LEGISLATIVE COUNCIL

Thursday 24 June 2010

The PRESIDENT (Hon. R.K. Sneath) took the chair at 11:03 and read prayers.

STANDING ORDERS SUSPENSION

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management) (11:03): I move:

That standing orders be so far suspended as to enable petitions, the tabling of papers and question time to be taken into consideration at 2.15pm.

Motion carried.

PAYROLL TAX (NEXUS) AMENDMENT BILL

In committee.

(Continued from 23 June 2010.)

Clause 1.

The Hon. R.I. LUCAS: I thank the minister for the reply to the questions that were provided on his behalf last evening in response to the second reading. That answers a significant number of the questions I had, so that will shorten the committee stage.

I make only one brief comment about the advisory group called the State Taxes Liaison Group, which was formerly the Accountants and Solicitors Consulting Group, the name of which escaped me during my second reading contribution. The minister notes that that body was not consulted on this particular occasion, and the government has given the reason, that is, there had been a national agreement.

In my view, that group, over many years under both Labor and Liberal governments, has provided sound advice to treasurers and Treasury officers in relation to tax legislation and, on a number of occasions, has managed to pick up loopholes, problems or concerns that the industry might have and, through that process, has assisted in the proper drafting of legislation.

It is my view—which I will just place on the record—that, even in circumstances where there has been a national discussion of officers, it does not always mean, with the greatest respect to officers in other jurisdictions, that they are also the font of all wisdom and will always be 100 per cent accurate.

As tax law nationally in other states would demonstrate quite well, there are always loopholes and problems, no matter which jurisdiction it happens to exist in, because there are clever lawyers and accountants. To get advice in a confidential manner—which has been the normal process—I think is sound policy, even in the circumstances that confronted the government on this occasion and will potentially confront the government in future.

Payroll tax harmonisation and stamp duty harmonisation have been debated for many years, probably decades, and will continue to be debated. We will continue to have examples where officers from all jurisdictions get together to agree on what needs to be done. I think some process ought to be developed in the future which would allow some continuing role for that advisory group, given the confidential advice it has provided in the past. Those are the only comments I make on clause 1.

The Hon. P. HOLLOWAY: The government accepts that the State Taxes Liaison Group performs an important function in any matters relating to changes to tax law. The group would normally be consulted, and its input is valued. The members of that group, of course, strongly support a harmonised approach across Australia, as do all industry bodies.

While I accept that not all wisdom might rely on one particular state, I guess the problem is that, if we are to have harmonised legislation—and it is important that we do for the example that was set out last night—we have to have a solution that is consistent across all states. Ultimately, that has to be the outcome.

If you are to avoid the sorts of situations that were set out in the example last night, where you have national companies operating across borders, then you need a harmonised approach. Sometimes, that will mean that some jurisdictions will have to agree to legislation that might not, in other circumstances, be agreed to.

Harmonisation is a very important principle and, as the example given last night illustrates, there are often significant consequences if you do not have harmonisation. That is really the dilemma that the government faces. As was pointed out last night, the government would normally consult with the State Taxes Liaison Group in matters of taxation changes, particularly if they were peculiar to this state. I suppose that, if one were to go through a new process of harmonisation, at some point there would be consultation about that but, presumably, the sort of people who would be represented on this tax liaison group would be involved in those discussions with their colleagues across the country anyway. I think that is the outcome that you nearly always get; there is agreement on harmonisation by the industry bodies even though there might be some differences as to how they harmonise. Generally, the feeling is that harmonisation in itself is so important that you have to agree to some common denominator rather than oppose harmonisation per se just because you have minor differences.

Clause passed.

Clauses 2 to 4 passed.

Clause 5.

The Hon. R.I. LUCAS: I would like to clarify the practical impact of this particular clause. It has been teased out through the debate in the House of Assembly and also in the second reading here, but I would like to clarify it. In the set of circumstances where we have in South Australia an interstate employer, with an employee from an interstate contract—say, a Victorian contractor—working here on a South Australian project for the whole of one particular month, I take it there is no issue in relation to both the past payroll tax law and now the current payroll tax law regarding where the payroll tax is payable?

The Hon. P. HOLLOWAY: My advice is that there is no problem in that instance; all the payroll tax would be payable in South Australia because the services were performed wholly within South Australia.

The Hon. R.I. LUCAS: So in this case, where we have the Victorian contractor, an employee, working for the whole of that month in South Australia on a particular project, irrespective of whether the employee has his or her bank account or principal place of residence in Melbourne, the payroll tax on that project for that month is completely collectable in South Australia.

The Hon. P. HOLLOWAY: My advice is that that is correct.

The Hon. R.I. LUCAS: Further clarifying that, what we are talking about—and it is stated in the second reading explanation—is where the employee has provided services in more than one jurisdiction in a month; so, there is a situation where this employee worked for three weeks in South Australia and one week in Victoria. It is only in that particular set of circumstances that the problem has been identified, which this legislation is directed towards resolving.

The Hon. P. HOLLOWAY: My advice is that that is correct.

The Hon. R.I. LUCAS: Thank you for that clarification. So in relation to the set of circumstances we are talking about, the Victorian contractor in South Australia, if they were working here full time there would obviously be some elements to that employee's remuneration package which relate directly to their hours of work and their monthly wage or salary, and there may be other elements by way of bonuses, for example, which are paid over the performance of the year. So let us take bonuses, for example; there may be other parts of a remuneration package that could be looked at which relate to the work of an employee over a 12 month period. If there are employees who are working for, say, the month of June in South Australia but for other months in other states, and in some months it is intermingled, and there are issues such as an annual or performance bonus payable, can the minister indicate what the state taxation office does in practical terms in relation to that element of a remuneration package?

The Hon. P. HOLLOWAY: The relevant fact sheet states that where wages relate to services performed by an employee over several months—that is, an annual bonus—payroll tax is payable in the jurisdiction where the services were performed in the month that the wages were

paid or payable. So the payroll tax would be paid where the services were performed; if a person were working in a particular state, that is where the payroll tax would be payable. However, if that person were to work in more than one state in the month when the payment is made, that is when you look at where the principal place of residence of the employee is in determining the liability.

The Hon. R.I. LUCAS: That is not clear to me. Let us take an annual performance bonus—although, clearly, bonuses are sometimes paid quarterly or twice a year—where an employee has worked in South Australia for part of the time, in full months, and in Victoria for some full months, and in some of the months they worked in both Victoria and South Australia. At the end of the year, in July of the following financial year, an annual performance bonus is paid to that employee for the work that they have conducted across jurisdictions.

This Victoria-based employee, who lives in Victoria and has a bank account in Victoria, has worked for nine months in South Australia. Is the minister saying that, if the bonus is paid into that employee's bank account in Victoria, the payroll tax is collected on that annual bonus in hindsight—the bonus is paid at the end of the financial year—or is he saying that the state tax offices are going to pro rata divide that up, go back over the 12 months and say there was nine months worked in South Australia, three months worked in Victoria, and it is divided between the tax offices as to who gets the payroll tax?

The Hon. P. HOLLOWAY: My advice is that, if someone is paid an annual performance bonus in July, for example, and if the services were provided in one state—whichever state the services were provided in that month—that is where the duty would be paid. My understanding is that what happens in that month determines where the liability lies. However, if in that month they were in different jurisdictions, it would go to the principal place of residence. That would determine that.

The Hon. R.I. LUCAS: That does not make much sense to me. Let us take the example where a Victoria-based person worked for nine of the previous 12 months in South Australia, and the payroll tax has been paid in South Australia, and worked for three of those 12 months in Victoria and Victoria has collected the payroll tax. In July, the person happens to be working in Victoria and gets paid a 100 per cent performance bonus for the work over the past 12 months, most of which was performed in South Australia, where the tax was being collected. What the minister's advice seems to be is that Victoria will collect the payroll tax on the July performance bonus which relates primarily to work and payroll tax having been incurred and paid within South Australia during the previous financial year.

Perhaps, for practical reasons, that is the way it is going to be interpreted, but it does not make much sense if this is to resolve potential loopholes of the sort that the minister has been talking about. It potentially raises issues for companies, if they wanted to, in a way to forum shop by changing the structure of remuneration packages. That will not suit everyone, obviously, because people want a significant component of their remuneration package paid on a monthly basis. When one is talking about directors and senior managers—and we will come to a later clause which talks about shares and options being granted, which applies mostly to directors and managers—this potentially raises a significant loophole in terms of the way the tax office is going to interpret these new provisions.

The Hon. P. HOLLOWAY: My advice is that this is the way it has always been interpreted. The problem is that, if one tried to allocate an annual performance bonus over where a person has worked, it would create an enormous amount of red tape. One would think that, normally, performance bonuses would not be of such significance to have a huge impact. I suppose it might be a different matter when talking about directors, and I guess we may come to that later.

The Hon. R.I. Lucas: The annual performance bonuses of some of these CEOs are beauties.

The Hon. P. HOLLOWAY: That is what I mean. In relation to some of those illustrations, whether a CEO would be working in other states is probably another question. How could you envisage a situation where a CEO of a Victorian company might be working here? I am not sure that that would be a significant issue. I guess if it were, you could contemplate the scenario in the future. I do not think that there is any particular evidence that this would pose a significant drain on revenue.

The Hon. R.I. LUCAS: I will not prolong the debate, suffice to say that I can understand why, for practical purposes, state tax offices may well have decided on this particular ruling. The minister is probably correct to say that at this stage it is not a significant issue. The history of state

tax law, however, is that, when one loophole is closed, what was formerly not a significant issue then does become a significant issue. The lawyers and the accountants work out a way to forum shop or to lower the tax payable. I guess if that occurs at some stage in the future, we will be confronting another piece of legislation that will endeavour to close that particular loophole. I might set myself up as an adviser in that particular area.

I would like to draw attention to a note that has been included in the same clause, which appears on page 5 of the bill in new section 11(6). As a point of clarification, the note states 'if 1 amount of wages is paid by an employer in a particular month'. I presume it is the decision of parliamentary counsel, and we have eminent counsel here advising the government. It seems an unusual construction of legislation in terms of the use of the number 1 in that note. Can the minister clarify why it has been drafted in that particular way? Is that just the personal style of parliamentary counsel these days or is there some legal significance or importance in the way that particular section has been drafted?

The Hon. P. HOLLOWAY: Essentially the answer to the question is that it is just a stylistic factor following on from the former parliamentary counsel, Mr Hackett-Jones.

The Hon. R.I. LUCAS: If I could just offer a comment about the new style, it certainly does not attract me as an individual legislator; for what it is worth, pass that onto parliamentary counsel. It seems clumsy in terms of its grammatical impact. If it has no legislative impact, I think there are a number of ways in the past we would have drafted that. It is only a note to the legislation. We have obviously had advice that it does not change the legal impact at all in terms of the way it has been drafted.

An honourable member interjecting:

The Hon. R.I. LUCAS: Yes, it is stylistic. If it is stylistic, we can all offer our individual views, and I am sure parliamentary counsel will take that into consideration. My further questions are on clause 7, so that is all I have on clause 5.

Clause passed.

Clause 6 passed.

Clause 7.

The Hon. R.I. LUCAS: This question in part comes back to the sorts of questions I was asking before about bonuses. This provision is a change in relation to shares and options being granted to directors as wages and deletes section 24(4) of the legislation. Can the minister provide advice to the committee as to the reasons these changes have been made? Are they part of the overall reason for the bill? Is this tied up with the overall problems being resolved by the legislation, or is this the government taking the opportunity to resolve some other issue which is completely unrelated?

The Hon. P. HOLLOWAY: My advice is that it is just a complementary change to these amendments that are moving to the principal place of residence.

The Hon. R.I. LUCAS: Given it is the case that it is part of the package, can the minister then indicate why section 24(4) of the legislation is being deleted?

The Hon. P. HOLLOWAY: What the bill is attempting to do is collect many of these issues under section 13. Clause 6 amends section 13—What are wages?—by inserting new subsection (2a). I think the idea is now that section 13 will treat these timing issues, and that is why they are being removed from section 24, and try to include them more generally under section 13. That is about the best I can do to explain that.

The Hon. R.I. LUCAS: Just to tease this out, if we go back to section 24 of the parent act, we are saying that for the purposes of this act wages include the grant of a share or option by a company to a director of the company by way of remuneration, etc. Let me clarify the practical implementation of that and look at the issue of a share option. The traditional share option is an opportunity for the director of a company, at some stage in the future, to purchase shares at a particular price.

Obviously, the most attractive option is to purchase shares at a discounted price to what might currently be on the market. Who knows what it will be at the time of being able to retrieve them? The director obviously hopes that it will still be at a price lower than the market price—it may or may not be—which might impact on the decision of the director.

So, what is the practical effect of the act and the bill, in relation to these share options, if a director chooses to take up a share option? How does the Tax Office determine what the aspect of wages payable is in relation to a share option? Is it the difference between what the director pays for the share and the share price on the particular day that the director exercises the option?

The Hon. P. HOLLOWAY: I am advised that the bottom line is that nothing is changed overall through the provisions before 24. I think that sections 19 to 23 inclusive set out the valuation of shares and options—section 19, choice of relevant day—and so on. All those issues are, I believe, set out under those sections of the act which are not amended by this particular bill.

The Hon. R.I. LUCAS: That is interesting but it does not answer the question. The question is: how does the Tax Office interpret this provision of the legislation? I am told, in relation to section 24(4), that it is deleting a provision which specifically relates to the payment of payroll tax in the circumstances of the grant of a share or an option to a director or an employee. I am told, 'Don't worry about the deletion of 24(4) because it's tied up with the amendments to 13, the overall provisions.'

I also have questions in relation to section 25 being deleted which, again, relates to the granting of a share and options. I ask the minister: how does the Tax Office currently interpret the payment of payroll tax for the granting of a share option? I repeat the question: if a director takes up a share option at a particular price—let us say it is $2 and on that particular day the market price is $3—does the State Tax Office calculate the wages payable subject to payroll tax as the difference between the $2 and the $3, multiplied by the number of shares, minus whatever fees and costs there might be, and then levy payroll tax in that particular way?

I think it is a pretty straightforward question. We have senior tax officers and parliamentary counsel available. The committee is entitled to get a response so that it can make a judgment as to what potential impact there might be regarding 24(4)–and I assume I am going to be told the same thing when I ask the question about section 25 being deleted.

The Hon. P. HOLLOWAY: My advice is that, essentially, the Tax Office will work on the market value of the option which, as the honourable member suggested, is really the difference between the share value on the particular date and how much they paid for the option. That is how they would work it out.

The Hon. R.I. LUCAS: It is not a normal circumstance but there have been recent examples in corporate history where CEOs wishing to demonstrate their faith in the company have exercised share options at a price slightly higher than the market price for the day; again, I assume doing so in an indication that they demonstrate good faith in the future of the company and that the share price will recover. In those circumstances, does the State Tax Office net the loss as a negative or a reduction in the wages for the director and therefore reduce the payroll tax payable?

The Hon. P. HOLLOWAY: My advice is no.

The Hon. R.I. LUCAS: The good Tax Office is all upside and no downside! I thank the minister for that response. In relation to the granting of a share as opposed to an option, if the director purchases a share at the tradeable market price of the day, then I am assuming from what the minister has said I can infer that there would be no addition to the wages calculation for the director and there will be no payroll tax payable.

The Hon. P. HOLLOWAY: My advice is that is correct.

The Hon. R.I. LUCAS: To firmly put it on the record, section 25 of the act is deleted and I ask the minister to indicate the reasons why. I am assuming he will say it is because it has been encapsulated under the changes to section 13, but if that is the case I would like that on the record as well.

The Hon. P. HOLLOWAY: Yes. I will place that on record: that it is my advice that that is the explanation.

Clause passed.

Remaining clauses (8 to 12), schedule and title passed.

Bill reported without amendment.

Bill read a third time and passed.

LAND TAX (MISCELLANEOUS) AMENDMENT BILL

In committee.

Clause 1.

The Hon. P. HOLLOWAY: Something I omitted to do yesterday was to read on the record the statement in relation to how the average movement in land values would be determined, so I will do that first. The Land Tax (Miscellaneous) Amendment Bill 2010 provides that from 2011 to 2012 all land tax thresholds will be indexed by the average movement in land values. The average percentage change in land values for a particular financial year will be determined by the Valuer-General having regard to the Valuation of Land Act 1971 and the Land Tax Act 1936.

Honourable members have expressed an interest in understanding the methodology that the Valuer-General will apply to determine the average percentage change in land values. The government has previously provided a working formula to members of parliament that summarised the Valuer-General's proposed approach. Following further examination of various approaches to determine the average change in land values, including having regard to feedback provided by honourable members particularly the Hon. John Darley during briefing meetings on the bill, the Valuer-General has now advised that he intends adopting the following methodology to determine the average percentage change in land values.

The Valuer-General will undertake the analysis of land value changes for the taxable properties following gazettal of completion of the general valuation in late May. The average percentage change in land values in 2011-12 will be determined as follows: taxable properties for the 2010-11 financial year from Revenue SA's database will be used as the taxable properties data set; the Valuer-General will determine the change in total taxable site values for those properties between the values in force for the 2010-11 year and those determined for the 2011-12 year and use those values to calculate the average percentage change in site values.

So the average percentage change in site value will be equal to the total land value in year 2 for properties in the taxable properties data set divided by the total land value in year 1 for properties in the taxable properties data set minus one multiplied by 100 (to give the percentage). While the underlying principles in this approach and the previously circulated working formula are consistent, the Valuer-General considers that this approach will ensure that the average percentage change in land value reflects as accurately as possible movements in the land values of properties subject to land tax. I needed to put that on record because I think the Hon. Mr Lucas had referred to it.

As the Hon. Mr Darley has put some amendments on file, I also take this opportunity to indicate in advance what the government's position would be on those, given that we would obviously like this bill passed as soon as possible next week before the end of the financial year. It might help members in coming to their positions if I put on record the government's views in relation to those amendments.

I advise the council that the government strongly opposes the amendments moved by the Hon. John Darley. While there are six amendments, the first five essentially relate to one issue—that is, removing the predominantly residential character tests from the act in relation to gaining a principal place of residence exemption.

The second amendment relates to minority interest provisions, which are anti-avoidance provisions. I note that the Hon. Rob Lucas has asked for an indication of the likely revenue impacts of these amendments. I am advised that the revenue impacts of amendments Nos 1 to 5 are difficult to quantify, but they will be significant, as it opens up the principal place of residence exemption for avoidance.

In relation to amendment No. 6, I am advised that this amendment will put all the revenue raised from these provisions in jeopardy, which was $20.8 million in 2008-09 and in 2009-10 is estimated to be $21.75 million. I now deal with each amendment in turn.

In relation to amendment No. 1, the Hon. Mr Darley's amendment removes the requirement under the act for buildings on the land to be of a 'predominately residential character' for a full principal place of residence exemption to apply. The government cannot support this amendment because, if adopted, there would be no requirement in the act for buildings on the land to be residential property. Under these amendments, any land owned by a natural person that is occupied as a principal place of residence would be exempt. This could potentially include small commercial premises, for example.

The predominately residential character test is essential for the effective operation of the provision, which currently works well. If removed, the provision would be ineffective and the exemption opened up to avoidance. It should be noted that the residential character test was inserted in 2005. However, prior to that, the regulations required all buildings on the land to be designed, constructed or adapted for use as a private dwelling and all buildings on the land had to be solely or principally used for residential purposes. This test was in place for many years and also operated effectively. It is unclear to the government why this amendment is necessary as these provisions have operated effectively in both of their forms for many years, whilst these amendments will open up the exemption to avoidance opportunities.

In relation to amendments Nos 2, 3 and 4, these are related to amendment No. 1 and, if amendment No. 1 is not passed, amendments Nos 2 to 4 should also be rejected as the residential character test was inserted in these provisions to be consistent with the wording of the standard principal place of residence exemption. The amendments remove the predominately residential character test from the new exemption that applies where buildings on the land become uninhabitable due to their being destroyed or rendered uninhabitable by an occurrence for which the owner was not responsible. Again, this would allow a person to construct any type of building on the land and still qualify for exemption. There would be no requirement that the buildings on the land be a residential property. The government can therefore similarly not support these amendments.

In relation to amendment No. 5, this amendment removes the requirement under the act for buildings on the land to be of a predominately residential character for a partial principal place of residence exemption to apply. This provision directly applies to the small country motel referred to by the Hon. Mr Darley in the second reading debate. Currently, a partial exemption will apply to home business activities that occupy between 25 per cent and 75 per cent of the area of all buildings on the land where those buildings have a 'predominantly residential character'.

The predominately residential character test operates to prevent commercial and industrial buildings being given a land tax benefit because the owner chooses to live there, rather than a residential owner choosing to conduct a commercial or industrial operation from buildings that are genuinely a residence. In this way, equity is maintained between light commercial or industrial activities because such a property is considered to be essentially used for commercial or industrial purposes and, consistent with the land tax status of other commercial or industrial activities, should be liable for land tax. The government can therefore not support the proposed amendment.

In addition, it is worth noting that the current provisions were introduced in 2005 to primarily provide land tax relief to bed and breakfast operators, in addition to those persons who were already exempt. The previous land tax exemption in cases where a principal place of residence was used for business purposes applied only where no assistance was offered to the owner other than by another person resident in the dwelling, the floor area used did not exceed 28 square metres, and no goods were displayed on the premises. The current provisions are therefore a significant expansion of what formerly applied.

Amendment No. 6 relates to anti-avoidance provisions concerning minor interests, which were introduced in the 2007-08 budget, effective from the 2008-09 financial year. The changes address the practice where owners of more than one piece of land avoid paying a higher marginal rate of land tax by structuring their ownership so that another party, or parties, holds a similar minority interest in an individual piece of land, thereby creating different legal ownerships. The provisions enable the Commissioner of State Taxation to ignore any minority interests in land that are 5 per cent or less unless the commissioner is satisfied that there is no doubt that the interest was created solely for the purpose or entirely for purposes unrelated to reducing the land tax payable in respect of that or any other piece of land.

I am advised that the provisions are anti-avoidance provisions and are intentionally drafted in a robust manner so that, where a minor interest of 5 per cent or less exists, a very high burden of proof is on the taxpayer to show that the interest was created for a legitimate purpose. Although it is difficult for a taxpayer to discharge that burden, it is possible to overcome, and the discretion has been exercised by the commissioner in a number of situations. It is considered that this approach has ensured that the provisions are effective in achieving their purpose.

To remove the words 'there is no doubt that' would mean that the commissioner would merely have to be satisfied that the relevant minor interest was created for a purpose unrelated to reducing land tax. I am advised that this test would be far too simple for the taxpayer to overcome and that the provisions would become ineffective and result in a significant revenue loss. Matters

raised during ongoing administration of these provisions have made it clear that the current robust test that requires the commissioner to have no doubt is essential for the effective operation of the provisions. The government therefore cannot support this amendment.

I trust those comments will help facilitate debate. If there are any other issues members wish to raise now, we can perhaps deal with those and then report progress.

The Hon. R.I. LUCAS: I would prefer that we report progress at clause 1 as I would like to consult further on what the minister has said. I think the substantive debate on the Hon. Mr Darley's amendments will be on clause 4 and the remaining clauses but, unless there is an argument to the contrary, if the minister is prepared to report progress at clause 1 that would seem to make most sense.

The Hon. P. HOLLOWAY: I am happy to do that. I just thought that if there were any other issues that members wished to raise now on clause 1, I would be happy to do that; however, if there are not, we can report progress.

Progress reported; committee to sit again.

MINING (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 11 May 2010.)

The Hon. M. PARNELL (12:02): The Greens support the second reading of this bill and note that it is a long, long overdue piece of legislation. The Mining Act has not been rewritten since 1971, yet this bill, despite that length of time, still falls short of the mark. It is not a comprehensive rewriting of the legislation—and that is what the Greens believe is necessary.

The government's objectives in this bill are threefold: red tape reduction, greater transparency and effective regulation. The second and third of those objectives are always quite reasonable, but I have to say that, whenever reduction of red tape is included as an objective, I tend to see red because often the government is seeking to give the impression that there is a gauntlet of paperwork to be run for its own sake, and the assumption is that all administrative processes are redundant and unnecessary and simply stand in the way of good things happening. However, one person's red tape is another person's protection against environmental destruction or uninformed decision-making. We do need to have a level of administration in mining, and therefore reduction of red tape for its own sake is not something that the Greens are usually well disposed to support.

Before the election, the government made a big song and dance about mining. It wanted to open up more areas, it wanted to make it easier to mine and it wanted to cut red tape. If you want to look at the effects of the fast-tracking of mining and of lax regulation in mining, you need look no further than the Gulf of Mexico, where we see that short cuts, inadequate scrutiny and administration have resulted in that country's worst environmental disaster and one of the worst on the planet.

At the federal level, the government is again opening up more areas of the sea for oil and gas exploration and production, including new areas off the coast of South Australia, off lower Eyre Peninsula and off Kangaroo Island. If you look at the maps with any understanding of prevailing winds and ocean current directions, you can see that an equivalent or even a lesser spill in that area would end up in Flinders Chase National Park, on Seal Bay, in Lincoln National Park and Coffin Bay National Park, and you could swap the images of pelicans covered in oil with sea lion pups covered in oil. That is the impact it would have on South Australia. However, this legislation is about terrestrial mining rather than offshore oil and gas exploration, but the principles of regulation are much the same.

I say that this bill is a missed opportunity and that the government should have started from scratch. I note that that was certainly the position taken by the South Australian Farmers Federation in 'Farming the Future', its document of state election priorities for the 2010 state election. One of the South Australian Farmers Federation recommendations was to 'rewrite the Mining Act 1971. What was acceptable in 1971 is certainly not in 2010 and into the future'. Really we could have done better than the piecemeal amendments that the government has put forward now.

I have a large number of amendments that I will table shortly, and I will do what I can to try to remedy some of the deficiencies in this bill, but that is no substitute for going back to the drawing

board and rewriting the act from scratch. However, there are some aspects of the bill that the Greens do support. In fact, it would be surprising not to support some aspects of the bill because it is difficult to take a 40 year old piece of legislation and not make it better, even if you are not trying that hard.

First, the bill is incorporating a new definition of the environment. Currently, the references to the environment in the Mining Act are scant. For example, it states 'that the minister must give proper consideration to the protection of the natural beauty of an area' or 'flora or fauna that may be endangered or disturbed'. Those types of definitions really completely misunderstand the concept of ecology, the interrelatedness of land and species, and the insertion of an amendment of the environment is far preferable to what is there. There is some criticism out there, but this is an improvement.

One of the criticisms is that the proposed new definition is still only a list of natural things. Whilst there is a reference to the word 'ecosystems', I think the government could have done better, but this is certainly an improvement.

Another provision that the Greens support is the ability for the minister to amend the conditions attached to a mining tenement at any time. That is an important provision, because circumstances change over time and new information comes to light. In fact, it is particularly important for those existing mining tenements that were issued well before proper environmental regulation had come into being. Those leases and licences have perpetually been reissued, and they are effectively operating in a time warp. Where there is a risk of environmental harm not adequately or specifically addressed by existing lease conditions, it makes sense for the minister to be able to intervene and revise those conditions.

The Greens also support some of the new compliance measures included in the legislation. I note that the proposed enforcement structure will assist in providing a greater degree of flexibility in dealing with compliance issues. The proposed structure comprises four strategy levels, namely: prevention, persuasion, compliance and punitive measures. It is contemplated that most action will take place within the prevention and persuasion strategies.

Whilst I support the general principle, the so-called pyramid of enforcement, it is most important that we maintain, at the end of the day, a big enough stick to make sure that proper behaviour is the result. I have often likened large mining companies to small children: they require limits to be set and they will operate within those limits provided it is absolutely clear what is expected of them. But, to expect a mining company, or any other big business, to go the extra mile voluntarily and spend millions of dollars more than they absolutely have to for the protection of the environment or anything else, is not realistic. We need to make sure that, at the end of the day, the requirements are clear and that the enforcement methods are robust and strong enough to get the outcomes we want.

In terms of the amendments that I am going to bring forward, they tackle 10 issues where I think this bill falls short. It will come as no surprise to members that the first category of amendments I have is one to protect the Arkaroola Wilderness Sanctuary from mineral exploration and mining. I urge all members—and I especially refer to members of the Liberal Party—to pay attention not just to what I am saying but to Senator Nick Minchin, who has come out very strongly in support of the protection of Arkaroola. I urge members to pay attention to the Liberals' former leader here, Iain Evans, who has also come out strongly in support of Arkaroola. You can also go down to the universities—and I never imagined I would be saying this in parliament—and pay attention to Ian Plimer. Don't pay attention to him on climate change; he is wrong on that, but pay attention to him on the importance of protecting the Arkaroola Wilderness Sanctuary.

Most recently, there was the discovery of a new frog species, the first species apparently in about 35 or 40 years—in fact, about as long as this Mining Act has been around. It just shows us that we know so little about this wilderness area, and we need to explore more for its biodiversity and not for minerals, where the end result will be the destruction of those ecosystems. So, I would urge members to pay attention to people like Mike Tyler, commonly referred to as the frog man. Ask him about the importance of areas like this that are under-explored in relation to biodiversity.

I am bringing back the legislation that I have brought to this parliament before in relation to Arkaroola and incorporating it into this legislation. As with the previous bills, my amendment to protect does not include the recently granted mining permits on the flat country, some of which is within the Arkaroola Wilderness Sanctuary, but the vast bulk of which is not. My bill seeks to

protect the high environmental values of the mountain and hill country of Arkaroola, including places like Mount Gee.

The next amendments I have seek to ensure that the legislation applies to all companies, to all South Australians, equally, and that we do not have exemptions that create special rules for special people. One aspect of the government's amendment is to enable a declaration that could exclude any part of the state from the operation of either the entire act or parts of the act. There is no qualification in the act as to how that power is to be exercised. So, effectively, the minister could declare entire areas of South Australia to be exempt from, say, all the environmental protection provisions of the Mining Act. Indeed, the minister could declare that the act does not apply to the entire state.

I do not for one minute want to suggest that that is in the contemplation of the government, but I have never found that to be a good reason not to support bad provisions, just because it is not the government's intention to abuse it. This is a provision that I think is open to abuse. My amendment ensures that the exemption only applies in relation to areas that are available to mining, not to the operation of the act itself or parts of the act.

The third set of amendments seeks to make it easier for the minister to protect environmentally sensitive areas from mining. Interestingly, the government has incorporated a provision which effectively declares areas off limits to mining, but the government's intention is that that be a short-term measure while it sorts out competing claims, rather than a long-term protection measure. At present, the only long-term protection measure involves a governor's decision: a proclamation—effectively, a decision of the entire cabinet. We need to make it easier for areas to be protected, because it is one of the principles of environmental protection that it is easy to overturn a protection measure later on, if needed, but it is often impossible to reverse a poor decision to allow exploitation or destruction.

The fourth amendment seeks to level the playing field in conflicts between miners and farmers. This is an issue that has been around for some time; in fact, I had drafted a stand-alone bill to give effect to this levelling of the playing field, but it is timely to incorporate that, given that the Mining Act is up for debate through the government's amendment.

To understand why the playing field needs to be levelled, and how I propose to level it, we need to understand how the act currently works. Under section 9 there is a category of 'exempt land'—in other words, land that is exempt from mining under the Mining Act. That land includes yards, gardens, cultivated fields, plantations, orchards and vineyards, but it also includes land within 400 metres of homes and land within 150 metres of other farm buildings, dams or wells. If land falls within one of these categories, under the Mining Act, mining companies are not permitted to go onto that land to explore or mine, unless—and this is the problem with the current law—the landholder signs a waiver, or the court—in this case, the Warden's Court—allows the mining company to enter the land, hopefully after payment of some compensation, but not always.

So how does that system work in practice? The way it works is that, if a mining company wants to access private farmland that would fall within the exempt category, they effectively threaten or harass farmers to sign waivers. If the landholder holds their ground, if the landholder resists signing a waiver and resists giving up their legal right to protect their crops or land near their buildings or homes, the mining company will threaten them with a visit to the Mining Warden's Court, and the mining company will advise the landholder that the company will win and the farmer will lose, because that is how it works. In some cases legal costs are also awarded against the landholder for daring to insist on their right to keep mining companies a reasonable distance from their property. That is an unfair system.

I recently received an email from a South Australian farmer who was, if you like, a victim of the current unbalanced system. I will not name the person, but I will read a sentence or two from their email:

> We faced issues such as [the mining company] not wanting to acknowledge or compensate us for loss of income—their suggestion was for us to simply move our sheep off our land. Also, the company was against establishing reasonable fencing to protect our stock from falling into or drowning in sumps. It is this kind of attitude that causes enormous stress to farmers, who are simply trying to conduct best land and livestock management. The proposed drilling will take place within metres of a permanent and precious water source—the only water available to us. How can this be allowed to happen on this land which is clearly exempt under the Mining Act?

My knowledge of this area comes from my previous experience as an environmental lawyer working with the Environmental Defender's Office, when I had a number of clients come to me seeking advice on this area of law. It took a couple of occasions with very unhappy outcomes for

me to realise that the odds were always stacked in favour of mining companies and against the farmers. If members are interested in pursuing this, they may want to read an article in the Law Society of South Australia's *Bulletin* a few years back. It is an article about the Mining Warden's Court, entitled 'The right to quality of life versus the right to mine'.

In that article, lawyer David Cole writes up his experiences as, I think, the only lawyer in this state ever to have won a case in the Mining Warden's Court on behalf of a farmer. In almost every other case I am aware of—and I have read most of them—the court has formed the view that the Mining Act is about promoting mining, and anyone who dares to stand in the way of mining will be given short shrift in the Mining Warden's Court.

In its pre-election document, the Farmers Federation called for reform in this area. The Farmers Federation pre-election wish list states:

> At present, many SA farmers are in a fragile position because of the threat presented by mining exploration. Currently the Mining Act 1971 provides a legal framework to enable private companies to explore for, discover and develop the State's mineral assets with minerals being the property of the Crown. This means that mining companies can enter private land, mine the resources and farmers have no option but to agree to this interference to their land.
>
> The current system with regards to compensation for property owners is not adequate as individual farmers with limited financial resources are often up against a national or multinational company with extensive legal resources and representation.

The mechanism I am proposing to redress this situation is as follows. First of all, we need to reinvigorate the presumption in the Mining Act that exempt land is what it says: it is exempt from mining. I still want to include the ability for mining companies and landholders to negotiate because in most cases it should be possible. If a mining company sufficiently wants access to that land, they should be able to negotiate satisfactory arrangements. I do not want to stand in the way of that, but I want the playing field to be more level.

My amendment proposes that mining companies, at the time of presenting their waiver document for the farmer to sign, will need a small amount (say $500) to enable the landholder get some preliminary legal advice on their rights under the Mining Act. We are probably talking about two hours or less of legal time for the amount of $500. I want to provide for a cooling-off period for farmers who may have been bullied into signing a waiver and subsequently get legal advice. This cooling-off period is similar to that available for those confronted by door-to-door salespeople.

I want the law to provide that the status of exempt land should only be overridden in exceptional circumstances in the absence of the landholder's agreement. The court should be able to order compensation to be paid by the mining company if they so desperately want access to the farmer's land, and I want a provision that prevents adverse legal costs orders against the landholder.

One of the saddest cases I was involved in was when a woman in the South-East tried to protect her amenity by preventing a quarry within a very close distance of her house. Ultimately, she lost in the Mining Warden's Court and was ordered to pay the mining company's legal costs. This all involved a property owner with exempt land. If the mining company wants access to exempt land, it will have to pay more either to secure a waiver from the landholder or go through a court process that applies the law the way it was intended to apply, that is, recognising the interests of our farmers to be able to go about their business.

The next set of amendments I want the chamber to consider at the committee stage is a system of improved public notification and submission rights for members of the public before decisions are made by the minister in relation to the issuing of mining tenements.

At present, the system is that the minister notifies his intention to grant a mining lease or exploration licence, ads go in the newspaper and the public make submissions. The submissions do not have to be considered by the minister. There is no requirement for any submission even to be read. In practice, submissions are always ignored, and mineral tenements, mining leases and mineral exploration licences are granted, including over some of our most important national parks and conservation parks. In fact, I think if you were to go down Rundle Mall and do a quick vox pop you would find that virtually no South Australians understand that over three-quarters of the area of reserves under the National Parks and Wildlife Act is open to mining. The proportion of South Australia that is protected from mining is minuscule.

In fact, it is also something that I have put on the record in this place before (in 2008, and I don't think the position has changed): there is only one full-time equivalent position in the

Department of Environment and Heritage to scrutinise applications for mining tenements or the activities of mining companies over National Parks and Wildlife Act reserves. Those reserves collectively cover some 21 per cent of South Australia.

A better system is one that involves genuine public input, similar to that which exists under the Development Act. The mechanism that I think should work is, first of all, in relation to these mining tenements, that public consultation needs to take place before the minister has formed an intention to issue a licence or a lease. In other words, do not wait till the decision has been made and then pretend to the community that you care about what they think. You actually advertise before you make a decision.

Advertisements should be in the newspaper, as they currently are. They also need to be on a website. The regime should involve direct notification to owners of land who are affected. At present if you do not see it in the newspaper then you just do not know about it—no obligation to notify landowners. The government often says, 'Well, these mineral exploration licences are so big we couldn't possibly notify all landholders.' I disagree. The rural areas that we are mostly talking about are not that big. It is not that hard to work out who the landholders are and to notify them individually.

We need a decent period of time to comment: 21 days is current, and that can stay. All landholder comments should be directed to whether or not the mining tenements should be granted and what, if any, conditions should be attached if they are granted.

Submissions—and this is important—need to be published on the website. There is no excuse now for secret public submissions. In a digital age it is the easiest thing to put them up on the web. We are finding other agencies are doing it. Development Assessment Commission and Development Policy Advisory Committee submissions are put up on the web; so too should be submissions in relation to the granting of mining tenements.

We should include a system of public hearings, if there are submissions received. If there are no submissions received, then there is no need for a hearing. I want a regime that mirrors that in the Development Act for development plan amendments or rezoning exercises.

Importantly, I think the act should include a provision—you might think this is radical—that says the minister has to have regard to submissions. What is the point of writing a submission if no decision-maker is obliged to have regard to it? It does not say they have to agree with it, but they should at least have regard to it, because not to have a provision like that is to perpetrate an absolute fraud on the people of South Australia who waste their time writing submissions, not knowing that they are of no effect or force whatsoever. Part of the engagement of our government agencies with the community needs to be that, if someone has bothered to write a submission, the government should be bothered to write back to them and tell them what decision they have made. At present no such regime exists. Again, once a decision has been made it needs to be readily accessible, including on the internet.

So that is the sort of public consultation system that we need. Bear in mind that we are not just talking about applications for exploration rights over private land: we are also talking about public land, and in particular, as I said, three-quarters of our National Parks and Wildlife Act reserve estate.

Another amendment that I think we should be looking at in this act is to give third-party representers the right to challenge decisions that are made by the minister. In other words, let us have an appeal provision similar to that which exists under the Development Act. The appeal criteria can be as narrow as we want, but should include at least, as a minimum, an appeal on the grounds that the exploration and mining operations are reasonably likely to result in undue damage to the environment. In other words, use the same language that the government is already proposing for the bill, which is 'undue damage to the environment'.

Appeals should be heard in the Environment Resources and Development Court. I should also say that disputes between farmers and mining companies need to go to the Environment Resources and Development Court as well, not the Mining Warden's Court.

The next amendment that we need to look at is to incorporate the right of citizens to enforce the law in circumstances where our public authorities are unable or unwilling to do so. People might think that is unusual—to give citizens the right to enforce the law—but this is now a standard provision. It is a provision in our pollution laws (section 104 of the Environment Protection Act); in our planning and development laws (section 85 of the Development Act); and in the Natural

Resources Management Act. The ability for people to enforce the act is now a standard provision in environmental and resource legislation.

We also need to make sure that we do not limit that right to a narrow class of people who might have some financial stake in it. Often the people wanting to enforce the law are people who are doing so in the public interest not because they have some opportunity for personal gain. Civil enforcement rights have to be included in this legislation.

One provision which was in the bill, and was then taken out of the bill—and I want to put it back into the bill—is the ability for the minister to give an early no. In other words, before mining companies have expended too many resources on what will turn out to be a fruitless exercise, the minister should be able to say no.

I said it was in, and then it was out, and it is now only partially back in, in relation to mineral exploration licences, and I want it to be included for mining leases. The reason I think that is important is because when you think of mineral exploration licences they are often vast areas (many hundreds of square kilometres) and, yet, the final results of that exploration might be a small area that the company wants to mine.

It may well turn out that, in the vast bulk of the full area of the exploration licence, mining could happily coexist with other landholders and with the environment, it could be done safely and there is no issue. However, if they happen to want to mine in the one biodiversity hotspot or the one area—maybe it is mound springs in the outback or some water resource—the minister should be able to say, 'Look, anywhere else in that exploration area would be okay but not the area that you've chosen.' So, they should be able to give an early no.

Of course, when the minister is evaluating the suitability of land for exploration, that level of inquiry does not come until later in the piece and it probably does not make sense for the minister to evaluate every form of mining that might take place on every square inch of land within that exploration licence. The minister, having worked out exactly what the company is proposing, does need to be able to say no early on.

The penalties in this legislation have been increased. I think the minister, in the second reading explanation, said they had not changed for some 30 years; I think there are $5,000 maximum penalties which probably represent only a fraction of the drinks bill at the average mining company's Christmas party. We are talking minuscule amounts of money for mining companies. So, the government has increased maximum penalties.

I do not think they are anywhere near high enough and I am proposing that they be increased further. The government's current penalty of $120,000 should be half a million dollars and the quarter million dollar penalty should be at least $1 million. Bear in mind that those penalties are commensurate with penalties in other similar legislation—for example, under the Environment Protection Act there are penalties of $1 million and more for deliberate damage to the environment. Why shouldn't environmental offences under mining legislation attract similar maximum penalties? You often have to look as an accountant would at a mining company's operations. If it is going to cost you $5 million to comply with some provision, and the maximum fine for not complying is only a quarter of a million dollars, the economic rationalist would say, 'Let's not comply. Let's hope we are not caught. If we are, the maximum penalty will still make it worth it in the long run.'

There is one final amendment that I will be proposing which relates to the deletion of an obsolete reference in relation to retention leases in relation to uranium mining, and those provisions have no application now that that form of mining can be regulated through other parts of the act.

In conclusion, while the Greens are supporting the second reading of this bill and we acknowledge that the government has taken some steps to bring a 40 year old piece of legislation up to date, we believe that there is still much more that needs to be done. I will shortly be circulating these amendments and I look forward to members' support for them in the committee stage.

Debate adjourned on motion of Hon. J.M. Gazzola.

HEALTH PRACTITIONER REGULATION NATIONAL LAW (SOUTH AUSTRALIA) BILL

Adjourned debate on second reading.

(Continued from 23 June 2010.)

The Hon. D.G.E. HOOD (12:37): I rise today to indicate Family First's position on this bill. We support the bill. Some important and significant measures are introduced in this bill which there seems to be very little opposition to in the community, which is a welcome aspect. We believe that our health practitioners should be able to practise interstate, if they wish to do so, without unnecessary hurdles being put in their way. In a similar light, we welcome competent medical practitioners from interstate to practise here without undue burden in terms of paperwork and the like. This is what this bill seeks to implement and it does so by consolidating 90 or so health boards from around the country into the Australian Health Practitioner Regulation Agency. This will certainly reduce duplication of administrative services, and Family First is certainly all for that.

This national law will commence on 1 July 2010 (next Thursday, if I am correct) and it will cover 10 health professions including medicine, nursing and midwifery, pharmacy, physiotherapy, dentistry, psychology, optometry, osteopathy, chiropractic and podiatry. On 1 July 2012 medical radiation practitioners, occupational therapists, Chinese medical practitioners and Aboriginal and Torres Strait Islander clinical health practitioners will also be included. It is also being scoped for the inclusion of other health professionals in the national scheme over time.

As the minister noted, the primary objectives of the national scheme are several—firstly, to provide for the protection of the public by ensuring that only health practitioners who are suitably trained and qualified to practise in a competent and ethical manner are actually registered; and secondly, to facilitate workforce mobility across Australia by reducing the administrative burden for health practitioners wishing to move between jurisdictions or to practise in more than one jurisdiction, which is becoming increasingly common.

Family First certainly has no issue with those objectives—indeed, we support them. There was also a suggestion during the minister's second reading that, under current mutual recognition laws, there is the potential for the public in South Australia to be exposed to practitioners who may not meet the registration requirements established by local registration boards. The discredited medical practitioners Patel and Reeves, who until recently were registered interstate, were mentioned and our participation in the national registration and accreditation scheme for the health professionals was urged in order to minimise that risk.

The scheme will ensure that health practitioners will be subject to nationally consistent registration standards and codes from their professions. Again, this is something that will protect South Australian families and therefore will have our support.

I also put on record that Family First has had discussions with a number of stakeholders regarding this bill. I indicate our support for the Pharmacy Guild's position in relation to this bill. I will refer to the as always valuable information supplied to us from Messrs Ian Todd and Michael Robertson from within the guild. We agree with the position taken in the bill that registration of pharmacies remain a state matter, and therefore we support the proposition, in principle, that pharmacies should be run by pharmacists. If doctors were to run pharmacies, as is the case in some countries, clearly, that raises the potential for conflict of interest and, if ever we were to go down that path, we would need to do so very carefully indeed.

Further, we will be supporting the government amendments that allow pharmacists who are not personally accredited to dispense drugs to nevertheless own pharmacies. In fact, I have personal acquaintances who fall into that category, and I see no problem with their acting in that capacity.

Family First is also mindful of the concerns raised by the Royal Australian College of General Practitioners regarding the risks they face if we do not get this legislation passed before 1 July. One risk of delay is a doctor care fund, as advised to us recently by a representative from the medical community. This is an important initiative to ensure that doctors look after themselves and have someone to talk to confidentially about their own health if it becomes a concern. Delaying this legislation will put that measure at risk because the continued operations of the South Australian Medical Board will drain the funds earmarked for that initiative.

I am not aware of anyone having issues with the aims of this proposed law. A number of concerns have been raised by the opposition regarding the way in which the law will be implemented, in particular, the handing over of our legislative prerogative, if I can put it that way, to Queensland, which is handling the main bill in this case. My recollection is that this is not the first time this chamber has done that. In fact, the River Murray handover and the national credit laws, which were recently passed, are just two examples, along with this bill, where the parliament has

given away some of its sovereignty to a COAG ministerial council in terms of decision-making. I must say we are a little uneasy about that fact.

I am not a big fan of passing on some of our legislative jurisdiction, although it may not be specifically power because we would have the power to overturn that decision at some later date. However, I put on the record that I think we should do so in limited and infrequent circumstances. In my opinion, I think it is fair to say that we have done it only where I see genuine advantages in doing so. I think that, if we are to continue to do that sort of thing, we need to do so carefully, but, at this stage, my feeling is that we as a parliament have been careful in that regard.

It is not ideal. New South Wales, as I understand it, has made some alterations to its bill along this line in relation to disciplinary proceedings, and Western Australia has come to separate arrangements as well. We will be listening to the debate with respect to the amendments; nevertheless, on balance, given the importance of consistency on this issue, at this stage we do not intend to support the amendments. It is something we have considered very carefully, and I think that, on balance, the legislation is best supported as it stands.

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for the City of Adelaide) (12:43): I understand that the Hon. Kelly Vincent also wishes to make a contribution, but she has indicated to me that she is happy for me to proceed with my closing remarks and that she will make her contribution during clause 1.

Having said that, I would like to make some closing remarks. I thank all members who have made a contribution to the debate over recent days. This bill is aimed at creating a nationally consistent scheme for the registration of health practitioners. When established, this system will mean better protection for Australians as well as creating a simpler system for all practitioners.

This bill in its current nationally consistent form is supported by may key groups, including the AMA, the Australian Nursing and Midwifery Federation and the South Australian Medical Board. To oppose this legislation is to effectively go against the wishes of the many health practitioners across South Australia who support national registration and want to see this legislation passed in South Australia.

A number of speakers in this debate have raised points about the protection of state sovereignty in terms of national law. State sovereignty is not threatened by the national law; the amendment to the law passed by the Queensland parliament must be approved by other states and territories. If Queensland were to take unprecedented action and impose its own amendments, states and territories could withdraw from the agreement and the amendment would be null and void. There are a number of other pieces of legislation, including national gas laws, which have similarly applied this arrangement and been successful.

The opposition amendment to allow state-based mirroring law, rather than adopting the Queensland legislation, will mean that amendments to the national law will be applied in South Australia possibly months or even years after it is applied in other states. There is a serious concern that this will disadvantage South Australian health practitioners, with amendments that benefit them coming into force in this state possibly months after they are applied elsewhere.

The experience with the Gene Technology Act 2000 is a good example. States introduced mirroring legislation and there are now significant issues and problems arising when amendments are required. The national law will strengthen requirements for mandatory reporting of health practitioners whose behaviour or actions are impacting and putting at risk their patients. This is all about providing better protection for Australian patients.

The opposition amendments aim to water down mandatory reporting requirements in the legislation, allowing some practitioners to avoid penalty for not reporting a colleague or domestic partner. If this amendment is successful, South Australia will have the weakest mandatory reporting requirement in the nation. This is just not fair for patients. I urge members to strongly consider the implications of these amendments and to pass the national law intact and consistent with the states and territories.

I have responses to a number of questions asked by honourable members during the second reading debate, and I will answer them now. The Hon. Tammy Jennings raised a question about mental health nurses. In response to that, minister Hill issued a statement in a letter to the ANF on 26 May stating:

I can reassure you that nurses currently endorsed as mental health nurses will continue to play an important role in the provision of mental health services in South Australia. We are committed to safe and efficient mental health nursing care, which requires nurses working in mental health to be adequately trained in mental health at the graduate diploma and advanced diploma levels. It is acknowledged that there is a need for a mix of both mental health qualified and non-mental health qualified registered nurses and enrolled nurses, and that appropriate supervision arrangements are in place to support this balance.

This skill mix includes non-mental health qualified registered nurses, mental health registered nurses, enrolled nurses and mental health trained enrolled nurses. The Hon. Tammy Jennings is correct in her assertion that it is a matter for the national Nursing and Midwifery Board of Australia to determine which nursing practice areas should have an area of practice endorsement. However, South Australia will continue to employ mental health nurses as part of the mix of registered enrolled nurses caring for people with mental health issues.

The honourable member also asked a question about medical unfitness or professional conduct of medical students, and I have been advised that in South Australia we already have in place a requirement that students in health professions are required to be registered. This is not the case in other jurisdictions.

Minister Hill fought hard to achieve this significant addition to the national scheme. With the commencement of the national law on 1 July 2010 all students undertaking courses in the relevant health professions will be registered. Boards will decide at what point during their program of study students will be required to be registered, and this will depend on the level of risk to the public. The national scheme will enable national boards to act on student impairment matters or where there is a conviction of a serious nature, which may impact on public safety. This requirement will come into effect for other jurisdictions from the beginning of 2011. However, as South Australia already registers students, clause 275 of the national law allows the continuation of student registration in South Australia from 1 July 2010.

A question was asked by the Hons Tammy Jennings and Stephen Wade concerning restrictions on psychological tests, including psychometric testing. I have been advised that, while South Australia's current Psychological Practices Act 1973 has provisions for the regulation of psychometric tests, no tests have been prescribed since the proclamation of the act.

In considering the risks associated with psychometric testing, the government has found that there is no evidence that the non-prescription of psychometric tests over the last 30 years has resulted in any harm to the public. The government also found that access to certain psychological tests is restricted by the companies or organisations that publish or provide those tests to registered psychologists.

At the first meeting of the Psychology Board of Australia on 20 September 2009, the board approved a process to prepare a consultation paper in 2010 on practice restrictions for psychological testing. This is the appropriate national mechanism for the profession to assess the need, or otherwise, for restrictions on psychometric tests.

The Hon. Tammy Jennings also asked a question on the Health and Community Services Complaints Commissioner and workload implications. I have been advised that, under the national law, the national board is required to notify the Health and Community Services Complaints Commissioner when a complaint has been received against a registered health practitioner and provide a copy of the complaint and any other relevant information.

Similarly, if the HCSCC receives a complaint concerning a health practitioner registered under the national scheme, the relevant national board must be notified and provided with a copy of the complaint and any other relevant information. The HCSCC and the national board must attempt to agree on how the complaint is to be dealt with. If agreement cannot be reached, then the most serious course of action will apply. For example, if the HCSCC believes that the matter should be referred to a tribunal, but the national board believes that it could be dealt with by a panel of the board, the matter must be referred to the tribunal.

The role of the HCSCC under the national law is no different from that which currently occurs with registration boards under the current state legislation, that is, to receive advice of complaints and propose a course of action. Under the national law, the HCSCC will have the additional ability to refer matters to a tribunal, a power that does not currently exist under state legislation. As a result, there is not expected to be any significant impact on the workload of the HCSCC.

The Hon. Tammy Jennings also asked a question regarding employment arrangements for nurses that might be deemed surplus to requirements. I have been advised that the national

agency is a body corporate and is not an instrumentality of the Crown and, as such, is not a public sector agency.

The provisions in the bill are consistent with other workforce transitions, such as the outsourcing of porters and orderlies at the Royal Adelaide Hospital in 1994 and the privatisation of Modbury Hospital in 1995, where public sector staff were not provided a right of return to the public sector. No other employee has a right of return to their former employment if they decide that they no longer like their new job. The government believes the provisions are generous by guaranteeing redeployment within the public sector should the national agency declare these staff surplus to requirements within two years.

The Hon. Stephen Wade and the Hon. Michelle Lensink asked a question in relation to provisions if there is a disagreement with something that is done by the ministerial council. I have been advised that the IGA states:

> Agreement by the ministerial council for the purpose of decisions relating to this scheme will be by consensus. The national law is silent in terms of the agreement process required.

However, clause 16 of the national law states:

> The ministerial council is to give direction or approval or make a recommendation, request or appointment for the purposes of a provision of this law by resolution of the council passed in accordance with procedures determined by the council.

Therefore, unless they decide otherwise, resolution of the council is by consensus. The Hon. Stephen Wade made a comment that parliament should make it as easy as possible for South Australians to know what law applies to them, particularly in relation to health practitioners. I have been advised that the Department of Health is in discussion with parliamentary counsel on whether the national law can be collocated with the South Australian adopting legislation for ease of access.

The Hon. Michelle Lensink asked a question in relation to carve-outs, and I have been advised that the exclusion of selected jurisdictional acts from applying to the national law is important to ensure national consistency in the administration of the national scheme. The acts to be excluded have been agreed across all jurisdictions. For example, rather than the requirements under the Freedom of Information Act of each jurisdiction applying to the national scheme, the equivalent commonwealth legislation will apply. There are no common health statutes between the jurisdictions that will affect the administration of the national scheme.

The Hon. Michelle Lensink also asked a question on what would happen with the five professions not included in this legislation. I have been advised that determining whether or not there will be a state office is a matter of the national board. Under national law, the national boards may establish a committee or boards in the participating jurisdictions. Each national board has determined where state or territory boards will be appointed. The role of these state and territory boards will be to oversee registration and complaint processes at the local level where these functions are delegated to them by the national board. The other five professions have determined that they will not establish a state or territory board.

In order to provide efficient processes for the professions, the other five national boards—pharmacy, optometry, podiatry, chiropractic and osteopathy—have decided that they will not establish a state or territory board in the first instance. As a result, the state or territory offices of the national agency will provide the registration and information provision roles on their behalf.

Finally, a question was asked in relation to risks posed by the concessions given to New South Wales. I have been advised that, regardless of whether jurisdictions use the national or local law, any outcomes from disciplinary proceedings will be recorded as part of a single national framework; therefore, the risks are expected to be minimal. Given the diversity of arrangements in Australia, the ministerial council agreed to a flexible model for the administrative arrangements for handling complaints. The national law—or state or territory law, depending on each jurisdiction's choice—provides a legislative framework for investigations and prosecutions and the definitions of offences and contraventions.

With those comments, I again thank honourable members for their valuable contributions and thank the Hon. Kelly Vincent for her cooperation in allowing us to expedite this bill. I look forward to the committee stage.

Bill read a second time.

[Sitting suspended from 12:59 to 14:17]

NEW PRIME MINISTER

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management) (14:18): I table a copy of a ministerial statement relating to the federal leadership made earlier today in another place by my colleague the Premier.

INTEGRATED DESIGN COMMISSIONER

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management) (14:18): I seek leave to make a ministerial statement.

Leave granted.

The Hon. P. HOLLOWAY: I advise the house that Mr Tim Horton, the distinguished Adelaide architect and President of the South Australian Chapter of the Australian Institute of Architects, has been offered and has accepted the position of Integrated Design Commissioner for a two year appointment. A recommendation will be made by cabinet to Executive Council next week. Mr Horton will take up his position from 5 July 2010.

Tim Horton has an outstanding reputation as an architect and urban designer. Since graduating in architecture and environmental design he has held a number of major roles, both as an architect and on professional bodies.

Tim has been responsible for design work on major projects in New South Wales, the Australian Capital Territory, the Northern Territory and, of course, South Australia. He currently practises at Hassell. Recently, Tim has been involved the design of the exemplary Adelaide Zoo entrance precinct (including the green wall) and the giant panda bamboo forest, and the Adelaide University Learning Hub (Hughes Plaza) master plan.

Tim's commitment to his profession has culminated in his appointment as President of the South Australia Chapter of the Royal Australian Institute of Architects, a position he now holds. He has also served as chair of the Architects National Practice Committee and as a juror for the Architecture Awards since 2008. Tim Horton is an exceptional South Australian and an exceptional architect, and he will make a significant difference to the design quality in this state. The government is grateful to him for accepting this important position as Integrated Design Commissioner.

The establishment of the Integrated Design Commission is a recommendation of Thinker in Residence Professor Laura Lee. Professor Lee was formerly head of architecture at Carnegie Mellon University in the United States and has held other distinguished appointments in other universities.

The South Australian government earlier this year asked Professor Lee to be our inaugural commissioner in order to turn her recommendations into reality. The announcement of the establishment of an Integrated Design Commission was hailed as visionary by Tim Horton himself on behalf of the Institute of Architects.

In relation to the appointment of Professor Lee as the inaugural commissioner, Tim Horton expressed the institute's deep respect for her understanding of the place of architecture in shaping more liveable, sustainable cities. He described Professor Lee as a highly respected architect and educator of international standing.

Professor Lee was due to begin her appointment part-time on 1 July. As the government had previously announced, Professor Lee advised the government that changed professional and family circumstances would make it difficult for her to take up her appointment on schedule. She inquired whether her appointment could be delayed until 1 September at the earliest.

Professor Lee has put an extraordinary amount of work into helping South Australia establish the IDC and on other design initiatives and is working closely with the Adelaide City Council on a separate but parallel strategy that has received substantial funding from the federal government. Regrettably, the government has had to advise Professor Lee that it cannot accede to her request for a delay in taking up the appointment, given the number of projects we are currently dealing with both in the central business district and the wider metropolitan area. She fully accepts

the government's decision for the earliest possible start and, therefore, has asked to be relieved of her appointment. She has also offered to give Mr Horton, the government and the commission any advice or support needed to help give the commission a flying start. A government architect will also be appointed, and this position will be advertised nationally shortly.

QUESTION TIME

ADELAIDE OVAL

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:24): My question is to the Minister for Urban Development and Planning. Did the minister know prior to the election that the estimated cost of the Adelaide Oval upgrade had increased?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management) (14:24): No, but one would not necessarily be surprised that when one has an initial estimate of any project and formal tenders are put in that the price may differ from that, but that should not surprise anybody.

The Hon. D.W. Ridgway: So your answer was no?

The PRESIDENT: If you had have been listening, you would have heard that, I think.

OFFSHORE OIL RIG LICENSING

The Hon. J.M.A. LENSINK (14:25): I seek leave to make an explanation before asking the Minister for Mineral Resources Development a question about offshore oil rig licensing.

Leave granted.

The Hon. J.M.A. LENSINK: There has been some consternation in the community about the vulnerability of Australian shores following the devastating oil spill from an offshore oil operation in the Gulf of Mexico. This environmental catastrophe should be a wake-up call to governments everywhere in terms of licensing of offshore mining operations. The minister stated in a media release on 17 May that he was inviting applications for two offshore developments within the Bight Basin, off the South Australian coast, which he believes could lead to multimillion dollar investment in offshore exploration. My questions are:

1. Is the government satisfied that its current licensing requirements of offshore operations adequately deal with risk management procedures? If so, how is the licensing different from the licensing that operated in the Gulf of Mexico?

2. In light of that catastrophe, does the minister feel that there is any need to review the licensing systems?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management) (14:26): One should always review any licensing system if there is some event, wherever it may be in the world. Of course, we have had a similar issue in relation to the North West Shelf, where there was a blowout. That is being reviewed by the National Offshore Petroleum Safety Authority (NOPSA) and other relevant bodies that regulate petroleum development and exploration in those activities. So, one always learns from any event.

In relation to offshore waters, they are beyond the three mile territorial mark, and they are the responsibility of the federal government, but the state government does have an arrangement for managing aspects of petroleum activity on behalf of the commonwealth.

Certainly, the early advice I have received is that, within this country and within this state in particular, we do have very stringent controls over petroleum exploration. As I understand it, the situation in the Gulf of Mexico was due to the failure of the blowout prevention mechanism that is required on these wells. I understand that, within our country, that blowout prevention technology has to be tested before it is put in place. It appears that may not have happened in the Gulf of Mexico, but I do not want to pre-empt any findings. In relation to what happened in the Gulf of Mexico, we have only press reports to go on.

I do understand that, certainly with operations within our state, that blowout prevention would have to be checked and proved to be safe before operations would continue. Certainly, the preliminary advice I have is that in this state we are required to have a number of regulatory measures in place, which may not apply in the Gulf of Mexico or other jurisdictions.

Of course, whenever there are events such as this, be they in the Gulf of Mexico or the North West Shelf, we should always look at those events and learn from them. Obviously, Australian regulatory authorities, be they commonwealth or state, will be looking at those events to see whether there are any lessons to be learnt, and our regulations would be upgraded accordingly.

CHARLES STURT COUNCIL

The Hon. S.G. WADE (14:28): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations a question about the Charles Sturt council.

Leave granted.

The Hon. S.G. WADE: On 3 December last year, this council passed a motion directing the Ombudsman to investigate allegations of undue influence on the City of Charles Sturt and potential conflicts of interest. Since that time, four other Ombudsman's investigations into aspects of the St Clair land swap have been concluded by the Ombudsman.

While the Ombudsman cleared the council of wrongdoing in relation to these investigations, he specifically warned that no conclusions about the outcome of the parliamentary investigation should be drawn from the conclusions of the first four investigations.

On 15 June 2010, the City of Charles Sturt resolved to meet in closed session and decided to take legal action, such as declaratory relief or judicial review, to challenge the Ombudsman's decisions in relation to the investigation; the Ombudsman's investigation has been suspended while the legal proceedings are underway. This means that Charles Sturt council is the second council in South Australia that is at risk of going into the upcoming local government elections period with issues of probity left unresolved. My questions are:

1. Does the minister support the use of closed sessions of council to authorise the use of ratepayers' money to initiate legal proceedings, which will delay an accountability investigation on the eve of an election?

2. Does the minister have the power, under the Local Government Elections Act 1999 or otherwise, to postpone any election that would otherwise be held in the context of unresolved probity investigations?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for the City of Adelaide) (14:30): I thank the honourable member for his questions. In relation to the powers of councils to hold closed sessions, the Local Government Act provides that councils may exclude the public from meetings to the extent, and only to the extent, that the council considers it necessary or appropriate to receive, discuss or consider in-confidence matters that fall within one of a number of categories listed in section 90 of the act.

These categories are not restricted to commercial information of a confidential nature or information that could confer a commercial advantage on a person with whom the council is dealing, but includes such matters as legal advice and litigation, the unreasonable disclosure of personal affairs of any person and security and safety matters. A council is not automatically justified in excluding the public simply because a matter comes within one of those categories spelt out in the act.

Councils need to consider in each case whether it is really necessary or appropriate to do so, bearing in mind the principles of open government. Section 90 states that, in considering whether it is necessary or appropriate to exclude the public, it is irrelevant that the discussion of a matter in public may, for instance, embarrass the council concerned (or members or employees of the council) or cause a loss of confidence in the council, so those things are expressly mentioned.

Similarly, the council should only order that a document associated with a discussion from which the public are excluded will remain confidential if it is considered proper and necessary in the broader community interests. So, we can see that the act is quite clear in the direction it gives. Unless there is evidence that the council has breached one of those provisions, then the council has a right to consider matters and make decisions in a closed session if it falls within those parameters of the act. My understanding is that the decisions that were made, to which the honourable member refers, were made in accordance with those.

The Hon. S.G. Wade interjecting:

The Hon. G.E. GAGO: If the honourable member is suggesting that they are not, there is a process for him to raise those allegations and there is a very clear process to enable us to investigate and deal with those allegations. If that is what the honourable member is implying, I suggest that he does the responsible thing and take that course of action.

In relation to powers to postpone elections, I have been advised that the only powers I have as Minister for State/Local Government Relations to do such a thing would be in relation to the results of an investigation that showed or demonstrated in some way that there had been breaches or other serious issues of concern, and that in response to that investigation—and the honourable member understands that investigations have a series of phases that have to be adhered to under the act, so it is not a simple process by any stretch of the imagination, and if all those phases were adhered to and the result of the investigation was that an election should be postponed—I understand that I would then have the powers to take action against a council. If that action involved the postponing of a council election to address a particular issue of concern that had been identified in that investigation, then I believe I would have the powers to do that.

As I said, there are a number of triggers, if you like, that would have to be met before I could avail myself of those particular powers. I understand that the Ombudsman has powers to direct a council to take certain actions if he is undertaking an investigation and there is reason to believe that certain actions of the council should be prevented or modified in some way.

In relation to that particular investigation, I understand that the Ombudsman has powers to direct a council to take certain actions in those circumstances. So, there are legislative provisions and they are very specific. Obviously, to interfere in the democratic process is a very serious intervention and one that our legislation protects fairly fiercely. So, there are provisions, but they are only available under certain conditions.

CHARLES STURT COUNCIL

The Hon. S.G. WADE (14:36): Does the minister's power to postpone an election relate only to investigations initiated under the Local Government Act, or could that also apply to an investigation of the Ombudsman initiated by the parliament?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for the City of Adelaide) (14:36): My understanding is that the powers that I have to intervene—the ones I was referring to—are in relation to my powers under the Local Government Act that I believe extend not just to breaches of the Local Government Act but to breaches of other legislation. I will double-check that. In relation to the Ombudsman Act, I will need to take that on notice to ensure that the detail is accurate, and I am happy to bring that back to the council.

MURRAY BRIDGE DEVELOPMENT PLAN AMENDMENT

The Hon. R.P. WORTLEY (14:38): Will the Minister for Urban Development and Planning provide an update on the Murray Bridge development plan amendment?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management) (14:38): I am very pleased to advise that the Murray Bridge residential and racecourse development plan amendment has been approved, providing a great opportunity for the racing industry, housing for local residents, employment opportunities, and a range of other economic benefits to Murray Bridge and the region.

The current Murray Bridge racecourse is located in a built-up area near the centre of the town. The Murray Bridge Racing Club believes an expansion of these existing facilities, particularly those required for training, is required to the future success of the club. Mr Reg Nolan, the Chairman of the Murray Bridge Racing Club, recently explained in an interview with the *Stock Journal* that, 'the expansion of the racing complex will create the opportunity for the club to become the most important racing complex in South Australia outside of Adelaide'. However, the current site of the racecourse, right in the middle of town, does not allow for this desired expansion.

In proposing to relocate the existing track to accommodate this expansion, the Murray Bridge Racing Club and joint-venture partners devised a master plan development on the outskirts of town. Their vision for the club also comprises residential allotments, including rural living allotments for equine management, as well as supporting retail community and training facilities, wetlands and open space.

Nearly two years ago, I initiated the Murray Bridge residential and racecourse development plan amendment process to help the club achieve this vision. Working with the Murray Bridge council and landowners, the Department of Planning and Local Government looked at ways to appropriately rezone about 853 hectares of land located on the outskirts of Murray Bridge, south of the South-Eastern Freeway. In January 2009 the draft Murray Bridge residential and racecourse development plan amendment was made available for public consultation. Five submissions were received from members of the public, along with four council submissions and 15 submissions from government agencies.

In March 2009 a public meeting attended by 16 people was held at Murray Bridge by a subcommittee of the Development Policy Advisory Committee to hear verbal submissions. Following issues raised during the consultation process, negotiations were conducted with both the Environment Protection Authority and Primary Industries and Resources SA. These land-use issues were addressed through changes to the original draft.

As a result of these negotiations and consultations, I have settled on the shape of the final rezoning, which is now being gazetted. As a consequence, the zoning of about 853 hectares south of the South-Eastern Freeway has now been changed to accommodate new residential rural living and recreational uses. This new zoning also includes provision for a race track, equine facilities, and horse trails. This government is often accused by those opposite of neglecting regional South Australia. This could not be further from the truth. Here we have a prime example of the practical support this government is providing to regional communities to boost their economies.

I would also like to acknowledge the support received for this development from the member for Hammond; however, it is disappointing that the government has not received similar support for responsible and sustainable planned development from his colleague the member for Kavel. Like many of those opposite, the Liberals' can-do resolve simply melts away at the first whiff of opposition from noisy minorities and the NIMBY brigade. This government is prepared to make the tough decisions and, where appropriate, facilitate strategic and long-term planning for the benefit of all South Australians. It does this knowing that the continued sustainable economic expansion created by this government's policies is closely aligned with the growth of our population.

I would like to acknowledge the initiative shown by the Murray Bridge Racing Club in taking steps to encourage the future economic growth of this important regional centre. Not only will this rezoning support upgraded race facilities: just as importantly, the complementary housing development will also accommodate the anticipated growth in Murray Bridge's population. As previously mentioned, about 3,500 housing allotments will be generated as a result of this development plan amendment. No doubt some of those homes will be used by persons directly involved with the racing industry.

A housing development on this scale also allows for the planned future growth of the Murray Bridge community; in particular, this development helps cater for the predicted growth of Murray Bridge, as outlined in the 30-Year Plan for Greater Adelaide. As members will be aware, the overall population target for the Adelaide Hills region in the 30-year plan is 29,000 additional people. Of this regional target, Murray Bridge is estimated to house 13,400 additional people during the next three decades.

The existing racecourse will continue to operate until the new racecourse is available. Once the Murray Bridge Racing Club transfers its operations to the new racecourse complex, the future of this significant landholding at the centre of town will no doubt be explored by the owners. I am confident that any future plans for that strategically placed land will take into account the needs of Murray Bridge and the regional economy.

SAMUELL, DR D.

The Hon. A. BRESSINGTON (14:43): I seek leave to make a brief explanation before asking the Minister for Industrial Relations questions concerning WorkCover.

Leave granted.

The Hon. A. BRESSINGTON: Over the past two weeks I have been approached by a number of constituents on WorkCover, who have been required by their case manager to appear before Dr Doron Samuell, a fly-in independent medical examiner from New South Wales. Each has alleged that the behaviour of Dr Samuell was intimidating and bullying, that he inappropriately

filmed meetings without seeking their permission, that there was yelling and finger-pointing, and that he behaved in a threatening manner towards the injured workers.

One constituent, diagnosed with post-traumatic stress disorder, reports cowering in a corner as Dr Samuell hurled abuse and pushed his finger into the worker's chest. This was reportedly in response to the injured worker taking notes during the meeting. Another said that Dr Samuell filmed the meeting without asking permission, and then proceeded to interview him as though he were before the Gestapo. The wife of another injured worker, who attended the assessment, reports that Dr Samuell confused her husband by asking question after question and not giving him time to collect his thoughts to answer any question properly. When she tried to clarify one of Dr Samuell's questions, she reports being told to be quiet because she was not even there.

As the minister would be aware, Dr Samuell is a fly-in, independent medical examiner who, as a group, were described as hired guns by Dr Andrew Lavender, President of the South Australian Branch of the Australian Medical Association in a recent *Sunday Mail* article. Dr Lavender went on to say in the article that they (claims managers) are trying to seek someone who, instead of giving an independent opinion, is getting the opinion that they (claims managers) want.

Of further concern is Dr Samuell's reported involvement in the campaign to discredit Dr Louise Newman, a child trauma expert who, in 2004, was a joint author of a damning study showing the extent of mental illness in detention centres.

In an ABC online article on 10 February 2005, Dr Samuell was accused by Dr Newman of a campaign of harassment and personal vilification, seemingly sponsored by the department of immigration, if not the minister. In essence, Dr Samuell is again accused of being a hired gun for the government. My questions to the minister are:

1. How many injured workers has Dr Samuell been engaged to assess as an independent medical examiner?

2. How many of these injured workers had previously seen independent medical examiners for assessment?

3. How many of these injured workers were required by claims managers to see another independent medical examiner after seeing Dr Samuell?

4. How many complaints have been made to claims managers, WorkCover and the WorkCover Ombudsman concerning Dr Samuell's conduct?

5. If, following the investigation, the minister considers the complaints to be with foundation, what action will the minister take to eliminate professional misconduct for certain IMEs and limit the number of independent assessments that injured workers are required to undergo?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management) (14:46): I thank the honourable member for her questions, and I note that she has a motion currently before this house. I propose to post some information when we debate that particular matter next week. The honourable member raised the issue of independent medical examiners sometime ago and I have been seeking information.

Perhaps I should say, first, that the honourable member has made allegations against one particular medical practitioner. In relation to that, I make two comments. First of all, I think that anyone who has issue with that should perhaps take those issues to the WorkCover Ombudsman.

The Hon. A. Bressington: I have.

The Hon. P. HOLLOWAY: And I am sure that they would be appropriately investigated. Secondly, in relation to any particular individual, as with all allegations made, they would need to be properly investigated before any conclusion should be drawn.

In relation to the broader issue, the honourable member did raise it with a question a week or two ago. It is a matter which WorkCover has been examining and they will be making some changes in relation to what happens with the use of independent medical examiners.

Independent medical examinations are currently used to obtain independent evidence of a medical nature as and when needed to determine a claim, whether that be a claim for weekly payment or, less likely, cost of medical treatment. Independent medical examinations are intended

to be impartial assessments providing independent medical opinion. They are arranged by the claims agent to assist in determining a worker's medical status or to clarify issues relating to disability, capacity, treatment or recovery. All independent medical examiners must be registered specialists with the Medical Board of South Australia to conduct examinations in South Australia.

In relation to the interstate use, I am advised that WorkCover has a list of medical specialists who have agreed to provide independent medical examinations. Although its preferred, and generally common, for an independent medical examination to be conducted by one of the medical specialists on this list, it is not always possible or most appropriate to utilise their services.

From 1 July 2010 any medical specialist registered with the Medical Board of South Australia can conduct an independent medical examination in South Australia. Sometimes a specialist practising interstate is the most suitable candidate in terms of their speciality or their availability. In other words, while any medical specialist as of 1 July will be able to conduct an independent medical examination, there will still be some situations where a specialist practising interstate may be required, because of the particular condition or the availability of suitable local specialists. Some of the areas of speciality where interstate independent medical examiners have been used, I am advised, include rheumatology, general surgeon, physician, occupational medicine, orthopaedic surgeon, and psychiatry.

It is important to note that the cost of an independent medical examination is gazetted in the WorkCover SA medical fee schedule, and all independent medical examiners must abide by these fees. WorkCover has a list of contracted providers, in accordance with section 53 part 2 of the Workers Compensation and Rehabilitation Act, who have agreed to provide these examinations.

As I explained earlier, WorkCover has reviewed its contracting processes for independent medical examiners, and its contracting arrangements will change from umbrella contracts to contracting providers on an individual case basis. This will remove the current list format of contracted providers, and WorkCover's nominated list of approved experts will become any medical specialist, other than a general practitioner, who is registered with the Medical Board of South Australia. So, this is an inclusive rather than exclusive approach that helps remove potential barriers in assessing independent medical examiners. Contracts will therefore be entered into with specialists on an individual basis for their acceptance following a referral letter

I also indicate that of course the changes that were made by this parliament to WorkCover several years ago introduced medical panels. Referrals to the medical panels since 1 April 2009, from both registered employers through Employers Mutual and self-insurers, have been progressively increasing. The medical panel selection process is transparent and equitable.

The Governor appoints legally qualified medical practitioners to the medical panel on the recommendation of the minister. Nominations come from a selection committee, which includes employee and employer stakeholders and others from the medical field. The Convenor of Medical Panels SA convenes panels to answer medical questions from the list of medical practitioners so appointed. The mix of specialties depends on the medical questions referred.

WorkCover with Employers Mutual have taken steps to broaden the approach and to evaluate when a referral to Medical Panels SA is a better option than the past practice of seeking further medical reports from an independent medical examiner or a treating doctor. We hope that this will lead to a change in practices over time, and so, if there is any truth to the type of allegation made by the honourable member, we hope this is one way in which that will be mitigated.

A doctor who is on the medical panel can be used as an independent medical examiner. However, if they have seen the injured worker previously, or been involved with their treatment, then a conflict of interest is declared and managed by the appropriate party, whether Employers Mutual or Medical Panels SA.

So the matters raised by the honourable member I have taken up with WorkCover. As I say, as a result of some work that has been undertaken by WorkCover there will be some changes such as I have announced now, and also we will endeavour to ensure that the use of the medical panels will mitigate against any of the types of abuses that have been alleged by the honourable member. In relation to the particular case that she raised, I think the appropriate way for that to be examined would be through the Ombudsman, but I will see if I can obtain any further information on that matter and bring that back to the council.

SAMUELL, DR D.

The Hon. A. BRESSINGTON (14:54): I have a supplementary question. Will the minister also try to get a commitment from WorkCover, since they are so willing to change their policies, that they will also limit the number of independent medical examinations that an injured worker is required to undergo?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management) (14:54): The problem would be that if you do need an expert from interstate because the specialty is so narrow that there is only a handful of people here and that they may therefore be conflicted, because they have already seen the person or in some way they are not available, then it would be dangerous to put a limit on it.

Obviously, I expect that WorkCover will adopt practices to reduce that. Certainly, the measures it has already announced will, I hope, see a reduction in the number of interstate medical examinations. That is the whole point of the exercise, and we would expect to see that happen. Whether putting a cap on it is sensible is another matter but I would certainly expect to see the number of interstate independent medical examinations reduced. That is the whole purpose of the exercise.

SAMUELL, DR D.

The Hon. A. BRESSINGTON (14:55): I would like to clarify this because I think the minister misunderstood my supplementary question. I am not asking about limiting the number of fly-ins: I am asking about limiting the number of actual independent medical examinations that an injured worker is required to undergo now. Can we put a cap on it? Does the minister think that perhaps 50 independent medical assessments is a bit too many?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management) (14:56): Of course that would be the case. One would hope that if the medical panels are functioning correctly—and certainly the advice I have received suggests that they have been making a big difference—then, in relation to the assessment processes of WorkCover, one would think that, apart from a case progressing over a period of time, in most cases one such examination would be desirable.

Unless there is an ongoing issue that needs future reference, it is hard to believe that the number of examinations that the honourable member is talking about is desirable. If there is any evidence that that is continuing then I would be concerned about it, and I would hope that WorkCover would be concerned as well.

May I take this opportunity to say that a new chief executive of WorkCover, Mr Rob Thompson, has been appointed in the last week or so. He is a former acting head of WorkCover in New South Wales, and he is a person with great experience in this field. As he becomes familiar with the operations in South Australia, one would expect that he will take action to ensure not only that the treatment of injured workers is reduced, in terms of over-examination, but that the scheme is efficient. Repeated medical examinations, if they do occur, are not in anyone's interest—neither for the economic cost of the scheme nor for the wellbeing of workers—so, obviously, we would like to see them reduced, and I am sure that will be the objective of the changes that are made.

INDIGENOUS WOMEN, BUSINESS ADVICE

The Hon. CARMEL ZOLLO (14:58): I seek leave to make a brief explanation before asking the Minister for the Status of Women a question about business advice for Indigenous people.

Leave granted.

The Hon. CARMEL ZOLLO: When starting a business, it can be helpful to learn from the experience of others. Will the minister advise what is being done to assist Indigenous women in business?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for the City of Adelaide) (14:58): I thank the honourable member for her question. A new business toolkit for Indigenous women has been released which is aimed at providing

Aboriginal women across Australia with practical guidance and advice on being successful in business.

The business toolkit tells the stories of six successful Aboriginal businesswomen, sharing their tips and experiences on how to get started, balance family and community obligations, manage the many demands of business life, and when and where to get help. The toolkit was created following recommendations from the National Aboriginal and Torres Strait Islander Women's Gathering (NATSIWG). NATSIWG met in Canberra last month and South Australia was represented by Violet Buckskin, Pat Waria-Read and Mabel Lochowiak. All were elected at the State Aboriginal Women's Gathering for their valued contribution in providing vital community-focused advice and support to Indigenous women. The sharing of ideas helps shape the NATSIWG agenda and provides a voice for issues affecting South Australian Indigenous women such as employment, housing, safety and wellbeing, and human rights at a national level.

Many Indigenous women live in rural and remote areas and often these areas have less access to essential business services such as postal, phone and banking services. The toolkit addresses these issues with a number of useful fact sheets covering business planning to exporting goods and provides access to a range of useful local resources.

Being your own boss can offer greater flexibility for women to combine family, culture and business. A further exciting development for Indigenous women's leadership is the recent appointment of Megan Davis to the United Nations Indigenous Advisory Group. Megan will join the United Nations Indigenous Advisory Group in 2011 after being recommended for the position by the Rudd government—the now Gillard government, I am pleased to say. An international human rights lawyer from Queensland, Megan is the first Australian Indigenous woman to be elected to a United Nations body. The United Nations' Permanent Forum on Indigenous Issues advises on issues including economic and social development, culture, health and human rights.

BURRA MONSTER MINE RESERVE

The Hon. M. PARNELL (15:02): I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development about the Monster Mine Reserve at Burra.

Leave granted.

The Hon. M. PARNELL: I have been contacted by a number of residents of Burra and the local Ratepayers Action Group concerned about proposed mineral exploration and mining within the historic Burra Monster Mine Reserve. Residents' concerns include negative impacts on groundwater, heritage, tourism as well as the pollution impacts of mining close to houses, if mining were to be allowed. One resident wrote to me as follows:

> The effect on the environment, groundwater and on the town itself will be profound. Burra is a much-loved part of regional South Australia...Allowing mining operations in Burra will be the death knell for any ambience and amenity the town has to offer.

I am informed that, if mining were to go ahead, several listed heritage items would be destroyed and I also understand that the reserve status of the former monster mine will need to be lifted before exploration or mining can proceed. My questions of the minister are:

1. What is the current status of Phoenix Copper's application for a mineral exploration licence?

2. Is it necessary to lift reserve status or delist any state or local heritage places in order to facilitate mining?

3. What is the government doing to engage the local community on important decisions about their historic town's future?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management) (15:04): My advice is that Phoenix Copper has a number of exploration licences throughout the Burra region, which will surround the monster mine, which was declared on 10 March 1988 to provide further protection to the historic mining heritage. That area which is precluded prevents any access for mineral exploration or mining within the reserve. The company is now proposing a defined program of exploration through the region, and they would like to explore within the Monster Mine Reserve, which covers the Burra mines historic site and the Burra smelter historic site, to further evaluate the copper and gold mineral prospectivity of the Burra district.

Exploration licence 4266 held by Phoenix Copper overlies the monster mine but excludes the land that is reserved under the Mining Act. Since Phoenix Copper began exploration in the region, it has initiated an in-depth study of the geology and possible sources of copper mineralisation in the region including a comprehensive review of all new and historic data on the Burra region.

I also advise that new work by the Geological Survey of South Australia on the geology of the historic Burra copper mine and the geological age of the rock units and the copper mineral system provides scientific support for further drill testing for economic mineral concentrations at depth beneath the Burra Mine Reserve and along strike to the north and south, beyond the historic mine reserve. That is the background to this information.

My advice is that a proposal by Phoenix Copper to publicly consult on varying the proclamation of the Monster Mine Reserve to allow exploration has been released and is out for public consultation. Hence, the issue raised by the honourable member sets out exactly why that is currently a matter of public debate.

Primary Industries and Resources South Australia has advised the district council, the Burra community and other stakeholders on the consultation process, through local newspaper advertisements, and written submissions will be invited on the proposal. That is where the situation lies at the moment. As I have said, Phoenix Copper is exploring around the historic mine, outside the region to both the north and south. Phoenix Copper has requested that consideration be given to its being able to explore within the historic mine site.

Any historic buildings and so on that come under the Heritage Act would be protected. Any suggestion that any activity during an exploration phase would damage existing historical features, such as buildings and the like, is not, in my view, correct. All the company is seeking to do at this stage is to be able to explore so that they can determine the extent of any copper and to see whether it would be viable for mining. In fact, if there were any resources there, they may be able to mine them from that site without necessarily any physical disturbance of the area.

However, that is all really for the future. At this stage, it is simply a question of the company seeking the lifting of the prohibition on exploration within the historic area, which includes the old mine site. However, that will have to go through the public consultation process before any decision is made on it. The sort of considerations outlined by the honourable member would be part of any consideration before a decision is made.

Obviously, Burra is a very important historic town, but its history is because of the mining industry. What we find in a number of historic sites is that they may well still have significant mineral resources. Ultimately, the question is whether one should determine whether there are resources there and then make the decision as to whether or not they can be exploited in the community's interest. At this stage, really, we are going through that consultation process before we make any decision.

COURT DELAYS

The Hon. J.S.L. DAWKINS (15:09): I seek leave to make a brief explanation before asking the Leader of the Government a question about court delays and an associated housing issue.

Leave granted.

The Hon. J.S.L. DAWKINS: The leader and some other members would be aware that in question time on 27 October last year I sought a whole of government approach to a difficult constituent issue. I raised a matter where a female constituent has a pending de facto property action in the District Court in which she is seeking relief to access settlement for her share of property with her former de facto partner, and that includes her registered half interest in their former residence. In my explanation I detailed my constituent's particularly difficult situation arising from the policy that states that if you are a registered proprietor of property you cannot access or even get on to the list of people seeking public housing through Housing SA.

So, you have a situation where a registered proprietor of property cannot live in it at the present time, access it, use the money from it or even borrow against it to secure other accommodation. The legal status means that they are excluded from being on a public housing list or having access to it, yet at the same time they face a significant delay in the resolution of civil court proceedings.

I previously raised this constituent's case with the housing minister by correspondence on two occasions. In addition, the situation was brought to the attention of the then attorney-general by the member for Bragg in another place. My constituent, who has been forced to live with relatives for many months, is continually frustrated by the presence of empty Housing Trust accommodation in the near vicinity of her temporary abode. She has also had the ongoing frustration that, despite predictions that court matters would have been concluded by March/April this year, they remain unresolved.

The leader assured me last October that he would pass this matter on to the other ministers involved. I provided the constituent's details the same day and I understand he took up this matter. However, despite my regular queries to the leader's office, no responses were received prior to the election. Following further discussion and correspondence with the leader personally and with his office, I received a letter from the new Attorney-General, the Hon. John Rau, on 20 May this year. This correspondence dealt with the history of the civil matter and the delays therein. However, given my request for a whole-of-government approach, I am disappointed that there has been no response whatsoever from the Minister for Housing. My questions are:

1. Will the Leader of the Government as a matter of priority seek a response from the Minister for Housing?

2. In doing so, will he emphasise my constituent's predicament of having to live with family members while there are many vacant Housing SA properties in nearby suburbs?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management) (15:12): I thank the honourable member for his question. I recall the particular issue that he raised and followed up with me. As to a whole of government approach in relation to housing, it is one thing to discuss a legal issue involving delays that might occur in the Family Court as to eligibility, but even if one was eligible for a Housing Trust home I am sure the honourable member is aware that there is a very lengthy waiting list for Housing Trust properties, so just being on a list will not necessarily resolve the problem. In relation to empty Housing Trust houses, I know from comments my colleague has made in another place—and this has been an issue for many years—that there are many reasons why there can be vacancies. It can be due to renovation or in some cases rehabilitation of whole areas. Often where some houses are vacant it can be because they are part of a wider rehabilitation process.

Much of our former Housing Trust stock is more than 50 years old and in need of renovation or, in some cases, replacement, so there are a number of reasons why properties are vacant and there is a waiting list. In some cases if they are elderly people they may be in hospital for treatment, so while a place may appear to be vacant it may not be. There are many reasons, but I assure the honourable member that the former Housing Trust, or whatever it is now, would not be keeping places vacant for no good reason. The legal matter is obviously more complex and, if it involves Family Court law and the like, clearly there are broader matters and commonwealth issues involved.

In relation to the general policy of making Housing Trust properties available, I am happy to see if the Minister for Housing has any further information, but I can assure the member that the Housing Trust is well aware that there are thousands of people on waiting lists, and I am sure that the department does not have houses unfilled for no good reason.

COURT DELAYS

The Hon. J.S.L. DAWKINS (15:15): In taking that matter up with the Minister for Housing, will the leader emphasise the predicament that this woman is in and the fact that, given her lack of assets, if it was not for sympathetic family members, she would not have anywhere to live?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management) (15:15): Unfortunately, there are many people in that situation, and that has been the way for many years. When I was first elected to parliament in the other chamber, I was well aware that I had a large Housing Trust area in my electorate. About 40 per cent of the constituent work I had during those four years as a member of parliament would have involved Housing Trust matters and people looking for housing. That was 20 years ago, so nothing much has changed.

In relation to individual cases, given that there are many people in need of housing, the department of housing obviously assesses those cases in a neutral way. I can only suggest that the honourable member—when these other issues are resolved—again approach the housing department in relation to this particular person's circumstances so that they can be treated on their merits, relative to those other people who also wish to obtain public housing.

OPEN SPACE FUNDING

The Hon. B.V. FINNIGAN (15:17): My question is to the Minister for Urban Development and Planning. The state government is recognised for providing funding to assist in the creation and improvement of public spaces for the enjoyment of all South Australians. Will the Leader of the Government advise of any recent funding provided to local councils to assist in improving our public spaces across our state?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management) (15:17): The state government is committed to providing quality open space areas for the benefit of all South Australians to use and enjoy. High quality open space in our community is more than just providing beautiful spaces that can be admired from afar. Open space that is truly appreciated by the community are those areas not only developed with great design principles but that are also actively used by members of local communities, as well as visitors.

I was most pleased to recently announce the recipients of state government assistance through the latest round of the Planning and Development Fund's Open Space and Places for People grants. As some members would be aware, the state government through the Planning and Development Fund provides significant financial assistance to local government for the planning, purchase and development of quality open spaces across South Australia.

The Open Space program provides funding for projects designed to assist in the preservation, enhancement and enjoyment of open space areas containing elements of natural beauty, conservation significance and cultural value. The program is specifically for works relating to conservation and recreation on public land.

The principal objective of the Places for People program is to provide funding to revitalise or create public spaces that are important to the social, cultural and economic life of their communities. The secondary aim of the program is to foster a culture of strategic urban design in councils, establishing practices that will benefit future public realm projects. The program is specifically for works relating to conservation and recreation on public land. Preference is given to projects that feature a high degree of informal recreation, such as walking and cycling, informal ball games and picnicking, that is compatible with the surrounding environment.

This government has now invested more than $70 million in the past eight years to encourage councils and community groups to develop inviting public space in their local areas. More than $5 million in funding has been provided to local government as part of the most recent Open Space and Places for People grants to provide and improve public spaces in South Australia.

The significance of this open space funding to local government is even more pronounced when we consider that the 2009-10 commitment to these programs has been more than $19 million. A total of 24 significant projects have received funding through the latest round of grants across South Australia, which is one of the highest number of projects ever funded in a single grant round.

Communities across South Australia have received funding for the development of a range of exciting projects, from Victor Harbor and Robe to Leigh Creek and Elliston and, within the Adelaide metropolitan region, from Willunga to Salisbury North and from Semaphore Park to Unley. I would like to highlight a handful of the projects in the latest round to give members an idea of the local initiatives we are supporting.

The City of Charles Sturt, for example, will receive $1.1 million for its Fort Glanville construction project, the latest stage in the development of the coast park along the metropolitan foreshore. This project covers a section of the coast park at Fort Glanville from Bower Road to Recreation Parade at Semaphore Park. This grant will assist the council to fund the construction of a three metre wide dual-use recreational park as well as significant environmental improvements to the dune vegetation, outdoor furniture, artistic signage highlighting historic Fort Glanville, and

educational information on the dunes, as well as facilities at Port Malcolm Reserve and the adjoining Semaphore Surf Lifesaving Club.

The Wattle Range Council is to receive $245,000 funding for its Mary MacKillop precinct project. The canonisation of Mary MacKillop in October this year is expected to result in a large increase in visitors to Penola, and this project will provide for a range of improvements that will benefit not only visitors to Penola but also the local community.

The project will provide for the upgrade and extension of the heritage trail footpath network, improved street lighting, street furniture, landscaping and the upgrade of Mary MacKillop Park, as well as the reduction of road widths and the widening of footpaths to encourage pedestrian movement and outdoor dining.

The City of Marion will receive $307,000 and the City of Unley will receive $166,000 for work to be undertaken to the Mike Turtur Bikeway, which was formerly known as Tramway Park. This funding will go towards the bikeway works north from Morphett Road to Greenhill Road, adjoining an already completed section from Greenhill Road to South Terrace in the city.

This handful of initiatives, along with other projects to receive funding from the Planning and Development Fund, will provide long-term benefits to local communities as well as visitors. Just as important as improving the look of suburbs and country towns, the landscaping and associated construction works provide jobs and training to many local tradespeople, which is, of course, particularly important for rural and regional communities.

CONSTRUCTION INDUSTRY TRAINING FUND

The Hon. D.G.E. HOOD (15:22): I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning a question regarding the Construction Industry Training Fund.

Leave granted.

The Hon. D.G.E. HOOD: It has come to my attention that there have been two reviews of the Construction Industry Training Fund, one pursuant to section 38 of the act and undertaken by KPA Consulting for the Minister for Employment, Training and Further Education back in 2004, and a further report prepared by the Economic and Finance Committee in 2005. It appears as though there was some double up; in particular that the Economic and Finance Committee was not initially aware of the KPA Consulting report when it began looking into the fund.

The Economic and Finance Committee, in particular, heard some damning evidence into the effectiveness of the fund. For example, the Deputy Chief Executive Officer of the Master Builders Association of South Australia, David Callan, blamed the board in part for actually causing labour shortages. Mr Callan told the committee:

> We do believe that the performance of the CITB is inextricably linked to the present labour shortages that we have. Those labour shortages, rather than being in a cyclical boom/bust situation are really to do with the systemic problems that issue from the system which training has provided, particularly entry-level training within the industry.

Further, the managing director of Home Australia complained to the committee that more had to be done for entry-level training and that every dollar the board put into upskilling tradespeople (who were already on significant wages, of course) was a dollar less that was going into recruiting young people as apprentices.

After hearing this damning evidence from across the industry regarding the effectiveness of the board, the committee recommended (in recommendation No. 4) that board policy be changed so that, as market conditions allow, the majority of the fund's training expenditure now be directed to entry-level training through group apprenticeship schemes or group prevocational schemes and individually indentured apprenticeships—including the upskilling during the term of the apprenticeship itself—and the retraining of workers who had left the industry and wished to return at some later point. My questions are:

1. Why has this recommendation not been implemented to date?

2. Will the minister confirm that none of the 10 recommendations of the report has actually been implemented?

3. What action will the government take to address South Australia's chronic shortage of apprentices?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management) (15:25): I thank the honourable member for his question. Following the question that he asked me about this fund the other day, I understand that these matters are the responsibility of the Minister for Employment, Training and Further Education in another place, and I will be happy to refer the questions to him for a response.

ANSWERS TO QUESTIONS

DISABILITY DATA

In reply to the **Hon. K.L. VINCENT** (6 May 2010).

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for the City of Adelaide): The Minister for Disability has provided the following information:

The unmet need data that is published on the website is part of the report entitled '*The Provision of Disability Services in South Australia*', and it was agreed that the information will be updated every six months.

The most recent data relates to the December 2009 quarter and I am informed that the information on the website was updated on 6 May 2010, following the re-election of the Labor Government.

HOME INSULATION SCHEME

In reply to the **Hon. J.M.A. LENSINK** (11 May 2010).

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for the City of Adelaide): I am advised:

1. Insulation installers require a restricted building work contractor's licence and building work supervisor's registration. The main measure introduced by OCBA to 'streamline' the processing of this type of application was the hiring of a dedicated officer to process these applications as a priority. This person was employed from 12 October 2009 to 12 April 2010.

OCBA commenced processing applications while applicants were awaiting their National Police Certificates or while they were completing their studies. However, OCBA did not grant licences to applicants until all documentation had been submitted and the Commissioner for Consumer Affairs was satisfied that the applicants met all licensing criteria.

Applicants underwent the same background checks as any other applicant for a restricted building work contractor's licence and they had to have completed a specific course to show they had sufficient technical knowledge. They also had to meet the same business knowledge and experience requirements as any other applicant.

SITTINGS AND BUSINESS

Adjourned debate on motion of Hon. P. Holloway:

That, during the present session and unless otherwise ordered, if the council has not adjourned at 10pm on Tuesdays and Wednesdays, a minister shall move the motion 'That the council do now adjourn.'

(Continued from 12 May 2010.)

The Hon. D.G.E. HOOD (15:26): I rise briefly to speak on this issue. I commend the minister for moving this motion. I think all of us have had discussions from time to time along these lines and it really takes somebody to move a motion to this effect for something actually to happen.

In very succinct terms, we are inclined to support the motion as it stands. I understand the Hon. Mr Parnell has an amendment to this motion, but we are not inclined to support that at this stage. We will certainly listen to the debate and the argument that the Hon. Mr Parnell puts forward in support of his amendment.

The council, of course, has the power to suspend standing orders at any time so that, if there were a particular debate extending into the evening past 10 o'clock, as proposed by the minister, and the council felt that it was appropriate to extend the time allowed for debate on that particular issue, then of course the council is able to do that. For that reason, we are inclined not to

support the Hon. Mr Parnell's amendment. However, as I say, we are certainly willing to listen to his point of view and make the final decision after having done so.

I think that all of us have felt that something has to be done about the sitting hours in this place for some time now. I see that the House of Assembly has made quite substantial changes to its sitting hours in recent times. I do not believe that we should mirror its sitting times. I see no reason for that, but I do believe that 10 o'clock is a reasonable time to finish. I am not suggesting that we cut sitting hours any shorter. We are certainly open to earlier starts.

My personal view is that a 2.15pm start is too late. Others will have different views and that is fine. I can see no reason why we should not start at 11am perhaps on Wednesday and Thursday, or perhaps even 1 o'clock on Wednesday and 11 o'clock on Thursday. In any case, we are open to all of those suggestions, although we do not intend to move amendments to that effect. I just signal to my honourable colleagues that we would be inclined to look at such measures favourably if they were presented. We think that 10pm is not an unreasonable time to have a scheduled regular finish but with the option to extend sitting time if something particularly required extra time.

I would just like to raise another couple of issues which I think the chamber could consider if there were support for them and which I have mentioned informally to some members. I see no reason why we could not have speeches during the dinner break but no voting. It is an hour and 45 minutes that we have, which is a very long dinner break, and I see no reason why it could not be shorter. The reason I am often given as to why people do not want to shorten that break is that they have other commitments. Really, to me the priority on the day is the sitting. As to those other commitments, people can get a pair if they need to be absent from the chamber for half an hour, 45 minutes, whatever it might be, and that would not cause too much disruption, I am sure. So I am certainly in favour of looking at a shorter dinner break as well. Like other members, I enjoy having some time for dinner, but I think an hour and 45 is too long. I think something in the order of an hour is probably more reasonable. It is plenty of time to have a reasonable meal and gather your thoughts as you prepare for the evening sitting.

Just returning to the point I was making a moment ago, I see no reason why we could not have speeches—second reading speeches—during the dinner break, with an agreement or standing order that required there would be no voting during the dinner break itself. In short, just to sum up our position, we are in favour of what the minister has proposed, and we intend to support it. Our intention at this stage is not to support the Hon. Mr Parnell's amendment, but, as I said, we will not rule that out. I would like to listen to his position.

The Hon. M. Parnell: It will be a good debate.

The Hon. D.G.E. HOOD: It will be a good debate. I am sure it will; it always is. As I say, the reason is that the council does have the power to extend the sitting if it is an issue that requires more time. Also, to be fair, we are very privileged in this chamber—I may be howled down by some other members here, but I think we are very privileged—particularly as minor parties, or so-called Independents, in that we do have a good deal of private members' time available to us. I am being open and honest and fully frank—

Members interjecting:

The ACTING PRESIDENT (Hon. R.P. Wortley): Order!

The Hon. D.G.E. HOOD: Thank you for your protection, Mr Acting President. It was getting way out of hand. I think to be honest and frank, we do have a good deal of time for private members' business in this chamber. I am not saying it is less important. I do not believe it is. I believe on some issues it is very important, but I do believe we are well served for time in that regard in comparison to similar chambers around the country, indeed around the world. So I think we need to be reasonable in what we can expect. I have always found this government—and when the government changes, I am sure it will be the case when the Liberals form government—

Members interjecting:

The Hon. D.G.E. HOOD: I did expect to be howled down, as I said. I would expect them to be equally cooperative. I have never found a problem with getting my issues on the agenda. I think each of us on the crossbenches here would have to agree that that is the case.

So, with those few words I indicate that that is our position. We support the 10 o'clock finish as a general rule. We do not at this stage intend to support the Hon. Mr Parnell's amendments, but,

as I say, we look forward to hearing precisely what he has to say on that before making a final decision. As I understand it, there are no other amendments put forward at this time, so it may be simply supporting it as it stands.

I would also like to raise just another quick issue, if I may, and I understand that we are ready to move on with the next item. This whole issue of sitting times raises, of course, the broader issue of reform of the chamber. Now I am not a reformer by nature. I think people would regard that as self-evident, but I do think there is opportunity to make some sensible, modest reforms to the way the chamber works, and I think particularly of items I have discussed with other members with respect to the way amendments are distributed, for example. It can be difficult to know what amendments are on file and which are not on file in this chamber from time to time. I see no reason why amendments could not simply be emailed to members once they are filed by the individual members. That is a reform I would like to see take place for certain. With those few words, I indicate support for the motion.

Debate adjourned on motion of Hon. Carmel Zollo.

HEALTH PRACTITIONER REGULATION NATIONAL LAW (SOUTH AUSTRALIA) BILL

In committee.

Clause 1.

The Hon. K.L. VINCENT: I wish to place on the record my support for this bill. From what I have heard in this place, it is clear that all sides of politics agree with the benefits of establishing a nationwide scheme of registration and accreditation for health practitioners, and I certainly agree.

Many of us in the disability community are heavily reliant upon health practitioners, such as OTs, physiotherapists and psychologists, to name a few. I believe that we need to ensure that the people who are caring for us are suitably trained and qualified. In view of the fact that health practitioners enjoy mutual recognition and are eligible for registration in South Australia if they are registered in another state or territory, I believe that it is important to have nationally consistent registration and accreditation.

It is clear that the main bone of contention with this bill is the fact that it effectively enacts a law from Queensland as it stands from time to time, so that any amendments made by the Queensland parliament will also affect South Australia. While I understand the sovereignty of the parliament may be somewhat eroded, in effect, I consider that a corresponding model which requires our parliament to legislate its own legislation may well lead to unnecessary delays and confusion when change is required, and this is not fair to our health practitioners or, indeed, to the people of this state who are owed some sense of stability.

I doubt very much that the Queensland parliament will take it upon itself to change its bill and trust that the ministerial council will be an effective body to make recommendations for change. In view of the above, I believe that it is essential to have a consistent approach and that this bill provides the best opportunity to achieve this.

The Hon. G.E. GAGO: I need to correct the record. In my summing up address, I gave an answer to one of the questions asked by the Hon. Michelle Lensink in relation to state committees of the national boards. I stated that 'determining whether or not there will be a state office is a matter of the national board'. I have been advised that that should be corrected to state 'determining whether or not there will be a state committee is a matter of the national board'.

Clause passed.

Clauses 2 and 3 passed.

Clause 4.

The Hon. J.M.A. LENSINK: I move:

Page 7—

Line 27—Delete 'The' and substitute 'Subject to subsection (2), the'

After line 33—Insert:

(2) An amendment to the Health *Practitioner Regulation National Law* (as referred to in subsection (1)) enacted by the Parliament of Queensland after 1 July 2010 does not apply as a law of this jurisdiction under subsection (1) unless it

has been adopted (with or without modification) by an Act of the Parliament of South Australia.

In relation to the amendments, I have been scurrying around consulting people because amendment No. 3 standing in my name does several things, so I indicate at this stage that I will be moving it in an amended form.

Amendment No. 2 is consequential to amendment No. 1, so this is the test clause in that the existing provisions within the bill mean that, as soon as Queensland amends its bill (Bill C), South Australia's laws are immediately amended to that effect. In my second reading contribution I talked about the fact that South Australia has very limited means of changing either through the ministerial council which would be by negotiation or by pulling out of the system entirely if it disagreed with some things that had been brought into effect.

So, what this clause means is that South Australia does not automatically adopt amendments which are made to the Queensland legislation, which would be at the direction of the ministerial council; therefore, the parliament would have an opportunity to consider those things, and I would envisage that in most instances it would agree to accept it so those changes would come into effect. There may be some delay but that would be up to the government to get things drafted and get things into the system.

The Hon. G.E. GAGO: The government opposes this amendment. The whole purpose of the legislative model that adopts a national law and applies it as a law of its own jurisdiction is to ensure a standard approach for achieving nationally consistent legislation in an efficient manner where the constitutional powers lie with the states and territories. The national law process can only work effectively where legislation applying in each jurisdiction is the same. If essential aspects such as those concerning registration process fall out of alignment, the scheme will effectively become inoperative from a national perspective.

While national uniformity can be obtained by each jurisdiction individually passing necessary amendments, such a process obviously will lend itself to being extremely cumbersome and potentially it will create lengthy delays that, in many cases, will be completely unacceptable to the public and the professions. If South Australia were to adopt this approach, there may be situations when South Australian practitioners are not covered by the national law and their national registration could then be compromised while waiting for the South Australian parliament to pass the required amendments.

The intergovernmental agreement, which forms the basis for the national law and was endorsed by all governments, establishes a process for making future amendments to the national law. This agreement ensures that all jurisdictions can participate and reflect their concerns in any proposed changes. This process ensures amendments must be agreed to by consensus by the ministerial council before Queensland, as the host jurisdiction, can progress them through the Queensland parliamentary process.

As part of this agreement there must be a national consultation for any substantive future amendments prior to them being agreed by the ministerial council. Changes cannot proceed without consideration by all health ministers and require their consensus to make the changes; therefore, there is a reasonable and effective mechanism established to ensure that South Australia's interests are served and one that will also preserve the need for a nationally consistent approach.

The Hon. J.M.A. LENSINK: There was a fair amount of hyperbole in the minister's reason why the government is not accepting this particular amendment. In terms of her stating that it will be an inefficient process, that is a reflection on the South Australian parliament and, if the process of the South Australian parliament is slow in taking on any proposed changes, then that would be entirely in the hands of the government. So I think that is a nonsense argument.

In terms of the undermining of any form of the uniformity of this legislation making the whole scheme fall apart, I remind the committee that, as I outlined last night, New South Wales has already succeeded in undermining a large section of this bill by having its practitioners excluded from the new NRAS process. Furthermore, the Western Australian parliament has the entire set of clauses in its own parliament. So, in effect, if they are going to have to go through the whole process of amending their own statutes, I do not see why South Australia having parliamentary oversight would undermine the scheme.

The committee divided on the amendments:

AYES (10)

Bressington, A.	Darley, J.A.	Dawkins, J.S.L.
Jennings, T.A.	Lee, J.S.	Lensink, J.M.A. (teller)
Parnell, M.	Ridgway, D.W.	Stephens, T.J.
Wade, S.G.		

NOES (9)

Brokenshire, R.L.	Finnigan, B.V.	Gago, G.E. (teller)
Gazzola, J.M.	Holloway, P.	Hood, D.G.E.
Vincent, K.L.	Wortley, R.P.	Zollo, C.

PAIRS (2)

Lucas, R.I.	Hunter, I.K.

Majority of 1 for the ayes.

Amendments thus carried; clause as amended passed.

Clauses 5 to 7 passed.

New clauses 7A and 7B.

The Hon. J.M.A. LENSINK: I move:

Page 8, after line 21—Insert:

7A—Specific modifications in relation to application of Health Practitioner Regulation National Law

(1) Without limiting subsection (1) of section 115 of the *Health Practitioner Regulation National Law (South Australia)*, it will be taken to be an offence against that subsection if a person knowingly or recklessly takes or uses the title 'surgeon' or 'physician' unless the person is registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student).

(2) Without limiting subsection (2) of section 115 of the *Health Practitioner Regulation National Law (South Australia)*, it will be taken to be an offence against that subsection if a person knowingly or recklessly takes or uses the title 'surgeon' or 'physician' in relation to another person unless the other person is registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student).

(3) Subsections (1) and (2)—

(a) do not prevent the use of the title 'dental surgeon' by a person registered under the *Health Practitioner Regulation National Law*—

(i) to practise in the dental profession as a dentist (other than as a student); and

(ii) in the dentist division of that profession; and

(b) do not prevent the use of the title 'veterinary surgeon' by a person who is registered as a veterinary surgeon under the law of this State.

(4) Section 141 of the *Health Practitioner Regulation National Law (South Australia)* does not apply—

(a) if the first health practitioner within the meaning of that section forms the reasonable belief referred to in subsection (1) of that section in the course of practising the first health practitioner's profession while employed or otherwise engaged (including in an unpaid capacity) by a designated body; or

(b) if the first health practitioner is the spouse or domestic partner of the second health practitioner under that section.

(5) The power conferred by section 245 of the *Health Practitioner Regulation National Law (South Australia)* to make regulations for the purposes of that Law does not extend to making a regulation relating to the safe operation or use by a medical radiation practitioner of radiation apparatus or a radioactive substance as those terms are defined in the *Radiation Protection and Control Act 1982*.

(6) In this section—

designated body means—

(a) the *Doctors Health Advisory Service*; or

(b) any other body brought within the ambit of this definition by the regulations;

domestic partner means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared under that Act or not;

spouse—a person is the spouse of another if they are legally married.

7B—Policy directions

The Minister must, in exercising functions as a member of the Ministerial Council under section 11 of the *Health Practitioner Regulation National Law* in relation to a particular proposed accreditation standard, or a particular proposed amendment of an accreditation standard, for a health profession, have regard to the public interest.

Amendment No. 3 does several things all at the same time. I will explain each of the subclauses and, when we vote, we will vote on them separately. On the first page of the amendments new clause 7A is headed 'Specific modifications in relation to application of health practitioner regulation national law'. Subclauses (1), (2) and (3) are a set and relate to the definition of 'surgeon'.

All these amendments, which have been tabled in my name, come from the Australian Medical Association, and I believe it circulated a letter it wrote to the Chief Executive of SA Health, along with some suggested draft amendments, which have been redrafted for us by parliamentary counsel. So, if members are familiar with those, this is the explanation that they have provided in relation to subclauses (1), (2) and (3), which seek additional protections of the titles 'surgeon' and 'physician'. The AMA has intimated that it is concerned that the legislation offers no protection around the use of titles.

As the Queensland legislation stands, non-medical health practitioners will be able to use the title 'physician' or 'surgeon'. This is dangerous and misleading as members of the public could wrongly believe that they are seeing a medical practitioner. The community must have confidence that this new national scheme will ensure safety, quality and high standards in medical training and, ultimately, in the provision of medical services themselves. A failure to protect these titles for the medical profession will not provide the community with that confidence and protection.

If we go over the page, subclause (4), which refers to section 141 of the Health Practitioner Regulation National Law Act, and subclause (6) are also a set. They relate to seeking additional exemptions for mandatory reporting. The AMA has provided advice on this as follows:

The Queensland act fails to provide additional exemptions from mandatory reporting for spouses, treating doctors and other professionals—such as doctors working in doctors' advisory health services—who provide support to doctors with health issues. Without changes, we risk instituting a system where doctors may not seek necessary and needed medical care because their treating doctors will be obliged to report them, and thus may pose a risk to both themselves and the members of the public that they treat.

Subclause (5) relates to radiation practitioners. Dr McFetridge has sought to have this particular subclause drafted because he has concerns that regulations may limit the ability of health and veterinary practitioners to continue to use radiation—X-rays and the like.

The final section, 7B—Policy Directions, is a public interest test. I apologise, because I am not sure whether I heard a response to my question of the minister last night in relation to the Senate committee recommendations whereby the ministerial council must provide some kind of public interest test. If the accreditation standards are reduced in any way and there may be a perceived risk to public safety, firstly, they must consult and, secondly, they must publish the decision as to why they have reduced those standards. I cannot recall whether the minister had a reply on that, so I hope that that might form part of her response to these amendments.

I hope that that adequately explains things for the benefit of members. I wanted us to vote on these separately, because I appreciate that some members may support certain aspects but not all of them. I did not want the whole thing to fall for the sake of not moving them separately.

The Hon. G.E. GAGO: The government will be opposing this amendment. The amendment will immediately result in South Australia having different requirements in relation to the national law for every other state and territory. It relation to (1), (2) and (3), protection of title, the intent of title protection is to protect members of the public by ensuring that they may be

confident that the person using the title is, in fact, registered under the law and therefore appropriately qualified and competent to practise the profession.

The national law creates an offence under sections 116 and 117 in relation to the use of certain specific titles associated with the health professions regulated under the national scheme. These provisions ensure that only persons who are registered under the national law may use a title associated with that profession. The proposed titles 'surgeon' and 'physician' are not protected under South Australia's Medical Practice Act 2004. This has not presented any problems that the government is aware of.

The new National Medical Board of Australia established under the national law has issued registration standards which have been approved by the ministerial council and include a list of names, with specialists including specialties describing physicians and surgeons, providing specialist title protection for professions included on the list.

The provisions in the national law are sufficient to provide adequate protection for the safety of the public without the need for specific title protection as proposed by this amendment. The registration standards listing the named specialists approved by the Medical Board of Australia ensure national consistency for the medical profession.

In relation to subclauses (4) and (6), mandatory reporting requirements under national law will ensure that patient safety is foremost and that if any issues of unprofessional conduct arise they are reported appropriately and as early as possible. The basis for such reporting is referred to as 'notifiable conduct'. Notifiable conduct in relation to a registered health practitioner provides that the practitioner has:

(a) practised while intoxicated by alcohol or drugs; or

(b) engaged in sexual misconduct while practising; or

(c) placed the public at risk of substantial harm because they have practised with an impairment (e.g. physical or mental impairment, disability, condition or disorder); or

(d) placed the public at risk of harm because they have practised in a way that constitutes a significant departure from accepted professional standards.

The intent of the bill is to ensure that all registered practitioners are required to work together to maintain high standards of conduct. All registered health practitioners and employers have a responsibility to report notifiable conduct in relation to a registered health practitioner.

The proposed amendment would significantly weaken the protection of the public by exempting persons who would reasonably have a responsibility as members of a registered profession to notify a board of such conduct. By adopting this amendment South Australia would be adopting a lower standard for health practitioners in this state than any other jurisdiction in Australia. A consistent national standard is essential for the protection of the public and the security of the profession. It is important that if someone is practising in a way that may put a member of the public at risk they should be reported.

Subclause (5) relates to the regulation of radiation apparatus or a radioactive substance by a medical radiation practitioner. The national law concerns only the regulation of health professions and individual practitioners, not the licensing of radiation apparatus and practitioners involved in using such equipment. This occurs under the Radiation Protection and Control Act 1982. Any practitioners that operate such equipment are required to be appropriately trained in the use of that equipment and their licensing occurs under the Radiation Protection and Control Act 1982.

I understand that in relation to the question about accreditation standards in new clause 7B, the government is opposed to that. This amendment will require the minister, when exercising his or her functions as a member of the ministerial council in relation to issuing a policy direction to an accredited standard, to have regard to the public interest.

The government is opposing this amendment. The powers and functions of the ministerial council are broad enough for it to consider the public interest in relation to accreditation standards or any other matter on which it may issue a direction. Clause 11 enables the ministerial council to issue a policy direction relating to a proposed accreditation standard or a particular proposed amendment of an accreditation standard for a health profession. In particular, clause 11(4) requires that, if the ministerial council intends to make a policy correction to a national board concerning an accreditation standard, it must take into account the potential impact on the quality and safety of health care. Therefore, in deciding to issue such a direction it will be essential for the ministerial

council to consider the public interest. So, the government believes the public interest is already protected in these matters.

The Hon. J.M.A. LENSINK: Can I just clarify that the clauses the minister just referred to are in the Health Practitioner Regulation National Law Bill that has been passed by the Queensland parliament?

The Hon. G.E. GAGO: I am advised that that is correct.

New clauses negatived.

Clauses 8 to 12 passed.

Clause 13.

The Hon. G.E. GAGO: I move:

Page 10, lines 30 and 31—Delete subclause (1) and substitute:

(1) A person may be appointed to be the Registrar or a Deputy Registrar of the Tribunal on a basis determined by the minister.

This amendment changes the appointment process for the Registrar of the South Australian Health Practitioners Tribunal. The method of appointment for the registrar has been reconsidered in the context of the proposed administrative arrangements for the tribunal. An opportunity exists to collocate the tribunal with the Industrial Court, which will allow resources to be shared between the two bodies.

On this basis, the current Industrial Court Registrar is proposed to be appointed as the Registrar of the South Australian Health Practitioners Tribunal. The appointment of the Industrial Court Registrar under the Fair Work Act 1994 is not made by the Governor. To require the appointment of the Registrar of the South Australian Health Practitioners Tribunal to be made by the Governor would be incongruous for a position which will be held in conjunction with another position which does not require the same level of appointment.

There are many other examples where registrars are not appointed by the Governor, including the Supreme and District Court registrars. The Registrar of the Equal Opportunity Tribunal and the Guardianship Board are Public Service employees. The Registrar of the South Australian Health Practitioners Tribunal is a support staff role, and as such it is not considered that the appointment needs a high level of cabinet scrutiny and government appointment.

To change the appointment process to that proposed by this amendment will streamline the appointment process and reduce red tape. The deletion of the clause in relation to the terms and conditions of this is consequential to the proposed appointment method.

The Hon. J.M.A. LENSINK: The opposition supports this amendment. We believe that the Industrial Court probably is a little idle these days, and it is an appropriate place for these issues to be dealt with.

Amendment carried.

The Hon. G.E. GAGO: I move:

Page 10, lines 34 and 35—Delete subclause (3)

Clause as amended passed.

Clauses 14 to 25 passed.

Clause 26.

The Hon. G.E. GAGO: I move:

Page 17, line 3—Delete 'to practise'

This amendment clarifies the definition of a 'pharmacist' as it relates to pharmacy ownership in South Australia. The definition of a 'pharmacist' is amended for the purpose of the pharmacy practice provisions as they relate to pharmacy ownership. The definition in the bill implies that pharmacists must be practising in order to own a pharmacy, and this was not the government's intention. The effect of this amendment will ensure that any pharmacist registered under the national law may own a pharmacy whether or not they are practising or non-practising.

Amendment carried.

The Hon. G.E. GAGO: I move:

Page 20, after line 32—Insert:

(8a) However—

(a) a trust cannot be a trustee pharmacy services provider for the purposes of this part unless the trust conforms with each of the following:

(i) each trustee must be—

(A) a pharmacist; or

(B) a prescribed relative of a pharmacist; or

(C) a person of a prescribed class; and

(ii) at least one trustee must be a pharmacist; and

(iii) any beneficiary of the trust must be a pharmacist or a prescribed relative of a pharmacist; and

(b) a trust ceases to be a trustee pharmacy services provider for the purposes of this part if the trust ceases to satisfy the requirements of paragraph (a) in any respect.

This amendment clarifies the definition of 'trustee services provider'. The concept of a trustee services provider was introduced in this bill as a means to restrict the ability of individuals from using trusts to increase the number of pharmacies that may be owned. However, the definition in the bill provides for others other than pharmacists to own a pharmacy through the use of trusts. This was not the policy intent. This amendment brings the trustee pharmacy services provider into line with other pharmacy services providers under the bill.

Amendment carried; clause as amended passed.

Clauses 27 to 42 passed.

Clause 43.

The Hon. G.E. GAGO: I move:

Clause 43, page 28, after line 30—Insert:

(4) In this section—

pharmacist means a person who holds a current authorisation to practise in the pharmacy profession (other than as a student) under the *Health Practitioner Regulation National Law*.

This amendment clarifies that pharmacists in attendance and available for consultation by members of the public must be a practising pharmacist. This amendment is consequential to the changing definition of a pharmacist under clause 26.

Amendment carried; clause as amended passed.

Clauses 44 to 80 passed.

Clause 81.

The Hon. G.E. GAGO: I move:

Clause 81, page 48, after line 11—Insert:

(2) A National Board may, in addition to the persons referred to in section 239 of the *Health Practitioner Regulation National Law (South Australia)*, appoint a person employed in the Public Service of the State, or by an agency or instrumentality of the Crown, as an inspector under that Law.

This amendment allows the national agency to consider the appointment of persons employed in the Public Service of the state, or an agency or instrumentality of the Crown, as an inspector under the national law. This replicates the appointment provisions under the bill for investigators. Inspectors have a similar role to that of investigators under the international law and so it makes sense to extend the provisions to cover this group as well.

Amendment carried; clause as amended passed.

New clause 81A.

The Hon. T.A. JENNINGS: I move to insert the following new clause:

New clause, page 48, after line 11—Insert:

81A—Restriction on administration and interpretation of certain psychological tests

(1) A person must not personally administer or interpret a prescribed psychological test unless—

(a) the person is a psychologist or psychiatrist acting in the ordinary course of his or her profession; or

(b) the person administers or interprets the test under the direct supervision of a psychologist or psychiatrist; or

(c) the person administers or interprets the test with the approval of the National Board.

Maximum penalty: $75,000.

(2) An applicant for approval under this section must, if the National Board so requires, provide the National Board with specified information to enable the National Board to determine the application.

(3) The National Board may, before giving its approval under this section, require the applicant to obtain qualifications or experience specified by the National Board and for that purpose may require the applicant to undertake a specified course of instruction or training.

(4) An approval under this section may be subject to such conditions as the National Board thinks fit.

(5) A person must not contravene, or fail to comply with, a condition of the person's approval under this section.

Maximum penalty: $75,000.

(6) If a person contravenes, or fails to comply with, a condition of the person's approval under this section, the National Board may, by written notice to the person, revoke the approval.

(7) In this section—

psychiatrist means a person registered under the *Health Practitioner Regulation National Law*—

(a) to practise in the medical profession; and

(b) holding specialist registration as a psychiatrist;

psychologist means a person registered under the *Health Practitioner Regulation National Law* to practise in the psychology profession (other than as a student).

This is an amendment that has been tabled late but it is not a new issue for this place. The issues around the administration of certain psychological tests and, in particular, the concerns that have been raised by the Australian Psychological Association and the Psychology Board have been put on record already in this place.

What I would like to point out is that this is not a new measure that I am introducing for South Australia. However, it was not gone into bat for by the minister as were plano lenses and as were our differences with other states in terms of the treatment of medical students in this legislation. In fact, the psychologists were told, on the issue of the regulation of psychometric tests, that they should just take it to their psychology board and go and lobby them.

I do not think that is necessarily an acceptable response to a sector's concern and I do not think it is an acceptable response to a law that has been in place for many years in this state that has been heavily debated. I will not go into those debates at this point: I will only point out that it already existed, so why was it not safeguarded for the protection of the South Australian people?

The Hon. G.E. GAGO: The government opposes this amendment. While South Australia's current Psychological Practices Act 1973 has provisions for the regulation of psychometric tests, no tests have been prescribed since the proclamation of the act.

In considering the risks associated with psychometric testing, the government has found there is no evidence that the non-prescription of psychometric tests over the last 30 years has resulted in any harm to the public. The government has also found that access to certain psychological tests is restricted by the companies or organisations that publish or provide those tests to registered psychologists.

At the first meeting of the Psychology Board of Australia on 20 September 2009, the board approved a process to prepare a consultation paper in 2010 on practice restrictions for psychological testing. This, we believe, is the appropriate national mechanism for the profession to assess the need or otherwise for restrictions on psychometric tests.

I would also like to advise members that the Psychology Board of Australia has now released a consultation paper on options for the protection of the public posed by the inappropriate use of psychological testing. The consultation period for the paper closes on 16 August 2010. It is our view that the profession itself should determine what restrictions should apply, not parliament. They are the experts, so they should determine what is acceptable. I have very little expertise in that area, and I believe that they are the appropriate professional body to determine their own standards.

The Hon. D.G.E. HOOD: Very briefly, Family First also opposes the amendment. I think the key problem for us is that this is what we would regard as a very heavy-handed way of restricting who can interpret these tests and who cannot. I think the minister said it well: it really should be a matter for the industry itself to determine, not necessarily for parliament.

As a matter of principle, restricting the supply of people who can interpret these tests will merely see the price rise and probably a less frequent use of them, despite the fact that people would probably still like to use them. For that reason, on balance, we see it as creating more difficulties than it seeks to address.

The Hon. J.M.A. LENSINK: I rise to speak to this with very mixed feelings. As I said in my second reading speech, we fought very hard to ensure that these provisions were retained in the South Australian statute and that was against a lot of opposition from the government which I think had just given up on this issue entirely and agreed with whatever national organisation it was that this was somehow uncompetitive.

I completely agree with the sentiment of restricting tests of personality or intelligence to those who are properly trained in it. A few years ago, when we debated the psychological practices bill in this place, I used the example of a friend of mine who had some test applied to him in a job application situation where it was very narrowly cast. I will not go into the whole background but, needless to say, he is a scientist and the questions were framed in such a way that it was either a yes/no answer, so he came out of it looking as though he had no personal skills, which was not the case.

In fact, as a personal reference, that was what tipped the balance for him in getting his job and saying, 'No, I don't think that test result is accurate.' That is just one example, but I do not think that clerical officers should be applying these. I think they should be performed by psychologists who do not just have that base qualification but have some appropriate form of training in that area.

However, in terms of the technicality, I am very pleased to hear in the minister's response that the psychological board is taking this issue a lot more seriously than has been done in the past, and therefore I am hopeful that there may be some outcome which will make sure that this issue does have some regulation.

The other reason I am not able to support this is the timing of it. Because of our party room rules, this has not been included as one of the considerations. I am bound by those rules and so am unable to support it, but I do congratulate the Greens on having the clause brought in. I did actually think that it would be quite technically difficult to have this retained in our legislation but I am unable to support it for those reasons.

The Hon. M. PARNELL: In response to the issue raised by the minister that the national board has now issued a discussion paper—if we had a dollar for every discussion paper that actually amounted to nothing, then we would all be very wealthy—my response is to say if we do end up getting some system of national regulation, then we can very simply in this place remove this section from the act if it no longer has any work to do.

The only other thing I wanted to say is that I do not know how short people's memories are, but when we debated this three years ago it was one of the most contentious issues in the bill. I need almost a separate filing cabinet just to accommodate the correspondence that we received on this clause. I think it is important as a consumer protection provision. I do not think this is about a group of professionals protecting their professional turf. It is about consumer protection and I think it is safer for all of us if we leave these tests in the hands of people who are properly qualified to

administer them. So I would endorse my colleague's remarks: this is an important amendment and we will be dividing on it if the need arises.

The Hon. A. BRESSINGTON: I rise to indicate that I will also be supporting this amendment. I do not quite understand the logic of how this amendment would restrict the use of psychological testing and therefore reduce the demand. The whole idea of the psychometric tests is that, as the Hon. Mark Parnell said, having people who are trained and skilful in the interpretation of these tests, and also how to deliver the results to people, is very, very important. We have the issue of certain religious organisations out there on the street doing personality tests and telling people that they are on the verge of insanity and conning them into spending hundreds of thousands of dollars on courses, and God knows what else—because this requirement is actually not solid enough. I also have mountains of correspondence from the last time we debated this in the Psychological Practices Bill. I do not think that it would do any harm at all to the bill and the intent of the bill to include the section in the bill that we are debating.

The Hon. G.E. GAGO: I just wanted to remind members that in supporting this amendment the outcome would be that restrictions would apply to the psychological testing only here in South Australia, no other jurisdiction. So we would have a standard that is completely out of sync with any other jurisdiction. What we are working for is a nationally consistent approach. Currently no other state provides these restrictions. I am not aware that any other state from their experience has evidence that that has caused any serious or undue public issues of concern. So currently the restrictions do not apply. In supporting this, we would have restrictions here in South Australia that would be the only state that would have such provisions.

This government is not saying that issues around psychological testing are not important. What we are saying is that parliament is not the best body to establish standards in relation to this matter. The profession itself is. I have outlined the steps that the profession has taken, and they are well advanced, in addressing those matters. The matter is being addressed. We believe it is being addressed by the appropriate body, that is the profession itself, and it would be ludicrous for South Australia to establish restrictions which would be out of sync with every other state and which no other state has identified a need for, in terms of this particular mechanism of address.

The committee divided on the new clause:

AYES (4)

Bressington, A.	Jennings, T.A. (teller)	Parnell, M.
Vincent, K.L.		

NOES (14)

Brokenshire, R.L.	Darley, J.A.	Dawkins, J.S.L.
Finnigan, B.V.	Gago, G.E. (teller)	Gazzola, J.M.
Holloway, P.	Hood, D.G.E.	Hunter, I.K.
Lensink, J.M.A.	Ridgway, D.W.	Stephens, T.J.
Wortley, R.P.	Zollo, C.	

Majority of 10 for the noes.

New clause thus negatived.

Remaining clauses (82 and 83), schedule and title passed.

The Hon. G.E. GAGO: I want to make a very short comment. The government has just tabled a new amendment. Clearly, honourable members have not had an opportunity to consider this amendment. In light of that, I will let my colleagues know that I will be adjourning the third reading until the next day of sitting to give honourable members an opportunity to consider that amendment.

Bill reported with amendment.

STATUTES AMENDMENT (ELECTRICITY AND GAS—PRICE DETERMINATION PERIODS) BILL

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

MINING (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

The Hon. D.W. RIDGWAY (Leader of the Opposition) (16:38): I rise on behalf of the opposition to speak to the bill. As members will be aware, of course, this is a reform of the Mining Act that the minister spoke about prior to the election. Of course, it is the same minister so we are dealing with it first up in this chamber.

The opposition welcomes the review of the Mining Act. It was initially the Mining Act of 1971, as I read from the bill. It has been amended over the years, and notwithstanding the way the minister and the Premier twist a number of the facts about mining (and I know that you are amazed and astonished that they would skew the facts) I suspect that it is probably one of the few areas in South Australia's history that has enjoyed bipartisan support. In fact, I have a couple of banners in my office that show the chronological history of the department of mines and energy and now PIRSA, and it is quite amazing the number of ministers from all political persuasions who have had a significant impact on the industry. As I said, it has been widely supported by both sides of politics. Certainly, we know that the greatest mine in South Australia was opposed by the current Premier when it was in its infancy. In fact, the Premier has had a change of heart, and it is very convenient for him to do that.

The Hon. P. Holloway interjecting:

The Hon. D.W. RIDGWAY: The minister said, 'Ever since he's been in parliament,' but he did his level best to stop it when he was not in parliament. People are entitled to change their mind. The Premier changes his mind, and the Treasurer loses his mind and forgets things every now and again. I think many former Liberal governments have a legacy of supporting the growth of mining in South Australia. The Liberal Party was the first to provide exploration incentives through the targeted exploration initiative in South Australia, later rebadged as PACE by the Labor Party.

The Hon. P. Holloway interjecting:

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): The minister is out of order.

The Hon. D.W. RIDGWAY: I would check those facts. The minister said it was something that happened in 1992. There would not have been much money put into it, because you lost most of it in the State Bank. Nonetheless, if that is the case, again, it shows bipartisan support.

Some time ago I found on the PIRSA website a document entitled, 'South Australia's mining projects pipeline'. This document listed prospects, projects and operational mines and indicated those that had received PACE funding. Interestingly, the documents show that only one of the then nine operational mines had received PACE funding. This was certainly interesting for a government that in the past has said that its encouragement of exploration amounted to 10 operational mines.

I recall in one of my two estimates periods, as the mineral resources shadow minister, that the budget announced that the highly successful PACE program, at $22.5 million over five years, would be extended with an additional $8.4 million over another two years until at least 2010-11. However, taking into account additional funding and the program extension, the annual funding actually decreased from $5.6 million a year to $3.5 million. The decrease in the average spending did not reflect the success of the program.

In 1999 the then Liberal government established the mining industry task force, which recommended amongst other things the setting of targets for both mineral resource exploration and mining activity. These targets were accepted by that government (the Liberal government) and continue to be the targets for the state Labor government. With the success of mineral resource exploration, a number of new mines have opened or are in advanced planning stages.

Premier Rann has stated that the mining success is not due to natural forces but to his government's survey work and encouragement of exploration. In 2008 he stated that this was supported by the fact that only four mines were operational when they came to government and now there are 10. What he did not mention is that many of these operators received their first exploration licences under the previous Liberal government.

The minister would be aware that there is a significant time frame between application for exploration licences and the commencement of mining operations as a result of the exploration. Nevertheless, the opposition supports this long-awaited amendment bill with a number of changes

to the legislation and a great deal of modernisation, which is needed to support this quickly changing and growing sector.

Rather than talk any longer in general terms about the mining industry, I will table a number of amendments on behalf of the opposition and I would also like to address the amendment bill and put a number of questions on the record for the minister to answer when he sums up.

Clause 4 redefines the term 'mining operator'. I indicate that the opposition will be seeking to amend this definition as the industry is concerned that the person on the ground of the mining operation may not always be the tenement holder. In the definitions, a 'mining operator' means the holder of a relevant mining tenement. Of course, members would be aware that people might have a mining tenement, but they may not always be the operator of the mine; so, we will be looking to move an amendment to that.

Also in clause 4, which amends section 6—Interpretation, in subclause (9), after subsection (3) of section 6, new subsections (4), (5) and (6) are added to define 'environment'. Our assumption is that, by defining the environment in this way, they can then just use the word 'environment' elsewhere in the act. It sort of makes sense, but paragraphs (c) and (d) talk about 'existing or permissible land use' and then 'public health, safety or amenity'. Our understanding was that some of these things would have already been dealt with by the Occupational Health and Safety Act and, I suspect, the act under the environment minister for existing or permissible land use. So, I would like an explanation as to why they have been rolled into this particular amending clause.

Further on, clause 7 inserts a new section, 'Special declared areas'. I ask the minister how he sees the main purpose of this new section and how he sees it will work. The opposition will be seeking an amendment to deal with the minister's accountability in terms of reasoning to declare a particular area a special area, and we feel that those reasons should be documented and made public. Subsection (8) of the new section provides:

> (8) A declaration under subsection (1) will expire at the end of the period of 2 years from its date of operation unless it is extended for a period or periods, not exceeding 2 years at a time, by further notice, as published by the Minister in the Gazette.

I will deal with it later, but we will be looking to amend this to allow it to be treated as a regulation, so that new subsection (8) provides that it can be extended by the minister. We think that these extensions should be treated as regulations, that the minister should signal his decision to parliament and that it should be a disallowable regulation or instrument. So, the minister can declare a special area but, when he comes to extend it for a period of up to two years, he has to table the reason for doing so and the extension will be disallowable by the parliament, as we do with regulations.

Clause 8 talks about the appointment of authorised officers. As far as the opposition understands, this seems to reflect the Petroleum Act. We are seeking clarification on why new section 14 is so broad. It provides that the minister is able to appoint anyone to that position, which one would think is reasonably specified. I further indicate the opposition will be moving to amend this section so that any appointment of a person outside the minister's agency must have a specific purpose for the appointment and, given some of the powers of authorised officers, it seems fitting that they are only given to the right people. We will also be seeking to make sure that these appointments are gazetted. I would like some clarification from the minister on new subsection 14(1), which provides:

> (1) The Minister may, by instrument in writing, appointment a Public Service employee to be an authorised officer under this Act.

In a lot of cases with mining operations (in fact, a lot of operations of government, but certainly in this case) you would need some expertise to be an authorised officer—undoubtedly, if you are operating under this act and discharging some of the duties of authorised officers.

It seems to be very broad that somebody, who might be very capable in their chosen profession of working for the government with a particular skill set, could find themselves becoming an authorised officer and then not having the appropriate skills to deal with the job at hand. So, I would certainly like some clarification as to why the minister thinks that virtually of the 97,000 public servants we have could be appointed to be an authorised officer under this bill.

Further on, in clause 8, under production of records, it provides:

> (1) This section applies to records relating to mining operations.

(2) A person who has possession or control of a record to which this section applies must, at the request of an authorised officer—

(a) produce the record for inspection by the authorised officer; and

(b) answer any questions that the authorised officer reasonably asks about the record.

Maximum penalty: $10,000 or imprisonment for six months

(3) An authorised officer may retain records produced under this section for the purpose of making copies of them.

I think we can all accept that the authorised officer may need to make copies of these records. However, it does not say how long the authorised officer can hold them. If they are records of a mining or business operation and the person providing the records is not able to provide a copy on the spot and the authorised officer takes them away, how long can records be retained? It seems to be a little open-ended. Maybe it could indicate that 72 hours or seven working days might be a reasonable time frame to allow the authorised officer to copy the records and return them. I indicate that, if we do not receive a satisfactory answer, we may look to amend this clause.

The opposition agrees with a lot of the amendment bill, and I will not cover it in any great detail. Our next query relates to clause 16, granting of exploration licence. As far as we can see, previous subsection 28(7) basically provides that the minister cannot grant a licence if she or he had given a public undertaking that such an action would not be taken. Why amend the section to allow the minister to take actions contrary to his or her public statements? It does not really make a lot of sense.

Clause 17 relates to the application for an exploration licence, and the amendment is quite strange. It provides:

(1a) If—

(a) an exploration licence has expired or been cancelled or surrendered; or

(b) part of the area of an exploration licence has been reduced,

an application for a corresponding licence may not be made during a succeeding period specified by the minister by notice published in a manner and form determined by the minister.

Can the minister explain what he is trying to do with this measure, because it is somewhat confusing. Perhaps the minister can give us some examples to clarify how he sees this amendment working.

The next clause I turn my attention to is clause 19, which relates to the term and renewal of exploration licences. The industry has indicated that it has some concerns in relation to this, and those concerns are shared by the opposition. In simple terms, the amendment to section 30A(6) provides that the minister reserves the power to change the contract of an exploration licence. Clause 19 provides:

The minister may, on renewing an exploration licence, add, vary or revoke a term or condition of an exploration licence.

An exploration licence is like a contract. A mining contractor gets an exploration licence, and they go out and explore. If the minister varies the licence at any time, it is like varying the contract, and we are a little concerned about that. If you look at contract law, where else in contract would these kinds of powers be reversed? In what circumstances would they be used?

This clause is repeated throughout the bill in relation to various licences and leases. Certainly, if we do not receive a satisfactory answer, we will consider looking at some amendments. If we receive a reasonable explanation from the minister, we would probably be quite happy with that. However, it does seem a little strange.

I would next like to comment on clause 23 of the government's bill. Again, it is about the granting of a mining lease and our concern, again, is that it enables the changing or revocation of 'any term or condition imposed by the Minister' and can 'impose any term or condition considered appropriate by the Court'. It appears in section 9; however, it makes sense, given that the lease has a 21 year term. We would still question its application to exploration licences and retention leases, given they only have a five year period. To actually change something mid-term, especially if you have a mining lease—a mining operator's whole operation is set up with a set of terms and conditions that they are happy with—that the minister can change, then clearly that would cause

some concern for industry and for the opposition, notwithstanding that a mining lease has a 21 year period, whereas an exploration lease only has a five year period.

Clause 26 is also of concern. This amends section 39 of the act regarding rights conferred by lease, which speaks about the sale of waste materials produced as a result of mining operations. The question is how you would treat the profits from those particular activities, which I assume are rock, rubble or some by-product of mining that may well be road making material—it might actually be sensible for that to be used.

However, we are not quite sure how the profit would be attributed. If we are unfortunate enough to have this super profits tax imposed upon us, would those profits from the sale of those products be included in the mining operations general profits, or would they be treated as extractive industry profit? I think there needs to be some clarification. The opposition supports the sale of other products from within a mine, but the industry needs to have some clarification of how those profits would be treated. They are not part of the mining royalties, so would they be part of the mining gate price profit or extractive industries? Do they pay into an extractive industries rehabilitation fund? There is a whole range of questions posed by that particular amendment.

Clause 27 talks about the suspension or cancellation of the lease. Can the minister clarify section 41(5), which provides:

> The Minister may, as a result of an appeal to the ERD Court, reinstate a mining lease to a date that coincides with the initial date of a cancellation or suspension, or such later date as may appear to the Minister to be appropriate in the circumstances.

I would like some clarity on that. I indicate that the opposition will be seeking an amendment to the otherwise untouched section 54 about compensation. We would like to see an additional component of compensation possible under the act that would be payable to a landowner in relation to certain negotiations and disputes. This would be repeated in section 61 to allow a landowner to have some compensation for legal costs.

I have been approached a number of times as a member of this place and a former farmer by farmers who have had rights of entry for exploration served on them by mining companies. It is a quite daunting time if you are a small farmer. In one case a farmer had the notice served on him right at the beginning of seeding time. He had three months to respond, but of course there are significant costs. You have to get legal advice and it is quite an impost on the landowner. With our modern farming, timing is very important. There are seeding and harvest times, but then we have different types of farming operations. The opposition sees the easiest way to help landowners in that situation is to give them an opportunity to recover or have their legal fees paid so that they are not out of pocket at all by the whole process of being approached by either an exploration or a mining company.

We have one farmer, of whom I think the minister is probably aware, in the electorate of Goyder who has contacted the member for Goyder, Stephen Griffiths. They have an exploration licence over their farm, but the company does not know when it will explore. It is a coal mine, from what I understand. The farmer has a couple of sons and, from the little bit of information I have, he would like to expand or at least wants to make future decisions about his farming operation, his family and whether they should expand—a whole range of things. I am sure you would appreciate, Mr President, that a family farm is an important part of our rural communities.

In this case this person and his family have a cloud hanging over them. There is an exploration licence; they may explore, they may not. They might find something, they might not. From the viewpoint of the bank and certainty—the Hon. John Gazzola is laughing.

Members interjecting:

The Hon. D.W. RIDGWAY: The Hon. John Gazzola apparently was laughing at one of my colleagues rather than at my comments. I certainly do not attribute his laughter to my comments.

The Hon. T.J. Stephens interjecting:

The Hon. D.W. RIDGWAY: It was at the Hon. Terry Stephens. I know it is late in the week, but nonetheless—

Members interjecting:

The Hon. T.J. Stephens: Throw us out.

The PRESIDENT: Order! The Hon. Mr Ridgway should not be distracted by a couple of miners!

The Hon. D.W. RIDGWAY: In these circumstances there is a financial concern for—

Members interjecting:

The Hon. D.W. RIDGWAY: They are not bad, this lot: they think they can talk whenever they want. I would like the minister to consider these circumstances. I do not know how you quite deal with it from a landowner's viewpoint. There is an exploration licence hanging over them, they want to make financial decisions about expanding the farming operation or selling the land—there is a whole range of considerations—and this is like a cloud over the future of their farm. I suspect it has impacts from a banking and financing viewpoint, for a whole range of reasons. I would like the minister to give the matter some consideration because I do not really know how to deal with it, but it needs to be looked at.

Clause 37 is the next clause I will address. It relates to notice of entry and involves an amendment to section 58A(6), and the penalty provision is to be substituted with a maximum penalty of $50,000. I highlight this because it is a substantial increase. I know there is a significant penalty for illegal mining, and some of the activities mentioned in the bill have a significant penalty, and it needs to be a deterrent. Many penalties have gone from $1,200 to many tens of thousands of dollars: I have noticed $50,000, $120,000 and $250,000. The minister made some mention in his second reading explanation of a deterrent for illegal mining, and we all accept that, but I would like an explanation as to why these fines and penalties have gone up by such a significant amount.

Clause 38, relating to the use of declared equipment, amends section 59(1ac) by deleting 'and the minister to whom the administration of this act is committed' and substituting 'the Director of Mines'. An application is made to the Director of Mines to use declared equipment for mining operations, with the subsequent referral of an application to a relevant minister. If the director and the minister cannot agree on an application, as we understand it, this subsection is taking away powers from the mining minister and handing them to the director in terms of negotiating on applications. That is, again, with the use of declared equipment. We would like an explanation from the minister as to why it is just the Director of Mines and not the minister still included. Surely, the minister is the person accountable to the people and the parliament, and we would have thought that it seems to be sensible that he should still be involved. Nonetheless, we would like an explanation.

The next amendment that we would like some clarification on is clause 46 which relates to the mining and rehabilitation plans (MARPs). New part 10A, section 70B—Preparation or application of program under this part, under subsection (2), provides:

> A program under subsection (1) must—
>
> (a) specify the mining operations that the holder of the mining tenement proposes to carry out in pursuance of the tenement; and
>
> (b) set out—
>
> (i) the environmental outcomes that are expected to occur as a result of the mining operations (including after taking into account any rehabilitation proposed by the holder of the tenement and other steps to manage, limit or remedy any adverse environmental impacts); and
>
> (ii) the criteria to be adopted to measure those environmental outcomes;

The minister might like to clarify—from what we understand and what we would assume—that these environmental rehabilitation programs have been done, and they have already been done in an informal manner for some time, known as MARPs. We understand this amendment simply gives power to the minister to insist on a MARP being drawn up.

Further, the interpretation is that the clause effectively states that the regulations may provide for some sort of code or template for a MARP under subsection (8), or it would be prepared under subsection (2) in a less prescribed manner. So, we have some concerns in that situation. We would like some clarification from the minister.

Under the same clause, we have a concern about subsection (10). Should the minister not have to give cause for determining that:

> Subsection (9) does not apply in relation to mining operations carried out by the holder of a particular mining tenement if the Minister has, by notice to the holder of the tenement, determined that the subsection will not apply in the circumstances of the particular case.

Subsection (9) provides:

> If—
>
> (a) a program is in place under subsection (8); and
>
> (b) the mining operations to be carried out by the holder of a mining tenement fall within the ambit of that program,
>
> the holder of the mining tenement may, subject to complying with any requirement prescribed by the relations for the purposes of this subsection, rely on the program prescribed by regulations rather than a program prepared under subsection (2) or (3) (and subsections (4) to (7) will not apply).

As I said, subsection (10) provides:

> Subsection (9) does not apply in relation to mining operations carried out by the holder of a particular mining tenement if the Minister has, by notice to the holder of the tenement, determined that the subsection will not apply in the circumstances of the particular case.

It is our view that the minister should give cause for why he has made that determination, and there does not seem to be a provision for appealing the minister's determination at that particular point either, so we would like an explanation on that.

The next part is new part 10B of that clause 46, which is quite a large clause, and so it is a lengthy amount of text into the new act. For the most part, we are comfortable with part 10B. These environmental issues have probably been happening loosely for some time. I will read this small bit out:

> If, in the opinion of an authorised officer—

and given that an 'authorised officer' can be anybody from the Public Service under this current act—

> (a) mining operations are being conducted in a way that results in, or that is reasonably likely to result in—
>
> (i) undue damage to the environment; or
>
> (ii) a breach of the environmental outcomes under a program under part 10A; and
>
> (b) it is urgently necessary to take action under this subsection,
>
> the authorised officer may, by written notice given to any person involved in undertaking the mining operations (an environmental direction), direct that action be taken to comply with specified requirements to prevent or minimise damage to the environment (to the extent necessary to address the relevant matter arising under paragraph (a)).

As I have said, we are reasonably happy with most of part 10B. This has probably been happening in a less formal manner for some time. However, section 70E(2) states that an authorised officer, if they can determine that there are certain risks to the environment, can give directions for alternate actions to be taken by the operator. Our question is: if the operator is already working per the MARP, why should this subsection exist? So, effectively, if people are operating to the mining and rehabilitation plan, why do you need to have this particular subsection? In effect, they are already following an agreement in place, which can be changed by the minister at any time under subsection (6).

A further question is: if the minister has approved the plan and then determines that it needs to be altered, at whose cost will that be? Subsection (7) states that the director must establish a process for an internal review if the authorised officer has directed that action is to be taken. Why is that process not also established under the act? I think there are two clear points there. If it is operating under an existing plan that the minister has approved and the operator has been given a direction by the authorised officer and has to change the plan, who pays that particular cost? In relation to the internal review, why is that process not established under the act?

Again, relating to clause 46, we now move to new section 70H, which talks about action if non-compliance occurs. Maybe I should read subsection (1) for the benefit of those reading *Hansard*. Subsection (1) states:

> If the requirements of an environmental direction or a rehabilitation direction are not complied with, the minister may take the action required by the direction.

(2) Any action to be taken by the minister under subsection (1) may be taken on the minister's behalf by an authorised officer or by any other person authorised by the minister for the purpose.

It seems a little strange that they can take powers to direct somebody to fix a problem. If the action is taken on behalf of the minister, they can direct anybody; so, an authorised officer, or any other person authorised by the minister for the purpose. It seems to be way too broad, and we would certainly like an explanation as to why we have somebody else. We already have very extensive powers to appoint authorised officers. It just seems a bit strange to be able to appoint anybody else.

The next amendment that the opposition has some concerns with is clause 54, which inserts new section 74AA—Compliance Directions. Subsection (1) states:

The minister may issue a direction under this section (a compliance direction) for the purpose of—

and it goes through a whole range of things, but I will read the first one. Paragraph (a) states:

securing compliance with a requirement under this act, a mining tenement (including a condition of a mining tenement) for any authorisation under or in relation to a mining tenement; or

What we are trying to work out is why the minister needs to do this. We would like an explanation of what is actually not right with the current act that he needs to do this. If it is not broken, why fix it? Can the minister, when he responds, please give some examples of how and where this particular power might be used?

Clause 55 relates to compliance orders. It deletes the words 'the director' from new section 74A(1). We want to know why the powers of the Director of Mines have been lessened in this instance. On the one hand, we have compliance directions—we do not know quite why they are there—and now the director is taken out of the compliance orders.

The opposition has some questions—and would like an answer from the minister when he sums up—about clause 60, which inserts a range of new sections, in particular, new section 77D(5), which provides for the release of information. New subsection (5) provides that 'subsections (3) and (4) do not apply'. New subsection (3) provides:

However, if the mining tenement is still current, the Director of Mines must not act under subsection (1)…

New subsection (1) provides:

The Director of Mines may release any report, information, sample or other material of a prescribed kind obtained from the holder or former holder of a mining tenement under this act.

If it is already operating and you do not want your competitors to know information about exactly what you are mining, we can understand that. New subsection (3) provides:

However, if the mining tenement is still current, the Director of Mines must not act under subsection (1) without—

(a) the consent of the holder of the mining tenement; or

(b) the consent of the minister.

New subsection (4) provides:

The minister must consult with the holder of the mining tenement before deciding whether or not to grant a consent under subsection (3).

New subsection (5) provides:

Subsections (3) and (4) do not apply—

(a) to the release of information in circumstances prescribed by the regulations in connection with the operation of this section...

We would like to know what regulations are proposed for the operation of this particular section and how it is envisaged they will apply. What circumstances would exist where the director of mines or the minister would not need to consult about the release of material under the circumstances prescribed. We would like to know the circumstances in which we would find ourselves where the minister, by regulation, would disclose information.

Clause 70 provides for administrative penalties. New section 91 provides:

(1) This section applies to any provision of this act (or the regulations) at the foot of which the words 'administrative penalty' appear.

(2) If a person who is a holder or a former holder of a mining tenement is alleged to have contravened a provision to which this section applies, the minister may, by notice in writing to that person, impose an administrative penalty on that person.

(3) The amount of an administrative penalty is an amount (not exceeded $10,000) fixed by regulation in relation to the relevant provision.

Our understanding is that there are no grounds to appeal administrative penalties, and $10,000 seems an awfully large amount of money for the minister—whether it be minister Holloway or a future minister—with a stroke of a pen to impose, given that I suspect it will be in relation to some information received by an authorised officer. Effectively, any one of the 90,000-odd Public Service employees are captured under this bill. The sum of $10,000—albeit 'not exceeding $10,000'—seems an excessively large fine to be issued at the whim of the minister, with no grounds of appeal.

I have highlighted the concerns of the opposition in relation to this bill. I know we have posed a large number of questions. As I said in my opening remarks, whoever is in government has always supported the mining industry, as does the opposition. We see it as an important part of the state's future; sadly, more important than the current federal Labor government sees it in its approach to the super profits tax, although the new Prime Minister today said she wanted to open the doors of the government in order to negotiate. Nonetheless, her statement was that they should be taxing the mining sector very heavily.

We are somewhat disadvantaged in that our mineral resources are buried under a large layer of silt and stone and it is more expensive to mine. So, if mining operations are taxed more heavily some of the marginal operations in South Australia are put at risk—

The PRESIDENT: It is only the profits.

The Hon. D.W. RIDGWAY: Mr President, I did not know that you would be engaging in the debate, but it is interesting that you are. I will say this and then conclude because it is Thursday afternoon and getting late. It looks as though the government may, in the end, remove extractive industries from this new super profits tax.

The sand and gravel that goes into the concrete of a house, and the rock of that comes from Penrice to make the cement will be taxed. The iron ore that makes the reinforcing will be taxed, the COLORBOND steel on the roof will be taxed, and if you have tiles they will be taxed because they are dug out of the ground. The gypsum that makes the plasterboard will be taxed, the iron ore that goes into the COLORBOND wall cladding will be taxed, the silicon used to make the glass will be taxed—

The Hon. J.M. Gazzola: Bob the Builder!

The Hon. D.W. RIDGWAY: The honourable member says 'Bob the Builder'. Virtually everything that goes into a new house will be taxed, even your granite bench tops that are mined at Padthaway—unless perhaps you are like the members of the government who have the very nice Italian floor tiles and Italian marble benches. That is how insane this new tax is; this resources super profit tax would affect housing affordability in this state particularly. So, it is not only jobs at the mining companies at one end that would be affected. We all want young Australians and young South Australians to be able to buy their first home and get into home ownership, but this ridiculous tax will force up the price of every new home. I know that is somewhat off the topic, Mr President, but you were starting to interject, so I thought I would take that opportunity.

With those remarks I indicate that the opposition is happy to support the bill. We do have some amendments I will put on file shortly, and I look forward to the minister's response to the questions I have raised so that we can progress the bill at a further date.

Debate adjourned on motion of Hon. D.G.E. Hood.

At 17:23 the council adjourned until Tuesday 29 June 2010 at 14:15.