittens are bred, they will meet them somewhere in a car park and do the deal out the back of a car.

There has also been a trade of, I guess you could call it, designer dogs. People basically put their orders in and it may be pet shops, even interstate, that say they want a certain breed or a certain crossbreed because that is the trend that there is a demand for. Some of these pups can sell for many hundreds of dollars if not approaching $1,000, so you will see people putting breeding animals through breeding programs that are totally unsustainable. It puts a lot of pressure on dogs and it is totally wrong. It causes dogs to breed continuously, just so someone can profit unscrupulously from this trade.

I was very pleased to be a part of this select committee. I just want to go through the specific recommendations that relate to our terms of reference. The first recommendation was about introducing an enforceable standard for the breeding of companion dogs and cats. I think

that is where we have to get at the core of the issue and make sure that people do follow the appropriate standards for breeding.

The second recommendation is around introducing a licensing scheme for breeders of companion dogs and cats, and this will cut out some of those unscrupulous traders. The third recommendation is to require mandatory inclusion of breeder's licence numbers and animal's microchip numbers in all advertising and at purchase point. What that will do is basically licence the trade so that people can see that these are legitimate breeders and, obviously, with a microchip there, the animal can be tracked along the way.

Our fourth recommendation is to require minimum qualifications for pet shop, breeding establishment and pound/shelter staff. From what I understand from our recommendations, at least one person operating that pet shop has to have a certain certificate and that has to be on display so that people can see that those qualifications have been adhered to, and the other staff can work under the guidance of that.

Recommendation five: move forward the recent review into the South Australian Code of Practice for the Care and Management of Animals in the Pet Trade, and I think that is self explanatory. Number six: require vendors to provide a cooling-off period prior to handing over a companion animal. This reflects on comments I made earlier in regard to people who think, 'There's a lovely kitten or a nice fluffy pup in the window and isn't that a great thing,' but people really need to think about how they manage these animals because, as we saw during our tours of shelters, and the RSPCA etc., people suddenly realise that they cannot manage the animals. Recommendation seven: develop industry standard information on pet ownership responsibilities, to be disseminated prior to sale. That reflects on my previous comments about the many responsibilities that pet owners need to have.

Recommendation eight: require dogs and cats purchased at any venue (breeder, pet shop, online, market etc.) to be vaccinated at the appropriate level for age and treated for worms and other parasites, microchipped; and require cats purchased at any venue (breeder, pet shop, online, market etc.) to be desexed prior to sale, or a commitment to do so undertaken at point of sale. Any person purchasing a cat for breeding must have a valid breeder's licence.

It is interesting that, while the committee was sitting, sadly we had to put down our pet cat at home. He had been run over or fallen off a tree or something and he was severely injured. We went to the Animal Welfare League and picked up a kitten and I thought, 'This is a pretty expensive cat—$195,' but, when I look back, I think that when buying a pet it is probably the best money we could have spent because all the vaccinations had been done, it was microchipped, it was tattooed and all ready to go and, for the benefit of the committee, to whom I used to talk about the life of this kitten, it is doing marvellously well, and it is a great little pet at home.

Recommendation nine: require councils to prepare separate cat management plans. I think that this is quite an important recommendation. At the moment councils have to prepare a dog and cat management plan. I think it is absolutely vital that a separate cat management plan to the dog management plan be prepared because there are so many more stray cats in society, and there are all these different plans that different councils use in managing their stray animal populations and, certainly, I take my hat off to what Mitcham Council has done in its plans. I have urged some of the local governments in my electorate to take a similar approach.

Another approach we saw interstate was in regard to recommendation 10: urge councils to adopt the 'found pets' initiative to facilitate the return of pets to their owners. In evidence we heard that this was a great initiative where found pets are put online—out there on the web for all to see—and this created far quicker response times, and these animals returned to their rightful owners. Recommendation 11: initiate public awareness programs into responsible pet welfare and ownership issues amongst the general public, with a particular focus on children; and the issues associated with irresponsible pet ownership and the nature and extent of the stray cat problem.

I certainly recommend the report to people who are interested in the welfare of dogs and cats as companion animals because we all should be interested in their welfare; they are fantastic companions. Without putting too heavy a burden on society, we still must do the right thing, in a regulatory way, to make sure that our animals are well looked after and that individuals fully know their responsibilities. As I have repeated a couple of times in my contribution, it is not just about having a lovely little animal at home; there is a lot of care over the next 14 or so years the animal may live, and people need to accept their responsibilities.

Mrs GERAGHTY (Torrens) (11:15): I want to make a very brief contribution. I wholeheartedly endorse the comments from the member for Hammond. Having owned Rhodesian Ridgebacks for so many years now that I cannot even remember, and having two big ones at home now, and being a past breeder, I know how difficult it is when you scrutinise people who come to look at your puppies to make sure that the puppy is going to a good home, that it is going to be well cared for and that people understand the responsibilities of taking a pet home—that it is a lifelong thing.

Some of our past Ridgebacks have lived to almost 15 years, and they have been extremely expensive. I say to the member for Morphett that my vet used to ask me where he should take his family on holiday, and I used to say him, 'It's a good choice to ask me, because I've probably paid for that holiday!' He is a wonderful vet. We still have the same vet, and he does a great job and he looks after my pets really well.

One of the things that does concern me is around pet shops. I know that we have some very good pet shops and that they do the right things, and that, when they sell their pets, they say that they are vaccinated and that you should take them off to have another vet check or whatever. But I was in a pet shop a few years ago and the owner of the shop said, 'Look, someone has dumped some kittens here,' and there they were in a cardboard box, trying to escape, as kittens do.

What really stunned me was that he took the kittens from the box and put them in with the other cats. I thought to myself, 'How irresponsible is that?' Those kittens clearly would not have been vaccinated and one would not have known whether they had any health issues—and there they were being put in with cats, which had a sign up saying that they had been vaccinated and they were healthy animals to take home, and that concerned me. So, I am not a supporter of people buying pets from pet shops, not just for that reason; I think there are other reasons.

In relation to the car boot sales the member for Hammond mentioned, I know someone who purchased a tiny little puppy out of the boot of a car at one of these fairs or whatever they have. After having the little pet for about five or six months—and obviously by that time you have fallen in love with the pet—it turned out that it had an horrendous heart defect, and there was absolutely nothing that could be done for that little puppy.

So, the owner had not only the trauma of knowing that their pet was going to die in the not too distant future but the horrendous expense that was associated with that in keeping the pet in a reasonable condition so that it lived a relatively happy life, which it did, I might say, and was not in pain. I thought about that and I thought about how many other puppies from that litter may have been afflicted with that same defect. I know that in Rhodesian Ridgebacks we have a defect in the breed that, if it is not picked up very early and you pass that puppy onto somebody, you could cause them to have to spend a lot of money in the future.

In fact, that happened to us with one of our puppies. It was missed by us and missed by the vet, but we took that puppy back and paid for surgery, which thankfully could be done to correct the defect, and they took their puppy on. That puppy grew into a lovely dog and she lived for about 12½ years, I think. That could have been an expense that the new owner should not have had to pay for.

I am concerned about those sorts of things. We see pets advertised in the paper, you have no idea what the parents are like—designer dogs, as the member for Hammond talked about. If you put a very large breed with another large breed their temperaments might be such that you produce aggressive dogs. If you are going to buy a pet and you do not see the parents, you do not know the temperament. In big dogs like mine, if they were of an aggressive nature, they could be a very dangerous dog. Thankfully the temperament of our breed is good, but if you mix the temperament of our dogs because of their size with a dog that has a different kind of temperament, you could have a mix of the breed where the dog is not suitable to be around children or out in the community.

For me, I think there needs to be a further investigation around how animals are sold. I have always thought there needed to be a registration for people who are selling pets, even cats, because if you are going to sell a pet you have to be responsible for the kind of animal that you are passing on to somebody else because somebody is likely to have that dog or cat for many years and you do not want them to have something that is going to cause a problem in the family or indeed cost them a lot of money.

Raising an animal can cost you bucketloads of dough with heartworm, vaccinations and all the things that go wrong with animals. They might cut themselves, they might break a limb, all those sorts of things. I guess something I would like to see is that eventually there be some form of registration so that it restricts people from doing car boot sales and flogging them off online. You have no idea what you are getting.

Puppy farming, I have to say I think is disgraceful, and I am not a supporter of designer dogs because I think there is nothing wrong with the original breeds, the same as cats. These creatures have evolved into a specific kind of breed that functions as they breed for a purpose, and I do not see why you need to go ahead and change the breeds. It would be like genetic engineering of human beings. I guess for some that might be a good thing, I am not so sure. They are just a few of my thoughts.

I think the report is a good one. It has been well worked through and I hope in the future that perhaps there may be an extension of that to look at some other things. I think if people are going to buy a pet and they don't want to buy it from a breeder who is a registered breeder, then certainly we should look at the Animal Welfare League because I know they do a fantastic job. Their animals are vetted, vaccinated and microchipped which is absolutely important and you would walk away from there getting a really good pet that you know is going to be a family member for a long time.

Mr VENNING (Schubert) (11:24): The member for Torrens inspires me to say a few things because we all have a certain affiliation and connection to what she just said in relation to our animals. My wife and I are certainly no exception. I want to make a couple of comments in relation to the select committee on dogs and cats. They are companion animals and we rely on them. Particularly in this job you need to have an animal in the family because they are loyal and they will never let you down and they will always be there. When the chips are down, they are great therapy to sit there with.

We have a large German Shepherd—a beautiful, thoroughbred dog—which we did not have to buy because he was in a family which could not cope with him. Because we are on a farm and he needed the space, he was given to us as a nine-month-old dog. He has been desexed, but he is just so fantastic. The saddest thing at the moment is that part of the morning ritual with this dog would be he would get you out of bed quickly so he could go and get the paper—100 yards down the road to pick up the paper and bring it back.

Of course, sadly it is no longer thrown out, and he cannot understand. So, what I do is go down the night before and chuck a paper out. But, he is starting to wise up—he has picked that one up before! We get so close to these dogs. Dogs are so useful in society today. Seeing-eye dogs and guide dogs are so valuable, as are the hearing dogs, and I cannot believe how intelligent and perceptive these dogs are. They do become a very big part of our lives. As has been said, people do buy kittens, puppies and even piglets—

Mrs Geraghty: Ah yes, tell us about the pig!

Mr VENNING: —but do not consider what happens when the pet grows up. As the member for Torrens was just inferring, I had a pet pig, and its name was Bertha. It grew up to be a large sow, but she was quite incredible.

The Hon. R.B. Such: Big Bertha?

Mr VENNING: Big Bertha. When it came time for mating, I would open the back of the ute and she would just jump in—no hurdles, nothing—and we would go down to the neighbour's place, the job was done, and we would bring her back. It was quite legendary. I raised this matter in this house many years ago, and the member for Torrens and particularly the member for Giles have never forgotten about Bertha.

We do become very attached to them. Pigs are highly intelligent animals; they really are. I went to watch the performing pigs the other night at the Adelaide Show. It was just amazing how they can train these little piglets—because, of course, they are not very old, and they are not very big—to that level when they are so young and so quickly; it amazes me. But, it is certainly worth watching.

What we have to understand with pets, and what people do not understand, is that they are a tie; your responsibility is to them, as it is with our dog Darchi. When you go away for a week-long or 10-day holiday, you have to consider the dog. You cannot just leave him tied up, and you cannot

just park him with a neighbour; you have to make proper plans for them. When you have them, you have to realise that is your responsibility.

I do agree with the member for Hammond. We have had dogs, and particularly working dogs, over the years. We have always had a working dog, although not so much at the moment. Kelpies, which are great working dogs and highly intelligent animals, need their exercise; you cannot have kelpies in built-up areas. When the time comes to get a new dog, you always note the neighbour with a bitch that is having a litter, and you put your name down for one and buy it. I hope that—I have not studied that part of this select committee recommendation—

Mr Pederick: They are not part of that; they are working dogs, so they are out of it.

Mr VENNING: The working dogs are exempt? Well, I am happy about that. I notice the member for Giles has just walked into the room, so she might hear about Bertha a bit later on. I would agree you know where the good dogs are, and the trading between farmers of the working dogs is certainly important. I do agree that we need to enforce basic breeding standards: we do not want to see these hybrid-type animals bred just for the sake of curiosity. I certainly agree that we need to cut out non-legitimate animal traders. I find puppy farms abhorrent.

In relation to microchipping, registration and tattoos, I think most owners are responsible, and the select committee would pick up on that. The hygiene of dogs is very important. As the member for Morphett would know, you have to be so careful with their hygiene, especially with long-haired dogs, particularly with eczema and dermatitis. Again, 99 per cent of owners do the right thing.

I think the cat management plan is a separate issue. We also have a cat called Gussygus. He is a moggy if ever there was, but he is a character; he has attitude big time, and he can boss this German Shepherd around like you would not believe. What worries me are stray cats. I believe stray cats are a big problem and they really are killing machines. When you consider how they can climb and jump, they are miniature leopards, really. They are killing machines, and they do have a huge impact on native birds and wildlife.

I think feral cats are a bigger problem that we want to recognise, so much so that when it is in season, we will put a bell around Gussygus' neck so that when he is around, you can hear him. He gets annoyed, but you have to put a bell around his neck so that the native animals know he is around. I commend the report; it is an issue close to most of our hearts and I will certainly go back and restudy the report. I think it is very appropriate that we have debated this committee's report today.

Mr SIBBONS (Mitchell) (11:30): I rise to speak on the select committee for dogs and cats. I was very honoured to be a member of the select committee. In my own household, I have a menagerie that consists of a 14-year-old golden retriever who has had a knee reconstruction and two near-death experiences over the years. We just recently lost one of our guinea pigs, so we are down to one. We have four chooks and a princess parrot, so needless to say, pets are a big part of my household, and the improvement of animal welfare is something that I am very proud to be an advocate for.

The primary objective of the committee was to look at ways to eliminate cruelty to dogs and cats, as well as to reduce the number of unwanted animals being euthanased. Many domestic animals are destroyed every year in South Australia and this is something we need to address as parliamentarians and also as a community. There is a social and economic cost to the needless destruction of so many healthy dogs and cats. The vast majority of people in our community support improved animal welfare legislation. The committee received 168 written submissions, nearly all of them calling for improvements to animal welfare legislation.

One issue at the core of the committee's concern was the consideration of a ban on intensive dog breeding or puppy farms. The RSPCA defines a puppy farm as 'An intensive dog breeding facility that is operated under inadequate conditions that fail to meet the dogs' behavioural, social and/or physiological needs.' In essence, puppy farms are commercial factories in which dogs are bred tirelessly, and housed in small, confined, unacceptable conditions with poor ventilation, hygiene, veterinary care and diet.

There have been numerous distressing examples in the media of puppy farms in recent years. Sadly, while the committee was preparing this report, the RSPCA was engaged in an action against a suspected puppy farm located in the Adelaide Hills. While they are much more difficult to

locate and monitor, the committee also heard evidence regarding kitten farms, which was equally disturbing.

Based on the written submissions and committee hearings, the committee made a number of recommendations, some small and others significant. These include:

- the introduction of an enforceable standard for the breeding of dogs and cats;
- mandatory licensing and registration of breeders;
- mandatory desexing and microchipping;
- the display of licensing and microchip information at point of sale;
- a cooling-off period before handover of a companion animal;
- minimum qualifications for those involved in the breeding, sale or shelter of companion animals; and
- improved public awareness and education about the responsibilities of pet ownership—just to name a few.

It is a great aspect of our parliament that representatives from across the political spectrum can come together and examine a topic such as this and work cooperatively to come up with solutions. The recommendations of this report will make cruelty in the trade of companion animals illegal, enforceable and punishable.

If the recommendations are adopted, within a few years, all owned animals will be microchipped, vaccinated and desexed, other than those intended for breeding by a registered breeder. This will cut down on the number of unwanted litters and reduce the unnecessary destruction of so many dogs and cats. That would be a magnificent achievement and a job worth doing, and I thank my fellow committee members and staff for the privilege of working with them on this worthwhile project.

Motion carried.

PUBLIC WORKS COMMITTEE: PATAWALONGA LAKE SYSTEM SEDIMENT MANAGEMENT PROJECT

Mr SIBBONS (Mitchell) (11:35): I move:

That the 479th report of the committee, entitled Patawalonga Lake System Sediment Management Project, be noted.

On receipt of the Patawalonga Lake System Sediment Management Project submission, the committee was of the opinion that the extent of works contained therein did not constitute the whole of the public work, as defined in the Parliamentary Committees Act 1991, contemplated by the full scope of the project. The submission allocates funding to developing a longer-term solution, which will be developed and constructed, subject to funding.

The committee resolved to address this initial phase of immediate sediment removal through an interim report. This means that the current report does not constitute a final report, enabling the construction of any works over and above the mere removal of sediment countenanced in the attached submission provided to the committee. The committee resolved that the various long-term options mooted in the current submission, or variants thereof, would constitute a public work. Therefore, before DEWNR moves to begin implementing any such solution, it must submit a proposal to the committee for consideration and a final report.

The committee has received the proposal to manage the sediment accumulation at the Patawalonga Lake System. The sediment management project (SMP) will establish contract services and any necessary infrastructure for:

- initial removal of accumulated sediment from the basin;
- ongoing (e.g. yearly) removal of accumulated sediment at the basin, subject to funding;
- ongoing monitoring of the sediment (quantity and character) within the basin; and
- conduct trials to achieve continuous improvements and innovation (trials may include: de-watering, draining, composting, etc.) to reduce sediment removal costs in the long term.

Sediment accumulation has been a significant issue at the Patawalonga Lake System since it was commissioned in 2001. Accumulated sediment poses a significant threat to the operation of the Patawalonga Lake System and the lake's water quality. The project is estimated to cost approximately $5.7 million, excluding GST. The project is expected to be complete in late June 2014. In working toward a longer-term solution and preparing a submission for the Public Works Committee to consider and report on such a proposal, DEWNR is not prevented from going to tender and planning, but it is prevented from starting construction of any such project, as provided in section 16A(2) of the act.

Even though this report has been designated an interim report, the committee will still require DEWNR to provide quarterly reports on this development and progress of the sediment removal project. This is consistent with committee practice. 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.

Dr McFETRIDGE (Morphett) (11:39): I rise to support the report of the Public Works Committee on the Patawalonga Lake System Sediment Management Project. As members will know, the Patawalonga Lake is central to my electorate of Morphett and is at the bottom end of the Brownhill Creek, Keswick Creek, Airport Drain and Sturt Creek drainage systems, and we receive about 8,000 tonnes of rubbish from our upstream neighbours every year. Managing the sediment and that floating rubbish has been an ongoing problem.

The Patawalonga was the second most polluted waterway in Australia when the then federal government introduced some funding to improve cities. I think it was called Better Cities funding and I think $13 million—I might stand corrected on that—was spent back in the 1990s to clean up the Pat and to remove the sediment. There were hundreds, if not thousands, of tonnes of sediment taken out of the Patawalonga Lake and stored on land on the western side of the airport.

The changes that have been brought about by the clean-up of the lake itself were just amazing to the point where I remember, in the 2002 election campaign, the then minister Brindal and I went for a swim in the Pat and we showed that the Pat had actually been cleaned up. However, the issues with the sediment and the rubbish coming down from upstream have still been ongoing.

There is a set of gates there now with the construction of the Barcoo Outlet. We have the old lock gates still down at Holdfast Shores there and there are other issues with them, which I will speak about in a moment, but the northern end, the Barcoo Outlet, which was constructed with a lot of controversy, has proven to be a godsend for the people of Glenelg.

We know that on 27 June 2003, when the southern lock gates down at Holdfast Shores did not operate properly, we had a high tide and heavy rainfall and we had serious flooding going out through hundreds of homes in Glenelg North. There were lives ruined and homes ruined; there were marriages ruined and I understand there was one suicide that resulted out of that whole event. It was a tragedy, so we need to make sure that we not only keep the Pat clean but we manage the system there. Managing the sediment is part of that whole process.

Where the creeks come through under Tapleys Hill Road, there is a boom that helps catch all the floating rubbish, and there are thousands of tonnes of that, but underneath that the sediment has been building up behind the second basin where there is a weir. The boom forms the first basin; there is a second basin with a concrete weir and then water and sediment has been diverted off into what is called the diversion basin, which then pushes water out through the Barcoo Outlet under the sand dunes out to sea at the appropriate times.

The sediment then goes over that weir. It does not go into the diversion basin, it accumulates at the northern butterfly gates, which are gates that pivot on a centre axis. They open up and form part of the Barcoo recirculation system. At high tide the lock gates down at Holdfast Shores are opened and water comes in at that end. At low tide, at the northern end, the butterfly gates open and water then goes out through the Barcoo. So, about every 48 hours, the water is exchanged in there and it keeps that water in a fantastic condition.

We have not had too many events there like we used to have. In the old days we had all sorts of waterskiing events and the Milk Carton Regatta did make one appearance back there. I am trying to get the Birdman Rally to come back—it was on the Glenelg jetty, but I hope it may one day be on the Patawalonga. There are hundreds of boats brought in there; millions and millions of dollars' worth of boats are being moored in the Patawalonga now and maintaining that system is going to be an ongoing problem.

I am glad to see that this report does acknowledge that this is just the first step in a long-term solution for a long-term problem because that sediment is building up. As I said, there are thousands and thousands of tonnes—between 4,000 and 8,000 tonnes every year—coming down from our upstream neighbours. I understand there are some plans in train to help control the water that comes down but controlling that sediment is something we need to be aware of as well.

The digging up of sediment, the dewatering of the sediment and then the disposal of the sediment are obviously big issues and expensive issues. It costs a lot of money to do that. The cost of this initial project is $5.7 million. I understand the ongoing annual recurrent costs are anything between $800,000 and $1.2 million. The bottom line, though, is that, with three million visitors a year coming down to Glenelg, it is a declared tourist area and we need to make sure that the Patawalonga basin and the Patawalonga lock gates are working well and the lake is looking pristine. An ongoing sediment management plan is a very good thing to see for the people of Glenelg North, who are subject to flooding.

I should also say that should things go wrong down there, if it is not managed well, it is not just the houses and businesses around there but we have also got the Adelaide International Airport. If you look back at historical maps that whole area was swamp. Sturt Creek used to empty out onto the swamp behind the sand dunes and would filter its way north and enter down by Port Adelaide. The River Torrens never went out to the sea. It is now a perched river, the Torrens River, and it used to go out north.

What we have got now is the outlet through the Pat, we have the perched river, the Torrens, but we have also got huge inflows coming down because of urban infill, because of the run-off from roads and concrete footpaths and other infrastructure and infill. We have got thousands and thousands of litres of water running off into the creeks and coming down towards the Pat and towards Glenelg. Managing that whole system is something that the state government needs to be aware of.

I know that there have been many plans over many years to make sure that the disasters are averted. I am very pleased to see that this is just another part of making sure that the bottom end of the system, where all the rubbish is ending up at the moment, is going to be managed in a better and long-term fashion. I congratulate the committee on the report. I look forward to further updates on the management plans. I have been lucky enough to have briefings down there from various government officials that have been involved, and I have attended public meetings down there.

I must say that I am still very concerned about the short-term solution we have got for the lock gates at Holdfast Shores. These are the old gates that are lifted up by counterweight, concrete weights. It is about a $3½ million project to upgrade and repair them. The total cost of replacing them is about $10 million, but when you consider the infrastructure that is at risk if things go wrong down there I think we really do need to look at our priorities.

I urge the government most strongly to reconsider the spend down there on the southern lock gates at Holdfast Shores, because if they do not work, if they malfunction like they did in 2003, well, then, not only is it the homes and businesses that are at risk, but it is also going to be the Adelaide Airport and it could be worse than that—it could be further up. No lives have been lost directly, as I say, but lives, families and businesses were severely impacted. This is a start, this sediment management plan, and I look forward to seeing it progress.

The Hon. R.B. SUCH (Fisher) (11:47): I will just make a couple of points. I commend this project, but I point out that the riverine environments in South Australia, particularly in the Mount Lofty Ranges area and adjacent areas, have suffered significantly since European settlement. Aboriginal people were able to look after the natural environment for 50,000 years. We have done a lot of damage in a couple of hundred years. What needs to happen now—and I am urging the government, and I would hope the opposition would support it—is that we have programs to revitalise and restore some of the riverine environments not just immediately in and around Adelaide but further out as well. Most of them are degraded, full of weeds and exotic plants, and they need to be brought back to something like what they were before European settlement. That will not happen in any pure sense but it is an important issue.

A report was released a few months ago, which I think was funded by the NRM and supported by, I believe, the minister for the environment, highlighting some of these creeks and rivers that are sadly in a state of neglect and, worse, have been severely damaged by inappropriate activity. I know it is peripheral in a sense to this issue, but one of the reasons we

have problems at the Patawalonga is reflective of a wider issue about not only the Sturt River but also all the other rivers that are in or near the Mount Lofty Ranges.

I commend this project, but I would urge the government and also the opposition to get on board in terms of supporting the revitalisation of our riverine environments. I notice that in the recent election I think Simon Birmingham, the senator, announced money to be spent on the Torrens River, and I applaud that, but we need to go beyond that. It is not simply about nitrogen overload in the Torrens; it is a much broader issue of restoring habitats, revegetating and trying to restore, as I said before, these creeks and riverine environments back to something approximating what they used to be before European settlement.

Mr VENNING (Schubert) (11:50): This is an issue that I have more than a casual interest in. I was chair of the ERD Committee when we took evidence on issues down there. This was before the boat harbour was built and it was also before we built the new high-rise facility down there. What is it called?

The Hon. R.B. Such: Holdfast Shores.

Mr VENNING: Holdfast Shores. Without being too political about this, I just think we ought to be revisiting some of that evidence and have a look at what was said because it really has not stacked up too well, in my book. At the same time, I was also involved with the preliminary planning and the assessment of the Barcoo Outlet project, which I do believe is a success. It is working, I understand. Could I again pay tribute to the government project officer who, of course, is still around—Rod Hook—who gave evidence on that.

When he was under fire, I certainly supported and stood by his experience and his advice, which has turned out to be true, because I think the Barcoo is quite clever. Rather than having the flushing out through the front of the Patawalonga, to flush it out on the tides, as happens, is a clever thing to do. In time, I would like to revisit that to see how effective it actually is. When minister Brindal was in charge, we hoped to clean it up to the point of being able to swim back in the Patawalonga. That has not happened. Even though we did go swimming one day, it probably was not legal.

Mrs Geraghty: I remember that.

Mr VENNING: The member for Torrens says she can remember that. Talk about painting bridges! That was much more controversial. Apparently, the amount of silt in the Patawalonga is a concern. Can I say it is a wonderful part of our city down there and we need to protect it. Of course, it is always the subject of a fair bit of controversy, particularly when they forgot to open the gates and the water flooded over the edge and caused a few problems. I think that was when we were in government—these things can happen.

When we interfere with nature, like we have done with our rivers and streams, we have to be oh so careful. I think reports like this one are certainly timely and we should be doing them regularly. Can I just say that I am very concerned about what has been happening down there with the boat harbour. Having a house very near there, it really narks me to see that dredge working 24 hours a day, seven days a week. I think that is appalling. We have locked future generations into that cost.

I think there is a way around this. We are now seeing the sand pumping pipeline there. I do not know whether or not it is working yet, but I see they have put it in. There are all these costs because we are meddling with nature, and I just question that. I do not know why we are seeing this huge sand and seaweed build-up at the entrance to the boat harbour. I do not understand how that can happen because we have interfered with the tidal movements off the beach. In retirement, I will certainly take more than a casual interest in this because I intend to be living down there. I will be reporting to the house pretty regularly about progress or the lack of it.

Motion carried.

PUBLIC WORKS COMMITTEE: TONSLEY PUBLIC TRANSPORT PROJECT—STAGE 1 AND 2

Mr SIBBONS (Mitchell) (11:53): I move:

That the 480th report of the committee, on the Tonsley Public Transport Project—Stage 1 and 2, be noted.

The Tonsley Public Transport Project consists of five interrelated projects within the Tonsley precinct. This report covers stage 1 and 2. Stage 1 and 2 increases the capacity of the Tonsley rail

line, including reconstruction, resleepering, duplication of Tonsley junction, partial line duplication, electrification and signalling, to enable a future 15-minute electric train service.

The cost of stage 1 and 2 is $18.2 million. The key aims of this project are to improve the accessibility and connectivity of the Tonsley Precinct to the users of the current public transport network; improve the attractiveness and efficiency of the public transport services operating in the precinct and the southern suburbs by offering the ability to transfer between bus and rail services; encourage a modal shift from car to cycling, walking and public transport for those living, working and studying in the precinct; and improved commuter comfort and convenience whilst providing enhanced public safety, security and general amenity for those using the public transport system.

It will also provide accessible stations and an interchange in line with the Disability Standards for Accessible Public Transport 2002, and support the Tonsley redevelopment providing attractive public transport services to the redevelopment precinct. The project will be completed by January 2014. 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.

The Hon. R.B. SUCH (Fisher) (11:55): I think it is almost 20 years since I first raised this issue of having an interchange at Tonsley. One of the things that I have learned in parliament is that nothing much happens quickly but I am pleased that this report has been produced. I think it does make a lot of sense to use the Tonsley area as a focal point for transport and interconnection. It is ideally placed and would certainly service people not only from my electorate but others as well, and I think it is great to see that this has reached the point of having some evaluation done. I am not sure how this will fit in with the argy-bargy in the new federal government over the Darlington proposal, but I hope that this project is a worthwhile one in its own right and I fully support it.

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (11:57): The report to the parliament includes on page 15 the following:

> Discussions with the Federal Government have resulted in the reallocation of this surplus funding, both and State and Federal, to the works to be undertaken from the submission in 2013-14.

In the context of the report, it is referring to moneys that have previously been allocated for the Northern Expressway. I bring to the parliament's attention that when Mr Mark Elford provided evidence to the committee on 24 July 2013, which I note was a matter of days before the federal election was called on 4 August 2013, he said as follows:

> I bring one thing to the committee's attention. In the actual submission itself, if I can take you to page 15, on page 15 you will see a table with a heading underneath it, Northern Expressway. The second paragraph under that says: 'Discussions with the federal government have resulted in the reallocation of surplus funding, both and state and federal, to the works to be undertaken.' I will clarify that the discussions with the federal government are well advanced, but they are not completed. The text actually says 'have resulted in'; they are well advanced, and I wanted to clarify that to the committee.

I place that information on the record.

Motion carried.

SUCCESSION DUTIES REPEAL BILL

The Hon. M.F. O'BRIEN (Napier—Minister for Finance, Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (12:00): Obtained leave and introduced a bill for an act to repeal the Succession Duties Act 1929. Read a first time.

The Hon. M.F. O'BRIEN (Napier—Minister for Finance, Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (12:00): I move:

> That this bill be now read a second time.

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

Leave granted.

> The *Succession Duties Act 1929* (the 'Act') was amended in 1979 to exempt from succession duty the estates of persons who died on or after 1 January 1980.
>
> However, succession duty assessments and refunds continue to be made in relation to those persons who died before that date as certain events trigger a liability or an entitlement under the Act.

Although assessments and refunds are increasingly infrequent events, the technical knowledge necessary to assess succession duty liability and consider refund applications is difficult to sustain or justify against the administration of more substantial state taxes.

All other Australian jurisdictions have abolished comparable legislation on the basis that the employment of resources required to administer the legislation was not cost effective.

The repeal of the Act will remove any confusion as to whether there is an ongoing liability to pay succession duty.

The *Succession Duties Repeal Bill 2013* (the 'Bill') gives effect to the abolition of succession duty from 1 July 2014, extinguishing any liability from duty that has not been paid from and including 1 July 2014.

The Bill also extinguishes any potential entitlement to a refund under the Act that has not crystallised before 1 July 2014.

The Bill further extinguishes any entitlement to a refund that existed prior to 1 July 2014 but in respect of which applications for a refund have not been made on or before 31 December 2014.

The Bill was released to the Public Trustee, Australian Executor Trustees, The Law Society of South Australia, Law Council of Australia, Property Council of Australia, The Tax Institute, The Real Estate Institute of South Australia Inc, CPA Australia, The Institute of Chartered Accountants in Australia, Institute of Public Accountants, Australian Institute of Conveyancers (SA Division) Inc and other law firms for confidential consultation prior to its introduction into Parliament.

Both the Public Trustee and The Law Society of South Australia have indicated that they support the Bill. No other comments were received.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

Part 2—Repeal of *Succession Duties Act 1929*

3—Repeal of Act

The *Succession Duties Act 1929* is repealed.

4—Liability for duty and entitlement to refund etc extinguished

Liability for duty under the *Succession Duties Act 1929* that was outstanding immediately before the commencement of this section is extinguished. After commencement of the Bill, a person is not entitled to a refund, rebate or remission under the *Succession Duties Act 1929* unless the entitlement accrued before that commencement and an application is made on or before 31 December 2014.

Debate adjourned on motion of Mr Pederick.

PUBLIC CORPORATIONS (SUBSIDIARIES) AMENDMENT BILL

The Hon. M.F. O'BRIEN (Napier—Minister for Finance, Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (12:01): Obtained leave and introduced a bill for an act to amend the Public Corporations Act 1993. Read a first time.

The Hon. M.F. O'BRIEN (Napier—Minister for Finance, Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (12:01): 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 make amendments to the *Public Corporations Act 1993*.

The 'Southern Select Super Corporation' was established as a subsidiary of the Minister for Finance pursuant to the *Public Corporations (Southern Select Super Corporation) Regulations 2012* and is the trustee of Super SA Select, the State Government's taxed superannuation scheme. There is currently no external independent dispute mechanism in respect of the decisions of the board of directors of the Southern Select Super Corporation. This is because the *Public Corporations Act 1993* does not provide for the regulations establishing a subsidiary of a public corporation to confer jurisdiction on a court to review a decision of that subsidiary.

It is imperative that current and former members of superannuation schemes have access to an appropriate external dispute resolution process as a means of resolving complaints with fund trustees as quickly as possible, in a fair and economical way. It is also important to note that in terms of the external dispute mechanism for the main State Government superannuation schemes, the *Southern State Superannuation Act 2009*, the *Superannuation Act 1988* and the *Police Superannuation Act 1990* currently confer jurisdiction on the Administrative and Disciplinary Division of the District Court with respect to the decisions of the Super SA Board and Police Superannuation Board.

Therefore, the legislation contained in this Bill, if enacted, will enable regulations establishing a subsidiary of a public corporation to confer jurisdiction on a court to review decisions or activities of that subsidiary. This amendment will enable a consequential amendment to be made to the *Public Corporations (Southern Select Super Corporation) Regulations 2012* to provide specifically for the Administrative and Disciplinary Division of the District Court to hear an appeal against a decision of the Southern Select Super Corporation.

The other issue covered by this Bill relates to the Schedule to the *Public Corporations Act 1993*, which sets out the provisions applicable to subsidiaries. Clause 2 provides that a subsidiary is subject to the control and direction of its parent corporation. As a result, it follows that the Southern Select Super Corporation is subject to the control and direction of the Minister for Finance, as the parent corporation. However, there are two main problems with this provision in the context of a subsidiary with a trustee role. Firstly, in terms of trustee duties, the trustee will commit a breach of trust if it fails to exercise honestly its judgement as to whether it should do a particular act or not. Having regard to this principle, it is inappropriate for a trustee to be subject to control and direction of its parent in respect of its trustee functions. This is because a direction could place the trustee in a conflicted situation where compliance with that direction could result in it breaching its trust obligations. Secondly, the direction and control of a parent corporation over the decisions of a subsidiary with trustee functions is not consistent with Commonwealth superannuation legislation, which provides that the governing rules of a superannuation entity must not render the trustee subject to the direction of a third party.

The Bill therefore seeks to amend clause 2 of the Schedule to the *Public Corporations Act 1993* to clarify that even though a subsidiary is subject to the direction and control of the board of its parent corporation, such direction and control will not apply in relation to the performance of that subsidiary's functions as a trustee (if any). The intention of the amendment is not to remove general oversight of, or accountability to, the parent corporation in respect of decisions of subsidiaries, but to ensure that where a subsidiary makes decisions in the capacity of trustee, the subsidiary is not bound to follow a direction but can exercise those trustee functions independently. Such a limited power of control and direction appears in other legislation, including section 6 of the *Public Trustee Act 1995* and section 21 of the *Superannuation Funds Management Corporation of South Australia Act 1995*.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Amendment provisions

These clauses are formal.

The Bill does not include a commencement clause and will therefore come into operation on the day that it is assented to by the Governor (in accordance with section 7(1) of the *Acts Interpretation Act 1915*).

Part 2—Amendment of *Public Corporations Act 1993*

3—Amendment of section 24—Formation of subsidiary by regulation

Section 24 of the *Public Corporations Act 1993* provides for the establishment by regulation of bodies corporate as subsidiaries of public corporations. This clause amends subsection (2) of section 24 so that regulations establishing a subsidiary may confer jurisdiction on a court to review decisions or activities of the subsidiary.

4—Amendment of Schedule—Provisions applicable to subsidiaries

The Schedule sets out provisions applicable to bodies established by regulation as subsidiaries of public corporations. Clause 2 of the Schedule provides that a subsidiary is subject to control and direction by the board of its parent corporation. Under clause 2 as amended by this clause, if a subsidiary is to perform functions as a trustee, it will not be subject to control or direction in relation to the performance of those functions.

Debate adjourned on motion of Mr Pederick.

STATUTES AMENDMENT (TRANSPORT PORTFOLIO) BILL

The Hon. M.F. O'BRIEN (Napier—Minister for Finance, Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (12:02): Obtained leave and introduced a bill for an act to amend the Motor Vehicles Act 1959 and the Road Traffic Act 1961. Read a first time.

The Hon. M.F. O'BRIEN (Napier—Minister for Finance, Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (12:02): I move:

That this bill be now read a second time.

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

Leave granted.

The Statutes Amendment (Transport Portfolio) Bill 2013 makes a number of minor amendments to the *Motor Vehicles Act 1959* and *Road Traffic Act 1961*. The changes include recognising pedalecs, a new form of electric powered bicycle; improving the administration of the driver's licensing provisions in the Motor Vehicles Act and enabling the Registrar of Motor Vehicles to refuse to register vehicles that the Registrar reasonably believes contain stolen parts.

Pedalecs

In South Australia, power assisted bicycles with a power output of up to 200 watts are treated as bicycles. They can also be driven without registration and insurance and riders are not required to hold a driver's licence. Pedalecs are a type of power assisted bicycle with a power output of up to 250 watts. Because of the higher power output, pedalecs fall into the definition of a motor vehicle, yet they do not comply with the Australian Design Rules and so cannot be registered and legally used on roads.

Pedalecs are very popular in Europe where they provide a useful alternative to passenger car travel. Unlike power assisted pedal cycles with a power output over 200 watts, pedalecs are safer in that a rider must pedal to access the power and the power cuts out once a speed of 25kmph is reached.

Since May 2012, Commonwealth changes to Australian Design Rules have meant that it is legal to import and sell pedalecs in Australia yet they cannot be legally used on our roads. Australian jurisdictions have agreed to amend their legislation to enable the use of pedalecs as bicycles. To date, Queensland, New South Wales, Victoria and the Australian Capital Territory have made the changes.

This Bill will enable South Australia to catch up with these states and territories by amending the definition of a bicycle in section 5 of the Road Traffic Act so that it includes a 'power assisted pedal cycle' within the meaning determined under the *Motor Vehicle Standards Act 1989* of the Commonwealth, which includes pedalecs. This amendment will be complemented by regulation changes to exempt pedalecs from the requirement for registration and compulsory third party insurance and to exempt the rider from the requirement to hold a driver's licence.

This amendment will enhance opportunities for our community to enjoy the health benefits and positive environmental effects of increased cycling on our roads.

Driver Licensing and Miscellaneous Changes

The Bill makes a number of miscellaneous amendments to the Motor Vehicles Act to improve its functioning, to better reflect the policy intention behind certain provisions and to correct anomalies. For example:

- The Motor Vehicles Act contains a system whereby people applying for a driver's licence after a period of disqualification as a result of a serious drink driving offence are issued with a probationary licence that is subject to mandatory alcohol interlock scheme conditions for the same period as the licence disqualification or 3 years, whichever is the lesser. Where a person is exempted from the mandatory alcohol interlock scheme conditions, for example on medical grounds, the probationary licence is issued for the same period, but he or she does not face the extra constraints to driving that the scheme imposes. The Bill amends this section to require a person who was disqualified from driving and was exempted from the scheme, to observe probationary licence conditions for double the time they would have been ordered to observe scheme conditions or 12 months, whichever is the greater. The longer period on a probationary licence reflects the fact that such drivers are not subject to mandatory alcohol interlock scheme conditions and is a fairer outcome.

- Whilst holding a probationary licence, drivers must not incur 2 or more demerit points. Currently this is a condition of the licence and the offence of breach of licence condition must be separately actioned by police in addition to the offence that incurs demerit points. This is often overlooked and results in some probationary licence holders avoiding the disqualification. The Registrar is informed of offences which incur demerit points and the amendment allows the Registrar to disqualify probationary licence holders upon being notified of the demerit points being incurred. This ensures an equitable outcome for all probationary licence holders and preserves the policy approved by Parliament that all probationary licence holders who incur two or more demerit points will be disqualified.

- The Safer Driver Agreement (SDA) is an option for provisional licence holders instead of disqualification and allows the provisional licence holder to continue driving, provided the driving offence they have committed is not a serious disqualification offence. The Bill makes slight amendments to section 81BA of the Motor Vehicles Act to ensure that an SDA is only open to a person holding a provisional licence at the time of the offence that led to the disqualification. Currently, the Act allows a person who held a learner's permit at the time of the offence but who has progressed to a provisional licence by the time the disqualification is issued to take advantage of the SDA. This was not the intended policy position. Further changes to that section clarify when an SDA commences, depending on whether the notice is acknowledged at a customer service centre or served personally.

- Additional changes to section 81BB(2) of the Motor Vehicles Act make clear that provisional licence holders given the option to enter into an SDA and who have allowed that option to lapse are not able to then appeal their disqualification to the Magistrates' Court. They also ensure that a person who has been disqualified for breaching a condition of an SDA within the last five years, is precluded from appealing to the Magistrates Court. Both amendments reflect Parliament's original intention that SDAs were intended to replace the option for provisional licence holders to appeal licence disqualifications to the Magistrates Court.
- The Bill streamlines the timing requirements for requests for reasons for decisions of the Registrar or Review Committee made by a person affected by the decision. At present, when the Registrar has acted under section 82 of the Act to refuse to issue, renew or cancel a driver's licence or learner's permit in order to prevent accident, injury or repetition of offences, the driver may re-apply for their licence or permit immediately. The Registrar is required to consider each application and the person may appeal each decision. The Bill introduces a system for such cases to ensure that the Registrar does not have to consider frivolous or vexatious applications or applications where the person has failed to provide new evidence satisfying the Registrar that they should no longer be prevented from holding a licence or permit.
- The Bill introduces an explicit approval mechanism for the installation of photographic detection devices into the Road Traffic Act. These devices are not classified as traffic control devices, whose installation must be approved by the Minister, but they are an essential tool in the detection and enforcement of speeding and other offences. It is considered that their installation should be approved in a similar way to traffic control devices.

Vehicles with Stolen Parts

The Bill amends sections 24, 58, 139 and 139AA of the Motor Vehicles Act to give the Registrar of Motor Vehicles the enhanced power to conduct investigations and refuse to register vehicles where the Registrar reasonably believes that part of a vehicle is or may be stolen. At present the Registrar's discretion only extends to cases where there is a suspicion that a vehicle itself is stolen.

These changes will assist crime fighting in our community by providing a significant disincentive for people to engage in the unlawful use of stolen or rebirthed motor vehicle parts.

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 *Motor Vehicles Act 1959*

4—Amendment of section 24—Duty to grant registration

This clause amends section 24 to include a reference to part of a vehicle in subsections (2)(b)(iii) and (3)(c).

5—Amendment of section 58—Transfer of registration

Section 58 is amended to include a reference to part of a vehicle in subsections (3)(b)(iii) and (4)(c).

6—Amendment of section 81AB—Probationary licences

This clause—

- deletes the probationary licence condition that requires that the holder of the licence must not incur 2 or more demerit points (consequentially to the amendment to section 81B(1) discussed below); and
- makes alcohol interlock conditions effective for a minimum period of 12 months.

7—Amendment of section 81B—Consequences of holder of learner's permit, provisional licence or probationary licence contravening conditions

This clause amends section 81B to require a notice of licence disqualification to be issued where the holder of a probationary licence has incurred 2 or more demerit points.

8—Amendment of section 81BA—Safer Driver Agreements

Section 81BA is amended—

- to ensure that a safer driver agreement can be entered into by any person who receives a notice of disqualification as a result of offences committed as the holder of a provisional licence (whether or not the person still holds that provisional licence);
- to give the Registrar a discretion to grant a person an extra week to elect to enter a safer driver agreement;

- to specify when the safer driver agreement is taken to commence.

9—Amendment of section 81BB—Appeals to Magistrate Court

This clause amends section 81BB to prevent a person appealing where the person was entitled to enter a safer driver agreement but failed to do so within the statutory time limit or where the person has, within the preceding 5 years, been disqualified as the holder of a provisional licence that was subject to a safer driver agreement. The clause also makes an amendment consequential to clause 7.

10—Amendment of section 82—Vehicle offences and unsuitability to be granted or hold licence or permit

This clause amends section 82 to allow the Registrar to refuse to consider an application by a person for the issue or renewal of a licence or permit where the Registrar has previously refused to issue a licence or permit to the person, or to renew the person's licence or permit, or has cancelled the person's licence or permit in accordance with the section and it appears to the Registrar that the applications by the person are frivolous or vexatious or that the person has failed to provide satisfactory evidence that circumstances have changed.

11—Amendment of section 98ZA—Appeal to District Court

This clause amends section 98ZA to specify that, if a person requests reasons for a decision, the Registrar or review committee has 1 month from the making of that request to provide those reasons.

12—Amendment of section 139—Inspection of motor vehicles

This clause amends section 139 to include a reference to part of a vehicle in subsection (1)(ab) and (ac)(ii).

13—Amendment of section 139AA—Where vehicle suspected of being stolen

This clause amends section 139AA to include a reference to part of a vehicle.

14—Transitional provisions

This clause sets out transitional measures (relevant to clauses 6, 7, 8 and 9).

Part 3—Amendment of *Road Traffic Act 1961*

15—Amendment of section 5—Interpretation

This clause amends the definition of bicycle to include power assisted pedal cycles (within the meaning of vehicle standards determined under the *Motor Vehicle Standards Act 1989* of the Commonwealth).

16—Insertion of section 79BA

This clause makes specific provision relating to installation, maintenance, alteration or removal of photographic detection devices on, above or near a road.

Debate adjourned on motion of Mr Pederick.

STATUTES AMENDMENT (ARREST PROCEDURES AND BAIL) BILL

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (12:03): Obtained leave and introduced a bill for an act to amend the Bail Act 1985 and the Summary Offences Act 1953. Read a first time.

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (12:04): I move:

That this bill be now read a second time.

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

Leave granted.

The Bill aims to achieve greater efficiencies in the bail process by amendments to the *Bail Act 1985* and the *Summary Offences Act 1953* and to clarify some ambiguities in the *Bail Act 1985* that have led to some variations in court practice.

A number of interested parties, including the courts and legal profession, were consulted on the form of the draft Bill. Submissions from these parties were considered by the Government in finalising the Bill.

Bail Act amendments

Definitions

- To insert definitions of a 'designated police facility' (to have the same meaning as in section 78 of the *Summary Offences Act 1953*) and 'officer in charge' in relation to a police station (to mean the police officer for the time being in charge of the police station).

- To insert a definition of the term 'responsible officer' in relation to a police station (to mean the officer in charge of the police station or, if a police officer has, for the time being, been designated by the officer in charge of the police station as the officer with responsibility for persons accepted into custody at the police station, that officer). The reality is that it is often the case that the position of officer in charge of a police station is a nominal administrative position, and the police officer who is actually in charge of the cells is someone other than that officer. This amendment will reflect that practice.
- To clarify that a bail authority who is a police officer must be a police officer who is of or above the rank of sergeant or is the responsible officer for a police station.

These definitions are also consistent with amendments proposed to the *Summary Offences Act 1953*.

Procedure on arrest

Currently, section 13 of the Bail Act sets out the requirements once a person has been arrested when the person is eligible to apply for bail. It is proposed to repeal the current section and substitute a new section 13 that will clarify how a person may be brought before the appropriate court (either the Youth Court of South Australia or the Magistrates Court) for the purposes of the section. A number of other minor technical changes are also proposed that do not alter the substantive effect of the current section. The substituted section will clarify that a person may be brought before the appropriate court either in person or by video link or, if the person is in custody in a police station or designated police facility that is situated in a remote area and there is no video link available, by audio link. A remote area is defined as being 400 kilometres or more from the nearest appropriate court (but some other distance may be prescribed by the regulations in substitution for that distance).

This amendment formalises current practices of the Magistrates Court and will mean that an arrested person could appear via video link on an application for bail wherever the appropriate facilities are available, including metropolitan police stations and police stations in remote areas. If the arrested person is in custody in a remote area where video link is not available, the person could be brought before the court via audio link (for example, by telephone). This should assist arrested persons and free the police from having to transport defendants long distances for a brief court appearance. Instead of using valuable police resources to transport bail applicants, those resources can be put to better use in managing police stations and patrolling the regions.

Telephone reviews

Section 15 of the Bail Act makes provision for a review by a magistrate of a decision of a bail authority that is a police officer or a court constituted of justices by an applicant for bail who is dissatisfied with the decision of the bail authority. The section does not apply in relation to a decision made on application to a police officer on arrest if the arrested person (not being a child) can be brought before the Magistrates Court constituted of a magistrate not later than 4 pm on the next day following the arrest.

Currently, the police officer who made the original decision is required, on application by a dissatisfied person to whom the section applies, to contact the duty magistrate by telephone for the purpose of having the decision reviewed by the magistrate. However, it is often the case that the police officer to whom an applicant applies is not in fact the same officer as the one who made the decision the subject of the review because, for example, that officer has completed his or her shift and has been relieved by another officer.

It is proposed to repeal the current section and substitute a new section 15. The new section will allow another police officer of or above the rank of sergeant or in charge of the police station to contact the magistrate for the purposes of a telephone review if the police officer who was the original decision maker is not immediately available to do so. The new section preserves the right for an arrested child always to have the right to a telephone review on request of the child or a guardian of the child and, in addition, reflects the amendments proposed in new section 13 in relation to how a person may be 'brought before' the Magistrates Court.

Other changes

Proposed substituted section 16 will allow the court to extend the time limit for deferral or a stay of release on bail where the Crown or police immediately indicate that an application for review of a magistrate's bail decision will be made. The amendment provides for an extension beyond 72 hours where there is approval either by a magistrate or the Supreme Court. The amendment will allow for the time necessary to provide information to the Office of the Director of Public Prosecutions (such as charge sheets, antecedent reports, bail papers), especially in cases where the criminal justice services are closed over a weekend or public holiday. The effort that goes into preparing written bail review applications is not only time consuming but resource intensive and this amendment will allow for sufficient time for prosecuting authorities to prepare the necessary documents.

The Bill will also amend sections 18 and 19A of the Bail Act so as to clarify that a court may, if a person has breached a term or condition of a bail agreement, revoke the bail agreement. Currently the court may cancel the right of the person to be at liberty in pursuance of the bail agreement. The amendment will avoid any confusion that may arise about the existence of the original bail agreement should the defendant, after having been taken into custody, be further bailed. The amendment will make it crystal clear that, on a breach application, the judicial officer may revoke the bail agreement.

Summary Offences Act amendments

Part 18 of the Summary Offences Act makes provision for arrest procedures. The Bill will substitute 'as soon as reasonably practicable' for the term 'forthwith' wherever it occurs in this Part of the Summary Offences Act. 'Forthwith' is considered to be an archaic term and has been interpreted by the courts as meaning the 'shortest time which is reasonably practicable in the existing circumstances'. These amendments are of a technical nature only and do not change the substantive effect of the provisions.

Proposed amendments to section 78 of the Summary Offences Act will relax the requirement for persons arrested without warrant to be brought to the nearest police station forthwith in certain circumstances. Currently, an officer must deliver the person into the custody of the officer in charge of the police station. An arrested person cannot be bailed on the spot, even if the arresting officer is a bail authority, but must be delivered into the custody of the police officer in charge of the nearest police station at which facilities are continuously available for the care and custody of the person apprehended or, for persons arrested in the Adelaide area, the City Watch House. This means, for example, that a person apprehended for a minor offence in the city cannot be taken to the Hindley Street Police Station because it does not have continuously operating holding cells. Further, a person who is injured cannot be granted bail but must be brought to a police station. The Bill will now allow police to take the arrested person to the nearest custodial police station or a designated police facility.

The Bill will permit police to grant bail at a designated place other than the nearest custodial police station when the person has been arrested in a remote or non-metropolitan regional area, or when the person is arrested in a situation where taking him or her to the nearest police station would significantly reduce operational police capacity in the area. This has been achieved by a series of amendments to section 78 of the Summary Offences Act and related amendments to sections 3 and 13(1) of the Bail Act.

The Bill repeals current subsections (1) and (2) of section 78 of the Summary Offences Act and substitutes new subsections. New subsection (2) will allow police to detain a person who has been apprehended without a warrant on suspicion of having committed a serious offence for a period not exceeding that specified in the subsection for investigation purposes. The Bill also inserts new subsections in section 78, including (3a), (3b) and (3c). The period of '2 hours, or such longer period (not exceeding 4 hours)' referred to in section 78(3a)(c) is a requirement that the legislation places on police to limit the amount of time that a person can be held at a 'designated police facility' without obtaining authorisation from a magistrate. This is intended to apply to special events or busy periods, such as New Year's Eve, where there are a high number of offenders arrested and it is not physically possible to process all of the arrested people quickly. The time limit of 2 hours is intended to be a balance between the ability of police to deal with the arrested person and that person's opportunity to apply for bail. The time limit and subsequent obligation to obtain authorisation are factors that will be a benefit for the arrested person by placing legislative constraints on police.

The Bill will allow the Commissioner of Police to approve in writing certain places as designated police facilities. These may include specified rooms, buildings or structures (whether permanent or temporary), or specified vehicles or classes of vehicles, for particular police operations or specified events, or classes of operations or events. The Commissioner of Police will be given authority to delegate this power by an instrument in writing to declare a designated police facility when there is an urgent need to declare and the Commissioner is not available. For example, the police may have been alerted that there will be a bikie run through the APY lands and may need to conduct, at short notice, an 'operation' at which there are likely to be arrests. The aim of this set of amendments is to have the Commissioner consider the custodial capacity of police throughout the State and to declare certain places outside the metropolitan area, other than police stations with the usual custodial facilities (usually located in large regional towns), to fill the gaps in remote areas. It is also to permit the Commissioner, in contemplation of arrests at a particular police operation or a large public event, to declare places or vehicles or vessels to be relevant police facilities for the duration of that operation or event.

Section 79 covers the situation where a police officer, without a warrant, takes into custody a person whom the officer has reasonable cause to believe has an outstanding warrant. Under the changes proposed to section 79(3), if a person taken into custody is in need of medical treatment before being delivered as required under the section, the requirement to deliver the person as soon as reasonably practicable does not prevent the immediate provision of necessary medical treatment.

The spirit of these changes is to allow police to address more easily the welfare issues of a person who has been arrested, without committing technical diversions from the prescribed legislation.

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 *Bail Act 1985*

4—Amendment of section 3—Interpretation

This proposed amendment will insert the following definitions into the principal Act: *designated police facility*, *officer in charge* of a police station and *responsible officer* in relation to a police station.

5—Amendment of section 5—Bail authorities

Section 5 provides for the constitution of bail authorities for the purposes of the principal Act. This proposed amendment constitutes a police officer who is of or above the rank of sergeant, or the responsible officer for a police station, to be a bail authority in certain circumstances.

6—Amendment of section 6—Nature of bail agreement

7—Amendment of section 7—Guarantee of bail

8—Amendment of section 11—Conditions of bail

These proposed amendments are consequential on the amendment proposed to section 5 of the principal Act (see clause 5).

9—Substitution of section 13

It is proposed to repeal current section 13 and substitute a new section containing a related amendment, a number of technical amendments and clarification of what it means to be brought before the Youth Court or the Magistrates Court as required under the section.

13—Procedure on arrest

New subsections (1) to (4) (inclusive) re-state in current terms with minor technical amendments the duties of a police officer on arresting a person eligible to apply for bail and the rights of the arrested person.

A new subsection is included that clarifies how an eligible person may be brought before the Youth Court or the Magistrates Court for the purposes of this section. This may be—

- in person or by video link; or
- if the person is in custody in a police station or designated police facility that is situated in a remote area and there is no video link available—by audio link.

In this section, *remote area*, in relation to the situation of a police station or designated police facility, is defined to mean 400 kilometres or more (or, if some other distance is prescribed by the regulations for the purposes of this definition, that distance) from the nearest Youth Court or Magistrates Court (as the case requires).

10—Substitution of section 15

It is proposed to repeal current section 15 and substitute a new section.

15—Telephone review

New section 15 is similar to the current section but clarifies the scheme for a review by telephone by a magistrate of the decision of a bail authority constituted of a police officer or a court constituted of justices.

The new section also sets out the manner in which a telephone review must be conducted and contains provisions consistent with the changes proposed in new section 13.

11—Substitution of section 16

It is proposed to repeal current section 16 and substitute a new section.

16—Stay of release on application for review

New section 16 provides that if a bail authority decides to release a person on bail or, on a review by a magistrate of a decision of a bail authority, the magistrate decides to release a person on bail and there is an immediate indication by a police officer or counsel on behalf of the Crown that an application for review of the decision will be made under this Part, the release must be deferred.

New section 16 sets out when the period of deferral will end and provides that if a person is released on bail when the period of deferral ends (other than on the completion of a review), the conditions of bail are those that would have applied had the person's release not been deferred.

12—Amendment of section 18—Arrest of eligible person on non-compliance with bail agreement

This proposed amendment clarifies that if a court or justice is satisfied that a person released on bail has contravened or failed to comply with a term or condition of a bail agreement, it may revoke the bail agreement. The other proposed amendment is consequential.

13—Amendment of section 19A—Arrest of person who is serious and organised crime suspect

This proposed amendment is consistent with the amendment proposed to section 18.

Part 3—Amendment of *Summary Offences Act 1953*

14—Amendment of section 76—Arrest by owner of property etc

This proposed amendment is of a statute law revision nature.

15—Amendment of section 77—Arrest of persons pawning or selling stolen goods

The proposed amendment is consequential.

16—Amendment of section 78—Person apprehended without warrant—how dealt with

It is proposed to insert new definitions of a *custodial police station*, *designated police facility* and *nearest custodial police station*, for the purposes of this section. The amendments will allow a person apprehended without a warrant to be delivered as soon as reasonably practicable into the custody of the police officer in charge of the nearest custodial police station or a police officer at a designated police facility. A person apprehended without warrant on suspicion of having committed an indictable offence or an offence punishable by imprisonment for 2 years or more (a *serious offence*) may be detained for a period for investigation purposes before being delivered to the nearest custodial police station or designated police facility.

Inserted subsection (3a) provides that a person who has been apprehended without warrant and detained in custody at a designated police facility must as soon as reasonably practicable be delivered into the custody of the police officer in charge of the nearest custodial police station if the person declines to make an application for release on bail; or a decision is made to refuse an application for bail made by the person; or 2 hours, or such longer period (not exceeding 4 hours) as may be authorised by a magistrate, has elapsed since the person has been detained in custody at the police facility and the person has not been released (whether on bail or otherwise).

The clause makes provision for what will not be taken into account when determining the period that has elapsed since being detained in custody either in a custodial police station or designated police facility.

The Commissioner of Police may, by instrument in writing, approve the use of any of the following as a designated police facility:

- a specified room, building or structure (whether permanent or temporary);
- a specified vehicle;
- a vehicle of a specified class,

and may, by subsequent instrument in writing, vary or revoke such an approval.

An approval of a designated police facility must—

- specify the use of the designated police facility for a specified event, purpose or police operation or an event or a purpose or police operation of a specified class or for a specified area of the State outside Metropolitan Adelaide (within the meaning of the *Development Act 1993*); and
- specify conditions for the use of the designated police facility.

17—Amendment of section 79—Arrest without warrant where warrant has been issued

One of the proposed amendments is of a statute law revision nature and the other makes it clear that if a person taken into custody is in need of medical treatment before being delivered as required under section 79, the requirement to deliver the person as soon as reasonably practicable does not prevent the immediate provision of necessary medical treatment.

Schedule 1—Statute law revision amendments of *Bail Act 1985*

The Schedule contains amendments to the Bail Act that are of a statute law revision nature.

Debate adjourned on motion of Mr Pederick.

WORKCOVER CORPORATION (GOVERNANCE) AMENDMENT BILL

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (12:05): Obtained leave and introduced a bill for an act to amend the WorkCover Corporation Act 1994. Read a first time.

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (12:05): 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 proposes amendments to the *WorkCover Corporation Act 1994*.

This Bill aims to build upon the amendments made to this Act in 2008 which replicated part of the governance arrangements used for other statutory authorities subject to the *Public Corporations Act 1993.*

A strong focus of this Bill is a move towards a professionally focussed Board of management which, as far as practicable, reflects the competencies of a publicly listed corporation. Changes to the WorkCover Board will:

- Reduce the required number of members from nine to seven and the quorum threshold from six to four to streamline and focus the Board.
- Provide for the Minister to recommend suitable Board member and Chair person appointments to the Governor.

- Remove the existing rehabilitation and occupational health and safety representation requirements and the requirement to consult with employee and employer stakeholder associations for four of the positions on the Board. These provisions are replaced with the requirement of relevant qualifications or experience to unite Board members with a business focus rather than often opposing stakeholder views. The Government will continue to consult with relevant stakeholders when considering appointments.
- Increase Board member accountability by enabling the Minister to recommend to the Governor the removal of a Board member for any reasonable cause.
- Require the Minister to approve the formation of any remunerated Board Committees to ensure WorkCover's existing exemption under the Department of the Premier and Cabinet Circular 16—which allows Board members to be paid for each subcommittee they are a member of—is used prudently.
- Dissolve the existing Board membership upon commencement of the relevant transitional provisions to enable the recommendation of a new Board to the Governor based on these new provisions.

Other key changes within this Bill will:

- Bring WorkCover closer in line with other public corporations by applying sections 7 and 8 of the *Public Corporations Act 1993* to it. These sections govern provision of information and records to the Minister and provide for a representative of the Minister or Treasurer to attend Board meetings. This formalises the arrangement that has existed for a number of years, where an observer from the Department of Treasury and Finance attends meetings of the Board.
- Require WorkCover's Chief Executive Officer to be available directly to the Minister as well as the Board to enable closer Ministerial scrutiny of WorkCover's operations.

These proposed amendments, in conjunction with the recently reviewed *WorkCover Corporation Charter*, provide the Government with greater oversight and control over WorkCover.

These powers will be used to ensure the operational changes required by the Charter are implemented by WorkCover and its claims agents, as envisioned.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

The measure will be brought into operation by proclamation.

3—Amendment provisions

This clause is formal.

Part 2—Amendment of *WorkCover Corporation Act 1994*

4—Amendment of section 4—Continuation of Corporation

This amendment provides for the application of sections 7 and 8 of the *Public Corporations Act 1993* in relation to the Corporation. Under section 7, a public corporation must, at the request of the relevant Minister, furnish the Minister with such information or records in its possession or control as the Minister may from time to time require. Under section 8, the relevant Minister or the Treasurer may appoint a person to attend (but not participate in) any meeting of the board of the public corporation to which the section applies, and such a person will also be entitled to have access to any papers provided to members of the board.

5—Amendment of section 5—Constitution of board of management

The membership of the board of management of the Corporation is to be reduced from 9 to 7. The members will be appointed by the Governor on the recommendation of the Minister. The Act will no longer specify particular qualifications or criteria for board membership but a provision is to be inserted into the Act that will provide that a person appointed to the board must have such qualifications, skills, knowledge or experience as are, in the Minister's opinion, relevant to ensuring that the board carries out its functions effectively. It will also be expressly provided that a person appointed to the board must at all times act professionally and in accordance with recognised principles of good corporate governance.

6—Amendment of section 6—Conditions of membership

It will now be possible to remove a member of the Board from office on the recommendation of the Minister on any other ground that the Minister considers to constitute a reasonable cause.

7—Amendment of section 11—Proceedings

The quorum of the board is to be reduced from 6 members to 4 members given the reduction in the size of the board.

8—Amendment of section 13—Functions

This clause amends section 13 to replace the word 'disabilities' with 'injuries' so that the terminology is consistent with the *Workers Rehabilitation and Compensation Act 1986*.

9—Amendment of section 14—Powers

This clause removes a redundant provision.

10—Amendment of section 16—Committees

The Corporation will be required to obtain the approval of the Minister before it establishes a committee that will include 1 or more persons who will be paid for their participation as members of the committee.

11—Amendment of section 21—Chief Executive Officer

The Corporation is to be subject to the statutory requirement to ensure that its CEO is reasonably available to the Minister in order to assist the relevant Minister or Ministers in the administration of this Act and the *Workers Rehabilitation and Compensation Act 1986*, and to ensure that the CEO complies with any reasonable request by the Minister to provide information about the operation or administration of either Act.

12—Amendment of section 28—Regulations

It is proposed that the regulations under this Act will be able to require the collection and collation of information that is relevant to the functions of the Corporation under an Act, and to require the provision of reports to the Corporation, or by the Corporation to the Minister.

Schedule 1—Transitional provision

1—Transitional provision

All current board positions will be vacated on the commencement of this schedule.

Debate adjourned on motion of Mr Pederick.

CRIMINAL LAW CONSOLIDATION (PROTECTION FOR WORKING ANIMALS) AMENDMENT BILL

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (12:06): Obtained leave and introduced a bill for an act to amend the Criminal Law Consolidation Act 1935. Read a first time.

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (12:06): 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.

On 26 August 2013, police dog Koda, a German shepherd, was stabbed while detaining an offender. The injury was life-threatening. Koda was treated by a nearby vet and underwent emergency surgery followed by a period of recovery. A 30 year-old man has been charged with attempted aggravated robbery, four counts of theft, aggravated serious criminal trespass, aggravated assault police, property damage and injuring an animal, being Koda.

There are currently no specific laws in South Australia that target offenders who intentionally harm animals used in law enforcement roles.

The most serious offence available that deals with harm to animals is s 13 of the *Animal Welfare Act 1985*. It says:

13—Ill treatment of animals

(1) If—

(a) a person ill treats an animal; and

(b) the ill treatment causes the death of, or serious harm to, the animal; and

(c) the person intends to cause, or is reckless about causing, the death of, or serious harm to, the animal, the person is guilty of an offence.

Maximum penalty: $50,000 or imprisonment for 4 years.

On 27 August 2013, the Premier and the Commissioner of Police announced that the Government would propose to Parliament the enactment of a serious criminal offence, punishable by up to 5 years imprisonment, that dealt with harming animals used for law enforcement purposes.

On 28 August 2013, the Premier indicated that there was a case for extending this measure to guide dogs.

The South Australian Police Force currently has 25 dogs and 36 horses.

The Premier and the Commissioner of Police announced that *'The new laws will not only provide more protection for the animals but also deter criminals from targeting them.'*

Further, the Premier has stated that *'In addition to any penalty that may be imposed, the Court will also be able to order the person to pay a reasonable amount for the treatment, care, rehabilitation and retraining of the animal.'*

The proposed *Criminal Law Consolidation (Protection for Working Animals) Amendment Bill 2013* contains the new offence of causing death or serious harm to a working animal by an intentional act. Serious harm is defined in a way that is consistent with the current definition of serious harm as it applies to humans. The applicable maximum penalty will be 5 years imprisonment. The definition of working animal explicitly covers a police dog, a police horse, a guide dog and a correctional services dog. Other working animals can be prescribed by regulation. The public has been invited, via Your SAy, to comment on the proposal generally and further listing in particular.

It is not necessary that, at the time the offence is committed, the offender knows that the animal is a working animal as defined. In almost all cases either the circumstances surrounding the incident or the accoutrements of the animal will make that obvious.

In accordance with the policy announced by the Premier, the Bill provides for an extensive set of court powers to award compensation for various effects of causing the death of or serious harm to a working animal. The extent of the order will be up to the court.

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 *Criminal Law Consolidation Act 1935*

4—Insertion of Part 3C

This clause inserts new Part 3C into the principal Act as follows:

Part 3C—Protection for working animals

83H—Interpretation

This clause defines key terms used in the new Part 3C.

83I—Causing death or serious harm etc to working animals

This clause creates an offence for a person to intentionally cause death or serious harm to a working animal. The relevant terms are defined in proposed section 83H. The maximum penalty for an offence is 5 years imprisonment.

The clause sets out circumstances in which the offence does not apply, and makes provision relating to the defences available in respect of the new offence.

83J—Court may order compensation and other costs

This clause allows a court to make orders for compensation for expenses arising out of the harm caused to the working animal (for example, for replacement, retraining, rehousing and similar costs).

83K—Enforcement of order for compensation etc

This clause provides that an amount ordered under new section 83J is enforceable under the *Criminal Law (Sentencing) Act 1988*.

83L—Evidentiary

This clause allows certain matters relating to an offence to be proved by certificate.

Debate adjourned on motion of Mr Pederick.

CIVIL LIABILITY (DISCLOSURE OF INFORMATION) AMENDMENT BILL

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (12:08): Obtained leave and introduced a bill for an act to amend the Civil Liability Act 1936. Read a first time.

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (12:08): 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.

For more than 20 years the Freedom of Information Act has provided the public with a legally enforceable right to access information held by State Government, Local Government, and the three State Universities. The FOI Act is well utilised by members of the public, including Members of Parliament and the media, with 12 328 applications made to government agencies in the 2011-12 financial year, of which 85 per cent of information was released in full or in part.

FOI access comes at a cost. In the 2011-12 financial year the estimated total cost of administering the FOI Act was reported as $10.4 million. Agencies only recovered some $222,000 of this through application fees and charges. This cost, which is considered a conservative estimate, has progressively increased since 2002. This, in part, reflects the increasingly broad and complex nature of FOI applications received by some agencies.

Although the FOI process is often described as the option of 'last resort' and the objects of the Act clearly state Parliament's intention that disclosure should be favoured over non-disclosure, some applicants report difficulties in obtaining information they have requested, including time delays and prohibitive costs. Government agencies administering the FOI Act report a culture of risk aversion and a reluctance to release information outside of the FOI Act.

One of the barriers to agencies proactively disclosing information outside of the FOI Act is the lack of protection from legal liability, meaning the proactive publication of information could give rise to a cause of action against the Crown.

Section 50 of the FOI Act provides the Crown with immunity from civil liability for defamation and breach of confidence in respect of the granting of access to a document under that Act.

While public servants are themselves protected from civil liability when exercising (or purportedly exercising) official functions and powers by the Public Sector Act, and the Crown has some protection from defamation in respect of documents issued by agencies for public information purposes, the Crown has no general immunity from civil liability in respect of the release of information outside of the FOI framework.

Understandably, this lack of protection weighs heavily on the minds of public servants when considering whether to release information proactively.

The Civil Liability (Disclosure of Information) Amendment Bill seeks to address this.

The Bill amends the *Civil Liability Act 1936* to provide the Crown with immunity from civil liability in respect of the release by or on behalf of government agencies of information, but only in respect of the publication of information of a prescribed kind, or in respect of the publication of information in circumstances prescribed by regulation.

The need to prescribe the kinds of information, or the circumstances of release, will limit, through Parliamentary scrutiny of the regulations, the scope of the immunity.

I expect that the list of prescribed kinds of information or prescribed circumstances will, at least initially, be quite limited. While the kinds and circumstances of release are yet to be finalised, the Government anticipates the regulations will prescribe only:

- general information about government agencies and their operations, being the type that is commonly sought and released under the FOI Act, such as details of credit card expenditure, travel, mobile phone usage and entertainment expenditure by ministers, their advisers and senior public servants, and information about consultancies, gifts received and agency procurement practices;
- submissions on government policy initiatives;
- information released in accordance with government-wide disclosure policies and information of a non-personal nature that has already been sought and provided to an applicant under the FOI Act.

I should make clear that the Government has no intention of prescribing information of a personal or sensitive nature or information that is commercially sensitive.

Further limiting the immunity provided by the new provision is that the civil liability of the author of the information (for example, the person who provides a document to a government agency) or a person or organisation who re-publishes information released by a government agency (for example, a media organisation) will not be protected by the immunity. It is the Crown and the Crown alone that is protected.

This amendment will not require a government agency to release information or documents. Rather, it will provide the Crown with a degree of legal protection where information or documents is or are released proactively. In so doing, this reform is aimed at encouraging greater proactive release of information by government agencies, thereby reducing the number of freedom of information requests received by government agencies and protecting

the Government, and, by extension, the taxpayer, from civil liability arising from the proactive release of information by government agencies.

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 *Civil Liability Act 1936*

4—Insertion of Part 9 Division 12A

This clause inserts new Division 12A into Part 9 of the Principal Act.

That Division contains new section 75A, excluding all civil liability (whether in tort, contract, equity or otherwise) of the Crown arising out of the publication by, or on behalf of, the Crown of information of a kind, or in circumstances, prescribed by the regulations.

The new section does not affect the civil liability of the original author of the information, or a person or body other than the Crown who publishes the information.

Debate adjourned on motion of Mr Pederick.

EVIDENCE (DISCREDITABLE CONDUCT) AMENDMENT BILL

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (12:09): Obtained leave and introduced a bill for an act to amend the Evidence Act 1929. Read a first time.

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (12:09): I move:

That this bill be now read a second time.

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

Leave granted.

The *Evidence (Discreditable Conduct) Amendment Act 2011* ('the 2011 Act') made changes to the *Evidence Act 1929* (SA) governing the use of discreditable conduct evidence in criminal proceedings. The Act passed with all party support following an extensive consultation process and commenced on 1 June 2012.

The Act was intended to simplify what had become a complex area of the common law. Though the Act is a major advance on the previous common law position, one aspect needs clarification.

The 2011 Act requires a party seeking to adduce of discreditable conduct to give notice in writing to each other party in the proceedings in accordance with the rules of court. This requirement was drawn from the practice in the Uniform Evidence Act jurisdictions. The UEA requires the prosecution to give written notice of its intention to use either propensity or similar fact evidence, but importantly does not require written notice of a party's intention to use discreditable conduct for other purposes.

The extension of the notice requirement in the South Australian legislation is not practical. The definition of discreditable conduct captures a vast amount of evidence. This is a type of evidence that is commonly used in court, and in the majority of cases for a purpose other than to establish a particular propensity or disposition of the defendant as circumstantial evidence of a fact in issue (in other words, for propensity or similar fact purposes). It is impractical that the use of discreditable conduct evidence for purposes other than a propensity or similar fact purpose be the subject of prior written notice; this was not the intent of the 2011 Act.

The *Evidence (Discreditable Conduct) Amendment Bill 2013* will bring the South Australian regime in line with the UEA jurisdictions. Notice will only be required when the party intends lead the evidence to establish a particular propensity or disposition of the defendant as circumstantial of a fact in issue.

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 *Evidence Act 1929*

4—Amendment of section 34P—Evidence of discreditable conduct

This clause amends section 34P, with the effect that discreditable conduct evidence can be led for certain purposes without prior written notice being given by the party seeking to adduce the evidence.

Debate adjourned on motion of Mr Pederick.

TORRENS UNIVERSITY AUSTRALIA BILL

Adjourned debate on second reading.

(Continued from 4 July 2013.)

Mr PISONI (Unley) (12:11): I indicate that I will be the lead speaker. The opposition is pleased to support the Torrens University and the establishment of the Laureate International Universities network into Australia. It is our sincere hope that Torrens will flourish in South Australia as it has done around the world, and we feel that it will add to our tertiary education diversity as an attraction for domestic and overseas students, unlike some of the projects that this government has attempted to bring in to South Australia in the past. We remember Cranfield University, which had an answering machine that was managed by the Department of the Premier and Cabinet because it had no students. We also remember Carnegie Mellon, which has taken around $40 million of taxpayers' money.

The Liberal Party is grateful to Laureate for keeping it fully briefed on its plans and progress in establishing in South Australia from the beginning of their negotiations. Laureate Education Asia Ltd is part of the Laureate Education Incorporated global higher education group and received conditional approval from the government of South Australia to establish a university on 17 October 2007, now to be known as the Torrens University Australia.

The transfer of responsibility for universities from state governments to the commonwealth in January 2012 immediately created some key problems for the Torrens University Australia, in the sense that the Tertiary Education Quality and Standards Agency did not recognise greenfield universities. As a consequence of this, registration of the new university by TEQSA was delayed until July 2012. The previous commonwealth government had agreed to amend the act to remove this oversight, but unfortunately was not able to do that before the election. I am sure that it will be an early task of the new government.

Despite this setback, an approval process commenced in 2009. Laureate had persisted with its objectives of establishing a new national university with its head office and some of its educational facilities here in Adelaide. Laureate is the largest global network of universities and institutions of higher education in the world. Currently, it has some 70 institutions, with a total of around 780,000 students in 30 or so countries, over 150 campuses and a global workforce approaching 70,000. It continues to grow rapidly, with particular emphasis on expanding higher education access in Asia and Latin America, and more recently in Africa.

Each university has its own name and individual characteristics. The chairman and CEO of Laureate Education Incorporated is Mr Douglas Becker, and its head office is in Baltimore in the United States. President Clinton is the Honorary Chancellor of Laureate International Universities, and in his role provides advice in areas such as social responsibility, youth leadership and increasing the access to higher education. In President Clinton's own words:

> I have had the opportunity to visit several Laureate universities and to speak to students, faculty and communities that they serve. These private universities exemplify the same principles of innovation and social responsibility in education that we worked to advance during my Presidency and now through my Foundation, and I am pleased to support their mission to expand access to higher education, particularly in the developing world.

Of course, we all know that Mr Clinton was a very modest man. Torrens has appointed a well-known Adelaide-based academic, Professor Fred McDougall, as the Vice-Chancellor and is currently recruiting academic and administrative staff. I am informed that a number of members in both houses of the parliament were former students of Professor McDougall. Besides Torrens University Australia, the Blue Mountain International Hotel Management School, ranked as the top hospitality school in the Asia-Pacific region, is also part of the Laureate global network in Australia. Laureate has a 20 per cent interest in THINK Group, the largest private provider of vocational education training and higher education in Australia.

Torrens University began operations in leased facilities in the Torrens building in Victoria Square in January. Its Chancellor is Mr Michael Mann AO, a former distinguished Australian diplomat and President of RMIT University in Vietnam. Two distinguished members of the governing council board include the Hon. Greg Crafter AO and Emeritus Professor Dennis Gibson AO, former Vice-Chancellor of Queensland University of Technology and Chancellor of RMIT University.

Torrens University Australia has also formed the Community Advisory Board. A number of distinguished leaders in this state have joined this board. Laureate have recently entered into an agreement with TAFE SA to cooperate in various areas and support the recent contract awarded to the group to operate a number of new technical colleges in Saudi Arabia by the government of that country. This could grow into a very significant area of business for TAFE SA.

Torrens University Australia will begin enrolling students in January 2014. It will initially offer bachelor degrees on campus in the areas of business, health and design and postgraduate course degrees in these and other fields of study. Laureate is the largest provider of online higher education programs for working adults in the world. Torrens is jointly developing a range of online master's programs with parts of the Laureate network that will be available for working adults across Australia and progressively in the broader Asia-Pacific region.

By the end of 2013, over 20 staff will be employed by Torrens University Australia in Adelaide. The number will grow as the university introduces new degrees and programs, enrols more students and employs academic and professional staff to support its operations. This team is supported by highly experienced staff in higher education around the globe and in other Laureate institutions and support units.

Torrens University Australia seeks to offer a different education experience to that available at other universities in this state, and indeed in Australia. It will operate on a trimester system, meaning that the typical bachelor degree of three years duration can be completed in just two years. All undergraduate students will be expected to spend a trimester studying at another Laureate institution and also complete an internship program in business, government or a professional organisation. Teaching will be organised around small classes of 20 to 25 students with a strong focus on students and preparing them for their future employment and careers.

The mission of Torrens University Australia is to be a distinctive higher education institution that enables its students, graduates and staff to make positive social, economic and cultural contributions to the societies in which they live and work by creating an environment of learning, scholarship and research that is culturally diverse, career-orientated and with distinct global perspective. Laureate seeks to make high quality tertiary education both accessible and affordable. The international outlook of Laureate prepares their students for a global marketplace.

Besides the teaching activities, Torrens University Australia staff will also be active researchers, with a focus on topics that support its mission. The university has made its first senior academic appointment with the appointment of Professor Barry Burgan, the chair in business and in the position of academic director. Professor Burgan recently completed a seven-year term as the head of the University of Adelaide's Business School. It is hoped that the Liberal Party and the federal and state governments will facilitate the establishment and operations of Torrens University and that neither they nor their agencies allow any bureaucratic hurdles to get in its way.

The Hon. R.B. SUCH (Fisher) (12:20): I support this bill, but I will take this opportunity to say something about the university sector in South Australia. Unfortunately, we do not often canvass the university sector in this place, and we should, because universities are very important institutions, not only because they employ a lot of people but also because of their role, obviously, in education and training.

We have the long-established universities of Adelaide, Flinders and South Australia. I know in the past, when private universities or other universities have been encouraged to set up here, there has been some concern that it would be at the expense of those existing longstanding universities. I do not believe that should occur. I think the more opportunity for people to study and train the better.

I think we need to remember what the main function of universities is. The fundamental role of universities is to search for truth, and they should never deviate from that path. A lot of people get confused in looking at education and training, and they are not the same thing. They are often interlinked, but they are not the same thing. You can train someone to pull levers, say, but that does not necessarily make that person an educated person.

We keep coming back to this issue of whether or not the three traditional longstanding universities here should continue as separate entities. That is only partially true, because the three of them now cooperate in a lot of areas, and I think that should be encouraged. If we are not going to have one large university, then at least make sure that the three universities cooperate in regard to course offerings and other areas. Certainly, in administration, they could no doubt cooperate more.

One thing that has happened to our universities over time is that they have become squeezed in relation to finances. That is unfortunate, because I benefitted from studying at university as a result of the Whitlam era, having left school to work as a farm worker at the age of 14. A farm worker is a fancy name for a farm labourer. I was able to come back through the system and eventually I graduated from each of the three universities.

I am very passionate about giving people the opportunity to study at a university, TAFE or wherever to the fullest possible extent of their capability and ability. I do not want to see a situation where people are denied access to higher education when they have the necessary entry requirements. In my first year at Flinders I was living off savings and ended the year hay carting down in the South-East, which was quite an experience. He was a grumpy farmer. Most farmers are not grumpy—

Mr Venning: Hear, hear!

The Hon. R.B. SUCH: There are some exceptions. When I finished the year before I went down the South-East, I think I had a dollar in my pocket, but I managed to get a scholarship and went on from there. I ended up doing eight years of part-time study at university and eight years full-time, and then training teachers, designers and other people like that at university for 17 years. So, I am very passionate about this sector.

What we have seen in recent times, sadly, is a decline in the quality of what is offered in some courses by virtue of the fact that the class sizes have become rather large. That is not so in all universities; some have stuck to a fairly strict tutorial size. When I went to Flinders Uni—which is a long time ago—we knew a lot of the staff. In fact, the professors used to have barbecues on weekends with the staff.

Those days are gone, sadly, but we had tutorials with about 15 students at the most. The lectures were usually 40 or 50 or sometimes a bit smaller but now, at some of the lectures at some of our universities, you are looking at potentially hundreds of students and so-called tutorials with 30 or 40 students. They are not tutorials. They should call them something else.

We have seen a big move to online delivery and electronic delivery and there is a place for that, but there is no substitute for the personal, human growth by interaction face to face. You can study online as much as you like, but you are not going to get the same enrichment and experience as if you are dealing with people face to face, whether it is arguing in a tutorial with real people or in extracurricular activities, which I am sure many members in here engaged in at university. I think we have to be careful that we do not end up simply having an electronic offering because it is cheaper, because you will short-change students in the process.

We have made it a lot harder for people to study at universities. When I say 'we', I mean governments over time. I have never been a supporter of HECS, not in its current format. I believe you should pay back your cost of education according to the income you earn when you graduate. If you end up becoming a highly-paid lawyer—and there are some of them around; there are some not so highly paid—then you pay more than if you become a social worker. I think that is the fairest system.

Currently I do not know the exact figure but I think it runs into the billions owed to the HECS scheme anyway, because people do not pay it or have not paid it or are delaying the payment. As a nation, there is an obligation to allow anyone with a potential to study at a higher level to do so, whether it is at a university or TAFE. I am not against some sort of financial assistance. I am not opposed to paying back for the benefit of a higher education but I do not believe the current HECS scheme is the ideal model.

There has always been an interesting relationship in our universities between teaching and research. Usually, the teaching side gets less kudos than the research side which is unfortunate because unless you have good research, you will not have good teaching and vice versa. However, in the popularity stakes, there is more emphasis on the researchers than on the teachers and the lecturers. I think now the staff in universities really have to put in. I am not saying they

never did in the past, but I think they have to put in a lot of hard work at the moment dealing with large numbers of students and often very tight budgets.

The introduction of another university is good. At the end of the day, universities live or die by their reputation. Here in Australia, people are a bit simplistic in judging. If someone says they have a degree, people just take it at face value. In the United States they look to see where you got the degree. Was it from Harvard or the Southern Louisiana Knitting School? They differentiate in the United States—

Ms Bedford: What's wrong with Louisiana and knitting?

The Hon. R.B. SUCH: I digress for a minute. I just spoke to the Knitwit group at Aberfoyle Park following the member for Reynell raising it. We have some highly capable, community-minded Knitwits out there. In the United States the emphasis is on which university you went to, rather than what degree you have, necessarily.

Here people are very simplistic and we see the system abused in some of the universities dishing out honorary doctorates and people then using them for employment purposes and other inappropriate uses. That is not what they are meant to do. An honorary doctorate is not meant to be used outside university-type activities.

People need to have a look at the history of it, because it has become an endorsement for getting, often, political favours or trying to curry favour with particular sections of the community. What that does over time (the same as what has happened with PhDs in some instances) is devalue the award, so it becomes, in my terminology, Mickey Mouse. We have to be very careful that universities do not devalue what they offer, because at the end of the day it will come back and bite them because people will know that it is not worth, literally, the paper it is written on.

Universities have to maintain proper standards. We have seen efforts, and I believe the incoming federal government will move to tighten standards for people entering the teaching profession. For a long time it has been an easy option, which is in contrast to years ago when some of our best scholars, who wanted to go into teaching, were the top scholars in schools. That is a reflection of the devaluing of the teaching profession, which is sad and unfortunate, because teaching should be valued as probably the most important profession. It is the mother profession.

The other thing—and we see this in the way universities market things—is double degrees. Well, they are not really two degrees; they are usually a combination (a bit like a Chinese restaurant) of two incomplete degrees. We are also seeing, for example, in medicine that they have scaled back the amount of anatomy that is taught now. I raised this with a medical specialist, and he said that it might be alright for a GP who needs a general idea of where your heart is, but as a surgeon—and I am talking about the top people in Adelaide—they have to know where every nerve is, every organ, in detail.

I heard the member for Unley suggest that people should be able to do a quick degree at Torrens University. I hope, if it is fast, it is still of quality. This tendency, which we are seeing in the technical area, of trying to train people in five minutes has a risk in that if you do not put in the hard yards and the detailed work you will end up with second-rate not only tradespeople in the technical area, but also second-rate people coming out of university. We are seeing that trend now because of the cost pressures on universities, where you can now become a medico, or something like that, pretty quickly, building on an existing degree which has very little to do with medicine, for example.

I welcome the introduction of the Torrens University. I do not think the established universities here—the big three—have anything to fear. If this new opportunity is available for more people to get a tertiary education then I am all for it. I would encourage the government, state and federal, to assist students to participate in a tertiary education irrespective of their financial circumstances or their family's economic position.

The Hon. G. PORTOLESI (Hartley—Minister for Employment, Higher Education and Skills, Minister for Science and Information Economy) (12:33): I would like to thank the member for Unley and the member for Fisher for their comments and for their support. To recap, the successful passage of this bill through parliament will be a statement of support for Torrens University and its operations in South Australia. Torrens University Australia is a private Australian university. It is a Laureate International Universities network member and has been fully underwritten by LEI Higher Education Holdings Pty Ltd. No state government financial assistance has been provided to Torrens University to establish operations in South Australia.

Torrens University is advanced in establishing its operations in Adelaide. Enrolments for its first accredited program of study, the Bachelor of Commerce, were opened in June 2013 and teaching will begin in 2014, I am advised. In addition, the university will offer coursework degrees in management and commerce and health and education by January 2014. Torrens University is also planning to offer a Masters in Business Administration in January 2014 along with higher degree by research programs including Master of Philosophy and Doctor of Philosophy in the fields of management and commerce and health and education later in 2014. That concludes my comments on the bill. I will address any further questions in committee.

Bill read a second time.

The Hon. G. PORTOLESI (Hartley—Minister for Employment, Higher Education and Skills, Minister for Science and Information Economy) (12:35): I move:

That this bill be now read a third time.

Bill read a third time and passed.

STATUTES AMENDMENT (DANGEROUS DRIVING) BILL

In committee.

(Continued from 10 September 2013.)

Clause 4.

The CHAIR: We are up to clause 4, and I think when we left it the Deputy Leader of the Opposition had asked a question of the minister.

The Hon. J.R. RAU: The answer is yes, because it is a vessel, and a vessel has the same meaning as in the Harbors and Navigation Act.

Mr WHETSTONE: Minister, there are a couple of issues, particularly with vessels on the river or on a tributary to the river. What is left to independent discretion is: where is the determination with respect to crown land or the river which is on crown land. We have fluctuating rivers and, at some point in time, there will be vessels which will potentially compete through the creeks on the river. They have to endure crossing into private property because, when we have a high river, the water level then encroaches.

For the sake also of competition water skiing or competition boat racing on the river, we have corridors which are proclaimed for the event, and that allows people to compete but it also allows the general public to be able to utilise that corridor while the competition is on. The issue I have is someone coming out driving dangerously within that corridor, impeding on a competition which is on the river or which, in another instance, would be potentially on the road. What is your interpretation in relation to addressing corridors or addressing high river into private property?

The Hon. J.R. RAU: I am advised that, under the Harbors and Navigation Act, all waterways, whether they be a creek, river or whatever, are treated as the same. It may be that, for the purposes of a particular event, a corridor as the honourable member has described is designated by the operators of the event, but that has no impact at all on the operation of this particular piece of legislation.

I am advised that, as far as the Harbors and Navigation Act is concerned, water generally is regulated. Whether or not, for the purposes of a particular event, there are markers or buoys or dedicated lanes or something, it does not impact on the regulation. I am also advised that there are already penalties under this piece of legislation; it is just that the 19A penalty is a higher penalty.

I stand to be corrected but, in answer to your specific question, if there is a designated corridor on the river and people are engaging in a particular event in that corridor and then somebody comes into the corridor and causes trouble from outside or whatever, they are still on the water, they are still operating a vessel and, if what they have done constitutes reckless and culpably negligent behaviour, they potentially have a problem.

Mr WHETSTONE: Minister, the difference between what happens on a waterway and what happens on a road is that the waterway potentially moves, so we have a rising river level. Once you go off the main channel into a creek and, if people are competing in that creek, they are potentially moving onto private property or back onto crown property. When we are talking about the road, the road does not move. That is the interpretation that is still a little confusing to me, but it is also very concerning to the people who are organising these events and competing in them.

The Hon. J.R. RAU: Again, my understanding is that the waterway, wherever it might be, albeit a section of the waterway which is otherwise confined within a private land holding, is still already governed by the Navigation Act. All we are doing in this proposal is to make it clear that that section 19A offence would also apply there. The critical element is not the ownership of the land on either side of the river, however wide or narrow that might be according to the time of the year or whatever. It is the fact that it is occurring on the surface of the water; that is my understanding.

Section 19A has always applied to waters wherever they might be. This amendment does not touch whether or not section 19A applies to waters; it already does. This amendment simply deals with the question that I was trying to explain yesterday as to whether or not the person who ultimately is injured or killed is a friend or an unknown person to the driver of the vehicle basically. That is all it does; it does not change any of the other arrangements.

Ms CHAPMAN: Recreational activity whether that is a race on a road—although I will come to street racing in a moment—but more particularly on a waterway, has dangers to the extent that we have a motorised piece of equipment, usually at some speed and there can be levels of competence of those who are in charge. The way I am reading the amendment to this area is not as you say to introduce marine vessels as some kind of new pieces of equipment that are going to be included but we are going to expand the victims. Rather than the member of the public who might be a spectator or whatever, we really are talking about passengers.

The Hon. J.R. Rau: Correct.

Ms CHAPMAN: People who get in the car or get into the boat when somebody wants to recklessly conduct themselves in the manner that is caught by this provision and then cause the death of or injury to that passenger. The cases that have been referred to in this debate highlight where there have been unsuccessful attempts to go down the line of prosecuting somebody in that circumstance. This is the 'mates' clause, as I see it. Sometimes they may go into that piece of equipment voluntarily, act in a manner which is careless at least or even go to the extent of being a joint venturer in the exercise, as unwise as that might be.

It is an area which our side of the house has received with some caution. Obviously we are concerned that people who act in a manner to hurt others should have some accountability, but I think in the application of this legislation there is going to be an enormous amount of work to identify and be able to support a case that will relate to sufficient evidence to be able to prosecute somebody successfully when the likely witness to be able to deal with this is going to be dead or severely injured.

My question is in relation to the speed on roads, and street racing is already provided for in the act, and it is to ask what the situation is with speed racing on riverways or lakes, or the ocean for that matter, that currently applies. I do not know whether this is even a practice or whether there is behaviour out there that is already attracting penalty. Can the attorney identify whether there have been any cases of successful prosecutions under this clause under the current legislation and also whether there are any examples of circumstances where a prosecution has not been able to proceed which this amendment will now remedy?

The Hon. J.R. RAU: First of all, I think in the remarks the honourable member made—you were able to really capture the point very clearly in your initial remarks about what this is doing: it is simply saying that where a random person (now) who is killed or injured in one of these events could result in a prosecution against the driver, but if it is their best mate, by reason of their association, they could not. We are just stopping the best mate from being somebody who can be a victim with no punishment; that is all we are doing. So, it is not disturbing any other things, or any other aspect of the thing.

The second thing—and it is quite important; I think I mentioned this briefly yesterday—is there is a second limb to the requirement: not only does the behaviour have to be culpably negligent, but it has to have caused the injury. To some extent, that might deal with the joint enterprise matter that the member for Bragg referred to.

It is important for people to remember that this is a criminal provision, not a civil provision. This is different to saying, 'Look, if you get in the car with a drunk driver and you are injured, your claim is going to be barred because of your own contributory negligence,' or whatever the case might be. That is me as a victim seeking to recover from the pooled insurance scheme in certain circumstances where I have actually contributed, according to the law, to my own injury. We are not talking about civil recovery here; we are talking about a criminal behaviour, which is an order of

magnitude above that. We are talking about something which is so reprehensible that the community expects us to punish people with a criminal penalty, not a civil debt.

As to the particular question about how many prosecutions there have been and so forth, I have to say that I do not have that information. I have checked and we just do not have it available. But I am advised that sections 69 and 69A of the Harbors and Navigation Act are probably the more likely provisions that would be applied.

For the benefit of members, section 69 is entitled 'Careless operation of a vessel'. 'Careless' is clearly less than what we are talking about here—this is gross carelessness, if you want to call it that. Under section 69 of the Harbors and Navigation Act there is already an offence of operating a vessel without due care; that has 12 months' imprisonment for an aggravated offence or $5,000 for any other offence. It is a lower order of magnitude, but it is a lower bar to be convicted of the offence.

The other one is section 69A—Dangerous operation of a vessel, which says, 'A person who operates a vessel at a dangerous speed or in a dangerous manner is guilty of an offence,' and there is an imprisonment there for a maximum of two years. There are other provisions relating to alcohol, drugs and so forth. So, there are already those provisions sitting in the legislation. My feeling about this would be that it would only be in the most extreme, unusual and rare circumstance that the prosecuting authorities would not have regard to those offences, and would be looking at the sort of offence we are talking about here.

Clause passed.

Clause 5.

Ms CHAPMAN: My first question relates to the 'Dangerous driving to escape police pursuit' amendment, which did not receive any attention in your contribution in the debates, Attorney, but I have assumed, for the purpose of completeness, that this is being applied to that serious offence as well, for consistency, but it does raise some questions.

Firstly, is there any reason why motor vessels are not included in this circumstance? It only relates to motor vehicles. I do not know how often police are in motor boats and how many times people are trying to escape them, but I could imagine on a busy River Murray or a seaside place that that would be a very difficult circumstance. I just wonder why that is not there at all.

The Hon. J.R. RAU: It is a good question, and I think the answer is basically that police chases routinely happen on the road, and I am not aware, and the member for Chaffey might or might not be aware, of high-speed police chases in boats. I do not know of them. I do remember in *Live and Let Die* there was an episode where blokes were jumping over barrages and things in high-powered boats. I do not think we can call that in aid, but I do not know of that being a problem. I can tell members that there is a big problem with police chases, as you would be aware from reading the papers, when this happens.

What has happened is some of these characters are almost invariably in cahoots (an interesting thing) because they are in a criminal enterprise together, so it might well be that if there is a crash and one of them is killed, the driver is able to say, 'Well, he was my mate,' so he is not a member of the public. The case is that police often are finding it really difficult to prove, and I will just give a very brief example.

They know these people, usually, because they have a bit of a record; they hear that there have been a couple of hold-ups at service stations, grog shops or whatever the case might be; they go out looking for these blokes; they give chase to them; and then these characters drive at extremely dangerous speeds, often on the wrong side of the road into oncoming traffic. The police break off the pursuit in order to protect the safety of other members of the public. When they ultimately recover the car, they cannot prove these blokes were in the car and, if they can prove they were in the car, they cannot prove that they were in the car and committed the other offences.

So, the effect of this will be that, if you have a bunch of crooks out there committing offences and speeding around the place and then one of them crashes the vehicle or for some other reason kills one of their passengers, if nothing else, the police will be able to pinch them under this, even if they cannot identify them and put them in the place of the burglary, for example, or have not actually caught them in the act of a police chase.

Ms CHAPMAN: That answer just gives me more concern. As you would be aware, Attorney, there is already provision for endangering the life of another under the legislation under

section 29. In fact, there is extra provision under this section to ensure that there is not a circumstance where you can be charged with both, for obvious reasons—we understand that.

Police chases and the consequential death and injury to people in this state are not very good statistics, I suggest, and there has been a lot of controversy about the continuing of a pursuit in a circumstance which could really just promote the offender to do even more unsafe activity and put people's lives at risk. Clearly, it is a fairly controversial issue, I suggest, because there are circumstances where it is justified to continue the pursuit and there are other circumstances where, tragically, that promotes an environment where it is even more likely that someone will be hurt.

I do not say that as a negative reflection on the police. I simply make the point that when people get into that situation and cause the vehicle to leave an area and a pursuit to ensue, they are no doubt doing it deliberately, recklessly and all those other things, but to introduce a penalty just because the police cannot catch them for something else I think is inappropriate. In any event, no doubt we will all continue to have a different view on this question of escaping police pursuit and the consequences that go with it. My next question is: had the police asked for this amendment, and if so, did it pre-date the amendment that relates to section 19A?

The Hon. J.R. RAU: A consequential amendment so that there is no misalignment between basically comparable provisions.

Progress reported; committee to sit again.

[Sitting suspended from 13:00 to 14:00]

GOVERNMENT STATIONERY CONTRACT

Ms BEDFORD (Florey): Presented a petition signed by 8,065 residents of South Australia requesting the house to urge the government to take immediate action to ensure that government purchases of stationery requirements for South Australian schools are opened up to all stationery suppliers.

GOVERNMENT STATIONERY CONTRACT

Mrs VLAHOS (Taylor): Presented a petition signed by 8,065 residents of South Australia requesting the house to urge the government to take immediate action to ensure that government purchases of stationery requirements for South Australian schools are opened up to all stationery suppliers.

VISITORS

The SPEAKER: I welcome to parliament today students from the Daws Road Centre, who are guests of the member for Elder, and also students from the Adelaide Secondary School of English, who are guests of me.

PAPERS

The following papers were laid on the table:

By the Minister for Transport and Infrastructure (Hon. A. Koutsantonis)—

Fourth Variation of the Port Operating Agreement for Port Adelaide

By the Minister for Tourism (Hon. L.W.K. Bignell)—

National Environment Protection Council Acts (Commonwealth, State and Territory) Report of the Third Review dated December 2012 and National Environment Protection Council Response dated April 2013—Report

LEGISLATIVE REVIEW COMMITTEE

Mr ODENWALDER (Little Para) (14:03): I bring up the 31st report of the committee, entitled Subordinate Legislation.

Report received.

PUBLIC WORKS COMMITTEE

Mr SIBBONS (Mitchell) (14:03): I bring up the report of the committee entitled Riverine Recovery Project Wetlands Phase 1B Infrastructure.

Report received and ordered to be published.

QUESTION TIME

STATE RECORDS

Mr MARSHALL (Norwood—Leader of the Opposition) (14:05): My question is to the Attorney-General. Can the Attorney-General confirm for the house that there has never been a review of records management in ministerial offices, and that these offices were deliberately excluded from a 2010 agency review of all other state government agencies and their compliance with the State Records Act?

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (14:05): I thank the honourable member for the question. The question is in two parts. The first part is about the 2010 review, and the second part implies that there was some deliberate action on the part of executive government to ensure that ministerial offices were not agencies that were the subject of any review.

I have no information available to me to suggest that there was any direction issued by executive government to the effect that ministerial offices, which are agencies for the purposes of the State Records Act, were deliberately (and I use the word used in the question) exempted from that review. I can, however, tell the parliament and the Leader of the Opposition that, at a briefing which the leader and I attended this morning, Mr Ryan from the State Records Office did indicate that it was the case that the ministerial offices were not amongst the group of offices that were reviewed.

Mrs Redmond: Just coincidentally.

Mr MARSHALL: A supplementary.

The SPEAKER: Before a supplementary, I call the member for Heysen to order.

STATE RECORDS

Mr MARSHALL (Norwood—Leader of the Opposition) (14:07): Can the Attorney-General in fact confirm that ministerial offices have never been the subject of a State Records Act review?

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (14:07): Look, never is a very long time. I can indicate that, so far as I am aware, and my most recent information about the matter occurred at a briefing this morning at which, as I said, the Leader of the Opposition was present, I received no indication about there having been a review specifically of ministerial offices. However, whether that has ever occurred I do not believe was a particular topic that was traversed with Mr Ryan. My understanding of what he informed me and the leader was that, certainly in 2010, they were not part of the agency group that was selected for review, and I also believe he indicated that, since 2010, they had not been specifically targeted for review.

STATE RECORDS

Mr MARSHALL (Norwood—Leader of the Opposition) (14:08): A supplementary.

The SPEAKER: A further supplementary.

Mr MARSHALL: Further and final, I'm sure, sir. Given the fact that this State Records Act review looked at in excess of 400 agencies, can the Attorney-General provide any explanation to this house why ministerial offices were specifically excluded from this review?

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (14:08): Again, I thank the leader for his question. I do not take issue with it except for the words 'specifically excluded', which actually imply that somebody in executive government or somewhere else had issued a directive that ministerial offices were not to be included. All I can tell the leader

and the parliament is this: the most recent information I have about this matter, which as I said was provided in a briefing this morning, is to the effect that they were not included.

Mr Marshall: Why?

The Hon. J.R. RAU: As to why, I would have to seek—that is a separate question—

Members interjecting:

The Hon. J.R. RAU: The leader and I and a number of other members of the opposition spent a period of time this morning with Mr Ryan, and I do not recall that specific question having been asked of Mr Ryan. He was there; he was available to answer the question. I have not been asked that particular question before, either, so I am unable to answer that question other than to say that there is no indication from Mr Ryan or anybody else that a member of executive government at any time has issued a direction or any form of guidance to the State Records people that they were to specifically avoid ministerial offices. I confirm again that Mr Ryan's advice—

Mrs Redmond interjecting:

The Hon. J.R. RAU: The member for Heysen is very interested in this, apparently. Mr Ryan's advice this morning was that in the 2010 review there were a number of agencies—and it might assist the parliament to understand that the State Records legislation covers various agencies; not all of them are agencies which are state government agencies. For example, the 68 councils within South Australia are agencies to which the State Records Act applies. The state universities are also agencies to which the State Records Act applies.

So what we know is that in 2010 there was an examination of a range of agencies. We don't know specifically which agencies. I haven't been provided with that information. Nor, should I say, was Mr Ryan asked to provide that information specifically this morning, although he might have been asked to go away and find that out. Either way, I don't have that information presently. But the point is that there is nothing sinister or peculiar about this.

The State Records people were obviously, one would assume, looking at the agencies which were the larger agencies. Now, ministerial offices are technically agencies for the purposes of the act—there is no question about that and I am not arguing about that. The only point I make is that if you were in the shoes of the State Records people, you would presumably make choices about where your inquiries would be most relevant to the community. All I can say is that, for whatever reason, the information we received this morning was that—

Members interjecting:

The Hon. J.R. RAU: Whatever agencies were looked at—and I think there are 400 or so of them—ministerial offices, which would have been relatively small agencies in that context, were not included. But to suggest that their being included or not included was in any way a function of executive government giving direction is something for which there is absolutely no support.

STATE RECORDS

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (14:12): A supplementary sir.

The CHAIR: Before we go to the supplementary, I would call you to order for earlier interjections and also call the member for Florey to order for usurping my function by telling you off.

Ms CHAPMAN: Is that my penalty, is it?

The CHAIR: Supplementary.

Ms CHAPMAN: Thank you sir. Attorney, given that you have not made the inquiry and are therefore not able to advise the house why, will you take that on notice, make that inquiry and report back to the house?

The Hon. P.F. Conlon: He has said that already.

Ms CHAPMAN: Oh, be quiet. Go back to your—

Members interjecting:

The CHAIR: The deputy leader is warned for the first time.

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (14:13): In answer to that question, can I say there was quite a cordial meeting this morning. The member for Bragg (the deputy leader) was present, the Leader of the Opposition was present, Mr Wade from another place was present, eventually Mr Lucas from another place was present, and there were a couple of other people who were present.

The Hon. A. Koutsantonis: Is he still in parliament?

The Hon. J.R. RAU: Yes, he turned up. There were a couple of other people, staffers, present, and a whole range of questions were asked specifically and particularly of Mr Ryan. I do not recall whether the particular question which I have been asked in parliament now was actually asked of Mr Ryan at that stage.

Members interjecting:

The Hon. J.R. RAU: Mr Ryan undertook to do his best to find answers to the questions that he was given this morning by the Leader of the Opposition, in particular, and Mr Wade and the deputy leader. If the question from the deputy leader is something along the lines of, 'If we forgot to ask him this morning, will you ask him?' the answer is, 'Yes.'

ADELAIDE QUALITY OF LIVING

Dr CLOSE (Port Adelaide) (14:14): My question is to the Premier. Will the Premier update the house on Adelaide's ranking in terms of liveability and affordability?

The Hon. J.W. WEATHERILL (Cheltenham—Premier, Treasurer, Minister for State Development, Minister for the Public Sector, Minister for the Arts) (14:14): With pleasure. We know, of course, that Adelaide has been consistently ranked one of the most liveable cities in the world. Twice each year the Economist Intelligence Unit releases a Global Liveability Survey in which 140 cities are ranked worldwide. For the past two years, Adelaide has ranked fifth in the world; this year, shared fifth with Calgary in Canada. This is an excellent result and it highlights some wonderful things about our capital city.

When compared with the rest of the world's cities, Adelaide received an overall ranking of 96.6. This included a score of 100 in both health care and education. The strengths captured in this survey include: access to education and health care; a low crime rate; strong cultural offerings; widespread availability of goods and services, including high-quality food and drink; and infrastructure, including our road network, public transport, housing and essential services.

These are areas in which we as a state government have invested, and that investment has paid off. In Adelaide, we are fortunate to live in a city that is not confronted by extreme conflict and we have invested to ensure that our crime rates and congestion are kept to a minimum. This has not happened by accident. We have made the investments necessary and we have worked in partnership to achieve this. This work has also meant that we are not only the most liveable place; we are the most affordable.

According to research released yesterday by Ben Phillips at the National Centre for Social and Economic Modelling (NATSEM), Adelaide has the lowest cost of living in the nation. Despite the misleading claims often made by those opposite, this research has shown that electricity is around 10 per cent cheaper in Adelaide than Sydney, grocery bills are cheaper by 4 per cent and transportation is 7 per cent cheaper. With housing making up the single biggest household—

The SPEAKER: Is the deputy leader taking a point of order?

Ms CHAPMAN: I think you, sir, appreciate the point of order about making an accusation about misleading the house. If you could caution the Premier not to do that. Unless he wants a more substantive motion then he should withdraw.

The SPEAKER: I understand that you are perfectly free outside the house to mislead the public if you want to—members are. So, I do not think it is a breach of standing orders. It might be reprehensible, but it is not—

An honourable member interjecting:

The SPEAKER: The offence is misleading the house and, as I understand it, the Premier is not accusing members opposite of misleading the house.

The Hon. J.W. WEATHERILL: There is a sensitivity. I accept there is some sensitivity, so I will rephrase this: despite inaccurate claims often made by those opposite, this research has shown that electricity is around 10 per cent cheaper in Adelaide than Sydney, grocery bills are cheaper by 4 per cent and transportation is 7 per cent cheaper. So, you can take that up with Mr Phillips if you have a different view. With housing making up the single biggest household expense, it is significant that the average mortgage is 38 per cent cheaper in Adelaide than Sydney and average rent is 40 per cent cheaper.

When tallied up, when compared with Sydney, Australia's most expensive city, Adelaide families are almost $5,000 better off. Despite this, we recognise that many South Australians struggle to make ends meet. That is why we have made 'affordable place to live' one of our key priorities. We have done this to protect those things that make South Australia an affordable place to live but also to provide greater support for those who are struggling. We are committed to not slashing the services that South Australians rely upon, while continuing to improve and invest in new services.

All of us should be proud that Adelaide is consistently ranked as one of the most liveable and affordable places to live in the world. While we all hear some of the criticism that often emanates from those opposite, what we never hear are any alternatives or new ideas to advance and ensure that our liveability and affordability continue to be the envy of this state.

Mr PISONI: Point of order, sir: this is clearly debate.

The SPEAKER: No. The Premier.

The Hon. J.W. WEATHERILL: There is a serious point about this: I think South Australia does actually have to develop some pride in what we have achieved. What we have achieved together in this state is something that is the envy of the world. This is a beautiful place to live. It is one of the most wonderful places to live on the planet and we have independent verified international research that backs up that point. I think we need to believe it more about ourselves and value what we have achieved together.

PATIENT ASSISTANCE TRANSPORT SCHEME

Mr BROCK (Frome) (14:20): My question is to the Minister for Health and Ageing. Can the minister please comment on the statement in this morning's media regarding the unauthorised expenditure or rorts of moneys from the current PAT Scheme for which the scheme does not allow? Also to the minister: if this statement is correct, will these unauthorised expenditures be included in the public PATS budget?

As everybody is aware, I requested the review of the current PATS system and Dr Filby is carrying that out. My concern is that, if this is true, it may exclude eligible people from claiming from the scheme due to the budget being reached.

The SPEAKER: Before I call the Minister for Health, it is of course contrary to standing orders to ask whether reports in the media are true. The Minister for Health.

Members interjecting:

The SPEAKER: The member for Kavel is called to order. We do not want a repeat of previous extreme disorder generated by him.

The Hon. J.J. SNELLING (Playford—Minister for Health and Ageing, Minister for Mental Health and Substance Abuse, Minister for Defence Industries, Minister for Veterans' Affairs) (14:21): I will not comment on the accuracy of those media reports, but I can thank the member for Frome for his question and of course his continuing interest in this topic. There is no doubt that the Patient Assistance Transport Scheme (PATS) is an important service in his electorate and indeed all country electorates across the state.

PATS currently provides a partial reimbursement of travel and accommodation costs for those who need to travel more than 100 kilometres to access health services. In 2012-13, PATS partially reimbursed more than 40,000 trips. On Friday 30 August, while I was visiting the Riverland, I released the discussion paper prepared by the review for public consultation.

The PAT Scheme has been thoroughly reviewed by Dr David Filby, senior adviser to the Australian Health Ministers' Advisory Council, with Dr Filby looking into the main elements of the program including eligibility criteria, reimbursement rates and the application process. As members are aware, allegations have been raised about misuse of the PAT Scheme. As part of the

PATS review, Dr Filby invited PATS staff to identify their issues with the scheme. In a media interview earlier today, Dr Filby said:

> We asked the people who administer the scheme to identify some of their issues and, in doing that, they've identified some places where people have made inappropriate claims which they identified and weren't paid.

I emphasise that they were not paid. Dr Filby also advised, however, that attempts to misuse the scheme are not common. It saddens me that people would try to misuse the PAT Scheme in this way but it appears that, through the current PATS screening process, most invalid claims—indeed, all of them—are caught before they are paid.

It is pleasing that this issue has come to light as part of the review process. Since I announced the PATS review, discussions have already been held with a wide range of people during the development of the review paper. I have also received a large amount of correspondence from individuals in country areas which has been given to Dr Filby for his consideration as part of the review.

I now encourage all country South Australians who use the scheme to look at Dr Filby's discussion paper and to continue to provide comments. These comments will feed into his final report to me. The public and interested parties have until Friday 11 October to comment on the draft. Dr Filby's final report is expected to be completed by the end of the year. The review consultation paper can be found at www.countryhealthsa.sa.gov.au/PATS.

Mr Pisoni: Are you going to try and buy a black hat with the PATS?

The SPEAKER: Just before the leader commences, the member for Unley is called to order. Leader.

STATE RECORDS

Mr MARSHALL (Norwood—Leader of the Opposition) (14:24): My question is to the Attorney-General. Can the Attorney confirm to the house that the 2010 state records agency review uncovered breaches of the State Records Act in over 100 agencies and that, although action plans were developed in each of these agencies, there will be no verification of the implementation of the action plans until 2014?

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (14:25): Yes; I thank the honourable member for his question. Again, the question is something that arises from the conversation we had this morning. I quibble with one word in that question, which is the word 'breaches', and I need to explain why I quibble with that. There are two levels of offending against the State Records Act. The first level is basically an agency which is for whatever reason failing to comply with the standard that the State Records people want of the agency (that is under section 23 of the act).

That obviously does not constitute a criminal offence by the agency, because how could it? Whereas, there is another area under the legislation which would apply to an individual who knowingly commits a breach. I think the use of the term 'breach' is unhelpful in this circumstance. I am able to confirm that the information we received this morning was to the effect that 400 and something agencies were involved in the 2010 review. There were 100, or thereabouts, instances which are regarded as of concern by the agency, and they went back to the agencies and said, 'Righty oh, we want you to put in place measures—

Mr Marshall: Action plan.

The Hon. J.R. RAU: —an action plan—to deal with these matters.' In the ordinary course of events it was the intention of the State Records office to follow up on those in the course of 2014, as I understand it. By and large, the question I basically am agreeing with but with the provision I have made. However, I do not believe and the government does not believe that that is enough by itself, because it has become evident to me and it has become evident to the government, as we stated some weeks ago, that the State Records Act of 1997 was not crafted with the current volume or style of information technology in mind. This has meant that there is potential disconnect between the State Records Act, the Freedom of Information Act, the Public Sector Management Act, and privacy principles operating within the state. All of those need to be brought into alignment and become consistent. It is also—

Mr Marshall interjecting:

The Hon. J.R. RAU: Indeed; and that is why a week or two ago, or more now, we announced that Mr Moss, a former District Court judge, was being commissioned to provide the government with a report which would analyse all of these issues and provide the government with recommendations for appropriate amendments to the State Records Act. I want to make it very clear that the government does not come into this chamber and say the State Records Act in its current form is perfect for contemporary circumstances; in fact, we have made it very clear by commissioning the review by Mr Moss that we recognise the act needs to be made contemporary. Can I just give a couple of very brief pieces of information that might underscore the point?

The SPEAKER: Probably not, because you have 16 seconds left.

The Hon. J.R. RAU: Oh, well, never mind.

STATE RECORDS

Mr MARSHALL (Norwood—Leader of the Opposition) (14:28): As a supplementary to that, can the Attorney-General provide the terms of reference and the powers of the Moss review to the parliament?

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (14:28): Yes; certainly. I am able to finish my last answer a bit now too, actually. Between 2009 and 2012, I was advised that the volume of email traffic—this is only email traffic; we are not talking here about text messages and other things which create a whole world of other complications—coming into government from outside is up by 500 per cent. The amount of internal increase in traffic in those three years is 1,000 per cent. I have also been told that 98 per cent of the data stored in the world today was created in the last two years; so that gives some idea of the scale and complexity of the issues that we are confronting. I was asked about Mr Moss.

I can inform the parliament that Mr Moss is being asked—and I will not go through the preamble because that is probably not relevant—to do the following: to inquire into the extent to which electronic communication is used as a means of creating, storing and transferring official records; secondly, the extent to which there has been an increase in the volume of official records created by government agencies due to increasing reliance on technology and electronic communications; thirdly, how other jurisdictions have attempted to address these issues and their degree of success; and fourthly, report on whether the existing legislative framework is appropriately managed or realistically capable of being so managed, including an examination of the destruction and retention regimes including efficient official record retention where necessary, and the extent to which the existing framework would be assisted or enhanced by a change in the culture of government agencies and current state records management practices and any legislative drivers required to achieve the same.

I indicate to the parliament today, as I indicated in our communication this morning, I have actually said to the Leader of the Opposition that I am very happy for the leader and any member of the leader's team that he wishes to nominate to do it, to be able to sit down with Mr Moss and express any particular concerns they have so that he can take those into account.

Mr Marshall: When will he report?

The Hon. J.R. RAU: When will he report? I can indicate that I would like Mr Moss to report as soon as possible, but I have deliberately not put some artificial time constraint on Mr Moss because this is a serious issue and I am not interested in having a bit of a spit and polish job done over this so that we can just say, 'We've looked at it and we've fixed it.' This is about getting it right and it is about doing it properly, so I hope he gets on with it—well, I know Mr Moss will get on with it—but I hope he is able to master all of the material quickly, and I hope that he is able to form opinions quickly, but I would rather he does it properly so that we are all better off rather than me putting some artificial time constraint on Mr Moss and him doing a job that is less than we deserve.

STATE RECORDS

Mr MARSHALL (Norwood—Leader of the Opposition) (14:31): Supplementary.

The SPEAKER: Supplementary from the leader.

Mr MARSHALL: In the Attorney's answer, when he outlined the terms of reference for the Moss Review, there was nothing in those terms of reference which dealt with the substance of the question, which essentially was, with these 100 agencies which have outstanding action plans for

non-compliance or areas or concern or whatever you want to call it, there is going to be no verification that there has been any corrective action taken at any of those agencies until 2014.

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (14:32): Actually I was answering your last question. That was the question before the last question but I am happy to answer that. As far as I am concerned, Mr Moss should be looking at these things. As I said, I issued the invitation to the opposition to speak with Mr Moss, and I actually do not disagree with the Leader of the Opposition that it would be useful for that 2014 timeline to be brought forward.

To the extent that it is possible for State Records to do that, fine, but Mr Moss is not State Records, and he is not an auditor. So, I am happy to have that moved forward as quickly as it possibly can be, but Mr Moss's job is basically to look at whether the legislative framework is adequate and whether it is working. I think it is fairly clear that the government by commissioning this report by Mr Moss is saying as clearly as we can to the public and to the opposition, 'We think it could be better and that is why we are asking him to do it.'

STATE RECORDS

Mr MARSHALL (Norwood—Leader of the Opposition) (14:33): My question is to the Attorney-General. Can the Attorney-General advise if it is standard practice for all computers used in ministerial offices to undergo a full data wipe, called a DBAN, when there is a change of ministerial responsibilities?

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (14:33): Yes; again, I thank the honourable member for his question. The issue about the wiping of computers is one that has somehow got conflated with other issues in the conversation that has been occurring recently, and I would like to just explain what this is about. If we have a piece of equipment—a computer—which was used, say, by the member for Unley, and the member for Unley had put a lot of his work on there and then the member for Unley got a new computer and somebody said, 'Well, look, we're not going to get rid of the member for Unley's computer because it is still a very good computer,' the question is, is it appropriate that if I pick up the member for Unley's computer, I get all the member for Unley's information? That is what it is about.

Mr Pisoni: That is not the question.

The Hon. J.R. RAU: No, I am saying, as I understand it—

Mr Goldsworthy interjecting:

The SPEAKER: The member for Kavel is warned for the first time.

The Hon. J.R. RAU: As I understand it—and this is not specifically a State Records issue; this is to do with the information security office or some other agency—they actually run the government security issues and, for security reasons, it is the idea that, if people lose control of a computer by reason, for example, of their having moved office or something, it is appropriate that the data on that computer, which might be very particular to them and might be very sensitive, is wiped. That is a completely separate issue about whether or not anything happens to that data before it is wiped.

STATE RECORDS

Mr MARSHALL (Norwood—Leader of the Opposition) (14:35): This is supplementary to that. So, you're saying that, if that is wiped, they would need to get approval from the Director of State Records to destroy those same records?

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (14:36): No, I'm not saying that at all. It basically works like this: under the State Records Act, there are some things which are deemed to be a state record and there are some things that are not. So, that is the first dividing line: is it a state record or is it not? Then, beyond that, if it is a state record, not all state records are required to be held permanently. Some records are required to be held for a short period, and then there are five-year periods and so on. So, there are varying periods of retention required.

There is a destruction schedule, which is document 18 (I can't remember the acronym for it, but the leader knows what I am talking about), and that document is a document which is prepared in consultation with the State Records people, and it prescribes the circumstances in which material may be destroyed. Because a machine is wiped does not mean necessarily that the material is destroyed, because the material may be removed from the machine, placed in a storage facility of some description, whether that is hard copy or hard drives, or whatever it might be, and then the destruction of the hard drive occurs. I think that it is important for the parliament to understand: the mere destruction of a memory on a computer does not in and of itself indicate that there has been a destruction of an official record.

STATE RECORDS

Mr MARSHALL (Norwood—Leader of the Opposition) (14:37): My question is to the Premier. Has the office of the former education minister (member for Cheltenham) ever sought appropriate approval from the State Records office to destroy records, filing an Intention to Destroy Records Report (an ITDRR)?

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (14:38): This matter has been extensively canvassed in the royal commission report.

Mrs Redmond interjecting:

The Hon. J.R. RAU: Mr Debelle actually had the powers of a royal commissioner. He inquired specifically into these matters, and he had the capacity to use the forensics people in the South Australian police force to do the work required to search these records.

Members interjecting:

The Hon. J.R. RAU: The answer to this matter is contained in that report.

Mrs REDMOND: No it's not, I'm sorry.

Mr MARSHALL: Supplementary, sir.

The SPEAKER: Before we go to the supplementary, would the leader be seated. I warn the member for Unley, I call the member for Morialta to order, and I warn the member for Heysen for the first time. The leader—supplementary?

STATE RECORDS

Mr MARSHALL (Norwood—Leader of the Opposition) (14:38): Yes, it's a supplementary, sir. As a supplementary, has the former education minister ever sought appropriate approval from the State Records office to destroy any records? I am not talking about specifically what was contained in the Debelle inquiry—'ever' is the question.

The Hon. J.W. WEATHERILL (Cheltenham—Premier, Treasurer, Minister for State Development, Minister for the Public Sector, Minister for the Arts) (14:39): This question proceeds from the fundamental misreading of the Debelle report. There was one computer in this whole equation that was never wiped, and it happened to be my computer. So, all this furphy that has been spread around about wiped computers and that somehow that was done for some nefarious purpose, the very computer that one might have thought might be at the centre of this thing—

Mr Gardner: This has nothing to do with the question.

The SPEAKER: The member for Morialta is warned.

The Hon. J.W. WEATHERILL: —is a computer that I had in my former role and carried with me through to the education department. So, despite the change of portfolios, it was the same computer and it never went through the process of the wiping of the computer.

Mr Gardner interjecting:

The SPEAKER: The member for Morialta is warned for the second and final time. I don't wish him to depart the house, but that is the final warning.

The Hon. J.W. WEATHERILL: Those opposite can continue to traverse this issue. They can carry on with this every day of every week, from now until the election, but the simple fact is

this: there has been a royal commission into this matter. I have given sworn evidence. My sworn evidence has been believed, despite those opposite seeking to cast doubt on my credibility—

Mr Marshall interjecting:

The Hon. J.W. WEATHERILL: Well, you said it across the chamber. You said it across this very chamber that you did not believe me. The royal commissioner did.

Members interjecting:

The Hon. J.W. WEATHERILL: No, I heard him—it was right here across the chamber. The royal commissioner believed what I said and believed me to be a witness of truth, and I won't have you or anybody else casting doubt on my integrity.

STATE RECORDS

Mr MARSHALL (Norwood—Leader of the Opposition) (14:40): Supplementary, sir.

The SPEAKER: Before the supplementary, the Premier will refer to the Leader of the Opposition as the leader rather than the second person pronoun. Leader.

Mr MARSHALL: Did you, Premier, as the former education minister, or any of your staff, seek approval from the State Records director to destroy records in accordance with the Intention to Destroy Records Report (ITDRR) requirements under the State Records Act—not your computer, but that of your staff?

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (14:41): All of these questions are predicated upon a certain assumption. The assumption is that there were, in the first place, official records which were not otherwise stored. They are two big, big assumptions: first of all, that they were official records at all for the purposes of the State Records Act, and, secondly, that they were not otherwise collected or stored somewhere. It is not possible to proceed, with respect, to ask questions based on those two assumptions and be able to say—

Ms Chapman: Rubbish.

The Hon. J.R. RAU: If members opposite are happy to say these things are total assumptions, that renders the question irrelevant because how can it be that something that is not an official record is governed by the destruction schedule attaching to official records—question No. 1? How is it that something that comes out of a computer and is destroyed, which is an official record but is nevertheless stored either in hard copy or in some other electronic form, destruction of an official record when the record is, in fact, kept? So, with respect, the question proceeds from a misunderstanding of the situation.

STATE RECORDS

Mr MARSHALL (Norwood—Leader of the Opposition) (14:43): Supplementary: does an email with the heading 'Urgent: for your information' with 'importance: high' constitute an official document for the purposes of the State Records Act?

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (14:43): Yes, I believe it does, and I also believe, if I am not mistaken, that Mr Debelle had that document from day one. I also believe that it appeared in his report. I also believe it was referred to in his report. I also believe that for the last three and a half or six months we have been talking about that document in this chamber every question time. Yes, I think it was an official record and, yes, Mr Debelle saw it and, yes, it was kept. The reason we know it was kept was because Mr Debelle spent some six months or so having a look at it and everything around it—there is no surprise in that.

Mr Pisoni interjecting:

The SPEAKER: The member for Unley is warned for the second and final time. The member for Fisher.

CHILD SEXUAL EXPLOITATION MATERIAL

The Hon. R.B. SUCH (Fisher) (14:44): My question is to the Premier. Will the Premier, in conjunction with the Attorney, review the laws relating to child sexual exploitation material? Recently—and I won't name the school—at a secondary school, a 13-year-old boy sent, via a

school iPad, a photo of his genital area to his classmates. As a result of that, that lad is likely to face court—it's not before a court now—and could end up on the sexual offenders register, as could all of the class who looked at the material, unsolicited. Having opened their iPad, they are guilty of an offence. I ask the Premier accordingly: the law, as I understood it, was to protect children from predators, not to turn silly 13 year olds into criminals.

The Hon. J.W. WEATHERILL (Cheltenham—Premier, Treasurer, Minister for State Development, Minister for the Public Sector, Minister for the Arts) (14:45): I thank the honourable member for his question. This is an important question. Of course, everyone accepts that the use of the internet for pornographic images of children is a matter of great concern, and we want to protect our children. The creation of offences for conduct of that sort is a matter of importance, and I think would be generally accepted.

The member for Fisher raises, I think, a difficult case, where you have juveniles or even young adults that may be engaging in conduct as he describes as silliness, rather than any attempt to exploit in the way in which perhaps has been intended by the offence. Can I say about the case that he raises in particular, I suspect that there may be different treatment for a juvenile that is convicted of an offence of this sort in terms of the register than perhaps an adult, but I will have to take some advice on that. In any event, the general point he raises, I think, is a strong one and we will reflect on it. I understand he has corresponded with us; I have not yet had the chance to consider it in detail. I know the Attorney has also been copied into that correspondence, and we will bring back an answer.

HUB ADELAIDE

The Hon. S.W. KEY (Ashford) (14:46): My question is to the Minister for Planning. Minister, can you please inform the house about the government's support for Hub Adelaide to encourage more young entrepreneurs to stay in South Australia?

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (14:46): I thank the honourable member for her question. Mr Speaker, the government is committed to encouraging young entrepreneurs to stay in South Australia and to develop their businesses here locally. That is the significant reason why the government has supported the creation of Hub Adelaide, which officially opened its Peel Street doors last Thursday.

South Australian entrepreneurs will be able to access an international network of resources and expertise. It is expected that up to 250 entrepreneurs will access Hub Adelaide's co-working space each day. For those members here who have not been there to have a look and would like to, I would be more than happy to arrange the opportunity to go and have a look, because it is really quite impressive.

The overall hub occupies 720 square metres over three levels of working space, providing a perfect professional environment for members to collaborate, share ideas and knowledge. The government has supported this project because of the great success that hub projects have had in other Australian capital cities and across the world. Members of Hub Adelaide will be part of a network that spans from Tokyo to Berlin and Seattle, over 30 different cities across five continents.

I am pleased to report that Hub Adelaide already has its first 100 members. Supported by Microsoft and BankSA, this base will continue to grow as more people realise the great potential of the initiative to improve their own business prospects. I can also advise the house that the state government, in partnership with Hub Adelaide, has announced a new fellowship program to sponsor 10 young entrepreneurs aged between 18 and 25 to work and learn at the hub.

All South Australians can take advantage of a Hub Adelaide membership, which will remain half-price until 2014. So, if anybody here is interested, jump in and get your membership. The government support of Hub Adelaide is part of the government's strong commitment to a vibrant city. A vibrant city will encourage young South Australians to stay and enjoy everything that this great state has to offer. We are already seeing an increased vibrancy of Bank, Leigh and Peel streets, with new small venues, restaurants and businesses.

Hub Adelaide will be a great addition to the emerging Peel Street. While some members opposite have been sceptical of the government's laneway activation and vibrant city agenda, this is a government that is getting on with the job of improving our CBD for all South Australians to enjoy. I look forward to seeing the progress of Hub Adelaide in the coming months.

STATE RECORDS

Mr MARSHALL (Norwood—Leader of the Opposition) (14:49): My question is to the Premier. If the office of the former education minister (the member for Cheltenham) did not fill out the Intention to Destroy Records Report (ITDRR), is it the case that all records, including the recipient of the email sent by Mr Simon Blewett, are still held by Telstra?

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (14:49): Again, the question has the problem that I have tried to identify in previous answers in that there are certain assumptions contained within the question itself, those being about there being 'official records'. That is a moot point, and I do not wish to proceed answering the question without making the point that that itself is a question that is contentious.

As to the issue about Telstra, as the leader would know, there is a process by Telstra. I think the terminology used by Mr Ryan was that 'sample snapshots' of data are held within government agencies from time to time. That government data is held by Telstra for a period of time, and then later snapshots are taken. Whether that data constitutes an official record or not is indeed a different question, but yes, there is an involvement with Telstra; yes, they do hold the data for a period of time.

I think for the sake of completeness I should say that Mr Ryan advised us this morning that, in his view, that is not the best way of recording data, if indeed data is an official record, which is the question that is at the core of all of this. A better alternative would be, in the event of it being an official record, that hard copies were retained or a specific data management system, such as TRIM or one of the other systems that are around the place, be utilised as the repository for the material.

STATE RECORDS

Mr MARSHALL (Norwood—Leader of the Opposition) (14:51): Supplementary: is the Attorney-General saying that the initial email is a state official record, but that any forwarded copy does not constitute an official state record? How do you determine what is a state record and what is not a state record?

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (14:51): Again, these are actually very good questions from the leader, because they underscore the point. When he says 'the email' and 'the second email', I assume he is referring back to our friendly conversation about Mr Debelle. The situation is this, and can I just explain it this way: each document is assessed in its own context and on its own face as being either a state record or not—point No. 1. Point No. 2 is that the State Records Act does not require multiple collection of the same material.

So, for example, if five agencies have a copy of document A, it is not required under the State Records Act that five versions of document A are reposed in the state records. It is only required that that record, being document A, is retained somewhere. If we are dealing with, for example, an email, and if the email has, as we are talking about here, a heading which indicates that it is of some significance, we know that in fact that email was retained. We know that for sure, because we have been hearing about it since about October last year. So, we know that. If that email was forwarded on to a third party and the—

Mr Marshall interjecting:

The Hon. J.R. RAU: Pardon?

Mr Marshall: We know that.

The Hon. J.R. RAU: Yes. That email is forwarded on to a third party. Now, it could be forwarded on to a third party in a way where the person with the email in their machine goes into Outlook and presses a button called 'Forward' and then a little thing pops up and they go to their address book, they put in 'Mr Speaker' and they hit 'send'. In that hypothetical, the only thing that has happened to the original document is that, above the top line somewhere, there is a thing that says, 'Forwarded by Bloggs'.

On the other hand, it is possible that a document might be obtained and a commentary on the document, some other comment about the document or some additional document is added to

that document, and then that completely different document be then forwarded on somewhere else. Now that is obviously a different situation to the first situation that I have tried to describe.

The point is that the analysis of those two documents from the perspective of whether they are State Records should logically produce a different answer. Because we haven't seen the document or the heading or whatever of that document, it is impossible for me, or the Leader of the Opposition or anyone else to classify that document with any certainty. What we can say is we do know what the primary document was, because we have all had it since October or thereabouts of last year.

STATE RECORDS

Mr MARSHALL (Norwood—Leader of the Opposition) (14:55): Has the Attorney-General made a request of the Director of State Records to make a determination on the official status of the forwarded email and also inquiries as to whether or not this is recoverable from Telstra?

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (14:55): First of all, I believe this was dealt with by Mr Debelle. Secondly and most importantly—as I was trying to explain in my last answer—for the Director of State Records to make that determination about the document he would need to actually sight the document. He has sighted the document which everyone has seen and he has formed the view that that document, in and of itself, is an official record, and nobody is arguing about that. Because he has not seen the other document, he is obviously unable to make a determination on the document.

I am simply trying to explain to members (so that that doesn't sound like it is peculiar) that it would depend upon, to some degree, what the document looked like. Can I come back to this: if the document was literally the same document we have all been looking at since October replicated on another computer—if that is all it was—then we already have that document and State Records management requirements do not require the same document to be retained in multiple copies.

Mrs Redmond: But we would know who got it.

The Hon. J.R. RAU: The member for Heysen interjects and the point is the only thing that is likely to be on that document is the name of the addressee. According to Mr Debelle we know the addressee wasn't the Premier, because the Premier's computer was available. Beyond that, it is impossible for me to get the State Records officer to declassify a document that he hasn't seen. All I can say with confidence is the bit of the document that is a replication of the document that we have had in the public domain since October last year is, and was, and remains, a document which was properly classified as an official record.

INTERSTATE AND INTERNATIONAL VISITORS

Ms BETTISON (Ramsay) (14:57): My question is to the Minister for Tourism. Can the minister inform the house about the increase in visitors and flights to South Australia?

The Hon. L.W.K. BIGNELL (Mawson—Minister for Tourism, Minister for Recreation and Sport) (14:57): I thank the member for her question. There are some good figures out today which show that national visitors to South Australia increased 2.3 per cent in the past 12 months, which is a great result for South Australia. Also on the statistics, there are some great signs for the regions. A lot of those trips were people going out into regional South Australia, and that is something that we have been working very hard on in the past 18 months.

We have had the Best Backyard campaigns, and people would have seen the promotion for the Eyre Peninsula and other regions. We have just been out filming up in Clare, Yorke Peninsula, Flinders Ranges and the Fleurieu, and we are really trying to encourage people in South Australia to take a holiday at home. It is a great state, and there are some areas with great natural beauty. There are also things that you can only do in a few parts of the world and one of those is in the member for Flinders' seat—to go face to face with the great white sharks at Port Lincoln which is one of only two or three places in the world you can do that.

It is staggering that only 4 per cent of Adelaide people have ever been to Eyre Peninsula. So we are really pumping the marketing in to get people out of Adelaide and into the regions, because we know that it brings about prosperity to the regions, it brings about jobs and it is great for our regional economies and our wider state economy.

Last week, the national figures were released for overseas visitors to South Australia, and it is great to see an 8.9 per cent increase on those figures. So more people from around the world are discovering South Australia and coming here to enjoy it. Again, that is no accident; we have been working very hard in marketing South Australia to the rest of the world.

We have also attracted a lot of new international flights into South Australia, and you will see that, by the time Jetstar begin their direct service to Adelaide in December, we will have seen an 83 per cent increase in the number of international seats coming directly into Adelaide—an 83 per cent increase since the Premier became Premier in October two years ago.

What we are now doing is working with those airlines. AirAsia X will be flying in here on 31 October for the first time. They fly in from 80 feed destinations throughout Asia. They are very important for us. It is the first time we have had a low-cost international airline flying into Adelaide. We know that people have previously left Adelaide to go to Melbourne to get on these cheap flights, and what we are doing now is having them coming direct into Adelaide, bringing people from their five destinations in India, their nine destinations in China, and other parts of Malaysia and Indonesia. We know that people will travel differently on a low-cost airline. People will come down here for an arts event, for example. They will come for just a couple of days because they have a cheaper flight, so it is terrific to see that.

The infrastructure that this government is investing in—over half a billion dollars into the Adelaide Oval—is going to be a game changer for visitors to South Australia. We are going to have 22 matches of AFL football there. I have been over talking to Collingwood, to Carlton, to the Brisbane Lions, to the Gold Coast Suns and to Geelong, as well as the AFL, to get them to bring their corporates here.

These people are the CEOs and the CFOs of major Australian corporations. What we want to do is get them to come to Adelaide to watch the football. They have not been interested in coming to Footy Park, but when they come here and see that Adelaide has changed, then we want them to take the next step to set up an office here and to actually believe in South Australia in the same way that this government and the people of South Australia believe in our state.

We are seeing some confidence with investment in South Australia from the private sector. Last week I opened the Quest on Franklin apartment building, and that follows on from Quest's investment in Whyalla, with the great apartments up there. They have also opened an apartment complex out at Mawson Lakes, and they announced last week that they are going to build an apartment complex down at Port Adelaide. So, there is some great confidence from the private sector in South Australia. Obviously the government has been on board for many years to improve South Australia and to make sure that people from interstate and overseas come here—

The SPEAKER: Alas, the member's time has expired.

ADULT LEARNERS' WEEK

Ms THOMPSON (Reynell) (15:01): My question is to the Minister for Employment, Higher Education and Skills. Can the minister inform the house about Adult Learners' Week and the recognition given to leading educators and learners through the Adult Learners' Week Awards?

The Hon. G. PORTOLESI (Hartley—Minister for Employment, Higher Education and Skills, Minister for Science and Information Economy) (15:02): Yes, I can. I thank the member for Reynell for this question and again acknowledge her longstanding advocacy and commitment to the adult community education sector both locally, in her local community, and throughout our state. This government recognises the value that further education skills have in making a massive difference to opportunities for people to enable them to get meaningful employment. Adult Learners' Week, which ran during the first week of September, is all about celebrating these achievements and the increased opportunities generated in this important area. I am very proud of the role the state government plays in supporting people in our ACE (as it is also known) sector.

Over the coming year, more than 1,500 people will take part in accredited foundation skills programs, and around 5,000 people are expected to take part in non-accredited programs offered through libraries, community centres and neighbourhood houses right across our state. Adult community education is important to the people in our local communities who face barriers of one kind or another that make going off to study at TAFE or university a very daunting prospect. But we know that, when they re-engage with education through adult community education by taking on studies like foundation skills courses, that often sparks an appetite to go on further, and we certainly want more of that.

I was delighted to attend the Adult Learners' Week Awards a couple of weeks ago with the member for Reynell, which recognised outstanding achievers in this field. In this regard, I would love to pay particular tribute to this year's Adult Learner of the Year, a young woman by the name of Naomi Stanbury. For those of us who were at the awards presentation, she told her story. It was an amazing story and she detailed the many hurdles she had to get over to enable her to be where she is today. She is now, I am very pleased to report, studying a diploma of community services and working at one of her local community centres. And to her great credit, she is helping others in the community and wants one day to go on to become an adult educator.

Can I also take this opportunity to congratulate other award winners: Mr Paul Fay of the Driving Industry Skills Centre for Adult Educator of the Year in the paid category; Miss Hellena MacKenzie of the Burton and Morella Community Centre and The Parafield Gardens Children's Centre for Adult Educator of the Year as a volunteer; Northern Volunteering SA as the Adult Learning Program of the Year; and Regional Development Australia Whyalla and Eyre Peninsula as the Adult Learning Community of the Year.

I thank and acknowledge the staff and the volunteers who do so much in this sector. I have to say that, being the relatively newly-appointed minister, I have had the enormous privilege and pleasure of encountering so many young South Australians and older South Australians who have benefited from our multimillion dollar program Skills for All in our state. Yes, the Minister for Health is nodding—

The Hon. J.J. Snelling: The father of Skills for All.

The Hon. G. PORTOLESI: —the father of Skills for All—seeking to take credit for this very important area because we know there are three very important facts that guide me as minister.

An honourable member interjecting:

The Hon. G. PORTOLESI: I'll tell you: No. 1—

The SPEAKER: Alas, those three points will go unmentioned because the minister's time has now expired. The leader.

STATE RECORDS

Mr MARSHALL (Norwood—Leader of the Opposition) (15:06): My question is to the Premier. As the minister responsible for IT, can the Premier advise whether it is standard practice for all computers used in ministerial offices to undergo a full data wipe, called a DBAN, where there is a change of ministerial responsibilities, as reported in the Debelle inquiry report on page 133 which says that computers—not just laptops, but computers—used by the minister and minister's staff are wiped?

Members interjecting:

The SPEAKER: The member for West Torrens and the member for Giles are called to order.

The Hon. J.W. WEATHERILL (Cheltenham—Premier, Treasurer, Minister for State Development, Minister for the Public Sector, Minister for the Arts) (15:06): It must have been disappointing for the Leader of the Opposition the day the Debelle inquiry was handed down to flick through its pages and for him to not have the findings that he would be so desperately looking for—flicking through all the pages of the Debelle report trying to actually find that finding that he was so longing for and that they have been spreading around about me, and it was not in there.

I heard the remarks thrown across the chamber at me and now they have to come in here and cast doubt on the findings of the Debelle report after being staggered for a few days while they worked out, 'Now what we do?' They have decided what plan B is: it is to cast doubt on the findings of the Debelle report. That is what is happening here.

Mr MARSHALL: Standing order 98, sir.

The SPEAKER: Standing order 98—refresh my memory. Is it debate?

Mr MARSHALL: It is about returning to the substance of the question.

The SPEAKER: I would ask the Premier to be germane to the question.

The Hon. J.W. WEATHERILL: Let us go back to the substance of the question. The substance of the question is wiping a computer. The very computer at the centre of this discussion was my computer and it was unwiped.

Members interjecting:

The SPEAKER: The leader and the member for Unley will come to order. The bases are loaded for the member for Unley.

The Hon. J.W. WEATHERILL: This is the pattern, Mr Speaker: ask some questions quietly, and try and actually get some relevant concessions so that he can declare victory for a day. It starts going a bit badly so he gets angry and then pretty soon we will have the Chris Pyne laugh. That is the formula.

The SPEAKER: I believe there is a point of order from the deputy leader.

Ms CHAPMAN: This is a disgrace, Mr Speaker. A legitimate question has been asked—

The SPEAKER: No, I'll decide whether or not it is a disgrace. Will the deputy leader be seated, please? Does the Premier have anything to add?

The Hon. J.W. WEATHERILL: QED.

The SPEAKER: Quod erat demonstrandum.

GRIEVANCE DEBATE

DEBELLE INQUIRY

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (15:11): On 21 June 2013, Bruce Debelle AM QC provided a report to the Governor titled, Report of Independent Education Inquiry. The report comes from:

> ...an independent review in relation to the events and circumstances surrounding the non-disclosure to the school community of allegations of sexual assault committed by an employee of the Out of School Hours Care service at [the metropolitan school] against a child in his care in 2010.

The report is unequivocal in its damning assessment of the conduct of certain persons and agencies, some of which is the subject of a review of the department by Mr Peter Allen, a proposed review of the State Records Act by Mr Allan Moss, and a foreshadowed select committee of inquiry under consideration in the Legislative Council. I direct my attention today to the problems surrounding legal advice, culminating in recommendation 23, and I quote:

> [That a fund be established] from which governing councils can draw from and obtain independent legal advice when the governing council is in dispute with the [council]...

The report included an examination of legal principles regulating the disclosure of allegations of sexual misconduct and, (b), findings of the misunderstandings of officers of the Department for Education and Children's Services. As to what constituted a suppression order and lack of knowledge of the Evidence Act there were two reasons why there was a failure to make a proper disclosure. The importance of the department and governing council having access to independent and reliable legal advice was highlighted in this review.

The law covering disclosure of information of allegations of sexual misconduct is complex, and includes legal restriction on publication, duties to victims and other children, consideration of possible defamation and the like. No one expects the department, employee or a member of the governing council to tiptoe through that legal jungle alone and without competent legal advice. We now know that the department did not get independent legal advice available from crown law. It relied on internal legislation and the legal services unit, managed by a non-lawyer, who gave the wrong advice, and parents were kept in the dark.

We also know the governing council was also a victim of this sorry saga. Independent legal advice was not given or even offered, and when it was provided flawed advice was given. Aside from the question of whether Mr Mackie's provision of advice may be in breach of the Legal Practitioners Act, which we consider should at least be considered to the DPP for consideration, there is also the burning question of why the department did not get independent advice when they had done so just weeks before for another case in another public school. Mr Debelle reported in paragraph 432 of his report, and I quote:

> The Department had obtained [legal] advice on at least one earlier occasion on the question whether parents could be informed that a teacher had been arrested. That advice was obtained on 30 September 2010 when

the Crown Solicitor gave clear and unequivocal advice that it was lawful to inform parents of a school in the north-eastern suburbs of metropolitan Adelaide that a teacher at that school (who was to be named in the letter) had been charged with serious criminal offences involving child pornography. The fact that the Department had received the advice obviously escaped the corporate memory of the Department.

Clearly, the Allen review will have, and the select committee, we hope, may have, a lot of work to do to cover these matters. The whole episode shines a spotlight on the role and responsibility, and exposure of legal liability, of governing councils.

The Education Act 1972 part 8, sets out the provisions of operation for state school governing councils. Any watering down of the role of the governing councils would not be welcomed on this side of the house. Mr Debelle clearly has raised concern and alerts to the question of just what their role is when he raises the question of: are they just 'an advisory body'? The broader issue attracts other events and circumstances in which governing councils and the department may have conflicts in their distinct responsibilities, or at least a tension, which should attract access to independent legal advice.

From schools in my own electorate, past and present examples include, firstly, a dispute between the principal and governing council which relates to section 84 of the Education Act. That had to be dealt with by an extensive inquiry by Mr Bill Cossey. Secondly, a dispute between the minister and the department on one side and the governing council and principal in coalition on the other side, on which an expensive consultancy report was undertaken. The third was a liability of a governing council as an employer of out of school hours care services within a school coming under the Children's Services Act 1985 and, again, more recently, the right of a member of a governing council to continue in that role, being a parent of a child at the school, when they are employed by the Crown Solicitor's Office. The Premier has apologised—

The ACTING SPEAKER (Hon. P. Caica): The honourable member's time has expired.

Ms CHAPMAN: —but he has got a lot of answers to questions to be dealt with.

The ACTING SPEAKER (Hon. P. Caica): The member for Ashford.

SYNTHETIC DRUGS

The Hon. S.W. KEY (Ashford) (15:16): Thank you, Mr Acting Speaker. My contribution today is about an issue that has been raised with me recently, certainly on the campaign trail, but constituents have not wanted to come to my office to raise this issue with me in an office. Both of these constituents—one was a young woman in her early 20s and the other was a parent with children ranging from toddlers right through to 14 years old—wanted to raise with me the issue of what the government was going to do about synthetic drugs.

The concerns they raised—the 23 year old told me about a number of drugs that I had never heard of before—were particularly concerned with something called 'Spice' and also something called 'K-2' which, as I understand it, along with the term 'Chronic', is a synthetic marijuana/cannabis-type product. I understand that these products do not have THC or Delta-9-tetrahydrocannabinol in them but they certainly, I am told, have the same effect as what we would have understood marijuana to do.

They also drew my attention to the fact that in New Zealand there has recently been legislation that has been passed looking at psychoactive substances and this legislation was introduced with the view that if a provider of a recreational drug can prove that it was safe, then they would be regulated to sell this drug. I guess this was a variation on the theme of prohibition versus regulation but I was quite surprised at the research that both of these constituents, separately, had done in this area.

The parent of the 14 year old was particularly concerned because her son had been offered 'Chronic' and he and his friends had purchased some from another friend—an older sibling in their circle of friends—and they were about to have a party to try this 'Chronic' which they were going to smoke. Fortunately, the parent, being very responsible, wanted to know the details of the party that they were organising and found that they had this supply of 'Chronic'.

I was very interested to then follow up on what was happening in New Zealand. I am not sure that it is an approach that I would necessarily support but it does raise the issues that we have heard before in our community about whether we need to be more open about the fact that people do take drugs, and that with a lot of these drugs people do not know what they are taking. They are taking advice from their friends, who probably have about as much information as they do.

Because it seems to be a 'hip' thing and it is easy to take, either in a pill or some sort of capsule, they just go ahead and do it.

I guess that what I am really doing is saying that I think this issue needs to be put back on the table for discussion. I can understand why many people in this place would have concerns about legalising drugs or going down the road of the New Zealand parliament, but I think that we need to put it back on the agenda and be aware of the fact that even the United Nations is telling us that, over the last 3½ years, the number of new drugs that have come onto the market that they know of has gone up by 30 per cent. We are talking about 300-odd drugs which are now in the market which we have no idea about whether they are safe or what they do. But when someone has taken them, seeing the results is not very pretty, from what I can make out.

WHEELS IN MOTION PROGRAM

Mr TRELOAR (Flinders) (15:21): I rise today to talk about quite a remarkable community initiative that has occurred in the township of Port Lincoln. Just recently, on 30 August, I attended the launch of the Wheels in Motion program. It is a community program that has identified a need within the community, that need being for young people who are socially or economically disadvantaged or isolated and would otherwise have difficulty in obtaining their driver's licence.

This is a terrific initiative. It is being sponsored by the Bendigo Community Bank. In fact, it outlaid, I think, all of the money to purchase a brand new Ford Focus (a nice little car) in which young people can undertake their driving. There are pedals on the off-side, where volunteer instructor drivers can sit and help these young people achieve their P-plates through the L-plate process.

The program is being supported by the Regional Development Australia Board, Whyalla and EP, under a pilot program called SA Works. It is in partnership with another group known as Eyre Futures, which I have had quite a bit to do with because one of their other programs, of course, is Mentoring EP, a program of which I am very proud to be the patron and about which I have spoken a number of times in this place. So, congratulations to Garry Downey and his gang for pulling together and putting together and identifying another very important community program.

As I have said, they are really looking to give the opportunity to those who would otherwise not have the opportunity to gain their driver's licence. As we know, a driver's licence, particularly in country and regional areas, is a vital life skill and, without it, life becomes very difficult. Obviously, we all recognise that it is a privilege to have a driver's licence, and that is to be respected. But, of course, it is also a life skill and a right of passage for many young people.

It is essential for young adults to pursue their social activities. In country areas, there is virtually no public transport. There are certainly very few taxi services, although in the City of Port Lincoln itself there are some. These social activities might include things such as going to sporting activities, going to the beach or going to a local dance, attending church or a youth group, things that young people as they grow into young adults like to do on their own and without involving any obligations from their parents or seniors. It gives them some independence.

Of course, most importantly for young people who come from those particular backgrounds, it can give them educational opportunities or the opportunity to access educational opportunities they would otherwise not have had and the opportunity to drive themselves around to attend courses. Improving their educational qualifications leads onto their being able to drive to and to explore employment opportunities, which is so vital and which is often quite limited within country areas.

Part of the problem here, I think, is that the cost of gaining a driver's licence can be significant. I did some quick research before coming down after lunch today and discovered that to gain an L-plate permit costs $56, to sit the theory test for an L-plate driver's permit costs $34 and to buy a driver's handbook is another $10, so there is a total of $100 in up-front costs that need to be outlaid.

Of course, the real cost factor in all of this is the cost in time, because L-plate drivers have to accumulate 75 hours of log book driving, which involves an adult who is a fully qualified driver being with them through all of that time. Not every family is in a situation where they are able to do that. Of course, there is also the petrol that is needed for this. It has become an expensive business to gain a driver's licence. I think there are unintended consequences of it becoming more difficult to gain a driver's licence.

Nobody can argue with road safety, and it is important that our young drivers be well skilled but, unfortunately, this government has made unintended consequences into an art form. What we have seen from this increasingly difficult, costly and time-consuming process is the disadvantaged in our community becoming even more so. My congratulations to those who have identified the need within the community and have put the program together. I look forward to watching it with interest.

CYCLISTS SMALLBORE RIFLE CLUB INC.

Mrs VLAHOS (Taylor) (15:26): I wish to speak today about the Cyclists Smallbore Rifle Club that I recently visited within the electorate of Taylor to present a $2,000 active club grant to, from round 34, for sports equipment. As a person who is interested in pistols and rifles, I was particularly interested to meet the small group, not far from my electorate, at Paralowie recently.

The Cyclists Smallbore Rifle Club was an offshoot of the Cyclists Big Bore Club, which began at the beginning of the 20th century. This club was formed by members of the Ariel Cycle Club whose members were interested in target rifle shooting. One can imagine the gentlemen of the era riding their bicycles to the Glen Osmond range, carrying their rifle slung over their shoulder. Times were very different then.

The big-bore club continued shooting regularly at the Glen Osmond range until the start of the Second World War, when all big-bore rifles were commandeered for the war effort. The enthusiasts wished to continue their pastime and converted to using small-bore rifles.

After having decided to purchase two .22 calibre rifles at a committee meeting in September 1940, the following November, they appointed a subcommittee of three men to look at the formation of a miniature rifle club, to be named the Cyclists Miniature Club and to remain affiliated with the parent club of the cyclists rifle club. At a committee meeting in December 1940, it was also decided that their first shoot would be at the Keswick range at Keswick Barracks and to advertise this event in the newspaper.

In January, it was reported at a committee meeting that a BSA (British Small Arms) small-bore rifle had been given to the club at Keswick, presumably from the Army, and that the club had also purchased a Savage single-shot rifle for the princely sum of £2/13/6. The fee for each shoot was about threepence. Nowadays, financial members only pay a small annual fee and there is no fee for any programmed shoot, except when visitors participate. The new club was set up and running and, interestingly, there were several other miniature rifle clubs formed around the same time for the same reason: big bores being taken away from civilian owners for the war effort.

The Cyclists Miniature Club continued its activities at Glen Osmond for another 40 years, during which time it changed its name to the Cyclists Smallbore Rifle Club Inc., before moving to the Adelaide Pistol Club's new range at Virginia in the early 1980s where it is currently located within my electorate. The move was presumably made because some of the members of Cyclists were also members of the Adelaide club. The range is now owned by the state government and is known as the State Shooting Park. I have had the pleasure of visiting this facility, presenting cheques there and shooting with different clubs that participate there.

Since moving to the new venue, the club has conducted several international shoots and has offered training courses for locals which have been run by international coaches from Germany, the United States of America and England. The club's interests have been expanded to include other shooting disciplines and interclub visits, including the historic Hahndorf Rifle Club, are always enjoyed.

The club was first gazetted in 1980, and later in 1992, when additional disciplines were recognised. Whilst the club's membership has always been relatively small, currently counted amongst its members are two Olympians—Mike Papps and Yvonne Hill—and, for a short time, renowned Paralympian Libby Kosmala was a member. It is a very friendly and enthusiastic group of people who made me very welcome on the evening I visited and I look forward to going out and shooting with them shortly.

FARM DEBT

Mr VENNING (Schubert) (15:29): Recent reports about the rise of farm debt over the past 30 years demonstrate that our farmers need more support and financial assistance from governments to be sustainable into the future. The minister acknowledged on 2 September:

The agricultural sector is extremely important to our state's economy, contributing $16 billion a year through food and wine.

If this is the case, why has this sector faced repeated cuts from this Labor government? The current budget decreased from the previous year, yet again, from $89 million down to $77 million, including a $4 million reduction to SARDI. Employee numbers have been reduced from 961 to 916; this follows a reduction from 1,052 in June 2013.

Our primary producers are faced with an increasingly difficult marketplace to navigate, and are trying to compete for both domestic and export market share with overseas producers who receive subsidies from their respective governments. Primary producers in other countries receive much more support than our farmers, such as direct payments, price support, minimum set prices, help with crop insurance, disaster response, credit, marketing, export subsidies and import barriers.

Governments in Norway, Switzerland, Iceland, Japan and Korea support their agriculture industries with average subsidies ranging from around 60 to 75 per cent. Many of our farmers are living and operating on their savings or just rising debt. This is in comparison to the assistance measures offered to our Australian farmers of less than 4 per cent, one of the lowest rates of assistance for agriculture anywhere in the world.

How are our farmers supposed to compete in such an uneven marketplace? Our farmers do not have the political clout they used to have, particularly with the demise of SAFF. Even though the new body is under way, there is still more ground to make up. Following the release of the 2013-14 budget, chairman of Primary Producers SA, Rob Kerin, said:

...it is disappointing to see the Government again decrease its investment in the industry...

Our producers do not look for handouts, but the government role in [research and development], biosecurity and accessing markets is vital to underpinning the enormous contribution of food and wine to the SA economy.

Regional SA is the power house of our economy, and reducing the budget for PIRSA yet again hurts the industry.

Agriculture is integral to our nation's prosperity, and the prosperity of farmers is integral to the country communities in which they live. I hope that governments recognise how important the industry is and provide more support for our farmers so they have more surety about their future being sustainable and viable.

I hope the election of the federal Abbot Liberal government will herald a turnaround, to be consummated with the election of the Marshall Liberal government here in South Australia next March. With the mining boom largely behind us, it is expected that we will no longer be able to avoid the downturn that currently grips most of the western world.

Farmers need debt to survive through the production cycle, but if the burden becomes too great to the farmer, then the resulting adverse impact is as great on the economy as it is for the individual farmer. The impact on the viability and prosperity of country towns is directly related to the wellbeing of farmers. A paper delivered by Queensland farmer and economist, Ben Rees, reported in the *News Weekly*, has a frightening statistic:

In 1981, the annual net value of farm production was about equal to debt. By 2011, the net value of farm production was just over AUD$10 billion; but farm debt was around AUD$65 billion—some six-and-a-half times greater.

I do not think any of us can remain silent on why this is. A study of the Australian Productivity Commission chose not to address the subject of farm debt at all. Mr Rees says his view is that policy failure is directly responsible. The article continues:

...more specifically, market failure arising from the economic policies Australia adopted post-1983. He observes that these deregulationist free market policies became the preferred policy policies became the preferred policy direction of all major political parties, farm leaders, media commentators and, in his phrase, 'some academics'.

Rees believes that the problems of our farm sector, including its descent into crippling debt, are attributable to the changes in economic philosophy which followed the collapse of Bretton Woods.

...If rural Australia was a member of the Eurozone, international financial markets would refuse to fund it.

Thank goodness we are having a great year on the farm this year. We do pray for a rain very shortly, but we are looking at hopefully a bumper year. It would certainly be a fillip to the economy and to all the individual farmers, but these statistics worry me. We have to turn it around. We have

to work out why it has happened and governments, of both persuasions, have to do something about it.

POLICE DOG KODA ASSAULT

Mr ODENWALDER (Little Para) (15:35): Like everyone in my local community, as well as the wider community, I was shocked when I heard about the callous stabbing of the German shepherd police dog Koda in the early hours of 26 August this year. It happened in Elizabeth Vale, just a few hundred metres from my office, in fact, on John Rice Avenue. Also, like everyone else, I am really pleased that Koda is on the mend. He has been cleared to return to work and will be returning to work shortly.

I have to say that the event affected almost everyone I spoke to in my community over the following days, including, I have to say, my own staff, who asked me what I intended to do about it. Luckily, I have been pre-empted by events. I have not actually seen much else like it since I was elected in terms of local community outrage over a single incident. People were justifiably upset and outraged.

It really did galvanise my local community, and it was clear that a strong message needed to be sent to the type of criminal who would consider attacking a working animal in this way. That is why I am pleased that the government is acting quickly and the Attorney has announced that he will introduce a bill, perhaps as early as today, to substantially increase the penalties for attacking police dogs. I am also pleased, incidentally, that this has been extended to include police horses and assistance animals like guide dogs.

But police dogs are not just ordinary dogs. They are very highly trained animals. They are trained and kept for very specific law enforcement tasks, and, importantly, they actually live and work side-by-side with the operational police that they serve from a young age. They are, in every sense, the working partner of a handling officer, and indeed the only reason Koda has not returned to work yet is that his handling partner is on leave. I understand that the new laws, if passed, would make the assault of such an animal a serious criminal offence, punishable by up to five years imprisonment.

I obviously do not want to pre-empt the Attorney's second reading speech. I merely make comment on Koda's law, on this proposed law, as an illustration of how seriously I and this government take on any attacks on the people and animals that serve our community. For example, thanks to this government and the valuable input of the Police Association of South Australia, we now have a separate offence for shooting at a police officer. This offence now attracts a prison term of up to 25 years.

Shooting at anyone or at any animal, for that matter, is obviously an extremely serious event, but shooting at a police officer while they are carrying out their duty is something else again. In October last year, the Premier told the Police Association at their annual delegates conference that, 'Police officers put their lives on the line every day to protect South Australians, and we want to do whatever we can to keep them safe in the line of duty.' All gun violence is unacceptable, but we need specific laws when gun violence is directed at our police.

So, I commend the Premier and the Attorney-General on this tough position and on the other measures they have instigated in this area in creating aggravated offences against, obviously, police officers, but also health workers and other emergency service workers.

Police officers put their safety and their lives on the line every day to keep our community safe. As police go from job to job they never know what they may confront. Every traffic stop, every summons service, every domestic disturbance has the potential to spin out of control, and if firearms are present, there is obviously a dramatically increased risk. This government is serious about protecting those who protect all of us every day, and Koda's law is no exception.

In closing, I just want to remind members that 29 September is National Police Remembrance Day, and this year it will be commemorated by ceremonies, including at the new Police Academy on Friday 27 September. I hope that all members will join me in the lead-up to that day and on the day in wearing this ribbon as remembrance as a reminder to all of us of the sacrifices made by police officers in the past and the risks that our service police take every day when they go to work.

ELECTORAL (FUNDING, EXPENDITURE AND DISCLOSURE) AMENDMENT BILL

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (15:41): Obtained leave and introduced a bill for an act to amend the Electoral Act (1985). Read a first time.

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (15:42): I move:

That this bill be now read a second time.

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

Leave granted.

This is a Bill to amend the *Electoral Act 1985*.

In its last term this Government implemented a number of significant reforms aimed at restoring the fundamental principles of accountability, transparency and efficiency in government. The amendments contained in the Electoral (Funding, Expenditure and Disclosure) Amendment Bill 2013 ('Bill') further demonstrate the Government's commitment, introducing a number of significant and overdue reforms to South Australia's electoral laws designed to improve public confidence in the electoral process.

It is evident that community attitudes toward the political process have become increasingly cynical. A general mistrust exists, predominantly as a consequence of the spiralling costs of electioneering, the inherent reliance on private donations to fund political campaigns, and a lack of transparency existing in the financing of such campaigns.

The measures taken in this Bill will improve public confidence in the electoral process, directly addressing these concerns and integrating reforms that will ensure the highest standards of political integrity, accountability and transparency.

The amendments can be broadly categorised into three main components.

The first introduces a voluntary public funding scheme which will partially reimburse political parties, candidates and groups for political expenditure incurred during the campaign period. Specifically, candidates and groups will have the choice of opting into a scheme to receive funding and, as a condition of opting into the scheme, will be subject to prescribed limits on 'political expenditure' during a specified period of time.

The second outlines expenditure caps that will apply to those candidates, groups and parties who choose to opt in. For a general election, limits on expenditure will apply throughout the eight month period prior to polling day. The expenditure caps, in conjunction with public funding, will level the playing field, reducing campaign costs and the need for political fundraising.

The final, and arguably most pivotal of the reforms, is the introduction of a regulatory disclosure scheme, requiring all key political participants, including political parties, their associated entities, candidates, groups and third party campaigners to disclose certain financial information on a regular basis, including relevant details of all gifts and loans valued over a threshold of $5,000.

Unlike other Australian jurisdictions, South Australia currently has no legislative framework requiring financial disclosure. The establishment of a regulated scheme which exposes fundraising activities, will give the community access to meaningful information, and provide effective transparency of the fundraising activities of key political participants.

Third party regulation is a new and important element of this reform. For some time the anonymity that has existed in relation to third party campaigns has been of concern. Electors are not always able to easily identify the source(s) of funding of a campaign and are therefore left unaware of the driving influences behind the information being provided to them.

The Bill does not restrict expenditure of third parties as it does to those candidates, and their parties who may opt in to scheme. However, the Bill subjects third parties to financial disclosure obligations and requires disclosure of political expenditure, providing a framework which will enable the public to identify the contributions made by third parties.

I now turn to the details of the Bill.

Division 2 of the Bill establishes a scheme of reporting agents nominated by political parties, candidates, groups and third parties. A nominated agent establishes a point of contact for parties, candidates, groups and third parties and will facilitate legislative compliance.

Reporting agents will be responsible for ensuring compliance with the disclosure obligations in the Bill, including lodgement of financial and expenditure returns, a responsibility that carries criminal penalties for non-compliance. Any payment of funding will also be made to the agent.

To assist in the regulation of the expenditure and disclosure obligations, the Bill requires agents to establish and maintain a designated campaign account for State campaigns. The Bill requires all gifts to be paid into

the account and prohibits parties, candidates and groups making other payments into the account other than those prescribed by regulation. To assist in the administration of relevant spending caps, all political expenditure must also be paid from the campaign account.

Division 7 of the Bill establishes the regulatory financial disclosure scheme, requiring all key participants to disclose, among other financial information, details of gifts and loans received within certain reporting periods that exceed the set threshold of $5,000.

A gift is broadly defined so as to capture a wide range of circumstances, and specifically includes money (excluding annual subscriptions and compulsory levies paid to a political party) and the provision of a service (excluding volunteer labour).

The scheme establishes two reporting cycles, one which applies outside the election period and the other throughout the election period, referred to in the Bill as the 'designated period'. The designated period commences on 1 January in an election year, and ends 30 days after polling day. During this period, the frequency of required disclosure increases considerably.

An annual disclosure period applies to parties, associated entities and third parties outside the designated period. Agents of political parties, third parties and financial controllers of associated entities are required to furnish two returns relating to the financial year, disclosing general financial details, including the total amounts received, total amounts owed and prescribed details of all gifts and loans received, valued above the threshold. This includes details of aggregate amounts received in a single disclosure period.

Unlike parties, non-party candidates and groups will only be required to furnish one return setting out specified details of all gifts received outside the designated period. The reporting period for candidates and groups will vary depending on whether the candidate is a new candidate or a sitting Member.

As of 1 January in an election year, parties, associated entities, candidates and groups will all be required to furnish a return at end of January, and then on a weekly basis thereafter. Again, this includes specified details of aggregate amounts received in a single disclosure period that exceed the threshold.

The continuous disclosure obligations adopted during this period are necessary in the interest of promoting transparency and informed voting. The timeframes for furnishing returns ensure there will be no lag between transactions being entered into and their disclosure. In order to augment the effectiveness of such disclosure, the Commissioner will be required to make the details of gifts received publically available for inspection on a website as soon as reasonably practicable.

In addition to this, the Bill requires immediate disclosure of large gifts received by political parties. Accordingly, if a political party receives a gift that exceeds the value of $25,000, the party will have seven days to furnish a return to the Electoral Commissioner that includes information such as the name and address of the donor and other prescribed details.

Donors will also be required to furnish returns relating to gifts made. Their reporting periods mirror the entity they donate to, with the exception of the designated period. Upon receipt of a gift that requires the donor to lodge a return, an agent is obliged to inform the donor of their disclosure obligations.

The short-comings of disclosure schemes often relate to inadequate or insufficient information being disclosed, and most significantly, infrequent disclosure and late release dates for returns.

No other State jurisdiction requires the same frequency of disclosure leading up to polling day. The proposed reforms will ensure that every voter will be able to see the significant donations that have been made to every party before they cast a vote.

Further to this, the Bill addresses the issue of the purchase of political access. Both the major political parties in South Australia have been accused of raising funds by selling political access. Many in the community object to such practices, seeing them as an exclusive forum for discussions that only those in attendance are privy to. This perception is reinforced by the price of tickets.

The Bill will not inhibit the right of parties to raise funds through access events. It will not prevent those who wish to obtain access via these events from doing so. However, the Bill will make it unlawful to receive an amount of money exceeding $500 per person for entry into such an event.

Notwithstanding the prohibition on anonymous gifts valued over $200, the Bill does not place any restrictions on the amounts that can be donated, nor does it restrict who may make donations. Such restrictions carry an inherent risk of offending the implied freedom of political communication under the Constitution. Great care has been taken when drafting this Bill to minimise the risk of a challenge both in relation to the regulation of gifts and the application of expenditure limits.

Consequently, rather than imposing limits on expenditure on all persons and organisations incurring political expenditure, the Bill establishes a voluntary system of public funding in which those opting in will be required to comply with political expenditure limits during the capped expenditure period, which commences on 1 July and ends 30 days after polling day. The alternative scheme of imposing limits on expenditure on all persons and organisations has been rejected.

To 'opt in' to the scheme, agents of candidates and groups must lodge a certificate before a specified date. Party agents must lodge a certificate in relation to a party candidate at least 24 months prior to polling day and may do so even though the candidate has not been pre-selected. However, an agent of a candidate or group not

endorsed by a political party must lodge a certificate before 5pm on the day on which the capped expenditure period commences.

Funding is allocated on a 'per vote' basis through a 4% eligibility threshold and is subject to a tapered formula that will allocate $3.50 for the first 10% of primary votes received within a district, and $3.00 for the remaining 90% of primary votes received within a district. These figures will be indexed annually in accordance with CPI.

Funding based on electoral support is the most equitable basis for calculating the eligible funding. The tapered scheme adopted in the Bill advances political equality by boosting the finances of legitimate minor parties and reduces the significant financial advantage afforded to major parties in circumstances where one blanket figure is applied to a primary vote.

A funding cap will restrict the total amount that may be received by a political party. This cap is calculated for a House of Assembly election and Legislative Council election respectively and applied to the total amount of funding payable to a political party.

This mechanism was established in the interests of maintaining financial equality. It will minimise the financial advantage one political party may obtain depending on electoral results and also minimise the budgetary impact of the funding scheme.

To address concerns of profiteering, a provision has been inserted into the Bill that enables the Electoral Commissioner to withhold funding if an amount of political expenditure incurred is less than the amount of public funding payable, or if the Commissioner is unable to adequately determine the amount of expenditure that was incurred. For expenditure incurred by a party or party candidate, the provision applies if the total amount of expenditure incurred by the party and party candidates was less than the total funding payable.

New section 130ZA sets out the different 'applicable expenditure caps' that apply to each participant. This is to recognise the political circumstances and nature of the different participants, ensuring the appropriate application of expenditure limits. The applicable expenditure caps will be indexed annually in accordance with CPI and are as follows:

Registered political parties

For a registered political party that is endorsing candidates for election in the Legislative Council only, a party cap of $500,000 applies.

A registered political party endorsing candidates in 1 or more House of Assembly districts is allocated a cap of $75,000 per district contested. For example, if a political party endorses candidates in 47 seats, the party will have a cap of $3,525,000. It should be noted that part of this cap must be allocated to a party candidate. If the party also endorses candidates in the Legislative Council, the party will receive an additional cap of $100,000 for each candidate (up to a maximum of 5 candidates).

This is intended to provide registered political parties with an additional 'state-wide cap' in recognition of the fact that political parties will conduct general political campaigns across the State of South Australia in addition to candidate specific campaigns.

There is no expenditure cap for a Legislative Council party candidate. Expenditure incurred by a candidate for the Legislative Council is taken to be expenditure incurred by the party.

Party candidate—House of Assembly

A party must allocate an amount (up to $100,000) of the party cap to each candidate for election in the House of Assembly. This allocation becomes the party candidate's applicable expenditure cap. The amount can be agreed between the agent and the candidate. If no agreement is reached, the assumed allocation is $40,000.

The Bill requires a copy of the agreement to be provided to the Electoral Commissioner.

The mandated maximum of $100,000 for a party candidate is designed to avoid significant overspending by parties in marginal electorates. To facilitate this policy aim, clause 130ZC requires an agent to ensure that the expenditure cap allocated to the candidate, and the expenditure incurred, relates to the election of the candidate only.

It is envisaged that the party cap will be used for 'general' electoral matter, whereas the candidate's cap will be used for electoral matter specific to a candidate and that district. There is an interpretive provision which provides that electoral matter 'relates' to a House of Assembly candidate if it:

- expressly mentions the name or displays the image of a candidate seeking to be elected in the district or expressly mentions the name of the district; and
- is communicated to the electors in the district; and
- is not mainly communicated to electors outside the district.

Non-party candidate—House of Assembly

The applicable expenditure cap for a non-party candidate contesting a seat in the House of Assembly is $100,000.

Non-party candidate/groups—Legislative Council

The applicable expenditure cap for a non-party Legislative Council group is $500,000 and $125,000 for a single candidate.

An agent is responsible for ensuring that expenditure is not incurred in excess of the applicable cap. If a party and/or candidate/group exceed their applicable expenditure cap, an amount of funding payable to the agent will be significantly reduced (by an amount equal to 20 times the amount of which the cap was exceeded). The Bill also contains a penalty provision (clause 130ZD) which applies directly to the agent, in the event they fail to ensure the applicable cap is not exceeded.

The strict consequences of an expenditure breach are necessary to compel compliance. Without appropriate and effective limits on political expenditure, public funding will fail to reduce reliance on private donations and merely contribute to expanding budgets, fuelling political overspending.

The definition of political expenditure in the Bill is deliberately broad, primarily relating to expenditure on the 'expression of views' on a political party or an issue in an election, producing material that requires the inclusion of authorisation details, and undertaking opinion polling and research.

The fact that expenditure limits apply to parties, candidates and groups only, raises concerns in relation to the operation of third parties and the potential for them to be used as an avenue by parties and candidates to circumvent expenditure caps.

To mitigate this risk the Bill contains a provision prohibiting a person from entering into an agreement or arrangement with a third party to incur political expenditure for the purpose of avoiding a cap. If found in breach of this provision, an agent will be guilty of an offence attracting a maximum penalty of $25,000. Once again, this strict approach is necessary to compel compliance and ensure established expenditure limits are effective and enforceable. The agent will also risk losing part or all of the entitlement to the funding.

All key participants will be required to furnish returns relating to political expenditure incurred during the capped expenditure period. Disclosure of expenditure by parties, candidates and groups enables the Electoral Commissioner to adequately determine the amount a party, candidate or group has spent for the purpose of enforcing relevant expenditure limits in addition to assessing whether or not they have acted in agreement or arrangement with a third party. It also provides a level of transparency to the public who will be able to inspect expenditure returns.

In addition to expenditure returns relating to the capped expenditure period, all participants, and persons incurring expenditure of more than $5,000 will be required to furnish an annual return outlining details relating to the political expenditure incurred. Persons incurring expenditure of more than $5,000 will also be required to furnish a return disclosing gifts received and used in whole or part, to incur political expenditure.

Clause 130ZW will require that all financial and expenditure returns be accompanied with an auditor's certificate. I note that in some circumstances an auditor's certificate may be provided at a later date with the permission of the Electoral Commissioner.

To assist political parties in meeting the proposed disclosure requirements, assistance funding will be provided to political parties for administrative expenditure incurred in complying with the Legislation. However, the assistance funding will only be made for expenditure that is actually incurred. A political party will not be paid 'in advance'.

The amount of assistance funding available will be $7,000 in the case of a party with 5 or fewer Members of Parliament and $12,000 in the case of a party with 6 or more Members of Parliament. Claims for assistance funding will also require an audit certificate.

This is an historic initiative. It is designed to address an extensively documented cynicism about special interests and financial interests that has plagued politics in other jurisdictions. Sunshine is the best disinfectant. The public will welcome transparency, openness and accountability in political campaigning, especially at times when politicking is at its height. The Parliament should welcome such initiatives.

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 *Electoral Act 1985*

4—Insertion of Part 13A

New Part 13A sets out a scheme for the disclosure of campaign donations.

Part 13A—Election funding, expenditure and disclosure

Division 1—Preliminary

Division 1 sets out various definitions required for the purposes of the Part. A number of the definitions have been taken from the *Commonwealth Electoral Act 1918*. The objects of the Part are provided for. This Division also provides that nothing in the Part requires the disclosure of details required to be furnished to the Australian Electoral Commission under Part 20 of the *Commonwealth Electoral Act 1918*.

Division 2—Agents

Division 2 provides for the appointment of an agent for an *appointing person or body* (defined as a registered political party, candidate, group or third party that appoints an agent) for the purposes of this Part. A registered political party will be required to appoint an agent. A candidate who has not appointed an agent will be taken to be his or her own agent. If the members of a group are all endorsed by the same registered political party, the agent of the party is the agent of the group. A third party that is a natural person who has not appointed an agent will be taken to be his or her own agent. Each member of the executive committee of a third party that is not a natural person and which has not appointed an agent will be taken to be the agent of the third party.

Certain processes with respect to the appointment of agents are set out. Division 2 also provides that the Electoral Commissioner will establish and maintain a *Register of Agents*. Processes to terminate the appointment of agents are set out. The Electoral Commissioner must be given notice of the death or resignation of an agent. Particular provision is made such that each member of the executive committee of a registered political party is to assume responsibility for the obligations of the party under this Part, including in a situation where there is no agent for the political party.

Division 3—State campaign accounts

Division 3 requires the agent of a registered political party, candidate, group or third party to keep a State campaign account. The Division provides for the regulations to prescribe what amounts may, or may not, be paid into a State campaign account kept by the agent of a registered political party, candidate or group. It also provides that agents must ensure that the registered political party, third party, candidate or group on behalf of which the State campaign account is kept does not pay an amount of money for political expenditure unless the amount is paid from its State campaign account.

Division 4—Public funding of candidates and groups for elections

Division 4 provides for public funding for elections. Candidates and groups are to receive funding based on the number of first preference votes received at elections.

Funding payable to the agent of candidates endorsed by a political party is capped. In addition, no funding is payable to a candidate or group unless the candidate or group received at least 4% of the total primary vote in the relevant election.

Furthermore, no funding is payable unless the agent of a candidate or group has lodged a certificate agreeing to be bound by the applicable cap on political expenditure under the Part. The Electoral Commissioner must also be provided with satisfactory evidence of political expenditure of at least the amount of the funding to be paid (otherwise the amount of funding payable is to be reduced, or, if no evidence is provided, not to be paid).

If a person to who Division 6 applies exceeds their applicable expenditure cap under that Division, the funding amount payable to the person's agent is to be reduced by 20 times the excess amount (or will be reduced to nothing if the excess amount is actually greater than the amount of funding that would otherwise have been payable).

Division 5—Special assistance funding for political parties

Division 5 provides for special assistance funding for registered political parties for administrative and operational expenditure. Parties are to receive half yearly funding if at least 1 member of the party is a member of Parliament during the relevant half yearly period, the party was registered at the last general election and continues to be registered and the party's agent lodges a claim with the Electoral Commissioner. Claims must set out administrative expenses incurred during the period. Funding is paid for those expenses, up to a maximum (which varies depending on the number of members of the party in Parliament).

The Division prohibits the use of special assistance funding for political expenditure.

Division 6—Limitations on political expenditure

Division 6 provides for expenditure caps during the *capped expenditure period* (which is defined) for a registered political party, candidate or group that adopts an expenditure cap (by lodging a certificate with the Electoral Commissioner). As stated above, adopting an expenditure cap for an election entitles the adopting candidate or group (or, in the case of a candidate or group endorsed by a political party, the agent of the party) to payments for public funding in relation to the election (if relevant requirements under Division 4 are met).

Applicable expenditure caps for an election are fixed under the Division. The caps vary based on different factors, such as whether a candidate or group is endorsed by a registered political party or not, or whether the election is a general election or any other election. A party, candidate or group must not exceed the applicable expenditure cap during a capped expenditure period.

Division 6 also makes provision in relation to political expenditure by registered political parties and candidates that *relates to the election of a candidate* (an expression that is defined). In addition, a third party and a registered political party, candidate or group are prohibited from entering into an agreement for the third party to incur political expenditure during a capped expenditure period for the purposes of the party, candidate or group avoiding its applicable expenditure cap. Breach of the provision will result in the commission of an offence by the registered political party, candidate or group.

Division 7—Disclosure of donations

Division 7 sets out the requirements for the provision of returns by the agent for a candidate or group in relation to gifts and loans received during the disclosure period for the election. A return will be required to be furnished to the Electoral Commissioner at the prescribed times and must set out information specified in the Division. However, a return need not set out any details about a gift or loan of an amount or value of $5,000 (indexed) or less, or a private gift or loan to a candidate or group.

The Division will require a person who makes a gift or gifts of more than $5,000 (indexed) to a candidate or member of a group, or a *relevant entity* (defined as a registered political party, an associated entity or a third party) during the disclosure period to also furnish a return. A loan or loans to a candidate or member of a group of more than $5,000 (indexed) must also be disclosed.

Registered political parties must disclose 'large gifts' within 7 days of receipt.

The Division will also require relevant entities, candidates and groups to ensure that they know the names and addresses of people who make gifts the amount or value of which exceeds $200 (or a greater amount prescribed by regulation) or loans exceeding $1,000 (or a greater amount prescribed by regulation).

The Division also prohibits registered political parties from receiving an amount of money of more than $500 for entry to a *relevant event* (which is defined).

Division 8—Returns

Division 8 will require registered political parties, associated entities (as defined) and third parties to file financial returns at the prescribed times, including the particulars prescribed by the regulations.

The Division also requires registered political parties, candidates, groups and third parties to file expenditure returns for the capped expenditure period within 60 days after polling day for an election.

The Division will require a person who has incurred political expenditure totalling more than $5,000 (indexed) (or $10,000 (indexed) for third parties) in any financial year to also furnish a return for the financial year. In addition, the Division will require a person who is required to furnish such a return to furnish an additional return for the financial year in respect of gifts received by the person which were used during the financial year to enable the person to incur political expenditure or to reimburse the person for incurring political expenditure (provided that the amount of at least 1 such gift was more than $5,000 (Commonwealth indexed)). The Division also specifies that returns are not to include lists of party membership.

Division 9—Related matters

Division 9 includes provisions that ensure returns provided under the Part by relevant entities, candidates and groups are accompanied by an audit certificate. The Division also provides that members of the public can inspect any return filed under the Part and that will require the retention of certain records, as well as various powers of investigation for the purposes of the Part.

The Division also provides that, in the event that a person is unable to provide all information required to complete a return, the Electoral Commissioner will be able to require persons to provide information to assist in the preparation of a return. The Division also sets out a procedure for the amendment of a return. A decision of the Electoral Commissioner to refuse a request for an amendment will be reviewable under the Act. The Division provides for various offences in connection with the operation of the Part.

Division 9 also provides that a failure to comply with a requirement of the Part in relation to an election does not invalidate the election.

5—Amendment of section 139—Regulations

This clause amends section 139 to include certain regulation making powers for the purposes of the Act, including the power to fix fees, the power for a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Electoral Commissioner, and the power for the regulations to modify the application of proposed Part 13A in relation to the disendorsement of a candidate by a registered political party or for savings or transitional purposes.

Schedule 1—Transitional provisions

Schedule 1 sets out transitional provisions for the purposes of proposed Part 13A.

Debate adjourned on motion of Mr Pederick.

LEGAL PRACTITIONERS (MISCELLANEOUS) AMENDMENT 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. Clause 32, page 25, line 18 [clause 32(2), inserted paragraph (g)]—

After 'the Commissioner' insert '(if he or she is a legal practitioner)'

No. 2. Clause 32, page 25, after line 19 [clause 32(2)]—After inserted paragraph (g) insert:

and

(h) the Independent Commissioner Against Corruption and a legal practitioner engaged by the Independent Commissioner Against Corruption.

No. 3. New clause, page 31, after line 34—After clause 38 insert:

38A—Amendment of section 61—Limitation of claims

Section 61(1)—delete 'three' and substitute '6'

No. 4. New clause, page 31, before line 35—Before clause 39 insert:

38B—Amendment of section 64—Satisfaction of claims

Section 64(2)—delete 'the prescribed percentage' and substitute:

a percentage (which must not be less than 20%) prescribed by regulation for the purposes of this subsection

No. 5. New clause, page 32, after line 26—After clause 40 insert:

40A—Amendment of section 67A—Annual report

Section 67A(2)—delete subsection (2) and substitute:

(2) The report must—

(a) state the amount of the payments from the Fidelity Fund during the financial year and the nature of the claims in respect of which payments were made; and

(b) contain the audited statement of accounts of the Fidelity Fund for the period to which the report relates.

No. 6. Clause 41, page 34, line 8 [clause 41, inserted section 71(2)]—

After 'the Governor' insert:

, following consultation about the appointment by the Attorney-General with the Society and the South Australian Bar Association Incorporated,

No. 7. Clause 41, page 34, lines 10 to 17 [clause 41, inserted section 71(3)]—

Delete subsection (3) and substitute:

(3) Although a person appointed as Legal Profession Conduct Commissioner need not be a legal practitioner, the Commissioner must be a person who, in the opinion of the Attorney-General—

(a) is familiar with the nature of the legal system and legal practice; and

(b) possesses sufficient qualities of independence, fairness and integrity.

No. 8. Clause 41, page 35, after line 5 [clause 41, inserted section 72]—

After inserted subsection (3) insert:

(4) The Commissioner may be represented in proceedings before any court or tribunal by a legal practitioner employed or engaged by the Commissioner.

No. 9. Clause 41, page 36, lines 12 and 13 [clause 41, inserted section 77(1)]—

Delete '(except the matters referred to in subsection (2) or any other prescribed function or power)'

No. 10. Clause 41, page 36, lines 14 to 21 [clause 41, inserted section 77(2)]—Delete inserted subsection (2)

No. 11. New clause, page 50, after line 12—After clause 41 insert:

41A—Amendment of section 78—Establishment of Tribunal

(1) Section 78(2)—after 'Chief Justice' insert:

of whom—

(a) 10 must be legal practitioners; and

(b) 5 must be persons who are not legal practitioners but who are familiar with the nature of the legal system and legal practice.

(2) Section 78(3)—after 'Tribunal' insert 'under subsection (2)(a)'

(3) Section 78(4)—after 'member of the Tribunal' insert:

who is a legal practitioner

(4) Section 78(4)—after 'another member' insert:

who is a legal practitioner

No. 12. Clause 42, page 51, after line 5 [clause 42(2)]—

After inserted subsection (1b) insert:

(1c) The Tribunal when constituted of a panel of 3 of its members must include at least 1 member who is a legal practitioner and at least 1 member who is not a legal practitioner but when the Tribunal consists of only 1 of its members the member constituting the Tribunal must be a legal practitioner.

No. 13. New clause, page 60, after line 8—After clause 53 insert:

53A—Repeal of section 95C

Section 95C—delete the section

No. 14. New clause, page 61, after line 15—After clause 55 insert:

55A—Insertion of section 98

After section 97 insert:

98—Review of operation of Act in relation to barristers

(1) The Minister must, within 6 months after the commencement of this section, cause a review to be undertaken into—

(a) the operation of this Act insofar as it affects legal practitioners who practise the profession of the law solely as barristers; and

(b) the operation of section 6, with particular reference to the role of a separate bar.

(2) A report on the review must be submitted to the Minister within 3 months after the commencement of the review.

(3) The Minister must, within 12 sitting days after receiving the report under this section, cause copies of the report to be laid before both Houses of Parliament.

No. 15. Clause 56, page 77, after line 18 [clause 56, inserted Schedule 2, clause 1(1)]—

After the definition of *approved ADI* insert:

barrister means a legal practitioner who practises the profession of the law solely as a barrister;

No. 16. Clause 56, page 82, line 34 [clause 56, inserted Schedule 2, clause 10]—Delete 'legal practitioner' and substitute 'barrister'

No. 17. Clause 56, page 99, after line 5 [clause 56, inserted Schedule 3, clause 1]—

After the definition of *adjudication* insert:

barrister means a legal practitioner who practises the profession of the law solely as a barrister;

No. 18. Clause 56, page 103, line 18 [clause 56, inserted Schedule 3, clause 9]—Delete 'person engaged only as a barrister' and substitute 'barrister engaged'

No. 19. Clause 56, page 103, after line 30 [clause 56, inserted Schedule 3, clause 10(1)]—

After paragraph (b) insert:

(ba) whether or not the law practice is prepared to enter into an arrangement with the client under which the law practice will not receive trust money for the purposes of the client's matter; and

No. 20. Clause 56, page 129, lines 16 and 17 [clause 56, inserted Schedule 4 clause 5(2)(a)]—Delete paragraph (a)

No. 21. Clause 56, page 129, lines 20 to 37 [clause 56, inserted Schedule 4 clause 5(3)]—Delete subclause (3)

No. 22. Clause 56, page 130, line 6 [clause 56, inserted Schedule 4 clause 5(6)]—

After 'the requirement' insert:

(other than on the ground that the giving of the information or access to information may tend to incriminate the practitioner)

No. 23. Clause 56, page 130, lines 11 and 12 [clause 56, inserted Schedule 4 clause 5(7)]—Delete 'to comply with the requirement' and substitute 'of a kind referred to in subclause (6)'

No. 24. Schedule 1, page 139 [Schedule 1, table, entry relating to section 67A(2)]—Delete both lines of the entry relating to section 67A(2)

No. 25. Schedule 2, clause 11, page 141, after line 14—Insert:

(2) Section 64 of the principal Act applies to any claim in relation to a fiduciary or professional default, or a series of fiduciary or professional defaults, in respect of which the Society has published a notice under Part 5 of the principal Act before the commencement of section 38B as if—

(a) the amendment to section 64(2) made by that section had not been made; and

(b) the prescribed percentage for the purposes of section 64(2) were 5%.

No. 26. Schedule 2, page 143, after line 27 [Schedule 2 Part 4]—After clause 17 insert:

18—Tribunal members

(1) The office of all members of the Legal Practitioners Disciplinary Tribunal will become vacant on the commencement of section 41A of this Act.

(2) A person who ceases to hold office as a member of the Tribunal under subclause (1)—

(a) may be appointed to the vacant office; or

(b) may continue to act as a member of the Tribunal for the purpose of completing the hearing and determination of proceedings part-heard on the commencement of section 41A.

PORT PIRIE SMELTING FACILITY (LEAD-IN-AIR CONCENTRATIONS) BILL

The Legislative Council agreed to the bill without any amendment.

STATUTES AMENDMENT (DANGEROUS DRIVING) BILL

In committee (resumed on motion).

Clause 5.

Ms CHAPMAN: I do have a couple of other questions on this clause but, before I do, with the indulgence of the Chair, I think the member for Hammond has a question on clause 4.

The CHAIR: I am sure we can take that into account.

Mr PEDERICK: I thank you for your indulgence. I had a thought today, Attorney-General, in regard to clause 4, which is an amendment to section 19A of the Criminal Law Consolidation Act, causing death or harm by use of a vehicle or vessel. I thought of another situation that occurs on pretty well every property in the state, and that is spotlighting, where people will be present on the back of a vehicle shooting rabbits.

Mr Treloar: Or camels.

Mr PEDERICK: Or camels, the member for Flinders suggests. There are not too many camels in Hammond, I can assure you.

Mr Whetstone: Or foxes.

Mr PEDERICK: The point is that there can be vehicles with one or two people seated in the front of the vehicle, and there could be two, three or more people standing on the back. Usually they have some frame to be supported with and about. Sadly, occasionally these vehicle can have accidents. My concern in relation to this clause is that, if there was a tragic death with an accident out spotlighting—which, especially in the case, as the member for Chaffey interjected, of chasing a fox, who are very wily creatures, there might be a sudden turn and there could be a rollover. As sad as it would be if there was a death caused by that, would that act, which is more or less a standard

procedure as far as spotlighting and getting rid of feral animals on a property, be constituted in your mind as an act to cause aggravated death by dangerous driving?

The Hon. J.R. RAU: I thank the honourable member for his question and my answer to that is, provided that it is the standard practice more or less, I do not see that it would pass the threshold test. That is point No. 1. Point No. 2 is remember this: the only difference between the law after we pass this—assuming we do—and the law now is potentially that, if you go spotlighting with mates and you kill one of your mates you cannot get pinched, but if you go spotlighting with a bloke you meet on the side of the road that afternoon you can get pinched. I think that is all that changes.

In other words, if it is dangerous enough now to be prosecuted with a stranger on the back of the car, it will now be possible that, if it is your best mate, you will be prosecuted. That is the only difference. The standard of behaviour is not being changed, so people are not expected to stop spotlighting or anything else—people taking reasonable precautions and whatever. We are talking here about a very high standard of misbehaviour.

Ms CHAPMAN: I think the member for Chaffey raised with me the same issue even on the river, if we briefly go back to this question of reckless behaviour or culpable negligence, whichever is going to apply, or other conduct. So, it could be anything under the legislation. I think I did express concern about the fact that there are a number of activities in river sport, for example, which could be seen to be quite dangerous on the face of it—waterskiing. If there are two boats in the water, if there are multiple skiers on the back, coupled with the fact that the surface of the water, of course, is moving, rather than a road surface, which at least is flat.

We have a scenario where even the people who might be 'passengers' on the back of a ski rope could be injured. If somebody sped past a child who was fishing on the side of the river and caused a wake to force them to be pulled into the river and they drowned, then you can see that there would be some connection–you may not know this person at all. However, we could end up with a situation where a whole lot more people who cause injury or death are caught under this legislation. We will be monitoring that aspect of what we would describe as legitimate, normal—but, on the face of it, potentially quite dangerous—recreational activity.

If I can just return then to clause 5, I was asking the Attorney about the consultation and it seemed that the answer from the Attorney was that the request for reform had been made by the police as a consequential matter. Given that there was going to be reform on the death and dangerous driving laws, then the police pursuit was coming to fall into line.

My understanding from the briefing, Attorney, is that the request for this extension (if I can put it that way) of the escaping police pursuit laws had actually been made by SAPOL back in December last year. I am not sure when you had made a determination to change the law to deal with matters that the DPP had raised, but I am particularly concerned not that those two very relevant bodies to these matters had been consulted or had put in their request but that, as I understand it, the Law Society has not been sent a copy of this bill. If that is the case, why were they excluded from the consultation?

The Hon. J.R. RAU: I do not know whether or not the Law Society has been consulted. The standard procedure with the office since I have been Attorney is that we send stuff to the Law Society as a matter of course. If that has not happened in this case, then as far as I am concerned, it is certainly not a product of a deliberate decision not to send them. It may be an oversight by somebody, but that would be the extent of it.

Can I just emphasise again: we are not in any way changing the sort of behaviour that is regarded as a criminal offence. We are only addressing the question of whether you know the victim. The fact that if you know the victim, they are a friend of yours or your acquaintance or your brother or sister or something, means that technically they are not a member of the public and therefore you cannot be pinched. That is all we are changing. We are not changing anything else.

While I am on my feet, in answer to questions that the deputy leader asked earlier today, I am advised that in the last financial year, there were 27 section 19A offences prosecuted by the DPP but there were no offences in respect of boats. They were all motor vehicle offences. That does lead me to assume that, even now, the incidence of boats being involved in these things is relatively infrequent. You cannot catch them—too quick. I would not expect that frequency to change at all.

Clause passed.

Remaining clause (6) and title passed.

Bill reported without amendment.

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (15:54): I move:

That this bill be now read a third time.

Can I thank all the members who have contributed to this conversation and can I emphasise again that I am very mindful of the members opposite who have made remarks about quite legitimate and natural—both recreational and other—activities that occur in the non-metropolitan area. Can I assure them that it is not and has never been my intention that those activities be in any way curtailed or circumscribed by this legislation. The only intention of this is that, in the event of those activities being so bad that they are culpably negligent and somebody is killed, the person who kills them should not be able to get off on the basis of, 'That fellow was my mate so isn't a member of the public.' That is all. With those few words I commend the third reading.

Bill read a third time and passed.

SOUTH AUSTRALIAN CIVIL AND ADMINISTRATIVE TRIBUNAL BILL

Adjourned debate on second reading.

(Continued from 24 July 2013.)

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (15:55): Before we start, Mr Deputy Speaker, I have lengthy second reading notes here in reply. I do not want to take up the parliament's time or the deputy leader's time with her having to address the thing as it is without knowing where we are intending to modify it. She can if she wishes; I am just putting it all out on the table. Very briefly, what has happened is that, as I foreshadowed when we first introduced this before the break, we were going to be consulting over the break and receiving feedback about the exact draft—

Ms Chapman: A supplementary second reading speech. Is that what you're saying?

The Hon. J.R. RAU: Well, look, we can call it that or I can do it in reply. I intend to file a number of amendments, if they have not already been filed, which I suspect they have.

Ms Chapman interjecting:

The Hon. J.R. RAU: Okay.

Ms Chapman interjecting:

The Hon. J.R. RAU: We have listened to the Law Society, the Bar Association, the Chief Justice; every person you can possibly imagine, and I will read out who they all are in due course as well. I do not mind how we handle it, but I just did not want—

The DEPUTY SPEAKER: Then you should probably do it in the second reading reply.

The Hon. J.R. RAU: Yes; I just did not want the deputy leader to expend a lot of time and energy on the bill in its current form and forensically work her way through it if she would actually be doing work that has already been done and she does not need to do it; that is all.

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (15:57): I appreciate the supplementary remarks by the Attorney, always considering my best interests, I see, in ensuring that there is no unnecessary burden placed on the opposition to make a contribution. I note that he indicates that, after consultation during the winter break, as he had foreshadowed in his second reading, he is apparently to table a number of amendments reflecting meritorious recommendations put during that time. I am assuming, therefore, he has taken some note of those submissions. I propose in my contribution to make a brief summary of the areas of concern that are raised; I will not be going into any detail on them. I am ever hopeful that most of those issues will either be explained or accommodated by amendment, and we will proceed with it.

The Hon. J.R. Rau interjecting:

Ms CHAPMAN: Thank you. The South Australian Civil and Administrative Tribunal Bill 2013, having been introduced subsequent to a discussion paper, which was released two years

ago now in 2011, came with the announcement by the Attorney-General on 26 August 2011 that he was committed to establishing:

> The people's court or General Appeals Tribunal...based on...'administrative appeal tribunals set up federally and in every other state except Tasmania'.

The model proposed would allow panels of:

> ...independent experts to rule on matters such as:
>
> THE REJECTION of extension to a home by a council...
>
> DISPUTES between landlords and tenants.
>
> DOG and cat management decisions by councils.
>
> TAX disputes with the State Government.
>
> SMALL claims disputes.
>
> COMPLAINTS against police.

Members would be aware that the Attorney-General's parliamentary secretary had undertaken an audit of what we have currently accumulated in South Australia by way of tribunals and another bodies to be considered. In July this year the Attorney-General confirmed, at least by press release initially, that the government intended to consult on the bill. There is no question that since the 1970s there has been significant growth in the number and variety of tribunals in Australia.

I will not go into any detail about my view on the establishment of a number of these tribunals. Suffice to say it was not always in the direction that I agreed with but, nevertheless, we have accumulated a mass and it is hardly surprising that we are now looking to some streamlining. In any event, specialist tribunals have been established on a relatively ad hoc basis where it is thought undesirable to confer powers on courts.

The consequence of this, of course, has led to some overlap and some duplication of infrastructure and resources. I think it is fair to say that probably we have produced some inconsistency in approach, unnecessarily narrowing the specialisation of some of these tribunals. It is fair to say, though, that the jurisdictions have progressively established civil and administrative tribunals which consolidate the work of a range of other tribunals, the theory being, as always, the aspiration to provide for quicker, cheaper, fairer, more informal and efficient access to justice and to free up the courts from hearing minor civil disciplinary and administrative review matters.

It has never ceased to amaze me how often that aspirational objective is outlined and how often it fails. I can recall, for example, in the mid-1970s, fresh out of school, the establishment of the Family Court, not a tribunal but a federal body. It was an accumulation of most of the jurisdictions covering those matters, and it was thought to provide a new, informal, cheap, accessible tribunal in which it would not even be necessary for judges to wear a wig and gown because it would be so informal and so friendly, and quite probably many of the applicants and respondents would not need to even be represented.

They could sit cosily around a courtroom where the judge was at the same level on the bench and they would all have a little chat and everything would be resolved. How far from that could it be that it now is one of the most sophisticated levels with its own registrars attached to it. So, these aspirations are wonderful but, in my experience, they are rarely achieved. Nevertheless, where they have operated and functioned well that should be acknowledged and recognised.

I think it is fair to say that sometimes the personnel who occupy the senior positions in these entities can take significant praise where these objectives are achieved, and rightly so, whereas sometimes, no matter what the governance structure or leadership structure you might have in a body, if you have not got good people in there, it can still of course fail miserably. So, in any event, we recognise where it has been successful.

I think it is fair to say, and I do not think this is universal, that sometimes where there has been a failing—if we were to equate failing with a significant level of complaint from the constituency who use their service, as a guide—that it usually relates to an area of major conflict between the relevant parties. I use the areas, for example, in residential tenancy. Perhaps this is a generalisation but there can be a level of fiery interaction between unrepresented landlords and tenants whereas you may not see the same level of civility—or lack thereof—in a courtroom in the Supreme Court between a commercial tenant and their unhappy tenant.

The other area probably where we have significant complaint as members of parliament is the hearings undertaken by the Guardianship Board. That is an entity that sits down there in the ABC building on North East Road, Collinswood. The Guardianship Board has to deal with applications which are frequently emotive and which do attract the distress and ire most often of relatives. It is a difficult jurisdiction. I do not raise that as an example to say necessarily that that level of complaint is all justified but to make the point that sometimes the nature of the subject matter before them and the personnel involved do attract considerable extra attention in the operation of those tribunals.

The concept of a general appeals tribunal in South Australia dates back in our jurisdiction to 1984; the recommendation of the South Australian Law Reform Committee. The process of reviewing administrative decisions was itself reviewed by the Attorney-General's Department and the Law Society, which proposed the idea of a civil or administrative tribunal. Certainly, in the submissions I have received from the Law Society since the tabling of this bill, they claim that this is something they have been championing for some years, and they are pleased that finally it appears to be coming to fruition.

I will not outline the detailed position in the other states and at the federal level, but it is fair to say that, over the 30 years, from the commonwealth in 1976 until more recently in Queensland in 2009, every other jurisdiction in the country has moved to a sort of super tribunal system, except Tasmania, and we are now following suit.

There is a significant expectation by the public that they have access to prompt and affordable determination of their disputes. Here again, the reliance on these tribunals, whilst chequered in the effectiveness of their operation, do stand up against the now significant delays in our court system, particularly the District Court. I was at a meeting of other barristers Saturday a week ago, and they tell me that it is now a 2½ year waiting list—

The Hon. J.R. Rau interjecting:

Ms CHAPMAN: For civil matters—and that is concerning because access delayed, of course, is very often described as access denied. Many in that jurisdiction do not have access to other alternates, but from the point of view of some of these other areas at least being out there and available to access for specialist areas, one can assume only that our District Court will be under even further pressure at the civil level without the individual bodies that exist here at the moment.

The Law Society presented a number of recommendations during the 2011 review. Obviously, they were not all picked up, but I am assuming that a number of them have in the amendments that are to be tabled by the Attorney.

On the question of cost, I place on the record that the Attorney-General indicated during budget estimates (and I think the Premier subsequently in a radio interview in the general media) that the Sturt Street court building would become SACAT's new accommodation. Members would be aware that that had been a court, and that it had been closed and had been re-opened for a special purpose and that it has had a significant refit.

Although at one stage I was told that the building was still leaking, I am sure that at least it will be available and ready to occupy. I am not sure where all the personnel are going to come from or whether there is going to be a shaving of the numbers of tribunal leaders or appointments. I did give some thought the other day to those judges who are sitting down there in the Industrial Court with not much to do—I say that with respect—given the decision of the government to transfer industrial determinations to Fair Work Australia, effectively, or to the national level.

All who are left, I think, are public servants and not many others who are still the subject of determination in the Industrial Court. I have not read anywhere in any public arena that any of them have retired or been transferred to the Galapagos Islands or somewhere, so I am assuming they are all still sitting there. I think, at one stage, there was some consideration given to the asbestos compensation cases going to them. I am not sure whether that has actually happened or not.

The Hon. J.R. Rau interjecting:

Ms CHAPMAN: Yes, the Attorney helpfully interjects to tell me that there are a couple of other jurisdictions on dust diseases and liquor licensing matters that they can also do, so I am pleased to see that they are actually getting a bit of work down there.

I cannot add any comment as to the workload that is coming from the state government matters with the public servants. Given the number of them who write to me on a regular basis, I am assuming that there is a fair bit of complaint out there about this government and they are down there filling up some of the caseload at the Industrial Court. In any event, if there are positions ultimately to be filled for this new super court, then perhaps that will give them an opportunity to fill up their day, or at least for one or other of them to transfer over to that.

The 2013-14 budget has allocated $4.9 million over four years in operating initiatives and $1.44 million in investing initiatives to establish the tribunal. As has now been out in the public arena, there is the apparently leaked cabinet submission where the project was costed at $7.3 million over five years, so one does wonder if there is going to be some significant shortfall in the establishment of a new tribunal so that it is particularly effective.

No-one would want to establish any entity without adequate funding. We on this side of the house have been critical in the past of governments not allocating reasonable funding. For example, at the time of the establishment of the ICAC, we obviously took a different view as to the amount of funding that would be necessary and have said so; nevertheless, if there is to be a skinny tribunal, then, no doubt, the cloth will be cut according to what is provided.

The second reading contribution states the intention to create a 'one-stop shop' for the community on a broad range of civil and administrative matters. I should just also say that my understanding is that this bill is to be the first of, I think, a series of bills, I am assuming to, firstly, transfer and amend a whole lot of other legislation that relate to the appointment of the existing tribunals, which are presumably being repealed. There will then be some usual catch-up legislation to go with the structure.

We are really setting the umbrella legislation, so, with this foundation bill, we do not have identification yet of which tribunals are going to be caught up with it. There is the definition by the Attorney in the second reading to identify the types of bodies that exercise 'merits review functions', including 'ministers, commissioners, ombudsman, courts and other specialist boards and tribunals.' So, we are yet to see a comprehensive list as to who is going to be in and who is going to be out. I will come to that in just a moment, in relation to freedom of information appeals as to whether they are from the ombudsman, or whether they are going to go direct. I will be seeking some clarity on that, and I will just mention it at this point.

The SACAT is to be headed by a president who would be a concurrent office holder as a judge, or just the Supreme Court or District Court. There is a variety in other jurisdictions as to how that operates, and there has been some commentary made in the submissions. We will see what amendments the government is proposing.

The only criticism that I have heard or read of in respect of having a one-size-fits-all approach—and bearing in mind that we are following suit for the rest of the country at this point—has been this loss of specialist expertise. The one advantage I would say of having specialty tribunals—it is not unreasonable that this be considered; there was a recent article in the Law Society's *Bulletin*, in which Dr John Chaney, President of the WA State Administrative Tribunal and a Justice of the Supreme Court of Western Australia, had considered this point.

I think it is fair to say that in his advice to members of the Law Society, and generally to those who are interested in this topic, it has significant benefits 'in accessibility, efficiency, flexibility, accountability, consistency, and quality'. This is no disrespect to His Honour, but usually the heads of these new bodies are sympathetic and rather flattering of their own body. Nevertheless, it seems he had started with some caution as to how these things can go wrong—not so much how they can go wrong, but what benefits you throw out when you get rid of the specialty areas.

There is a school of thought that says it is better that you have somebody who is going to be providing an arbitrational or judicial determination of a legal matter who has absolutely no knowledge of the particulars of the matter before them. In other words, for example, if they are dealing with a teachers' dispute in a disciplinary matter, that they are not teachers themselves. This type of experience sometimes leads to a particular bias, and it is sometimes better to be completely independent of the subject matter of the dispute.

Others say it helps to have some knowledge. For example, if you have someone who is making a determination of a medical disciplinary matter and you are a medically-trained person, particularly in the specialty of which the person practices who is the subject of the application, it can be helpful to quickly identify if there has been a following of proper process. There are various schools of thought on that.

What is important is that whoever we end up with in a tribunal, whatever generalist experience they may have, that they have available to them access to expertise to support the decisions that they are going to be making. That, to me, is the most important thing in a circumstance where a non-specialist is making the determination.

In relation to the Law Society of South Australia, I will quickly summarise the matters that the Hon. Stephen Wade has summarised. It is a rather lengthy document. On the other hand, the Bar Association has sent in its submission, adding a couple of extra matters.

The Hon. J.R. Rau: I think we have dealt with most of them.

Ms CHAPMAN: They have been, mostly?

The Hon. J.R. Rau: I think so.

Ms CHAPMAN: Well, I think the federal issue—

The Hon. J.R. Rau: If not, we will come back to the ones we haven't dealt with, by all means.

Ms CHAPMAN: The Law Society submission includes:

- removal of the phrase 'reduction in the need of legal representation' from the objectives of the bill;
- that the president of the tribunal should be a Justice of the Supreme Court, as in the case of Victoria, Queensland and Western Australia, in order to give the tribunal impetus and status;
- that the ability to revoke a president by proclamation be removed to allow greater independence, potentially with a five-year capped term;
- remuneration of the president should be determined by the Remuneration Tribunal, not the Governor, to again ensure independence;
- a requirement that the president be full-time;
- guaranteed tenure of the deputy presidents from the District Court (perhaps for five years);
- a requirement for a person to apply to be a member of the tribunal should be removed, allowing appointment from those who have not applied;
- clarification as to the roles and rules of evidence;
- a stipulation that a person cannot act for fee or reward as a lawyer in their appearance before the tribunal consistent with the Legal Practitioners Act;
- allowance for costs to be awarded in some instances;
- retention of the privilege against self-incrimination and other common law privileges;
- provision that matters before the tribunal are to be considered litigation;
- clarification as to whether the tribunal is a court of the state; and
- provision of both a written notice of the decision and information about review rights.

In the Bar Association's submission, in their view, there is a high likelihood that SACAT is a tribunal and not a court and the consequence of the characterisation of SACAT as a tribunal is that it cannot be a repository of federal judicial power. Now, that is of concern, and if that is a question of who we are going to have in charge of this tribunal it becomes even more important. If that is going to be remedied in the amendments, I will not dwell on it further, but there are a couple of other matters which I think, on my quick perusal of that, have been captured.

The opposition's understanding is that, as indicated in estimates, SACAT would not be under the management of the Courts Administration Authority. Rather, it would be managed by the Chief Executive of the Attorney-General's Department. That is a curious addition, but nevertheless, I think the expectation is that it would facilitate an early establishment of the new court, which could, under that regime, perhaps commence by early 2014, which has a sort of flavour of being important for the purpose of showing a new system operational before an election. It may not be that; it may be that he has a genuine view that it is better that the Chief Executive of the Attorney-General's Department run this new system and not the Courts Administration Authority.

The Courts Administration Authority and the Attorney have come into some attention during the estimates period, and it would be very disappointing if there was a decision to move to the bureaucracy, as distinct from the independence that the Courts Administration Authority has in respect of all other matters in the judicial area. That would be very disappointing.

I note that, from the Law Society's overview of the SACAT jurisdictions (this is from the consultation paper), there are four main areas: the jurisdictions under the vocational, occupational and disciplinary functions, which largely result to different occupations and professions—the Legal Practitioners Disciplinary Tribunal for example—but everyone else, such as land valuers, plumbers and the like, and also the Equal Opportunities Tribunal.

Under the human and community services, housing and local government, there is also the Residential Tenancies Tribunal. I forget what they call housing improvement now—I think it is the Public Housing Appeal Panel or something of that nature—I do not have a note of it here. In any event, there is a housing appeal panel, but I note there is also the capacity for freedom of information and health and community services potentially to be referred. Members would be familiar with freedom of information; that is dealt with by an appointed officer within departments of government, for example, or agencies—local government and the like—with appeal processes to the Ombudsman and then to the District Court.

The health and community services commissioner was something that was born in the legislation in this house, I think in about 2003-04, on my recollection under minister Hill—it might have even actually been under minister Stevens. I can remember the long debates over that being appointed and the importance, the government said, to have a specialty independent process in that instance where the commissioner had health and community complaints which needed to be separated off and not be in the Ombudsman's office for two reasons.

Firstly, they said it was an area of specialty that needed to be on its own. Secondly, they wanted to have health complaints expanded, not just principally to health complaints in the Department for Health entities and hospitals, but also to private hospitals and to community organisations. So notwithstanding that the government has been quite happy to come in here and espouse the virtues of the need to have separate tribunals and/or commissioners, we are not certain whether that is going to be included. Perhaps the Attorney could provide us with a list of the anticipated ones that are ultimately to be included on the list.

Third is the tax deregulatory and business licensing division. There are a number of entities here, again, some of which have been established since there has been a restructuring, like the Essential Services Commission. That entity, as I understand it, may be given some extra responsibility but again was born to have a very specific role and yet it seems is likely to be pulled into the system.

The commercial and civil area is the division to cover the building work contractors, consumer credit, small claims, and so on. There are some areas to be transferred out of the Magistrates Court, as I understand it, for a lot of these matters, and I expect it is the attempt of the government to try and save money that motivates the push for those jurisdictions. That is an area, I must say, more particularly in relation to building construction work, which frankly I would have thought needed some area of specialty but nevertheless, we will see how that works.

So we will support the passage of the bill. There is a comprehensive list of amendments that I have been provided with, and at first blush there were some that I picked up which have followed the Law Society's recommendations, and I am pleased to see that. If there are other particular matters that we consider still need to be adopted, we will consider that between the houses. But we would appreciate, Attorney, a list of all of the tribunals at this stage, having conducted two reviews that you intend will actually be transferred to fit under this new umbrella.

The DEPUTY SPEAKER: If the minister speaks, he closes the debate.

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (16:30): Yes, thank you very much Mr Deputy Speaker, and I thank the deputy leader for her contribution and I am pleased that the opposition is, by the sound of it, generally supportive of the proposal. I am going to speak at some length in relation to this so that I can do two things: first, try to answer some of the questions the deputy leader has raised; secondly, for those members who want to be taken through each of the amendments, I will briefly explain why they are being done so that that does not need to happen again later. If members want to follow this, it would be useful to have a copy of the bill and the amendments in front of you so that you can go through them.

Ms Chapman interjecting:

The Hon. J.R. RAU: I know. There is some restraint being shown on the other side about whipping out their bills, but never mind. In respect of the jurisdictional roll in—because that was the last question the deputy leader asked—that is something that has yet to be determined, but there are some that are reasonably obvious candidates, whether they are in tranche 1 or tranche 2, for example, residential tenancies, guardianship and so on—the bigger clusters, if you like.

Ms Chapman: In terms of this appointment?

The Hon. J.R. RAU: Yes. But, because the conversations in detail have not occurred yet with those agencies, because this structural bill is not yet up, we have not advanced that as far as perhaps the deputy leader might have anticipated. We are waiting to see what this looks like, because we are going to take this to each of the agencies and say, 'Here it is. Now we want to have that conversation.'

Ms Chapman: They already are aware it's coming.

The Hon. J.R. RAU: Yes, I think they know it is coming, but all the same. Secondly, I must say that I am personally quite pleased that we have been able to get to this point, because this is something I have had quite a personal passion for all along and it is great that it is here now. As I foreshadowed in the second reading explanation, the bill was introduced prior to the winter recess so that consultation could occur over the winter break.

By a letter dated 23 June 2013, all of the agencies, organisations and individuals consulted by the steering committee were requested by my department to provide comment on the bill. I also extended an open invitation to any other interested person to provide their comment on the bill. As I noted in the second reading explanation, if amendments to the bill were necessary as a consequence of comments received during the consultation period on the bill, that would take place during the winter recess.

Those amendments would be filed during the debate on the bill and, indeed, that is what has happened. I will say a few things in respect of consultation, because I know the deputy leader is interested in these matters as a matter of general course. First and foremost, I want to thank all of the agencies, organisations, bodies and individuals who took the time to consider and provide their comment in relation to the bill.

In particular, I would like to mention these—and I am sure the Deputy Leader of the Opposition will be familiar with some of these names: the Law Society, Mr Stephen McDonald, the Council of Australasian Tribunals SA chapter, Mr Deane Jarvis, Kathy McEvoy of the Housing Appeal Panel, and the Crown Solicitor's Office. All of them offered very useful and helpful suggestions.

In fact, a total of 38 responses and submissions were received during the consultation period on the bill. The feedback received has been invaluable and I am very pleased that so many contributed to the ongoing development of the bill. My department has carefully considered all of the submissions received, and a significant number of comments have informed and given rise to a large number of government amendments that will, if passed, in my view improve the bill in numerous ways.

I will turn now to a general description of the key elements arising from the consultation. This is very important, because it touches on some of the things the deputy leader has raised. The SACAT is to be clearly characterised as a tribunal, not a court. It was evident during the consultation—and this was confirmed by advice I received from the Crown and the Solicitor-General as well—that there was confusion as to the status of the tribunal, as to whether it was a court or a tribunal.

The deputy leader is quite aware of all the case law about whether something is a court or not a court, and it is quite complex and esoteric in some respects. In any event, the government has acted to confirm its status as a tribunal and to remove any ambiguity surrounding this. Accordingly, the government proposes to amend the bill at various clauses—which I will take people to in due course—to remove or modify any provision which is or could be considered to be an exercise of judicial power. In that respect, can I mention just in parentheses that the fact of this being a judicial body now attracts with it all the Kable issues that are causing all sorts of interesting problems throughout our court system, so that is another good reason why this should not be in any way capable of being characterised as a court.

Appointing the president and the deputy president of the tribunal for a term of five years with eligibility for reappointment at the expiration of the term of office: this amendment to the appointment mechanism of the presidential tribunal members underpins the independence of the tribunal and is consistent with the approach taken in most other jurisdictions with a generalist administrative tribunal.

Clarifying and simplifying the treatment of common-law privileges and immunities in the tribunal proceedings: it was submitted during consultation that the provisions of the bill that deal with requirements to produce documents and give evidence, the powers of the tribunal to compel parties and how privilege will be dealt with were complex, particularly by reason of their interaction.

The government has acted to address this by substituting many of these clauses with an amendment to clause 39 that confirms that nothing in the bill affects any right or principle of law relating to legal professional privilege or without prejudice communications or public interest immunity. I am advised that the Hon. Stephen Wade from the other place raised questions about the treatment of legal professional privilege and other privileges and immunities in this bill.

The amendments simplify these issues and will hopefully provide a clearer picture for Mr Wade. For the sake of completeness, however, I confirm that clause 72 of the bill will remain as drafted. Clause 72 of the bill abrogates the privilege against self-incrimination. This is consistent with other jurisdictions, and I invite people to look at section 68 of the State Administrative Tribunal Act in Western Australia.

Ms Chapman: It doesn't make it right.

The Hon. J.R. RAU: Western Australia is a very forward-looking jurisdiction. I am also advised that the Hon. Stephen Wade asked what powers of the SACAT will be prescribed to the rules or regulations—that old chestnut. There are no specific powers proposed or contemplated for rules or regulations at this stage. Rather, we are aware that regulations and rules for equivalent interstate tribunals contain various matters that might, in some cases, constitute powers.

Therefore, the best indication we can give to Mr Wade is that the intention is that we may need to provide for powers or procedural matters in rules or regulations equivalent to those that have been made for the equivalent interstate generalist tribunals. At this stage we cannot be certain, in the absence of knowing exactly which jurisdictions will be assumed by SACAT, that we have included every power or procedure required by the tribunal in the actual bill. We have attempted to do it, but we are contemplating the fact that there may be some revision required.

I would encourage members of this house to support all the government's amendments, which stem from the feedback received from the various agencies, organisations and individuals who are currently working in various areas of administrative law and administrative decision-making. If the house will bear with me I will just read very quickly a complete list of those who produced submissions. This might be of interest to the deputy leader.

They are the South Australian Ombudsman, the Legal Practitioners Disciplinary Tribunal, the Hon. Gail Gago, the Firearms Branch, the Environment Protection Authority, the Minister for Tourism, the Electoral Commission of South Australia, the Public Trustee, non-government schools education and early childhood services, the Courts Admin. Authority, Law Society of South Australia, Mr Ralph Bonig, Housing Appeal Panel, SA Lotteries, Council of Australasian Tribunals SA, Legal Services Commission, City of Campbelltown, Minister for Employment, Higher Education and Skills, Department of Planning, Transport and Infrastructure, Mr Deane Jarvis, Office of the Public Advocate, Commissioner of Police, Health Practitioners Tribunal, SA Health, Teachers Registration Board of SA, Architectural Practice Board of SA, Australian Health Practitioners Regulatory Agency, Public Service Association, Minister for Recreation and Sport, Minister for Sustainability, Environment and Conservation, Super SA, Medical Panels SA, Valuer-General SA, RevenueSA, SA Bar Association, Guardianship Board of South Australia, Department of Planning, Transport and Infrastructure, and the Construction Industry Long Service Leave Board. As you can see, there have been quite a few people who have made contributions.

As foreshadowed a little while ago, I will now, with as much brevity as I reasonably can, go through the amendments and explain each one of them so that there is a record on *Hansard* of why we are doing what we are doing.

Amendment No. 1: the explanation for this amendment is of a technical nature. It clarifies the definition of 'applicant' in any context other than in the tribunal's review jurisdiction as modified by and to the extent that the rules otherwise provide for that definition to be modified.

Amendment No. 2: this amendment broadens the definition of 'decision' to confirm that this includes an order of the tribunal. Secondly, this amendment clarifies the definition of 'decision', including an order in every instance where it is used in the bill, thereby removing any ambiguity or inconsistency generally.

Amendment No 3: this amendment is necessary to clarify the definition of 'decision'. For the purposes of the bill it will include interlocutory decisions, directions or determinations of the tribunal such as those made under clause 44 of the bill unless they are of a category prescribed in regulations to be excluded from this definition. I note, for the sake of completeness, that the interlocutory decisions, directions and determinations that will be prescribed will be done in consultation with, and the guidance and advice of, the president.

The DEPUTY SPEAKER: It might be more appropriate if you go into the detail of your amendments when we are in committee, but just give an overview at this stage, otherwise you might have to do it twice.

The Hon. J.R. RAU: We don't want to go to committee, do we? We will just do them.

The DEPUTY SPEAKER: You have to go into committee.

Ms Chapman interjecting:

The Hon. J.R. RAU: If I do this, we will go into committee, finish at all, and send it through, is that the idea?

Ms Chapman: Yes.

The Hon. J.R. RAU: Okay. I am doing this in lieu of committee.

The DEPUTY SPEAKER: Alright.

The Hon. J.R. RAU: Alright? Everyone happy?

Ms Chapman interjecting:

The Hon. J.R. RAU: The member for Bragg is happy, that's the main thing. It is not the intention, nor is it appropriate, that an appeal should lie from every interlocutory or procedural decision or direction of the tribunal as this would frustrate the ability of the tribunal to deal with proceedings in a timely, cost-effective and efficient manner.

Amendment No. 4: this amendment clarifies that the definition in clause 3(1) is not an exclusive or restrictive definition of what is to be considered as evidentiary material for the purposes of the bill. Substituting the phrase 'includes' ensures that other evidentiary material not expressly stated in this clause, for example, audio or video recordings, may constitute evidentiary material for the purposes of the bill.

Amendment No. 5: this amendment is consequential to the government's amendment No. 4 and clarifies the second limb of the definition of evidentiary material. Specifically, this amendment clarifies and broadens the definition to include any other document, object or substance of evidentiary value that is not currently in proceedings before the tribunal and that is material that should in the opinion of the tribunal be produced for the purpose of enabling the tribunal to determine whether or not it has evidentiary value.

Amendment No. 6: this is a consequential amendment related to government's amendments Nos 48 and 71. The definition of 'exempt documents', that is, documents exempt under the Freedom of Information Act, are relevant to the operation of clauses 70 and 71 of the bill, which the government proposes to delete at amendment No. 71, for reasons that I shall now explain.

During the consultation process on the bill, a comment made by a number of those consulted was the inconsistent and complex interaction of common law rights such as legal professional privilege, 'without prejudice privilege', and public interest immunity throughout a number of clauses in the bill. It was submitted to the government that these complexities were at odds with the objectives of the tribunal to ensure its procedures are simple and easily understandable to members of the public.

In response to these comments, the government will propose at amendment No. 48 to confirm beyond doubt that nothing in this bill will affect any existing common law rule or principle relating to legal professional privilege or, in other words, without prejudice privilege, or public interest immunity. In other words, these common law rights will be protected and apply

to all proceedings before the tribunal. As a consequence of that amendment No. 48, clauses 70 and 71 are proposed to be deleted. Clause 70 establishes a scheme for dealing with disclosures that are contrary to the public interest and clause 71 sets out the tribunal's duties as to any protected matter.

The treatment of executive documents was addressed in clause 71, which is now redundant by virtue of the government amendment No. 48. Mr Deputy Speaker, can I pause here to ask can anybody think of any possible procedural manner by which I can simply hand all of this up and it is incorporated into *Hansard* because, if you can, I am ready, willing and able to do that. Otherwise, I will keep reading.

The DEPUTY SPEAKER: Not so easy.

The Hon. J.R. RAU: Does somebody want to demand that I table these documents? Would that get me over the line?

Mrs Geraghty: I could do that if I am forced.

The Hon. J.R. RAU: Okay, I am seeking assistance here.

The DEPUTY SPEAKER: I am advised that you need to read them because there needs to be an explanation of them.

The Hon. J.R. RAU: Never mind, I had a crack at it. I will keep going then. Are you sure that somebody didn't say am I reading from a document and I must table it?

Mr Pederick: No, it is copious notes.

The Hon. J.R. RAU: It is certainly copious. Here we go. It was nice to have a break. Amendment No. 7: this is related to amendment No. 6 and seeks to delete the definition of 'protected matter' from clause 3 of the bill. The definition of 'protected matter' is relevant to the operation of clause 71 of the bill for the same reasons outlined in amendment No. 6. It is proposed to delete clauses 70 and 71 by government amendment No. 71. The deletion of the definition of 'protected matter' is consequential to government amendment Nos 48 and 71.

Amendment No. 8: this amendment is necessary to ensure consistency between clauses 42(3) of the bill, which relates to expert reports, and clause 3(4), which defines who is considered an officer of the tribunal. Clause 42(3) of the bill states that a person to whom a question is referred under the section becomes an officer of the tribunal and may exercise such powers of the tribunal as the tribunal delegates. Currently, at clause 3(4) of the bill, this is not reflected in the definition as to what constitutes an officer of the tribunal. This amendment rectifies this oversight.

Amendment No. 9: this amendment is a direct result of feedback received during the consultation on the bill. Those who provided comment stated that the meaning of this phrase was ambiguous and that exercises of administrative power by the tribunal, including exercises of merits review jurisdiction, are arguably not in the field of administrative law but in the administration of the law of the state. Accordingly, the government has acted to remedy this and to substitute this with a clear and efficient objective for the tribunal, namely to promote the best principles of public administration.

Amendment No. 10: this amendment arises from comment received during the consultation at clause 8(e) of the bill regarding straightforward language and procedures of the tribunal leading to a reduction in the need for legal representation and was inconsistent with 56(1)(b) which provides that subject to the provisions of a relevant act, parties before the tribunal are entitled to be legally represented. To address this inconsistency, clause 8(e) of the bill will retain the objective that the tribunal use plain language and straightforward procedures but will be amended so as to include the additional objective that the tribunal, insofar as is reasonably practical and appropriate, use simple and standardised forms. Using simple and standardised forms where possible will go a long way to making access to the tribunal for a range of administrative decisions or reviews a much more straightforward experience and process.

Amendment No. 11: this amendment clarifies that the reference in clause 8(g) of the bill to flexibility in the way in which the tribunal conducts its business, and to adjust its procedures, is not applicable only to particular cases before the tribunal, but it should extend further to a particular jurisdiction or type of matter as evidenced in clause 27 of the bill. The president of the tribunal, once appointed, will have the ability to establish streams to reflect the areas of jurisdiction of the tribunal, and I think this addresses something that the member for Bragg was asking about a

moment ago. This amendment will make it clear that different procedures can be used for different types of matters or jurisdictional streams.

Amendment No. 12: this amendment seeks to amend clause 10(1) of the bill to use the term 'appointed' rather than 'assigned'. This is a consequential amendment connected to the government's amendment No. 13 which proposes to amend clause 10(3) of the bill to provide for appointing a president of the tribunal for a fixed term of five years by inserting subclause 3(a). The importance of enshrining legislation for a fixed term of five years for presidential members of the tribunal was the primary concern raised by those who provided feedback in relation to the bill. The rationale for this was that creating a fixed term, as opposed to assigning a role by the Governor without a fixed term, underpins the independence of a presidential member.

It was submitted by a large number of contributors that a fixed term of five years ensured independence of presidential members of the tribunal due to their tenure being secured for a fixed period. Fixed tenure is also consistent with the appointment mechanism for presidential members in other jurisdictions with equivalent tribunals.

Amendment No. 13: this amendment is connected, not surprisingly, to amendment No. 12. As I explained in relation to that amendment, this amendment provides for the appointment of a judge as president of the tribunal for a term of five years, with the person being eligible for reappointment at the expiration of that term. This amendment was a direct result of feedback received during the consultation period. The government has been influenced by the weight of submissions in favour of a presidential member being appointed for a fixed term of five years, and this amendment is evidence of the government's making the necessary changes arising from that important feedback.

Amendment No. 14: this amendment is consequential on amendment Nos 12 and 13. Amendment No. 15: this amendment is a further measure designed to strengthen and reinforce across the bill the independence of the presidential members of the tribunal. The amendment achieves this by clarifying that, in cases where the president does receive an additional component to their salary or allowance as a judge, pursuant to clause 10(5) of the bill, the additional salary or allowance will not be able to be reduced during the president's term. I note for the sake of completeness that the same amendment is proposed to be made by the government by amendment No. 23 to clause 14(5) of the bill in relation to a deputy president's salary or allowances as a judge.

Amendment No. 16: in order to be eligible for appointment to the role of president, a person must be either a current sitting Supreme Court or District Court judge. As set out in the bill, in order to provide maximum flexibility, the role of president of the tribunal can be undertaken either on a full-time or part-time basis. The appointment of a judge as a president of the tribunal does not affect, amongst other matters, the judge's tenure of office or status as a judge. Clause 10(6) of the bill sets out the grounds upon which a person ceases to be a president of the tribunal. Clause 10(6)(b) confirms that a person ceases to be president of the tribunal if they resign by written notice to the Attorney-General.

Accordingly, as currently drafted, a person who is appointed but at some point resigns from the position would maintain their tenure and status as a judge. In other words, the person may elect to resign as president of the tribunal but would retain their appointment as a judge of either the Supreme Court or the District Court.

This amendment seeks to insert an additional requirement of concurrence of the Chief Justice or the Chief Judge, as the case requires, prior to resignation. This will ensure that appropriate workloads and practical considerations can be taken into account by the Courts Administration Authority to accommodate a return by the judicial officer to the bench from their role as the tribunal president, or deputy president, for that matter.

Amendment No. 17: this amendment arises from the previous government amendments to abandon the ability of the Governor to assign a judge of the Supreme Court or the District Court by proclamation to be president of the tribunal in favour of appointment to the role for a term of five years. A consequential amendment that is now necessary is to delete clause 10(6)(c) of the bill and substitute it with mechanisms to address circumstances that will cause that appointment to cease. Accordingly, this amendment seeks to substitute clause 10(6) of the bill. The following additional grounds upon which a person ceases to be president of the tribunal are as follows:

- the person completes a term of office and is not reappointed; or

- the appointment is revoked by the Governor on the recommendation of the Attorney-General for mental or physical incapacity to carry out the duties; or
- neglect of duty; or
- dishonourable conduct; or
- if the person, obviously, dies.

It is important with any amendment to a role of public office that a measure exists to revoke such an appointment should there be a sound and justified reason to do so. The government considers the grounds which are the subject of this amendment as appropriate. It should also be borne in mind that independence is still preserved by the fact that presidential members are judges and may be removed as judges only by addresses of both houses of parliament, pursuant to removal provisions in the Constitution Act and the District Court Act respectively.

Amendment No. 18: this is a technical amendment consequential to amendment No. 17 to clarify that, should a person who holds a position of presidential member resign, not be reappointed to the role of president at the expiration of the five-year term, or have their appointment revoked by the Governor, their tenure and status as a Supreme Court or District Court judge is not affected.

Amendment No. 19: this is the same as outlined in amendment No. 12 but relates to the deputy president. The amendment seeks to amend clause 14(1) of the bill to substitute the words 'assigned' and 'appointed'. I do not think I need to repeat all of that. Amendment No. 20: this amendment replicates amendment No. 13 and applies to the deputy president. Again, I do not think I need to repeat that. Amendment No. 21: this amendment is consequential to amendment No. 20.

Amendment No. 22: this amendment is consequential to government amendments Nos. 19, 20 and 21. Amendment No. 23: this amendment mirrors the government amendment No. 15; however, it only applies to a deputy president who is, at the time of appointment, a District Court judge. As I have previously explained, this is a measure designed to strengthen and reinforce the independence of the presidential members of the tribunal from any perception of executive interference.

Amendment No. 24: this amendment clarifies that, in the case where an appointed deputy president is not a judge of the Supreme or District Court, pursuant to 14(1)(b) of the bill, any salary or allowances paid to the person are not able to be reduced during their term as deputy president. A person who is appointed under 14(1)(b) does not hold concurrent office as a judge of either the District or Supreme courts. It is necessary to provide a mechanism to address the circumstance where a person desires to change from full-time to part-time in their role as deputy president, as is permitted under the bill. Should such a circumstance arise, it is necessary to permit a reduction in salary and allowances to reflect the reduction in working hours—so, it is materially different to the judge. This amendment achieves this.

Amendment No. 25: this amendment is consequential to No. 20, to abandon assignment by proclamation of a deputy president in favour of appointment for a term of five years. Given this, in order to be consistent with government amendment No. 17—the president of the tribunal—clause 14 of the bill requires mirror provisions to apply to deputy presidents. In summary, this amendment removes all references to assignment and sets out the grounds that will cause the appointment of the role of the deputy president to cease—that mirrors the presidential provisions.

Amendment No. 26: I note, for the sake of completeness, that both limbs of this proposed amendment relate only to a person who is a District Court judge appointed to the role of deputy president. The first limb is consequential to amendment No. 25 that clarifies that, should a judge of the District Court resign from the role of deputy president or not be reappointed or have their appointment revoked, their tenure and status is not affected. In relation to the second limb of this amendment, for the same reason given for government amendment No. 16, regarding resignation of the president, it is proposed to insert an additional requirement that a judge of the District Court secure the concurrence of the Chief Judge.

Amendment No. 27: this amendment is consequential to No. 25. Amendment No. 28: this is the first of a few government amendments that relate to clause 19 of the bill, that concern the appointment of senior and ordinary members of the tribunal. Upon further consideration of this clause, it became evident that it was unnecessary to impose a mandatory requirement for the minister to appoint a panel of persons to perform prescribed functions in relation to the appointment of senior and ordinary members of the tribunal. This is because there may not need to be a need to

do so at a particular point in time, due to there being no vacancy for tribunal members. This amendment simply provides that flexibility to the minister to appoint a panel of persons for the purposes set out in clause 19, as and when required.

Amendment No. 29 is a technical amendment, due to correcting a drafting error. Amendment No. 30: this proposes to delete subclause (3) and arises from the feedback received during the consultation period that it was unnecessary and unduly prescriptive. The majority of the feedback received regarding 19(3) of the bill was supportive of leaving the technicalities of an appointment process for senior and ordinary members of the tribunal to the president to manage. In short, some submissions considered it unnecessary to state in the bill the requirements to advertise for applications. I, frankly, have some sympathy with that. This is considered to be a standard approach across most public sector recruitment processes. The deletion of subclause (3), as proposed in this amendment, simplifies the appointment process.

Amendment No. 31: this amendment is consequential to amendment No. 28. Amendment No. 32: this is consequential to No. 28 as well. Amendment No. 33: this amendment corrects a drafting error in clause 22(4) and removes any suggestion that there is to be more than one president of the tribunal. Amendment No. 34: this is a technical amendment to delete reference in 23(2) of the bill to the phrase:

(unless a relevant Act provides otherwise)

Clause 4 of the bill already confirms that;

(4) If there is an inconsistency between this Act and a relevant Act, the relevant Act prevails to the extent of the inconsistency.

Accordingly, given the clarification in clause 4 of the bill as to the interaction between the legislation that will in due course confer jurisdiction on this tribunal and the provisions of this bill, it is unnecessary to continue to make this clarification as various clauses throughout the bill.

Amendment No. 35: this amendment arises from the weight of feedback received during the consultation about clause 23(3), which provides a range of relevant considerations that the president of the tribunal must consider in determining the constitution of the tribunal for a particular matter before it.

A range of commentators submitted to the government that clause 23(3) of the bill was unduly prescriptive, and could invite challenge as to the constitution of a particular panel. The general consensus of those who provided comment on clause 23(3) of the bill was that it was unnecessary, because it is safe, in the absence of such a provision, to rely on the president to allocate the work of the tribunal appropriately.

Amendment No. 36: as currently drafted, clause 26 of the bill requires that questions of law before the tribunal are to be decided in accordance with the opinion of the most senior legally trained member. If there is no legally trained member, then the presiding member is to refer a question of low to a presidential member of the tribunal.

Clause 26 of the bill was one of the most significant matters arising from consultation, with those commenting indicating that the separation of questions of law and fact is complex and notoriously difficult (as I am sure the member for Bragg knows). This is because the concept of a question of law, as used in clause 26 of the bill, is capable of a number of different meanings. For example: it could be construed as including a mixed question of law and fact; it could be construed as meaning limited to a question of law that arises independently of any fact; or, a question requiring the tribunal to identify and separate out questions of law from questions of fact.

It was submitted during the consultation that clause 26 as currently drafted will be highly inconvenient and will invite challenge. This is because most if not all matters to be determined by the tribunal will involve a range of legal issues. Many if not most of those legal issues will not be contested or controversial, but clause 26 of the bill as currently drafted will nonetheless require the tribunal to consider an answer to those issues, either by way of express consideration or by inference.

It was submitted during the consultation that a failure to correctly identify all legal issues before it, or identify an issue that is not properly characterised as a legal issue, will then fall into error under clause 26 and invite our old friend judicial review, or a challenge by an aggrieved party. It is for these reasons that the government seeks to simplify the process set out in clause 26 by deleting subclauses (1) to (8).

I note that this is consistent with the objectives of the tribunal as set out in clause 8 of the bill. Instead, the government proposed to simply provide that a question of law may be referred to a presidential member of the tribunal. This change removes all of the complexity and ambiguity discussed and simply empowers the members of the tribunal constituting the tribunal to form a view about the applicable law, whether legally qualified or not, with a mechanism to seek assistance on a question of law if there is a need to do so.

Amendment No. 37: this is consequential on amendment No. 36. Amendment No. 38: this is necessary for consistency with clause 81(b) of the bill, which confirms the range of persons upon whom the president of the tribunal may delegate a function or power under this or any other act.

Amendment No. 39: this amendment is consequential to amendment No. 73 and others which seeks to substitute the use throughout the bill of the term 'review' where the tribunal is reviewing its own decisions in favour of 'internal review'. It was submitted during consultation that the use of the word 'review' in the context of the tribunal reviewing its own original decisions was confusing and unnecessarily technical, when one considers the objectives of the tribunal as set out in clause 8 of the bill. Amendment No. 40: this government amendment is consequential to the government amendment 41, and applies to the exercise of the tribunal's review jurisdiction only.

Amendment No. 41: as currently drafted, the review jurisdiction of the tribunal is limited to reviews by way of rehearing which do not involve a right to introduce new evidence unless the tribunal considers in a circumstance of the particular case to admit for the purpose of rehearing the matter. There are strong public policy reasons for this approach being taken when considering the appropriate model for the tribunal's review jurisdiction. During consultation, however, it was submitted that a review by way of rehearing as currently proposed may inadvertently fail to cure defects in original decisions that would have ordinarily been cured by hearing de novo—which is not a bad point.

The consequent effect of this is that the tribunal will not necessarily come to the preferable decision, but may defer to a less than ideal original decision where no error can be discerned. Clearly, this outcome is undesirable. In order to address this, the notion of the review process requires clarification to state that, on re-hearing, the tribunal must reach the correct or preferable decision, but in doing so, must have regard to and give appropriate weight to the decision of the original decision-maker.

Ms Chapman: Gobbledegook.

The Hon. J.R. RAU: The way I understand all of that is basically to say this: if there is a decision by a functionary at first instance, and that decision is to be reviewed by the tribunal, if the functionary at first instance did not have regard to all relevant material informing their decision, and the only thing the review authority can do is have regard to what the functionary had before them, then the review authority may be constrained in coming to the best outcome. That is the way I understand the proposition. We are getting down to dancing on pinheads here.

What we did not want to do was have open-slather hearing de novo, for obvious reasons, so what we are trying to do is achieve a limited rehearing or review, but not so limited that manifest absurdities cannot be corrected that occurred at the base level when it is being reviewed. That is effectively what we are trying to achieve.

Amendment No. 42: this amendment is a technical amendment to incorporate the word 'procedure' when describing a rehearing for the purpose of clause 34 of the bill. Amendment No. 43: this amendment relates only to proceedings before the tribunal in an exercise of its review jurisdiction—in other words, whether the tribunal reviews a decision already made by a person or agency. The intention of this amendment is to accommodate the varying situation where it may be thought desirable to stay or vary the operation of a reviewable decision. Whilst it is possible that clause 36 of the bill, as currently drafted, could be interpreted as including this power, this amendment removes any doubt as to this matter.

Amendment No. 44: as per the last amendment, this amendment relates only to when the tribunal is exercising a review jurisdiction, and specifically what the tribunal may do on a review of an original decision made by another agency or person. Specifically, this amendment clarifies that orders can be made on an interim basis, pending the reconsideration and determination of the matter by the original decision-maker. Amendment No. 45: this is a technical amendment to correct a drafting error.

Amendment No. 46: this amendment relates to the power given to the tribunal to invite the original decision-maker to reconsider a decision that is currently the subject of a proceeding before the tribunal in the exercise of its review jurisdiction. This is necessary to ensure that when a matter is in fact returned to an original decision-maker by the tribunal, pursuant to clause 38, a timeframe can be set, where appropriate to do so, so as the tribunal's expectation regarding the finalisation of the matter by the original decision-maker is achieved. This provides clarification for not only the party that is seeking a review of the original decision, but equally places the original decision-maker on notice as to the expectation of the tribunal in terms of the urgency with which the matter received, pursuant to clause 38 of the bill, should be given.

Amendment No. 47: This amendment is consequential to government amendment 92, which proposes to delete clause 95 of the bill. Clause 95 of the bill, as drafted, relates to contempt. As I stated in my second reading reply, a large number of submissions considered the characterisation of the tribunal as a court or a tribunal in the bill, as currently drafted, to be ambiguous. This view was argued on the basis that there were some clauses of the bill which could be considered to be an exercise of judicial power.

Clause 95 of the bill was one of the provisions in the bill identified as being able to be called in aid in an argument that the tribunal is a court, obviously, because it effectively gives the orders of the tribunal the force of those of the court. Accordingly, if the government proposes to delete clause 95 of the bill, clause 40(9) of the bill is no longer required.

Amendment No. 48: as I stated in government amendment No. 6, this amendment was borne out of consultation to address the concerns raised that there was an inconsistent and complex interaction of common law rights such as legal professional privilege without prejudice, public interest immunity and so on. This amendment proposes to confirm beyond doubt that nothing in this bill will affect any existing common law rule principle relating to legal professional privilege, without prejudice privilege, or public interest immunity. In other words, these common law rights will be protected and applied to all proceedings before the tribunal.

As a consequence of this amendment, clauses 70 and 71 of the bill are proposed to be deleted. I note that for the sake of completeness, however, that the abrogation of the privilege against self-incrimination at clause 72 of the bill will not be affected by clause 39 as amended, nor will it limit the operation of clause 73.

Amendment No. 49: clause 40 of the bill sets out the power of the tribunal on an application by another party of his own motion to issue a summons requiring a person to appear before the tribunal to give evidence or produce a document. Clause 40(4) of the bill makes it an offence if a person who is called to give evidence or produce evidentiary material to the tribunal refuses or fails to do one of the following: make an oath or an affirmation; produce evidentiary material they are required to produce; give evidence or otherwise refuse or fail to answer questions; give false or misleading evidence; or misbehaves or wilfully interrupts the proceedings of the tribunal.

During consultation it was brought to my attention that clauses 40(4)(b) of the bill includes the 'without reasonable excuse' proviso. In other words, it would not constitute an offence under clause 40(4)(b) of the bill where a person refused or failed to produce evidentiary material as required if the person in question had a reasonable excuse. This is appropriate and sound. Accordingly, it was submitted during the consultation that for consistency, 'without reasonable excuse' should also be applied to the offence created in clause 40(4)(a), which is the offence of refusing or failing to take an oath or affirmation when required to do so.

I note, for the sake of completeness, that the same amendment is proposed for clause 40(4)(c) and (4)(d). It will now, however, be applied to the offences created under clause 40(4)(e) and (4)(f) as there are no grounds upon which to justify or allow either giving of false or misleading evidence or misbehaving or wilfully interrupting the proceedings of the tribunal.

Amendment No. 50 is connected to the government's amendment No. 49 and is proposed for the same reasons I have just explained. Amendment No. 51 is connected to 49 and 50, and I will not repeat myself. Amendment No. 52 is the amendment which applies to clause 40 of the bill and increases the maximum penalty to a fine of $25,000 or imprisonment for a year. If a person is called to give evidence or produce evidentiary material, refuses or fails without reasonable excuse so to do it is the same penalty as proposed in the amendment and will apply to the offences of giving false, misleading evidence and misbehaving before the tribunal.

The offences set out in clause 40(4) of the bill are an important mechanism to ensure that all aspects of the proceedings of the tribunal are complied with by the party. Where a failure to do

so constitutes one of the offences in clause 40(4) of the bill, the person is liable to be prosecuted. It is therefore important that the maximum penalty for an offence constitutes a summary offence to act as a measure to reinforce the weight and authority of tribunal proceedings and the need for parties who appear there to comply.

Amendment No. 53: this amendment relates to clause 40, but deletes subclauses (5), (6) and (7), which provide powers to order persons to produce to the tribunal documents or materials relevant to proceedings. Subclauses (5), (6) and (7) of clause 40 provide a mechanism for the tribunal to seek an order from the Supreme Court to direct the person attend, or that the material be produced, or that an oath or affirmation be made, or the question put by or before the tribunal be answered and, on that application, the Supreme Court may make such orders as the court thinks fit. This is a function of it not being a court, obviously.

As a result of submissions received during consultation, the government considers it necessary to abandon the mechanism for the tribunal to seek enforcement from the Supreme Court of its powers under clause 40 of the bill. This is because clause 40, subclauses (5) to (7) as drafted could contribute to the characterisation of the tribunal as a court. By seeking enforcement in the Supreme Court, it might be argued to give orders of the tribunal the force of that court. I note for the sake of completeness that the tribunal will instead be relying on the summary offences created under clause 40(4) of the bill to provide the mechanism by which the tribunal can address those instances when a person refuses to comply with the powers and procedures.

Amendment No. 54: this amendment is consequential to government amendment No. 92, which proposes to delete clause 95, which provides a measure to address contempt of tribunal proceedings. Under clause 95 of the bill as drafted, it is proposed that the president of the tribunal may deal with any act or omission that would constitute contempt of court if the proceedings were before the Supreme Court. Further, the president of the tribunal may refer the matter to the Supreme Court or deal with the matter as a judge of the court of which he or she is a member. Clause 95 as drafted relates to contempt.

As I have stated in my second reading reply, a large number of submissions considered the characterisation of the tribunal as a court or tribunal to be ambiguous, and that there were some provisions in the bill that could be considered to be an exercise of judicial power. Clause 95 of the bill was one of the provisions in the bill identified during consultation that could be called in aid of an argument that the tribunal was indeed a court, which is not the intended characterisation of the tribunal. Accordingly, the government proposes to delete clause 95 of the bill. This amendment proposes to delete clause 40(9) as it relates to the interpretation and operation of clause 95.

Amendment No. 55: this amendment relates to the power of the tribunal to refer any question arising in any proceeding for investigation or report by an expert in the relevant field. Specifically, clause 40(5) of the bill as currently drafted provides that rejection of a report does not prevent the tribunal from making a further reference to an expert. It was submitted during consultation on the bill that it may also be warranted to clarify the converse scenario—that is, when the tribunal adopts a report in whole or in part. This amendment achieves this clarification to ensure that, whether the tribunal rejects, adopts in whole or in part an expert report ordered pursuant to clause 42 of the bill, it does not prevent the tribunal from making a further reference to the expert in the proceedings.

Amendment No. 56: clause 43 of the bill sets out the approach to be taken to tribunal practices and procedures generally in any of its jurisdictions. This amendment seeks to exclude references in clause 43(d) of the bill that the tribunal ensures parties have the opportunity to call or give evidence and to examine, cross-examine or re-examine witnesses. Instead, it is proposed to substitute a simple and straightforward measure that places the onus on the tribunal to ensure that the parties are heard or otherwise have their submissions received.

While it is to be expected that parties, particularly in the tribunal's original jurisdiction, would be enabled to test evidence, it was the view of some who provided comment on clause 43 of the bill during consultation that, generally speaking, the approach taken by the tribunal in respect to testing evidence would be on an inquisitorial rather than an adversarial basis. For example, it was submitted that such testing of evidence given in tribunal proceedings would be done through the presiding tribunal member rather than in a more adversarial form of cross-examination between the parties. Consideration and comment was also given as to whether clause 42(3)(d) as drafted was consistent with the objectives of the tribunal and the principles governing the hearings, as set out in

clauses 8 and 39 of the bill respectively. This amendment ensures that there is no inconsistency with other provisions of the bill and simplifies the approach to be taken in proceedings.

Amendment No. 57 is a technical amendment to confirm that an adjournment of the tribunal proceedings can be made at any time during the proceedings and to any place.

Amendment No. 58: this amendment concerns clause 44 of the bill which enables the tribunal to give directions and to do other things to enable the proceedings to be as fair and expeditious as possible. This amendment is consequential to government amendments Nos 48 and 71 which propose to uphold common law rights with respect to legal professional privilege, etc. The practical effect of this amendment, if passed, is that any direction given by the tribunal pursuant to clause 44 of the bill will be subject to the parties being able to seek and rely upon the common law rights that were expressly protected at government amendment No. 48.

Amendment No. 59: clause 48 empowers the tribunal to order the proceedings to be dismissed or struck out if the tribunal believes that a proceeding is frivolous or vexatious, is being used for an improper purpose or is otherwise an abuse of process. This amendment proposes to provide a further ground upon which a proceeding can be dismissed or struck out and that is if the proceedings involve a trivial matter or amount. This amendment achieves consistency with recent amendments made to the Residential Tenancies Tribunal proceedings under section 32 of the Residential Tenancies (Miscellaneous) Amendment Act 2013.

Amendment No. 60: clause 50(2) of the bill as drafted imposes a duty on the tribunal to require parties to attend a compulsory conference if required by the rules or a relevant act. Clause 50(3) is intended to allow the tribunal to dispense with that requirement whether it be found in the rules or in the relevant act. However, clause 4 of the bill provides that, in the event of an inconsistency between the relevant act and the bill, the relevant act prevails. As clause 50(3) of the bill is intended to allow the tribunal to override a duty imposed by a relevant act, it is necessary to include a provision clarifying the intention by excluding what would otherwise be the operation of clause 4 of the bill in relation to that duty.

Amendment No. 61: this amendment is necessary for efficiency and completeness. Clause 50(8) of the bill allows the tribunal to refer any question of law to a presidential member. It was submitted during consultation that clause 50 of the bill should also provide a mechanism that, in the event that a question of law is referred to a presidential member under clause 50(8) of the bill, the president should be able to refer the question to the Supreme Court in circumstances where the question of law is unable, for what ever reason, to be dealt with by the president.

Amendment No. 62: as stated in previous amendments, clause 50 of the bill empowers the tribunal to hold private compulsory conferences to identify and clarify issues and promote settlement of disputes. Whilst it may not be the case for all disciplinary proceedings before the tribunal to be referred to a conference or mediated pathway, based on the experience of other jurisdictions, particularly in WA, some are resolved by these means.

Accessing mediated pathways to resolve a disciplinary matter is understandable when one considers the onus on those bringing professional misconduct proceedings to take into account the principles of the model litigant rules that require consideration of options to avoid unnecessary litigation, costs, delays and the obvious benefit in resolving matters.

Where disciplinary proceedings are referred to a compulsory conference pursuant to clause 50 of the bill and are resolved, there are strong public policy reasons that the outcome of such proceedings be made public on the basis of being in the public interest. This amendment clarifies that the rules may prescribe a category of proceedings for which the outcome of conciliation is to be made public.

Amendment No. 63: clause 51 of the bill, as drafted, enables matters dealt with in a directions hearing or compulsory conference to be referred, with or without the parties' consent, for private mediation. For the same reasons explained at amendment No. 62, it is proposed to amend clause 51 to clarify that the rules may prescribe a category of mediation proceedings for which the outcome is to be made public.

Amendment No. 64: clause 52 of the bill allows the tribunal to make orders giving effect to parties' written agreements to settle proceedings where the tribunal would otherwise have power to make a decision in accordance with that settlement. This amendment provides an additional ground upon which the tribunal may reject a settlement pursuant to clause 52 of the bill and that is if the terms of the settlement are inappropriate.

Amendment No. 65: clause 56 of the bill deals with representations before the tribunal. It permits representation personally or by counsel or, by leave of the tribunal and subject to the rules, by other representative. Clause 56(2) permits a person appearing before the tribunal to be assisted by another person as a friend. There are three key aspects to this amendment, so I will begin firstly by explaining the background of the proposal to delete subclause (3). Clause 56(3) of the bill was intended to address any disadvantage where only one of the parties to a dispute is represented. In such circumstances, 56(3) states that a tribunal must adopt an inquisitorial approach.

It was submitted during consultation on the bill that this was not appropriate as it may give rise to technical appeals. Other submissions indicated that the tribunal should in all cases adopt an inquisitorial approach, not just in these circumstances and, as such, it was unnecessary to make special reference to this in the context of clause 58(3) of the bill. The government agrees with the comments made in relation to clause 56(3) during the consultation and proposes in this amendment that it be deleted.

With respect to the second aspect of this amendment, it is proposed to clarify the interplay between clause 56(1)(c) of the bill and the Legal Practitioners Act. Section 21(2)(e) of the Legal Practitioners Act prohibits an unqualified person from representing any party to proceedings in a court or tribunal. Section 21(3)(g) of the Legal Practitioners Act permits an unqualified person to represent a party in a court or tribunal for fee or reward 'if the person is authorised by or under the Act by which the court or tribunal is constituted, or any other Act, to do so'.

The concern raised during the consultation was that, despite clause 56(1)(c) not expressly authorising acting for fee or award, there is a substantial risk that potential lay advocates may not appreciate this. It was never the government's intention to permit unqualified or lay advocates to act on behalf of a party in the tribunal's proceedings for fee or reward. Accordingly, the government considers it necessary to clarify this with this amendment.

Finally, this amendment seeks to insert an exclusion preventing a person acting as a representative in proceedings before the tribunal if the person is a legal practitioner whose practising certificate has been suspended, or the person's name has been struck off the roll, or the person would be acting in any manner that is inconsistent with disciplinary proceedings that have been taken under the Legal Practitioners Act.

No. 66: this amendment corrects a drafting error in clause 57. No. 67: this amendment is to clause 58(1) of the bill which, as drafted, confirms the tribunal's power to make an order for the payment by a party at the cost of another party and includes the power to make an order for the payment of an amount to compensate the other party for any expenses, loss, inconvenience or embarrassment resulting from any proceedings in this matter. This amendment proposes to delete reference to 'inconvenience or embarrassment'.

This arises from comments received during the consultation on the bill that the scope of the concept of 'embarrassment or inconvenience' in this context is ambiguous and may attract unmeritorious applications that could give rise to significant expense and delay to defend and resolve cost matters in dispute. In short, there is a risk that an application for costs awarded on the basis of inconvenience or loss may of itself act as a disincentive to use the tribunal, thereby undermining the objectives that gave rise to it being created.

Clause 64 as drafted enables the tribunal to make binding declarations or rights whether or not any consequential relief is or could be claimed. For reasons outlined in my second reading reply, it has been necessary to remove the provisions of the bill that may be considered an exercise of judicial power to avoid the tribunal being characterised as a court. Clause 64 is one of the provisions that can be considered to be an exercise of judicial power and should be deleted on this basis.

No. 69: this amendment corrects a drafting error. No. 70: clause 69 of the bill as drafted permits a person who no longer holds office as a member of the tribunal to continue to act in the relevant office for the purpose of completing part-heard proceedings. There are practical reasons for including this measure in the bill; however, as drafted clause 69 of the bill can be interpreted to allow a former tribunal member who was removed from office due to dishonourable conduct being permitted to continue to act to complete a part-heard matter. This is clearly inappropriate and not the intention of clause 69. This amendment expressly excludes such a person.

No. 71: under clause 70 of the bill the Attorney may certify that disclosures of certain information because of specified reasons, including national security or damage to intergovernmental relations, would be contrary to the public interest. Further, clause 70 enables the

President to order that the disclosure of such information is not contrary to the public interest. Clause 71 of the bill provides that the tribunal ensures that protected matter provided to it is not disclosed in any way other than to a sitting member of the tribunal. This amendment is consequential to government amendment No. 48 and proposes that both clauses 70 and 71 of the bill be deleted.

Government amendment No. 48 amended the bill to confirm beyond doubt that nothing in this bill will affect any existing common law rule or principle regarding privilege. A separate scheme to address public interest immunity as was proposed in clauses 70 and 71 is now redundant and should be deleted.

No. 72: this amendment is consequential on amendments Nos 48 and 58. No. 73: this amendment is connected to the government's amendment No. 39 and proposes to substitute the term 'review' where the tribunal is reviewing its own decisions in favour of 'internal review'. It was submitted during consultation that the term 'review', as we have already heard, was confusing.

No. 74: clause 74 of the bill makes provision relating to review or appeal against decisions of the tribunal for the same reasons outlined at government amendment No. 34. This is a technical amendment to delete the reference in clause 74(1) of the bill to the phrase 'and to any provision of a relevant act as to the review or appeal against a decision of the tribunal'. Clause 4 of the bill already confirms that, if there is an inconsistency between this and the act, the relevant act prevails to the extent of the inconsistency. Accordingly, given the clarification in clause 4 of the bill, it is unnecessary to replicate this at clause 74(1).

No. 75 is a technical amendment to clarify beyond doubt that, in cases where the tribunal exercises discretion to dispense with the requirement that an application for review must be instituted within one month of the making of the decision to which the application relates, this discretion can be exercised even if the time for instituting the application has expired.

No. 76: this amendment is connected to government amendment No. 41 and for consistency applies the same requirement upon the tribunal when undertaking an internal review of an original decision made by the tribunal. As I explained at government amendment No. 41, during consultation it was submitted that a review by way of re-hearing may inadvertently fail to cure defects and original decisions, and I think we have already canvassed that topic.

No. 77: this amendment relates only to when the tribunal is exercising its internal review jurisdictions. Specifically, this amendment clarifies that orders can be made on an interim basis pending the reconsideration or determination of the matter, for example, to stay the operation of the decision under review.

No. 78: clauses 74(3) and 74(5) provide a prescriptive method by which review panels are to be appointed for the purpose of undertaking an internal review of the original decision. During consultation, those submissions that considered this clause thought it to be unduly prescriptive and considered it preferable for clause 74 to provide that the president may constitute review panels as he or she sees fit. This amendment achieves this purpose. I note for the sake of completeness that this amendment is also necessary to ensure consistency with government amendment No. 35, which deleted the prescriptive method by which tribunal panels were reported for the purpose of undertaking reviews of external decisions.

No. 79: this amendment is consequential to amendment No. 2, which amends the definition of 'decision' for the purposes of the bill to include order. No. 80: under clause 75 of the bill, appeals from decisions of the tribunal are aligned to the Supreme Court. As was the case with government amendment No. 75, this is a technical amendment to clarify beyond doubt that, in cases where the Supreme Court exercises discretion to dispense with the requirement, then an appeal must be instituted within one month of making the decision to which the appeal relates, and that this discretion can be exercised by the Supreme Court even if the time for instituting the appeal has expired.

No. 81: this amendment seeks to insert the word 'interim' to subclause (5). By doing so, this will allow the ability, for example, for the tribunal to vary decisions made by the tribunal. No. 82: this is a consequential amendment to amendment No. 2 which amends the definition of 'decision'. No. 83: clause 77 of the bill enables the Supreme Court or the tribunal to stay the operation of the tribunal decision while the Supreme Court decides whether to grant leave to appeal and, if so, while it decides the appeal. This is a consequential amendment to government amendment No 84 but it is necessary to explain in this amendment why it is required.

It was submitted during consultation that relevant decisions should be defined for the purposes of this clause to include both the decision of the tribunal under review and any original decision, whether of the tribunal or the decision maker, that was the subject of review by the tribunal. It was submitted that a failure to do so may have the practical effect of preventing the original decision operating, according to its own terms, while the appeal from the tribunal's review decision was still being heard by the Supreme Court. This amendment addresses this concern.

No. 84: as I have explained in government amendment No. 83, it was submitted during consultation that relevant decisions should be defined for the purposes of the clause to include both the decision of the tribunal under review and any original decision.

No. 85: clause 84 of the bill is drafted to provide that members of the tribunal or members of the staff of the tribunal will be protected from liability in tort or anything done in performance or purported performance of a function under this act or a relevant act. This amendment ensures the same protection from liability extends to other persons who are not members of the tribunal but designated officers of the tribunal. This would include, for example, an expert who provided a report to the tribunal pursuant to clause 42 of the bill.

No. 86: this amendment corrects a drafting error to ensure provision covers both types of review undertaken by the tribunal of external decisions, and an internal review of its own original decisions. Amendment No. 87: this amendment corrects a drafting error.

Amendment No. 88: clause 93 of the bill as drafted enables a person seeking to enforce a decision or order of the tribunal to file an order or decision in the appropriate court, and that decision is to be deemed to be a decision of the appropriate court and so be enforced. For reasons already explained in other amendments, the consultation on the bill raised a number of issues about this and the exercise of judicial power. It is instead proposed in this amendment to include a mechanism with respect to monetary orders of the tribunal being made enforceable as a debt in a court of competent jurisdiction. For orders that do not involve a monetary amount, a person who contravenes or fails to comply with the order of the tribunal will be liable to be prosecuted for an offence created under clause 93(3) of the bill.

The significance of these amendments has the effect of requiring a court to exercise its own judicial power in ordinary court proceedings before the orders of the tribunal would become enforceable—very important. It would be the order of the court and not the tribunal that would be enforceable. Clause 93 of the bill as amended could not be seen as exercising judicial power. I am actually quite excited by that; I think that is a very clever piece of drafting. Congratulations to whoever thought that one up; that is very good—very smooth.

Amendment No. 89: this amendment is connected to government amendment No. 88 and proposes to increase the maximum penalty that applies for noncompliance of an order to the tribunal, pursuant to clause 93 of the bill. It has been necessary to increase the maximum penalty as this offence serves as the single mechanism to ensure compliance with tribunal orders that do not involve monetary amounts.

Amendment No. 90: this amendment applies to clause 94 of the bill, which outlines the procedure that will apply when a member of the public applies to inspect or obtain documentary material held by the tribunal. Clause 94 as currently drafted replicates similar provisions in other statutes, for example, section 51 of the Magistrates Court Act. Concerns were raised during consultation that, due to the diversity of the subject matter to be dealt with by the tribunal, it would be unlikely that the stated exemptions in subclause (2), which require tribunal permission for disclosure, will cover every potential circumstance in which information should be withheld, for example, medical records or the names of mandated officers.

This amendment will have the practical effect of the tribunal having to exercise its discretion in receipt of all applications, pursuant to clause 94. Should any confidential material be identified, this can either be withheld in isolation from release or the application refused. This will create a final safeguard to ensure that no confidential material arising from a tribunal proceeding is publicly released. This is necessary as the tribunal is not a court and, on this basis, can be distinguished from section 51 of the Magistrates Court Act.

I note for the sake of completeness that clause 60 of the bill provides a mechanism that sets out that a tribunal proceedings may be held in private. Clause 60 of the bill also empowers the tribunal to give directions prohibiting or restricting the publication of names, evidence of documents produced where it is appropriate to do so. It is submitted, however, that the protection for confidential material, under clause 60 of the bill, operates only when proceedings are currently

underway and not beyond finalisation when many requests to inspect or copy proceedings are made.

Amendment No. 91: this amendment is consequential to amendment No. 90.

Amendment No. 92: in clause 95 of the bill as drafted, the president of the tribunal may deal with any act or omission that would constitute contempt of court if the proceedings were before the Supreme Court. For reasons already explained in other amendments, consultation on the bill raised a number of concerns that there were provisions of the bill which made the tribunal basically look like a court. The weight of submissions received during the consultation indicated that it would be preferable if the bill did not provide for the exercise of judicial power by the tribunal, and consequently it is proposed in this amendment to delete clause 95.

Amendment No. 93: this is an amendment to clause 75. This amendment provides a mechanism whereby costs for appeals to the Supreme Court against decisions of the tribunal, as provided for in clause 75, could be capped by prescribing cost scales for such appeals in regulations under the bill. The government's objective in establishing the SACAT is to provide easy access to an easy to use dispute resolution forum, not for it to be used as a stepping stone to get into the court system to challenge administrative decisions. Obviously, having a handle on costs is an important thing.

I realise that is a slightly longer speech than I normally give, and it is certainly less pleasant, from my point of view, than most, too. But, that said, I hope I have fully explained all of the amendments we are putting in. Can I take this opportunity to thank all of the officers who have worked on this and my staff who have worked on this. As you can see from the amount of amendments that we have got here, to get from where we were before the winter break to where we are today, where we have got this comprehensive consultation process that has occurred and been not only considered but acted upon in terms of amendments, is fantastic. So, can I say to all of you who have been working on this, thank you very much.

Parliamentary counsel, as usual, have stepped up to the plate and done a great job, so to parliamentary counsel, thank you. This has been no easy exercise from anybody's point of view. It has been a lot of work. I know policy and legislation people, parliamentary counsel and my office have been working very hard, so I really do want to thank all of those people for the tremendous work they have put in. It is a worthwhile project. I know it has been hard work, I know you have spent a lot of time on it, but I think it is ultimately something that you will be pleased to have been associated with.

Bill read a second time.

In committee.

The Hon. J.R. RAU: The honourable member for Bragg and I simply wish that I move all of the amendments which stand in my name in one go. We want to insert the whole lot, just like that.

The CHAIR: The advice I have received is that you cannot do it the way you are wishing to do it. You have got to do it clause by clause.

The Hon. J.R. RAU: Okay.

The CHAIR: It will not take as long as you expect because these are blocked together.

Clauses 1 and 2 passed.

Clause 3.

The Hon. J.R. RAU: I move:

Amendment No 1 [AG–1]—

Page 6, line 3—After 'unless' insert 'and to the extent that'

Amendment No 2 [AG–1]—

Page 6, line 6—Delete 'or determination' and substitute ', determination or order'

Amendment No 3 [AG–1]—

Page 6, line 6—After 'Tribunal' insert:

but, in prescribed circumstances, does not include an interlocutory direction, determination or order

Amendment No 4 [AG–1]—

Page 6, line 12—Delete 'means' and substitute 'includes'

Amendment No 5 [AG–1]—

Page 6, line 13—After 'includes any' insert 'other'

Amendment No 6 [AG–1]—

Page 6, lines 16 and 17—Delete definition of *exempt document*

Amendment No 7 [AG–1]—

Page 6, lines 34 to 38—Delete definition of *protected matter*

Amendment No 8 [AG–1]—

Page 7, after line 20—Insert:

and

(a) other persons who are designated as officers of the Tribunal under this Act.

Amendments carried; clause as amended passed.

Clauses 4 to 7 passed.

Clause 8.

The Hon. J.R. RAU: I move:

Amendment No 9 [AG–1]—

Page 8, lines 5 and 6—

Delete 'in the field of administrative law, to promote the best principles of administrative law' and substitute:

, to promote the best principles of public administration

Amendment No 10 [AG–1]—

Page 8, lines 20 to 22—Delete paragraph (e) and substitute:

(e) to use straightforward language and procedures (including, insofar as is reasonably practicable and appropriate, by using simple and standardised forms); and

Amendment No 11 [AG–1]—

Page 8, line 26—After 'case' insert 'or a particular jurisdiction'

Amendments carried; clause as amended passed.

Clause 9 passed.

Clause 10.

The Hon. J.R. RAU: I move:

Amendment No 12 [AG–1]—

Page 9, line 5—Delete 'assigned' and substitute 'appointed'

Amendment No 13 [AG–1]—

Page 9, after line 17—Insert:

(3a) The appointment of a judge as the President of the Tribunal will be for a term of 5 years (and the person is eligible for reappointment at the expiration of a term of office).

Amendment No 14 [AG–1]—

Page 9, line 18—Delete 'assignment' and substitute 'appointment'

Amendment No 15 [AG–1]—

Page 9, after line 24—Insert:

(5a) Any salary or allowances payable as an additional component of remuneration under subsection (5) cannot be reduced during the person's term of office as President.

Amendment No 16 [AG–1]—

Page 9, line 27—After 'the person' insert:

, acting with the agreement of the Chief Justice or the Chief Judge (as the case requires),

Amendment No 17 [AG–1]—

Page 9, lines 28 and 29—Delete paragraph (c) and substitute:

(c) the person completes a term of office and is not reappointed; or

(d) the appointment is revoked by the Governor, on the recommendation of the Attorney-General, for—

(i) mental or physical incapacity to carry out duties satisfactorily; or

(ii) neglect of duty; or

(iii) dishonourable conduct; or

(e) the person dies.

Amendment No 18 [AG–1]—

Page 9, after line 29—Insert:

(6a) Nothing under subsection (6)(b), (c) or (d) affects the person's tenure or status as a judge.

Amendments carried; clause as amended passed.

Clauses 11 to 13 passed.

Clause 14.

The Hon. J.R. RAU: I move:

Amendment No 19 [AG–1]—

Page 11, line 11—Delete 'assigned' and substitute 'appointed'

Amendment No 20 [AG–1]—

Page 11, after line 24—Insert:

(3a) The appointment of a judge as a Deputy President of the Tribunal will be for a period of 5 years (and the person is eligible for reappointment at the expiration of a term of office).

Amendment No 21 [AG–1]—

Page 11, line 25—Delete 'assignment' and substitute 'appointment'

Amendment No 22 [AG–1]—

Page 11, line 27—Delete 'assignment' and substitute 'appointment'

Amendment No 23 [AG–1]—

Page 11, after line 31—Insert:

(5a) Any salary or allowances payable as an additional component of remuneration under subsection (5) cannot be reduced during the person's term of office as a Deputy President of the Tribunal.

Amendment No 24 [AG–1]—

Page 12, after line 5—Insert:

(8a) The remuneration of a Deputy President of the Tribunal appointed under subsection (1)(b) (including any salary or allowances) cannot be reduced during the person's term of office as a Deputy President of the Tribunal (unless the reduction is related to a reduction in the person's hours of service over a particular period under an agreement entered into under subsection (6)(b)).

Amendment No 25 [AG–1]—

Page 12, lines 7 to 19—Delete paragraphs (a), (b) and (c) and substitute:

(a) in the case of an appointment under subsection (1)(a)—the person ceases to be a judge of the District Court; or

(b) the person resigns as Deputy President by written notice to the Attorney-General; or

(c) the person completes a term of office and is not reappointed; or

(d) the appointment is revoked by the Governor, on the recommendation of the Attorney-General, for—

(i) mental or physical incapacity to carry out duties satisfactorily; or

(ii) neglect of duty; or

(iii) dishonourable conduct; or

(e) the person dies.

Amendment No 26 [AG–1]—

Page 12, after line 19—Insert:

(9a) Nothing in subsection (9)(b), (c) or (d) affects a person's tenure or status as a judge (in the case of an appointment under subsection (1)(a)).

(9b) A judge of the District Court may only act under subsection (9)(b) with the agreement of the Chief Judge.

Amendment No 27 [AG–1]—

Page 12, line 21—Delete '(b)(ii)' and substitute '(d)'

Amendments carried; clause as amended passed.

Clauses 15 to 18 passed.

Clause 19.

The Hon. J.R. RAU: I move:

Amendment No 28 [AG–1]—

Page 15, line 17—Delete 'must from time to time appoint a panel of persons who will' and substitute:

may from time to time appoint a panel of persons who will, at the request of the Minister

Amendment No 29 [AG–1]—

Page 15, line 19—Delete 'and' (appearing after paragraph (a))

Amendment No 30 [AG–1]—

Page 15, lines 23 to 25—Delete subclause (3)

Amendment No 31 [AG–1]—

Page 15, line 36—Delete 'the' and substitute 'any'

Amendment No 32 [AG–1]—

Page 15, line 37—Delete 'the' and substitute 'any'

Amendments carried; clause as amended passed.

Clauses 20 and 21 passed.

Clause 22.

The Hon. J.R. RAU: I move:

Amendment No 33 [AG–1]—

Page 18, line 5—Delete 'a' and substitute 'the'

Amendment carried; clause as amended passed.

Clause 23.

The Hon. J.R. RAU: I move:

Amendment No 34 [AG–1]—

Page 18, lines 35 and 36—Delete '(unless a relevant Act provides otherwise)'

Amendment No 35 [AG–1]—

Page 19, lines 1 to 14—Delete subclause (3)

Amendments carried; clause as amended passed.

Clauses 24 and 25 passed.

Clause 26.

The Hon. J.R. RAU: I move:

Amendment No 36 [AG–1]—

Page 20, lines 28 to 37 and page 21, lines 1 to 15—

Delete subclauses (1) to (8) and substitute:

(1) The member of the Tribunal constituting the Tribunal or, if the Tribunal is constituted by 2 or more members, the presiding member, may refer a question of law to a Presidential member of the Tribunal.

Amendment No 37 [AG–1]—

Page 21, line 16—Delete 'this subsection applies to a question of law' and substitute 'a question of law is referred under this section'

Amendments carried; clause as amended passed.

Clauses 27 to 29 passed.

Clause 30.

The Hon. J.R. RAU: I move:

Amendment No 38 [AG–1]—

Page 22, after line 18—Insert:

or

(c) to the person (being either a member of the Tribunal or a member of the staff of the Tribunal) for the time being performing particular duties or holding or acting in a particular position.

Amendment carried; clause as amended passed.

Clause 31 passed.

Clause 32.

The Hon. J.R. RAU: I move:

Amendment No 39 [AG–1]—

Page 23, line 1—Delete 'jurisdiction that is exercised under Part 5' and substitute 'internal review jurisdiction that is exercised under Part 5 Division 1'

Amendment carried; clause as amended passed.

Clause 33 passed.

Clause 34.

The Hon. J.R. RAU: I move:

Amendment No 40 [AG–1]—

Page 23, line 23—Delete 'subsection' and substitute 'subsections (3a),'

Amendment No 41 [AG–1]—

Page 23, after line 24—Insert:

(3a) On a rehearing, the Tribunal must reach the correct or preferable decision but in doing so must have regard to, and give appropriate weight to, the decision of the original decision-maker.

Amendment No 42 [AG–1]—

Page 23, line 25—Delete 'A' and substitute 'A procedure on a'

Amendments carried; clause as amended passed.

Clause 35 passed.

Clause 36.

The Hon. J.R. RAU: I move:

Amendment No 43 [AG–1]—

Page 24, line 34—After 'determination of the matter' insert:

, or until such time (whether before or after the determination of the matter) as the Tribunal or the decision-maker may specify,

Amendment carried; clause as amended passed.

Clause 37.

The Hon. J.R. RAU: I move:

Amendment No 44 [AG–1]—

Page 25, line 10—After 'including' insert:

any interim order pending the reconsideration and determination of the matter by the decision-maker, or

Amendment No 45 [AG–1]—

Page 25, line 11—Delete 'order' and substitute 'order,'

Amendments carried; clause as amended passed.

Clause 38.

The Hon. J.R. RAU: I move:

Amendment No 46 [AG–1]—

Page 25, after line 37—Insert:

(4) The Tribunal may specify a period within which the decision-maker should act under this section (and if the decision-maker does not take action within that period then the Tribunal may resume its proceedings under this Division in such manner as it thinks fit).

Amendment carried; clause as amended passed.

Clause 39.

The Hon. J.R. RAU: I move:

Amendment No 47 [AG–1]—

Page 26, line 5—Delete '(other than contempt proceedings)'

Amendment No 48 [AG–1]—

Page 26, lines 13 to 16—Delete subclause (2) and substitute:

(2) Nothing in this Act affects any rule or principle of law relating to—

(a) legal professional privilege; or

(b) 'without prejudice' privilege; or

(c) public interest immunity.

(3) This section does not limit the operation of section 73.

Amendments carried; clause as amended passed.

Clause 40.

The Hon. J.R. RAU: I move:

Amendment No 49 [AG–1]—

Page 27, line 3—After 'fails' insert 'without reasonable excuse'

Amendment No 50 [AG–1]—

Page 27, line 4—After 'fails' insert 'without reasonable excuse'

Amendment No 51 [AG–1]—

Page 27, line 5—After 'fails' insert 'without reasonable excuse'

Amendment No 52 [AG–1]—

Page 27, line 12—Delete '$10,000 or imprisonment for 6 months' and substitute '$25,000 or imprisonment for 1 year.'

Amendment No 53 [AG–1]—

Page 27, lines 13 to 27—Delete subclauses (5), (6) and (7)

Amendment No 54 [AG–1]—

Page 27, line 33—Delete subclause (9)

Amendments carried; clause as amended passed.

Clause 41 passed.

Clause 42.

The Hon. J.R. RAU: I move:

Amendment No 55 [AG–1]—

Page 28, line 14—Delete 'The rejection of a report' and substitute 'Any action taken'

Amendment carried; clause as amended passed.

Clause 43.

The Hon. J.R. RAU: I move:

Amendment No 56 [AG–1]—

Page 28, lines 29 and 30—Delete subparagraphs (i) and (ii):

Amendment No 57 [AG–1]—

Page 29, line 5—Delete ' and place' and substitute 'and to any place'

Amendments carried; clause as amended passed.

Clause 44.

The Hon. J.R. RAU: I move:

Amendment No 58 [AG–1]—

Page 29, lines 17 and 18—Delete all words in these lines after 'another party' in line 17

Amendment carried; clause as amended passed.

Clauses 45 to 47 passed.

Clause 48.

The Hon. J.R. RAU: I move:

Amendment No 59 [AG–1]—

Page 30, line 12—After 'in substance' insert 'or involves a trivial matter or amount'

Amendment carried; clause as amended passed.

Clause 49 passed.

Clause 50.

The Hon. J.R. RAU: I move:

Amendment No 60 [AG–1]—

Page 31, line 14—After 'subsection (2)' insert '(and section 4)'

Amendment No 61 [AG–1]—

Page 32, after line 7—Insert:

(8a) If a question of law is referred to a Presidential member of the Tribunal under subsection (8)(a), the Presidential member may refer the question to the Supreme Court for decision by the Full Court of the Supreme Court.

Amendment No 62 [AG–1]—

Page 32, after line 26—Insert:

(14) The rules may set out circumstances where the outcome of any proceedings under this section (including details of a settlement) are to be available to members of the public.

Amendments carried; clause as amended passed.

Clause 51.

The Hon. J.R. RAU: I move:

Amendment No 63 [AG–1]—

Page 33, after line 18—Insert:

(13) The rules may set out circumstances where the outcome of any proceedings under this section (including details of a settlement) are to be available to members of the public.

Amendment carried; clause as amended passed.

Clause 52.

The Hon. J.R. RAU: I move:

Amendment No 64 [AG–1]—

Page 33, line 28—After 'matter' insert 'or that the terms of the settlement are inappropriate'

Amendment carried; clause as amended passed.

Clauses 53 to 55 passed.

Clause 56.

The Hon. J.R. RAU: I move:

Amendment No 65 [AG–1]—

Page 34, lines 32 to 34—Delete subclause (3) and substitute:

(3) Nothing in this section authorises a person who is not a legal practitioner to act for fee or reward in relation to proceedings before the Tribunal.

(4) A person may not act as a representative in proceedings before the Tribunal if—

(a) the person is a legal practitioner whose practising certificate has been suspended; or

(b) the person's name has been struck off the roll of legal practitioners; or

(c) the person would be acting in any other manner that is inconsistent with disciplinary proceedings that have been taken under the *Legal Practitioners Act 1981*.

Amendment carried; clause as amended passed.

Clause 57.

The Hon. J.R. RAU: I move:

Amendment No 66 [AG–1]—

Page 35, line 22—Delete 'order of' and substitute 'order for'

Amendment carried; clause as amended passed.

Clause 58.

The Hon. J.R. RAU: I move:

Amendment No 67 [AG–1]—

Page 35, line 27—Delete ', loss, inconvenience or embarrassment' and substitute 'or loss'

Amendment carried; clause as amended passed.

Clauses 59 to 63 passed.

Clause 64 negatived.

Clauses 65 to 67 passed.

Clause 68.

The Hon. J.R. RAU: I move:

Amendment No 69 [AG–1]—

Page 39, line 3—Delete 'have been' and substitute 'had been'

Amendment carried; clause as amended passed.

Clause 69.

The Hon. J.R. RAU: I move:

Amendment No 70 [AG–1]—

Page 39, line 6—After 'Tribunal' insert:

(other than on account of having his or her appointment revoked or being removed from office)

Amendment carried; clause as amended passed.

Clauses 70 and 71 negatived.

Clause 72 passed.

Clause 73.

The Hon. J.R. RAU: I move:

Amendment No 72 [AG–1]—

Page 41, line 2—Delete 'or a direction under section 44(4)'

Amendment No 73 [AG–1]—

Page 41, line 10—Delete 'Reviews' and substitute 'Internal reviews'

Amendments carried; clause as amended passed.

Clause 74.

The Hon. J.R. RAU: I move:

Amendment No 74 [AG–1]—

Page 41, lines 12 and 13—Delete 'and to any provision of a relevant Act as to the review of, or appeal against, a decision of the Tribunal'

Amendment No 75 [AG–1]—

Page 41, line 18—After 'that period' insert '(even if the time for instituting the application has expired)'

Amendment No 76 [AG–1]—

Page 42, after line 3—Insert:

(6a) The Tribunal must, in acting under this section, reach the correct or preferable decision but in so doing must have regard to, and give appropriate weight to, the decision of the Tribunal at first instance.

Amendment No 77 [AG–1]—

Page 42, line 13—After 'make' insert:

any interim order pending any review, or any reconsideration and determination of the matter, under this section, or

Amendment No 78 [AG–1]—

Page 41, lines 19 to 39—Delete subclauses (3), (4) and (5) and substitute:

(3) The President may determine, in relation to a particular matter, or particular class of matters, how the Tribunal will be constituted for the purposes of this section.

Amendment No 79 [AG–1]—

Page 42, line 17—Delete the definition of *decision*

Amendments carried; clause as amended passed.

Clause 75.

Amendment No 80 [AG–1]—

Page 42, line 34—After 'that period' insert '(even if the time for instituting the appeal has expired)'

Amendment No 81 [AG–1]—

Page 43, line 5—After 'any' insert 'interim,'

Amendment No 82 [AG–1]—

Page 43, lines 7 and 8—Delete subclause (6)

Amendment No 1 [AG–2]—

Page 43, after line 7—Insert:

(5a) The regulations may prescribe scales of costs that are payable in respect of proceedings before the Supreme Court on an appeal under this section (and if a

regulation is made under this section then the costs so prescribed will apply in substitution for any costs under the *Supreme Court Act 1935*).

Amendments carried; clause as amended passed.

Clause 76 passed.

Clause 77.

The Hon. J.R. RAU: I move:

Amendment No 83 [AG–1]—

Page 43, lines 18 and 19—Delete 'the decision' and substitute 'a decision'

Amendment No 84 [AG–1]—

Page 43, line 22—Delete 'the relevant decision' and substitute 'a relevant decision (including a decision of a relevant decision-maker)'

Amendments carried; clause as amended passed.

Clauses 78 to 83 passed.

Clause 84.

The Hon. J.R. RAU: I move:

Amendment No 85 [AG–1]—

Page 46, line 4—After 'staff' insert 'or an officer'

Amendment carried; clause as amended passed.

Clauses 85 and 86 passed.

Clause 87.

The Hon. J.R. RAU: I move:

Amendment No 86 [AG–1]—

Page 46, lines 31 and 32—Delete 'the requirement' and substitute 'a requirement'

Amendment carried; clause as amended passed.

Clause 88 passed.

Clause 89.

The Hon. J.R. RAU: I move:

Amendment No 87 [AG–1]—

Page 47, line 27—After 'section 34' insert 'or 74'

Amendment carried; clause as amended passed.

Clauses 90 to 92 passed.

Clause 93.

The Hon. J.R. RAU: I move:

Amendment No 88 [AG–1]—

Page 48, lines 25 to 34—Delete subclauses (1) and (2) and substitute:

(1) If the Tribunal makes a monetary order, the amount specified in the order may be recovered in the appropriate court, by a person recognised by the regulations for the purposes of this subsection, as if it were a debt.

Amendment No 89 [AG–1]—

Page 48, line 37—Delete '$10,000' and substitute '$50,000 or imprisonment for 2 years.'

Amendments carried; clause as amended passed.

Clause 94.

The Hon. J.R. RAU: I move:

Amendment No 90 [AG–1]—

Page 49, line 9—Delete 'must' and substitute 'may'

Amendment No 91 [AG–1]—

Page 49, line 26—After 'subsection' insert '(1) or'

Amendments carried; clause as amended passed.

Clause 95 negatived.

Clauses 96 to 101 passed.

Ms CHAPMAN: I just indicate that there was a second amendment—clause 75.

The CHAIR: We did that on clause 75.

Ms CHAPMAN: It was there and the second matter is on page 12 of the amendments, I think you dealt with amendment 72 and 73 together as they were an amendment of clause 73 and the amendment 73 is actually a deletion of a heading after clause 73. Just so it is all clear, I think we have to separately move amendment 73. It is not an amendment to clause 73.

The CHAIR: I am advised that it falls between 73 and 74.

Ms CHAPMAN: So what do we do with it?

The CHAIR: We moved it as an amendment.

Ms CHAPMAN: As long as that is okay.

The CHAIR: Yes.

Ms CHAPMAN: Thank you.

Title passed.

Bill reported with amendment.

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Planning, Minister for Industrial Relations, Minister for Business Services and Consumers) (17:58): I move:

That this bill be now read a third time.

Bill read a third time and passed.

STATUTES AMENDMENT (SMART METERS) BILL

The Hon. A. KOUTSANTONIS (West Torrens—Minister for Transport and Infrastructure, Minister for Mineral Resources and Energy, Minister for Housing and Urban Development) (17:58): Obtained leave and introduced a bill for an act to amend the National Electricity (South Australia) Act 1996 and the National Energy Retail Law (South Australia) Act 2011. Read a first time.

The Hon. A. KOUTSANTONIS (West Torrens—Minister for Transport and Infrastructure, Minister for Mineral Resources and Energy, Minister for Housing and Urban Development) (17:58): I move:

That this bill be now read a second time.

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

Leave granted.

The Government is amending the national energy legislation to provide for the implementation of smart meter consumer protections and to remove the power for a Minister to issue a Ministerial smart meter roll-out determination.

Smart meters enable a customer's electricity consumption to be recorded at half hourly intervals. Customers can access that information via various methods, including through a web portal or an in home display. Interval electricity consumption data will enable small customers to better manage their electricity consumption and to select an electricity tariff that best meets their individual needs.

The Statutes Amendment (Smart Meters) Bill 2013 makes amendments to the National Energy Retail Law in the Schedule to the *National Energy Retail Law (South Australia) Act 2011* and the National Electricity Law in the Schedule to the *National Electricity Law (South Australia) Act 1996*.

The Bill will empower jurisdictions to stipulate retail tariff structures that must be included in a retailer's standing offer for small customers that have an interval meter or smart meter.

If a Rule on the prescription of tariff structures to apply to a retailer's standing offer is in the future included in the National Energy Retail Rules, jurisdictions will be able to opt-in to this Rule being applied in their jurisdiction.

For small customers that use an interval meter or smart meter, it is imperative that there is a robust and comprehensive consumer protections framework in place.

Consumer protections will be provided by new Rules to be included in the National Energy Retail Rules. This Bill provides that the South Australian Minister may make initial Rules in relation to the use of interval meters and smart meters and other related technologies. The initial Rules process is being used to ensure that consumer protections are in place in early 2014.

The Bill will provide that once initial Rules have been made by the South Australian Minister on the subjects provided for in the Bill, the Minister will have no power to make any further Rules under this power.

Noting that Victoria has been the only jurisdiction to mandate a smart meter roll-out, jurisdictions have now agreed that any future roll-out of smart meters should proceed on a market driven, competitive basis. Accordingly, the Bill removes the ability of the Minister of a participating jurisdiction to issue a Ministerial smart meter roll-out determination, which would mandate a broad-scale roll-out.

It is important to note that removal of this power in no way seeks to change or inhibit Victoria from finalising the roll-out of smart meters in their jurisdiction.

This Bill will also not impact the ability of a Minister of a participating jurisdiction to make a determination that requires a distribution system operator to conduct a smart meter trial or assessment.

An Exposure Draft of the Bill has been provided for industry and public consultation prior to its introduction here and the minor matters of clarification sought by stakeholders have been incorporated into the Bill.

Smart meters have already been rolled-out widely in Victoria, and stakeholders are preparing for the market driven commercial roll-out of smart meters in other jurisdictions. It is important to therefore implement smart meter consumer protections and remove the option for a Minister to issue a Ministerial smart meter roll-out determination as soon as possible.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

The measure will be brought into operation by proclamation.

3—Amendment provisions

This clause is formal.

Part 2—Amendment of *National Electricity Law*

4—Amendment of section 2—Definitions

The National Electricity Law is to no longer provide for Ministerial smart meter rollout determinations. References to such determinations must therefore be removed from terms that are defined for the purposes of the national law.

5—Amendment of section 118A—Definitions

The definitions relevant to Ministerial smart meter rollout determinations are to be struck out.

6—Repeal of Part 8A Division 3

The provisions that allow a Minister to make a determination about the provision of smart meter services by a regulated distribution system operator for electricity are to be repealed.

Part 3—Amendment of *National Energy Retail Law*

7—Amendment of section 22—Obligation to make offer to small customers

This clause will provide for particular tariff structures to be part of a retailer's standing offer for small customers who have an interval meter. However, this requirement will only apply in relation to a jurisdiction if a local instrument of the jurisdiction so provides.

8—Amendment of section 237—Subject matter of Rules

It will be necessary and appropriate for the Rules to make provision with respect to the use of interval meters and other technologies, including devices that enable direct load control.

9—Insertion of section 238A

The South Australian Minister will be empowered to make the initial Rules that are to apply under section 237(2)(ia) of the national law.

Debate adjourned on motion of Mr Gardner.

At 18:00 the house adjourned until Thursday 12 September 2013 at 10:30.