LEGISLATIVE COUNCIL

Wednesday 24 November 2010

The PRESIDENT (Hon. R.K. Sneath) took the chair at 11:06 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) (11:06): I move:

That standing orders be so far suspended as to enable petitions, the tabling of papers, question time and statements on matters of interest to be taken into consideration at 2.15pm, and orders of the day, government business to be taken into consideration prior to notices of motion and orders of the day, private business.

Motion carried.

RECREATION GROUNDS (REGULATIONS) (PENALTIES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 23 November 2010.)

The Hon. T.J. STEPHENS (11:07): The purpose of this bill is to amend the Recreation Grounds (Regulations) Act 1931 to incorporate increased penalties for crowd behaviour that is antisocial or has the potential to impact on public and participant safety.

The government argues that, as an events city, we need to have public environments that are safe and family friendly. This summer, South Australia will host a number of major events, including the second Ashes Test, our first International Twenty20 game and, with some luck, Hyundai A-League finals matches.

Whilst this is a great summer of sport for South Australians, the sports minister argues that it has the potential to be accompanied by a high risk ground invasion, antisocial behaviour and the use of flares. Recent experiences interstate have heightened concerns from international and national sporting bodies and venue managers about the possibility of such antisocial behaviour occurring and the need to increase the current statutory penalties that apply.

In Adelaide, we do not want to see incidents such as that which happened when a Pakistani player was tackled by a spectator at the WACA last summer. It is not good for the game, it is certainly not good for our image, and it is not something that we would condone in South Australia. The ICC noted this particular incident and expressed its disappointment, and this is an organisation that has the power to strip venues—and states—of their international status. Australian sporting fans love to have fun and enjoy the game, but we need to accept that some individuals go too far and, quite obviously, a $200 fine is not an effective deterrent to bad behaviour. The bill amends section 3 of the Recreation Grounds (Regulations) Act 1931 to:

(a) widen the regulation-making power of the act, with respect to securing orderly behaviour, to include persons in the vicinity of the ground;

(b) increase the maximum penalty that may be imposed by regulation from $200 to $5,000 to address serious behaviours, such as pitch invasion; and

(c) allow for expiation fees in the regulations (not exceeding $315) for minor alleged offences against the regulations.

I thank all the staff who provided a briefing to my office and clarified a few points for the opposition, such as the fact that the actual penalties will be at the judge's discretion in each case and that minor expiations will operate in a similar way to traffic expiation notices, in that recipients will be able to pay the fine, write a letter of dispute or elect to be prosecuted.

This bill is one part of the approach to managing poor crowd behaviour, and I note that major venues are reviewing and will continue to review their security procedures and conditions of entry to manage crowd behaviour generally. The amendments contained in this bill are consistent with other states and will enable effective and consistent deterrents to be in place. The bill will only impact on those whose behaviour is unacceptable. If you do not want a major fine, then the message is: do not play up in or around our sporting venues.

In an ideal world we would not be rushing this one through parliament as we are, but I understand the urgency to get this bill in place prior to the Ashes and other major sporting events. I want to put on the record the opposition's disappointment at having to rush the bill through the council. We do not see anything sinister about this bill but we do not think it is good parliamentary process.

One of the reasons I was keen to make sure this bill was put in place is that I am concerned about poor crowd behaviour at soccer grounds. We really need to make sure that we stamp it out. It is unacceptable the way in which soccer supporters behave themselves in some parts of the world. We have a proud tradition in Australia of supporting our teams and events without violence and disgraceful antisocial behaviour. With those few words, I indicate the Liberal Party's support for this bill.

The Hon. T.A. FRANKS (11:12): I rise to indicate the Greens' in-principle support for this bill. We, too, express our grave concerns that we are rushing through legislation within a matter of days for an issue that was raised by the ICC with Cricket Australia as a grave concern for the security of the players, and it arose after the WACA incident last year. We are heartened to see the South Australian government take this issue up. We are disappointed to see how long the South Australian government has taken to get this legislation before us.

The Greens, as the Hon. Terry Stephens and the Liberal Party have indicated, support the safety of our players. We think that measures being taken here are worthy of support, and I thank SACA for the briefing that it provided to us and I thank the minister's office also for its briefing, which was held in the last few days.

In that briefing we were presented with a schedule of grounds that this may apply to. I would like to note that all of the discussion so far in the briefings largely has actually focused on the fact that we need to pass this bill before the Ashes start next week. The Ashes start pretty much the same time every year. We knew this was coming, and it has taken quite a long time for us to get this point where we are now in a rush debating a bill that may have other implications. The schedule of grounds is several pages long and certainly much more than the Adelaide Oval. It includes regional grounds, rural grounds, Elizabeth Oval and Glenelg Oval. We might expect to see all the SANFL ovals but also some of the smaller ones; I think Williamstown is in there, from memory.

The Greens raised in our briefing that there are also penalties and so on for flares but also for handing out printed matter. We have some concerns about what 'handing out of printed matter' might mean. We would like some clarification from the government of whether that means that somebody handing out a leaflet may be subject to the proposed penalties. When we were given the briefing, we were told that we would now see this bill enabling authorities to take action against somebody, say, carrying flares or possibly this printed matter outside of the grounds.

We would like to have some clarification from the government about how far outside the grounds we are talking about. Are we simply talking about the Adelaide Oval in this case or are we talking about somebody walking down the Elizabeth train station, for instance? Are they subject to being searched to see whether they have unauthorised printed matter or flares because they are close to the oval there? These questions may have very simple answers, but because we are rushing this bill on we have not had the proper consultation time to get answers in a more appropriate way; in fact, I am receiving the bill in front of me as I speak—handy, that.

We think that South Australia should be in line with all the other Ashes grounds, in terms of Adelaide Oval, and we have some sympathy for the raising of the provisions for penalties for somebody who does enter the field, particularly with the intent of hurting a player; even if they do not mean to hurt the player, tackling a player, running up to a player, could in fact cause that player serious injury and we think this is a serious matter.

However, we do not support rushing through legislation without correct consultation or all the facts before us. The government has known that this issue was coming up for at least half a year, and we knew this was an issue late last year when it was raised by the International Cricket Council with Cricket Australia. I think this is indicative of a government that could not even get its budget together in a timely manner.

We were the last state in the country to see a budget, yet Tasmania, which had an election on exactly the same day as us and which returned a coalition government as a new government, was able to get its done in a timely manner. This government should be ashamed of itself in the way it is treating Cricket Australia and its quite legitimate concerns, because we are now presented

with a bill that we do not have all the facts on. I look forward to the committee stage and getting some answers.

The PRESIDENT: Order! The Hon. Ms Lensink will kindly remove that T-shirt. I have just noticed it. It is totally inappropriate.

The Hon. R.I. Lucas: She got away with it for 15 minutes.

The PRESIDENT: Well, you should not try those sort of things. I have just noticed it. It is a pity to cover up that rather attractive dress anyway with such garbage.

The Hon. R.I. LUCAS (11:17): I had no intention of speaking on this. I agree with the brief comments I have just heard from the Hon. Tammy Franks and my colleague the Hon. Terry Stephens that, evidently, this issue has been raised for weeks, if not months and, with two days to go, less than 48 hours, the government decides it is going to rush legislation through on the grounds that, I guess, it minimises any potential chance for asking questions or scrutiny.

On the surface of it, I understood this to be about Adelaide Oval, but I think it was the Hon. Tammy Franks who indicated that there are a whole variety of country facilities and other recreation facilities that are covered by this, including, my colleague says, facilities in Whyalla: Bennett Oval, Centrals Oval, Croatia Soccer Ground, Bradford Street Reserve, Club Italico Soccer Grounds; there is a list of 20 or 30 grounds that are evidently covered by this proposed legislation.

As I said, the pre-publicity that I had heard about this was that it was in relation to test cricket at Adelaide Oval—it was as specific as that. I will ask the minister: are the same penalties potentially going to apply to a pitch invader at Bennett Oval? My colleague the Hon. Mr Stephens would know much more about Bennett Oval than I would, but I cannot see why that is any different to recreational facilities in my home town of Mount Gambier, for example, and I cannot immediately see whether they are covered or not.

Could the government explain what the rationale is for some regional community facilities being covered when it would appear that many others in other parts of South Australia are not covered? What is the rationale for all of the different areas of coverage?

As I said, it is one thing to be whacking people with a massive fine for pitch invasion during test cricket at Adelaide Oval but, with due respect to my colleague the Hon. Mr Stephens, in relation to, say, Bennett Oval at Whyalla or an equivalent one in Mount Gambier, if you are going to start whacking people with fines for invading the pitch in those particular areas, then it raises a significant number of other issues that at least ought to be canvassed in this council before the legislation is rushed through under the guise of looking after test cricket next week (or this weekend or whenever it is) at Adelaide Oval.

I had not intended to speak until I had the benefit of listening to the contributions of some members of this council (and of the two houses of parliament, I would hope). At least let us have somebody answer some questions. The Hon. Ms Franks indicates she has only just received a copy of the bill (albeit having been briefed, evidently, beforehand in relation to this particular issue).

Are the offences only in relation to invading a pitch with the deliberate intention of hurting, or actually hurting, a participant, or something along those lines? Pitch invasions in country communities happen every day of the week. I do not know whether you would call them a pitch invasion, but people going onto country ovals—

The Hon. T.J. Stephens interjecting:

The Hon. R.I. LUCAS: My colleague says kicking a footy at quarter time, but on any number of occasions there are examples. I am assuming it does not cover circumstances such as when in some country communities the local hero kicks his hundredth goal and his best mates, having had a few sherbets, jump onto the ground to celebrate it with him. This is not perhaps quite in the numbers that come onto suburban football ovals when, in the past, people have kicked their hundredth goal or some significant record has been broken.

Those cases, not that we condone them or see any intention to harm anybody, have been recognised as being part of our Australian or sporting culture for some considerable time. I do not think that this bill ought to be rushed through until the minister answers some of the questions the Hon. Ms Franks and others have put in relation to the legislation. I think it is entirely unfair to the chamber.

Given the debate that has been going on in relation to Adelaide Oval, I am interested in the issues the Hon. Ms Franks has raised about the handing out of leaflets potentially being an offence. Any number of us have been involved with occasions where, to put a particular point of view, leaflets have been distributed outside major events that occurred at Adelaide Oval over many years. Is that going to be made an offence?

These are legitimate forms of protest, which in the past have been lawful or certainly have involved no intention to hurt anybody; there is no-one running onto a pitch to belt someone. If you are distributing a leaflet that says you do not support the Adelaide Oval redevelopment, or something like that, and you want the 50,000 people who are going to be there to get an alternative point of view, will that be deemed by the government to be an offence under this legislation? How has the government defined Adelaide Oval? The Hon. Ms Franks raises this issue. I cannot see it in the actual one-page bill we have, but obviously there is more detail somewhere that someone has.

The Hon. A. Bressington interjecting:

The Hon. R.I. LUCAS: Yes, from briefings or something. But there is a huge issue that is going to come with the Adelaide Oval redevelopment as to what is defined as the precinct. Football, for example, as some colleagues will know, wants to control the whole of the precinct from King William Road to Montefiore Hill—well, the four roads that bound the broader Adelaide Oval precinct, with all the car parking, Adelaide Oval No. 2 and the tennis centre in the middle of it. It is not just the footprint of Adelaide Oval: it is that whole precinct that football and the government are obviously talking about there.

Will these provisions be covering all of that area in terms of where you can hand out leaflets and such things? I do not know. These are genuine questions which, hopefully, the government can answer in the second reading reply or the committee stage. I suspect the minister is going to need an adviser or two to respond to a number of those questions.

The Hon. S.G. WADE (11:25): I share the concerns of the Hon. Rob Lucas, the Hon. Tammy Franks and the Hon. Terry Stephens about the breadth of this provision. Likewise, my concerns have been stimulated by debate in this chamber. Specifically on the point the Hon. Rob Lucas just raised in relation to how broadly this provision impacts, my reading of the recreation grounds act, which this bill purports to amend, is that it will be inclusive; it is certainly not just the pitch. It provides:

> 'recreation ground' means any enclosed area of land commonly used for playing sports or games, or accommodating the spectators at any sport or game, and any enclosed area of land contiguous thereto and used in connection therewith;

I will certainly be interested to hear the minister's response to the Hon. Mr Lucas's concern, because my reading of that is that it would basically include the whole of the Adelaide Oval precinct, including the recreation facilities.

My concern is actually divergent to that, in the sense that that definition of recreation ground is quite expansive, and I would like to focus particularly on the phrase that 'recreation ground' includes an area 'accommodating the spectators at any sport or game'. There is no limitation in that provision to the recreation ground being directly connected with the area for the containment of spectators, and I am led to think about sporting events such as the Tour Down Under.

That is a very expansive sporting event, and, clearly, it is a sport. Under this definition of a recreation ground, an area 'accommodating the spectators at any sport or game' reminds me of the stage of the Tour Down Under with which I am most involved, the Stirling and Hills leg, but even more so the Eastern Adelaide leg, where you have major areas for the containment of spectators who would, in my view, be subject to the definition in this act and therefore subject to the penalties of this bill.

One could say that if the government were concerned about the mischief of spectators disrupting sporting events, why should it not cover something like the Tour Down Under? We can all recall the incident where the dog upset the Tour de France, last year I think. So, in this context, we need to make sure that we do not increase penalties in a provision which is particularly expansive. I think all these concerns support the concerns expressed by other honourable members that this is not a bill that should be rushed, and I too look forward to the answers that the minister might offer.

The Hon. A. BRESSINGTON (11:27): I just wonder how many times we have to have this conversation in this chamber, about getting legislation dumped on us at the last minute—

The Hon. P. Holloway: Perhaps you could go to the briefings. Instead of playing politics why don't you do the job that you are well paid for?

The Hon. A. BRESSINGTON: Excuse me—

The PRESIDENT: I think the minister is saying that there were briefings.

The Hon. A. BRESSINGTON: Well, gee whizz. They were talking—

Members interjecting:

The Hon. A. BRESSINGTON: Who expected to get a bill dumped on us after 6 o'clock last night and then be in here at 11 o'clock to debate it?

An honourable member interjecting:

The Hon. A. BRESSINGTON: Please, with everything else that is going on—

The PRESIDENT: Order! Make the contribution.

The Hon. A. BRESSINGTON: As I was saying, how many times do we have to have this conversation in here about getting last minute bills and expecting this house to rubber-stamp legislation that comes from who knows where (because we would not know)? All the concerns that the Hon. Tammy Franks has raised, as well as the Hon. Rob Lucas, the Hon. Terry Stephens and the Hon. Stephen Wade do need to be addressed, because this will probably affect good old weekend sporting activities in the community.

Last week on the radio I heard comments being made about legislation being drawn up for this. Since when do the media get to hear about this stuff first, before we have even had a chance to look at a bill? It is really poor form. As far as coming back with, 'Why don't you do your job; that's what you are paid to do,' well, why doesn't the minister do his job and give us the notice that is in the conventions, that we are supposed to have time to consider these bills and go through them? It is not about us not doing our job: it is about you guys not doing your job.

The PRESIDENT: The Hon. Mr Brokenshire wants to have a go.

The Hon. R.L. BROKENSHIRE (11:29): Yes I do, Mr President, because I am here to contribute. Taxpayers pay me to contribute and I will contribute. We support the intent of what the government was trying to do, and we have actually had a phone hook-up briefing with the minister's adviser, but we were initially under this understanding that it was specifically for the Adelaide Oval because Cricket Australia wanted this because they did not want to have any embarrassment during the senior cricket matches that are about to occur.

Of course, we want to promote our state in the best way, so we could understand that, but I just have to say three things briefly. Firstly, again, we have been expected to rubber stamp legislation. This state is going backwards on the quality of legislation coming through this parliament at the moment. We are intimidated. I had two ministers behind me when I moved one amendment on the River Murray handover bill, which we should never have supported. Look at the damn mess with the River Murray legislation and the independent authority's draft basin plan, etc., now. We were intimidated on that.

We had ministers sitting at the back saying, 'How dare you even move an amendment?' We were supposed to rubber-stamp that because it goes through ministerial council meetings. We have got bad legislation coming up into this house because there is very little work being done in the lower house. They were up at 10 past five last week, and at quarter past five as well, two days in a row. What is happening in the House of Assembly is a disgrace. This house is the house of review. We should have a right to be able to consider this and to go out and negotiate with our constituents.

Now, we will be supporting this bill, because we do not want the state and the government embarrassed over the possible innuendo that might occur during these matches. I just want to say: number one, we need more time. There used to be a convention in this place that a bill sat for at least one full week, if not two full weeks, plus the recess in between the sitting weeks, so we could go and consult. There have been several times, since I have been privileged to be in the Legislative Council, when that has not occurred. That leads to bad outcomes for legislation and it leads to amendments coming back into this house.

With respect to this, if they are going to rush this through and probably get the Governor in Executive Council to sign this off on Thursday, then they must have the regulations drafted somewhere now. I think that it is in contempt of this Legislative Council that they do not give us a copy of the regulations. I have never seen a piece of legislation like this before; one page. This is a record; one page. The second thing I want to say is, as a country person myself, you see a few antics that our community get up to. It is the only time they can lead off any steam.

At the end of the minor round, clearly at a grand final, often at the end of a grand final, during cricket and other sporting events and community events as well, like the Compass Cup, people let their hair down. I hope it has not got implications for that type of event, because things are a little different there. I don't know and I am being asked to pass this legislation with my colleagues in the next half an hour or less.

We wanted to look at things like scalpers. If you are going to be worried about people running onto Adelaide Oval, perhaps we should be a bit worried about the scalpers who are profiteering and pressurising people into cash transfers at the gates of these bigger events. There are many other issues. In defence of the government, my adviser has been told that the government does have a much larger bill, to do with major events, which they are going to bring in.

We will take what the minister's adviser has told us with goodwill, but we expect to see proper consideration for members of parliament to move amendments that we can consult with community about first, because this has to stop. I hope that next year colleagues of all colours—Independents and crossbenchers, other than the government who are told what to do—will actually say, 'We have had enough of this and we will not support or debate legislation if it is rammed down our throats at this short notice.'

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) (11:34): I thank honourable members for their contributions to this debate. I think I need to point out exactly what it is that we are debating here. It is an amendment to the Recreation Grounds (Regulations) Act 1931. This is a very simple act of just two pages which basically provides the Governor with the powers to make 'regulations necessary or convenient for any of the following purposes'. It then goes through regulating entry and egress of persons and vehicles into or out of any recreation ground or any enclosure or building thereon and a range of other conditions.

Of course, the current regulations were actually implemented back in 1996, so I am surprised: the Hon. Mr Lucas must have been asleep when they went through cabinet in 1996. The Recreation Grounds Regulations of 1996 contain the penalties and conditions of issue in relation to those grounds covered in the schedule to the regulations. Also, in respect of Ms Franks' question, clause 8(2) of those regulations back in 1996, states:

> A person must not deposit litter, refuse or waste matter in any place other than a receptacle provided for that purpose or distribute any printed matter or erect a sign or offer an article for sale or take up a collection or drive or ride any vehicle or bring a dog or, if the owner or person in charge of a dog, allow the dog to remain on a recreation ground, except as authorised by the controlling body or these regulations: maximum penalty $200.

This bill seeks to change the head power which limits the penalties that can apply. Whereas it is a $200 penalty for a person depositing litter, and so on, it would simply enable the penalty to increase to an expiation fee not exceeding $315 for an alleged offence against the regulations. Section 3(1)(j) of the head act provides:

> The regulations may create offences punishable summarily and prescribing penalties not exceeding $200 for such an offence.

That was put in there back in 1931. The regulations to cover these events, about which the Hons Mr Lucas and Ms Franks are talking, were put in place in 1996, but the maximum penalty had to be $200 because it was restricted as such by the head power under the act. All this amendment will do is, in the head act—this two-page measure—enable the prescription of expiation fees not exceeding $315, delete the $200 maximum set back in 1931 and substitute $5,000. That is in line with the sort of penalties that apply elsewhere in the country.

The Hon. R.I. Lucas: That is a pitch invasion. All these other things—

The Hon. P. HOLLOWAY: Well, it is a maximum penalty. The Recreation Grounds (Regulations) Act 1931 states:

> 3(1)(j) Power of Governor to make regulations

Creating offences punishable summarily and prescribing penalties not exceeding $200 for any such offence.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Well, that will be the maximum offence. The amendment provides for expiation offences not exceeding $315. The regulations of 1996 cover such things as behaviour of persons on ground, that is, where there are more serious offences, but for matters that may involve a person depositing litter, and so on, it is obviously the government's intention that under the new power you would apply the expiation fine.

The only way the government can increase the penalties under this 1931 act, where the penalties are restricted to $200 maximum, is by changing the act to allow a high level of penalties. The regulations themselves set out the offences with the appropriate penalties, and the schedule defines the recreation grounds covered by the act. In relation to Adelaide Oval, the current description, under the 1996 regulations (of course, they could go back further), is 'that part of the north parklands at Adelaide leased by the Corporation of the City of Adelaide to trustees for the South Australian Cricket Association Incorporated under and by virtue of memorandum of lease dated 30 November 1994: controlling body the South Australian Cricket Association Incorporated'.

That is the current regulation as it defines Adelaide Oval, but there are a number of other ovals. Most of the SANFL ovals are in here and a number of other local ovals. Of course, they must be included in the schedule (the recreation grounds), so some of these other particular regulations can apply, for example, the littering and so on—what one might describe as minor offences.

Unfortunately, at the present, all those offences are limited to a $200 fine under the regulations because that is all the act allows. What we are seeking through changing the act is to allow a higher level of penalty (up to $5,000) and also to allow for expiation notices so that we can have a much better balance of penalties for appropriate offences, but these will be in the regulations. After all, the act we are amending is called the Recreation Grounds (Regulations) Act and is simply a head power to create regulations under that act. With those comments, I commend the bill to the house.

Bill read a second time.

In committee.

Clause 1.

The Hon. R.I. LUCAS: I thank the minister for his response. I want to clarify a number of questions that were put at the second reading stage. The first question is: if the major problem is, as we understand it, pitch invasions of international cricket but particularly test cricket this coming weekend at Adelaide Oval, why did the government not just amend that particular provision? It is administratively convenient, I accept, to change the $200 penalty to $5,000, but then it potentially applies right across the board. There is a difference between a $200 penalty and $5,000 penalty. Even the debates in the House of Assembly acknowledged that; that is, $200 is a relatively modest penalty.

The Hon. P. Holloway: It probably wasn't in 1931.

The Hon. R.I. LUCAS: No, but in 1996 (whenever this regulation was brought in) clearly it was a relatively modest penalty and clearly $5,000 is a significant penalty. I think even the minister would have to concede that a pitch invasion of Adelaide Oval in front of 50,000 is a bit different from a pitch invasion of Bennett Oval at Whyalla in front of 46 people. I do notice that Richmond Oval—my beloved West Adelaide Football Club—is listed. A pitch invasion in front of 1,461 people at a West Adelaide South Adelaide game is a bit different again, and I think the minister would even acknowledge that. If the problem is Adelaide Oval and major events at Adelaide Oval—and we can all understand that and I think everyone accepts that the penalty there should be appropriate—why could the government not have chosen that particular course, that is, amend it in a way so that it only applies to those events at Adelaide Oval?

The Hon. P. HOLLOWAY: The point I tried to make earlier is that it is the Recreation Grounds Regulations 1996 that apply, but they have a maximum of $200 because the Recreation Grounds (Regulations) Act 1931 restricts any penalty under that act to a maximum of $200. That was section 3(1)(j) where the Governor may make any regulations necessary or convenient for any of the following purposes, namely:

creating offences punishable summarily and prescribing penalties not exceeding two hundred dollars for any such offence.

When the regulations came down in 1996, there were a number of parts to those regulations. The relevant regulation is 'behaviour of persons on the ground', but the maximum penalty is $200 because that is all that could be applied then under the terms of the act.

The Hon. R.I. Lucas: But they relate only to Adelaide Oval.

The Hon. P. HOLLOWAY: No, these are under the Recreation Grounds (Regulations) Act. They cover all penalties for all grounds, and a schedule to those regulations includes the names of the recreation grounds, that is, Hindmarsh Stadium, the SANFL grounds and Adelaide Oval.

The Hon. R.I. Lucas: Are you saying that, say, at Bennett Oval at the moment it would incur a penalty of $200?

The Hon. P. HOLLOWAY: It is behaviour of persons on the ground. A person must not, while on a recreation ground, obstruct or interfere with the conduct of a sporting or other event. The maximum penalty is $200, and that applies across the board for all of those grounds.

The Hon. R.I. LUCAS: I thought the regulations the minister was referring to from 1996 related only to Adelaide Oval, but he is confirming now that they relate to all of them. So, what the minister is saying is that the government's intention under this regulation is to say, in essence, that a pitch invasion that interferes with a game at Bennett Oval attracts a penalty of $5,000 as opposed to $200. Forgive me for common sense, but I do not see the element of common sense in relation to how one equates a pitch invasion at Bennett Oval, Whyalla or at Richmond Oval in the western suburbs—

The Hon. P. Holloway: That is what the courts are for. They determine the penalty for that.

The Hon. R.I. LUCAS: I accept that, but we are the parliament and we are setting the guidelines and we are saying, in essence, that we the parliament agree with you, the government, that, ultimately, the court should interpret Bennett Oval and others as being applicable to the same penalty of $5,000. I do not see the logic of why the government would want to have a penalty for a spectator who, because he has had a sherbet too many, runs on to join his mate, who has kicked 100 goals at Memorial Oval or Bennett Oval, or whatever it is, in Whyalla, to celebrate with him. He gets shooed off or whatever it is.

Why should that sort of offence be subject to a $5,000 maximum penalty and be equated to some idiot who runs on to Adelaide Oval in front of 50,000 people, with live television coverage and all that sort of stuff, clearly with much greater ramifications for that particular event than it would at a country oval, whether it be Bennett Oval or any of the others there, even though that is the way it was done when it was $200? I accept that. At $200, it was an administrative convenience to do all of them together.

If you are going to whack it up to $5,000, it is possible for the government, if it so chooses, to either amend the act, if need be, and say that it just relates to Adelaide Oval, or take legal advice as to whether it is possible to have a regulation that applies to Adelaide Oval. It might not be possible; it might be that you have to amend the act, but that is what you are doing at the moment, anyway. You have come in here had said, 'For major events at Adelaide Oval, the penalty ought to be $5,000. For the other odds and sods, there hasn't been a problem; let's leave it as it happens to be.'

The Hon. P. HOLLOWAY: It would not just be Adelaide Oval. At Hindmarsh Stadium, one of the real concerns is the use of flares, which are an increasing problem at some soccer games, and that is the sort of behaviour that could be very dangerous. I think the best way to answer the Hon. Mr Lucas' point is by analogy with speeding. Speeding has a particular penalty, but obviously the circumstances in which one speeds could be far more dangerous in some cases than in others. I admit there is gradation of offences. It is now mainly expiation notices that would be offered but, if it goes to court, the penalty the judge would give for an offence like that would obviously depend on the severity of the offence.

I would have thought that it is pretty common practice here that we would just set a maximum penalty, and it is really up to the courts to determine the relative severity of the offence. Clearly, if someone obstructs a match or interferes with a sporting event at Adelaide Oval when

tens of thousands are people are present, undoubtedly, they would regard that with greater severity than an offence where there were fewer people. The courts do that all the time in relation to a whole lot of other offences, whether it is assault or—

An honourable member interjecting:

The Hon. P. HOLLOWAY: Yes, drugs. The courts take into account the severity in applying it. It would certainly be possible in theory to create a new offence of obstructing a major sporting event. I guess it would even be possible to do it under this act, but we need to deal with a whole range of behaviours here as well.

As I mentioned earlier, letting off flares, which unfortunately has become a habit at soccer matches in the Eastern States, is a highly dangerous activity and should be covered. At some of these small grounds where you have soccer matches, if you have strong ethnic tensions, it may not be a particularly large match but it could be quite dangerous behaviour. One would expect that police in the first instance in terms of prosecution and, secondly, the courts would take into account how dangerous the behaviour was in both making a decision to prosecute and then the courts in applying the penalties.

A number of other offences under the recreation grounds regulations, such as the littering and distributing offences or bringing a dog in and so on, are obviously candidates for an expiation notice. Again, it needs an amendment to the act to allow that to happen. In relation to these more serious penalties such as pitch invasion, we should have a higher penalty at $5,000 maximum. I understand that the penalties in most other parts of the country are as high as or higher than that. I know they were spelt out in the debate in the House of Assembly as to just what other states do in relation to some of those penalties. But it is not the government's intention that we should apply the maximum $5,000 penalty to all offences under the regulation, as was done back in 1996, but rather that we need to have a maximum of $5,000 to enable us to apply that to the particular offence of behaviour of persons on the ground.

The Hon. S.G. WADE: If I could clarify the minister's last comment in particular, because it pre-empts the question I was going to ask: do I take it that the only penalty which will be increased under the regulations the government is planning is to the regulation clause 8, behaviour of persons on grounds? If that is the case, is that in relation to all of the five subcategories of behaviour of persons on grounds?

The Hon. P. HOLLOWAY: My advice is that it is the government's intention to restructure that part of the regulation so that it would just apply to behaviour in the two instances of pitch invasion and also paragraph (d) dealing with flares which provides:

> except as authorised by the controlling body, carry or be in possession of a flare, firework, explosive device or missile;

Also, it applies to paragraph (a) 'obstruct or interfere'. They are the two that would be restructured to have the more serious penalty. The one about climbing on a fence, tree and so on would presumably be at the lesser level.

The Hon. S.G. WADE: So the government's intention is that the maximum penalty corresponds to the current 8(1)(a) and 8(1)(d) and would be at $5,000. All other penalties would stay at the $200 level?

The Hon. P. HOLLOWAY: No; it is the government's intention to look at some of those areas but there probably is the scope for scaling up some of those penalties. For example, if we are making the expiation penalty not exceeding $315—that is the prescribing expiation—obviously, the expiation notice at that level would suggest a penalty somewhat greater than that. The government will be looking at some of the other penalties. We will be looking at penalties of $250. For example, regulations part 2—Use of recreation grounds, clause 6—Entry to and exit from grounds, the maximum penalty is $200. It would be the government's intention to increase that to $250 with an expiation notice of $80.

It would be proposed that the maximum penalty of $5,000 would only apply to a person being in the vicinity of a recreation ground in possession of a flare, firework, explosive device or missile without lawful excuse, proof of which lies on the person; a person in the vicinity of a recreation ground, which is the old provision (a) obstruct or interfere with the conduct; and damage to property. So, those three would have the maximum penalty of $5,000, every other one would be increased with an expiation penalty to a lesser amount.

Obviously, these ought to be reviewed from time to time, but certainly in the immediate future my understanding is that they are only looking at those three instances for a maximum penalty. I think removal of persons from ground also had a maximum penalty. It says a member of the police force or special constable may remove from a recreation ground any person reasonably suspected of having committed an offence while on the recreation ground. The person who has been so removed on a particular day must not re-enter the recreation ground on that day.

Again, I think a lot of these regulations will require some level of redrafting, but the proposal is that that would have a penalty of $1,250. Similarly, for the powers of an authorised person, that is regulation 10(3):

A person must not, without reasonable excuse, refuse or fail to comply with a requirement of an authorised person under this regulation.

The maximum penalty would also be increased to $1,250.

The Hon. S.G. WADE: Considering the redrafting that the minister has rightly pointed out will be necessary, when does the government expect that the redrafting of the regulations will be promulgated?

The Hon. P. HOLLOWAY: Clearly, once the act is approved these will need to be in place, hopefully, before the test. One would think that they would need to go through a special gazette, or something, before the start of the test, so it will have to be done within the next week or so, if this bill is assented to.

The Hon. S.G. WADE: As I indicated in my second reading contribution, I think that 'recreation grounds' can be read very broadly, but I appreciate that the recreation grounds are as specified in the schedule. Does the government have any intention of changing the scheduled recreation grounds?

The Hon. P. HOLLOWAY: I have been advised that there is some consideration being given. For example, the current schedule does not include the Morphettville Racecourse. I believe the SAJC is currently considering whether it should be included as part of that. The Adelaide Super-Drome is another which is not included under the current schedule.

The Hon. R.I. Lucas interjecting:

The Hon. P. HOLLOWAY: Yes, the recreation grounds are a schedule to the regulations, so they would simply be added to that schedule.

The Hon. T.A. FRANKS: I have a question about the distribution of printed matter. That is actually one of my main concerns here, because what we are doing in this bill is that we are increasing the scope of some of the alleged offences against the regulations to be in the vicinity of a recreational ground. So, with distribution of printed matter, what is that defined to be? Does that include handing out pamphlets? To me, that is what distribution of printed matter might be. If so, what does 'in the vicinity of' specifically mean? Does it mean 50 metres, 100 metres, a kilometre? What is 'in the vicinity of' meant to mean in this bill?

The Hon. P. HOLLOWAY: It is not proposed that the government would change the current regulations which say a person must not deposit litter, distribute any printed matter, etc., on a recreation ground except as authorised by the controlling body or these regulations. The definition of a recreation ground, as appears in the act, is: 'a recreation ground means any enclosed area of land commonly used for playing sports or games or accommodating the spectators of any sport or game and any enclosed area of land contiguous thereto and used in connection therewith'. So that is the interpretation of the act.

I am not quite sure where 'the vicinity' comes from, whether it is that part the honourable member is talking about, namely, 'land contiguous thereto and used in connection therewith'. That could mean 'the vicinity', but I think that is just a legal interpretation. Clearly, if one is outside a sporting ground, the reason that would be there—and it would be up to the police and the courts to determine how that would act—is that, clearly, if you had a flare, for example, and set it off just outside a ground, that would be just as inflammatory and dangerous. If you were waiting outside a ground to do that within the vicinity, it would be really up to the police and the courts to determine whether it was close enough. So it does not have to be a specific distance.

Otherwise, if you said 50 metres and someone wanted to do it, they would stand at 51 metres and do it. That is why the laws have to be general enough to cover behaviour but, ultimately, it is up to the courts to determine whether that would be a fair interpretation or not. I

would suggest that the regulations—and the act does have to cover the proximity of a ground, because behaviour could take place on the outskirts of the ground—that could be contrary to the public good, and that is why you need these sort of the regulations to deal with it. Setting a specific distance would not be helpful in terms of defining that behaviour. It is better to use the general terms which the police and then the courts can use their discretion with in interpretation.

The Hon. T.A. FRANKS: I will reiterate my question. My question is specifically regarding the distribution of printed matter and whether the distribution of printed matter 'in the vicinity of' (which we have just now been informed could be anywhere near a ground; it could be kilometres away because we are going to leave it ephemeral) is going to be subject to expiation fees of $315. Will you be able to get into trouble for handing out leaflets outside a sporting ground? That is what I want to know.

The Hon. P. HOLLOWAY: What the current regulations say, and we are not proposing to change them, is that a person must not distribute any printed matter on a recreation ground except as authorised by the controlling body or these regulations. Now, it says 'on a recreation ground'. The definition of 'a recreation ground' is contained in the schedule so, if it was, for example, Elizabeth Oval, it is the whole of the land described in the certificate of title; register book volume and folio numbers are given and an area of 6.75 hectares or thereabouts, being section 140, allotment 2 of the hundred of Munno Para.

Similarly, there are definitions of Football Park, Glenelg Oval and all the other ovals for which this applies. They are the current regulations and definitions. They have been in place for some time and, one hopes, the police, ground officials and others interpret them like all other laws, with common sense.

The Hon. T.A. FRANKS: Common sense would mean that you would answer the question: what does 'in the vicinity of' mean? I understand that currently we have laws that stop people from distributing printed matter on a recreation ground.

The Hon. T.A. FRANKS: In the bill. In the bill we are deleting 'about to enter, entering, being on, or quitting, any' and substituting 'or in the vicinity of'. That is why I am asking what 'in the vicinity of' means. Does it mean kilometres away, does it mean on the doorstep? Can we get a clarification?

The Hon. P. HOLLOWAY: One needs to go back to the original act, which is the Recreation Grounds (Regulations) Act. It amends 3(1)(d), which provides:

> The Governor may make any regulations necessary or convenient for any of the following purposes, namely…
>
> (d) securing orderly and decent behaviour on the part of all persons about to enter, entering, being on, or quitting, any recreation ground and providing for the comfort and convenience of all such persons;

That is to be changed to 'or in the vicinity of'. I am not a lawyer but, as I understand it, 'in the vicinity of' is a common term used throughout the law. Obviously, it is subject to the interpretation of the police in the first instance in terms of prosecution and the courts. The reason it is inserted there, as I said earlier, is to allow for behaviour by someone who may be on the outskirts of one of these recreation grounds and be creating a public nuisance. Clearly, it would have to be established—before the courts, presumably—that that behaviour was in some way related to an event taking place on a recreation ground, or was in some way connected to a recreation ground; otherwise it would not be 'in the vicinity'. I do not think this is a new form of law we are talking about; it is very common.

The Hon. T.A. FRANKS: Does that mean that clubs could not, for example, hand out leaflets for their drinks night or awards night outside the ground?

The Hon. P. HOLLOWAY: The point I was making was that in 3(1)(d) it is about securing orderly and decent behaviour, so it will not relate to that particular regulation that deals with distributing material. We are only talking here about 'in the vicinity of' in relation to those more serious offences such as those involving flares and damage to property. Obviously, it would not be necessary for pitch invasion because one would be in the ground, not 'in the vicinity'. I guess it is in there specifically to cover instances of flares; as I said, if someone was outside clearly they could create a nuisance. I am sorry that I did not clarify that earlier; the amendment will really only relate to those two more serious offences, and not to the more minor offences of handing out literature.

The Hon. T.A. FRANKS: That is very reassuring.

The Hon. R.I. LUCAS: I think the minister has clarified, through some of his responses, some of the questions raised by members, and I think it has been a worthwhile debate. At this stage I can express only a personal view, because these issues were not raised in our party room discussions on the matter; most of us believed this related just to Adelaide Oval. My personal view is that I think the minister has now confirmed that the government's intention is that a pitch invasion of Largs Reserve in the Port Adelaide Enfield area, or a pitch invasion of the Noarlunga Downs oval, or a pitch invasion of Bennett Oval in Whyalla, is the equivalent of a pitch invasion of Adelaide Oval and subject to a maximum fine of $5,000.

I do not think that passes the common-sense test. Given this late stage—we have only today and tomorrow and, certainly, our party room does not meet again at this stage—I think that is why the points were made earlier that if these issues are raised early it would give all the parties, and their party rooms, the opportunity to further consider them. As I said, my view in relation to this $5,000 fine is that it ought to be applied to the areas where there is a problem. If Adelaide Oval is the area where there has been a problem, then let us apply that particular fine to Adelaide Oval.

We are distinguishing a whole range of these other offences between various areas. We could have targeted this legislation so that it addressed the problem that is evidently there—that is, major events at Adelaide Oval—and had a maximum fine of $5,000, then have a more modest fine for pitch invasions of suburban ovals.

I remain of the view that a mate invading a suburban football oval to celebrate his mate's 100th goal in a football season, or whatever it is, in good nature and good humour, then being sent off the field, should not be potentially legally subject to a fine of up to $5,000. Now he, in those circumstances, might not get $5,000, as the court considers appropriate, but it will be some gradation of $5,000. It will not be a gradation of $200. If you only get half of the penalty, it is $2,500 for invading the Largs Reserve recreation ground where a suburban amateur football match is being conducted.

It is the government's intention that they be treated in the same way with the same penalty of $5,000. As I said, I don't think that passes the common-sense test, but the only option available to this house is to delay the legislation when the prime purpose is for the Adelaide Oval test coming up in the next few days to have this increased fine. Given that the government refuses to sit in the scheduled optional sitting week next week, when we could have tidied these things up, those options do not remain available for the upper house.

The Hon. Mr Stephens has indicated the Liberal Party's formal position. I think the debate, from my viewpoint, has been worthwhile. It has actually, again, I guess, pointed to the reasons why there are processes and conventions in the house. On occasions they need to be short-circuited. This is not one of those occasions because the minister had been telling people for a month or so, at sporting and other events, that parliament was going to need to consider this legislation. So, it is not as if it is something that has occurred in the last week. The minister has been telling people at sporting events, for more than a month, that this is coming. We have had the opportunity to introduce the legislation much earlier and much of this debate might have been circumvented if that process had been followed by the government and the minister.

The Hon. P. HOLLOWAY: I don't want to comment on the debate, but I just think that, in relation to the common-sense argument regarding the pitch invasion being different at some ovals than others, one has to look at the circumstances. We also have to look at things like flares being used. As I said earlier, the use of a flare could be more dangerous at some venues. It is not just at Adelaide Oval where there could be a risk. I think we can rely on the courts, or indeed, the police and prosecution service to interpret the law fairly.

Clause passed.

Remaining clauses (2 and 3) and title passed.

Bill reported without amendment.

Bill read a third time and passed.

OCCUPATIONAL LICENSING NATIONAL LAW (SOUTH AUSTRALIA) BILL

Adjourned debate on second reading.

(Continued from 10 November 2010.)

The Hon. T.A. FRANKS (12:15): I rise to indicate Greens' support for this legislation, which creates a nationally consistent set of licensing standards across a number of economically important occupational areas, with the first wave of occupational transfers to the national scheme commencing on 1 July 2012 and the subsequent wave one year after that. In April 2009 COAG agreed on a delegated agency model for the National Occupational Licensing Authority. The states and territories will retain responsibility for licensing services and for regulating licensee conduct.

A key feature of the bill before us is the establishment of a national register so consumers can confirm that an individual or business is appropriately licensed, and that is something we welcome. Reviews and appeals of licensing decisions of course will continue to be made in the South Australian jurisdiction, and applications for injunctions against traders operating in contravention to the national law will continue to be made in the South Australian courts.

A number of assumed benefits have been presented as part of this national licensing scheme. They include the removal of the need to hold multiple licences; the capacity for individuals to move across Australia with one licence; particularly to travel where work is available; one consistent set of rules; standard qualification requirements; and a consistent knowledge base for licensed occupations. The Greens welcome all these initiatives.

The bill is, of course, not without some critics or issues. The Plumbing and Gasfitting Occupations Interim Advisory Committee expressed concerns about the lack of consistent quality of training delivery and assessment, and this has been a common theme within a number of the interim advisory committees. I put on record that the Greens are keen to find out with regard to these particular concerns that have been raised whether we could have some advice as to where South Australia will see a lowering of education or training standards with regard to licensing requirements, and, conversely, could the minister also inform the council where South Australia will see a raising of the standards required?

Could the minister also clarify whether additional occupations can be added at a state level by regulation with regards to this bill without any direct reference to this parliament? In relation to the make-up of the interim advisory committees, on which of the four advisory committees does the South Australian government have no representation and representation? Is there a representative of TAFE on any of the four interim advisory committees and, if so, which ones?

The concern I raise here with these questions is that these changes have implications for both public and private providers of vocational education and training, and this is coming before the federal government's moves with regard to the regulation of vocational education and training. The Greens elsewhere have expressed our grave concerns about the implications of this move. Finally, with this bill (and it was note in the briefing we received) reward payments are available under the national partnership agreement to deliver a seamless national economy.

It was stated by the minister in her second reading on this bill that we are at risk in South Australia if we do not meet this key reform milestone, and the crucial milestone before us as a parliament is to enact this application by December 2010. Will the minister outline what financial rewards will be sacrificed if this bill is not passed by both houses before next week? At what stage were these deadlines or key milestones informed to the government?

Which states have already introduced this piece of legislation around the country? The Greens will not oppose this legislation. We look forward to the committee stage. We note that the Hon. Stephen Wade has tabled an amendment, which we believe has some merit. The government has a similar amendment before us. We look forward to the committee stage.

The Hon. J.M.A. LENSINK (12:19): I rise to indicate support, with some reservation, for this measure. I understand there have been a number of intergovernmental agreements as part of moving towards a seamless national economy, which has been working through the COAG process through 2007, 2008 and 2009, and the agreement for this proposal was signed off in 2009, from memory. So, through the Intergovernmental Agreement on Federal Financial Relations and the National Partnership Agreement to Deliver a Seamless National Economy which was established and signed by COAG in April 2009, it is this intergovernmental agreement that forms the basis for this law before us.

There is a statement in the national partnership agreement which summarises the intention of the bill, which is to reduce the cost of regulation and enhance the productivity and workforce mobility in areas of shared commonwealth, state and territory responsibility. This bill has been brought on rather rapidly. The agreement from my reading was that the host state, which is

Victoria, was due to pass that legislation in June. That was behind time and was done in September.

The expressed wish was that this legislation would be passed through all jurisdictions by the end of this calendar year. I think that probably was a rather optimistic timetable, but from what I understand, because the Victorian legislation has been brought into effect, the National Occupational Licensing Authority can proceed without each jurisdiction necessarily having passed its own complementary legislation. I think we are a little behind the schedule but I would not have thought offensively so.

This bill refers occupational licensing to the new system in two waves. The first wave will come into operation in July 2012 and will include the occupations of air-conditioning and refrigeration mechanics, plumbers and gasfitters, electricians, and property agents other than conveyancers and valuers. The second wave will come into effect in July 2013 and will include land transport, passenger vehicle and dangerous goods only, maritime building, and conveyances and valuers. As I stated, Victoria is the lead jurisdiction and the host state for the commonwealth law. This enables the establishment of the national occupational licensing system through the National Occupational Licensing Authority (NOLA) from 1 January 2010.

In her second reading speech the minister stated that the law had been designed to provide the governance and high level framework for the national scheme. The operational aspects of the scheme and industry specific licensing rules and procedures are to be covered in regulations which are currently being developed. This will enable informed and detailed analysis on the risks, needs and safety requirements for both licensees and consumers before each occupational area becomes operational under the national law. Occupation specific legislation will still exist in South Australia to regulate areas that fall outside the national scheme, for example, conduct matters.

I understand that a great deal of detail is yet to be developed through consultation and the operation of the new regime will be covered by regulation. I expressed a concern in my opening remark that that process will continue to take place in good faith and the parliaments of the various states will no longer have such a specific input into that process. I think that is a concern. I do understand that, in principle, national licensing is a good idea—and I will refer to each of the industry organisations responses to this in a moment.

The Liberal Party certainly has very great concerns for small businesses, but not so much the larger organisations which are probably members of industry associations. Generally they are able to articulate and voice their concerns as loudly as they need to, but there would be a lot of people in certain occupations—and I think particularly within our party room we discussed the issue of conveyancers—who probably only operate in this state and who probably are aware of very locally specific issues that relate to the matters that they need to be aware of. The propensity for a one size fits all is always a danger in progressing these initiatives.

The Office of Consumer and Business Affairs will still have operational responsibilities relating to operational licences and OCBA will be responsible for licensee disciplinary decisions. I understand funding for this will come from general budgeting funding of the agency which is soon to be amalgamated with the Office of the Liquor and Gambling Commissioner.

Through our discussions with the minister's office, we did ask for further information in relation to a number of areas. I am grateful for the advice that has been given, including an organisational chart, which would be very hard to read into *Hansard*, but I am sure it would be available for any honourable members in order for them to understand who is going to be doing what and when in the new regime.

In terms of South Australia deciding that it wanted to exit from the system, it would be able to do that with 12 months' notice to the system. The ministerial council will be responsible for agreeing to amendments to the national law, as it sees fit. If the proposed amendments would substantially alter the objectives of the national licensing system, any ministerial council decision and proposed amendments must be approved by consensus.

I now turn to our own discussions with industry bodies. This has been a relatively difficult bill to consult on because the new NOLA has to establish a governing body of the system and a range of occupational licence advisory committees as the principal source of advice on licence policy for the occupational areas under the licensing system. Until these committees are themselves established, they are reliant on the understanding that representatives from their industry will participate in the committees to form that licensing system.

The government provided us with quite an extensive list of bodies that it believes have been consulted. In that advice, the following was stated:

> OCBA has integrated general briefings on the development of NOLS into its stakeholder liaison meetings and has met with individual stakeholders on request, as well as provided general updates to industry and licensees via the Commissioner's newsletters and OCBA's website.

My office has directly contacted a range of organisations, including the air conditioning and refrigeration mechanics association of SA (AMCA). That organisation's advice to us was that AMCA and the National Fire Industry Association have taken an active role in the participation of those various working groups involved in the first round of national occupational licensing, in particular, the areas of plumbing and fire services, refrigeration and air conditioning and, to a lesser extent, electrical. The association also stated that the transportability for workers who wish to pursue their trade occupations across state boundaries is important to the nation's economy and that it supports the new national licensing system as a workable way of achieving this outcome.

The Plumbing Industry Association is aware of the proposals and will be seeking support for competency-based licensing through the new system. I have a question on that particular industry, which I will put later. We contacted the National Electrical and Communications Association, but we have not had a response from that association at this time. The Real Estate Institute of South Australia (RIESA) states:

> RIESA is supportive of the national licensing system in the widest sense and agrees that individuals should have the opportunity to cross borders and work more easily. However, there are some key areas which must be addressed in the implementation of the national licensing to ensure that consumers continue to receive a high level of service and standards from the profession.

We also contacted the Australian Institute of Conveyancers, which stated that it conceptually supports a national occupational licensing system. However, it has concerns with the disciplinary process remaining with the local jurisdictional authority (OCBA), which refers disciplinary matters to the DPP.

The Master Builders Association has raised concerns about the lack of information about regulation of the occupation once the national framework has been established, although it is in favour of the reduction of red tape proposed by having a national licence. We did not receive a response from two organisations, namely, the South Australian Road Transport Association and the Housing Industry Association.

In relation to plumbing, I have asked a couple of questions at least in this place about the split between OCBA's licensing role and the Office of the Technical Regulator, located within SA Water. My question for the minister is: is that role to be largely devolved into the new NOLA, and is the minister able to provide further details on that?

In relation to OCBA's licensing and plumbing annual registration fees, can she advise whether they will continue to be at the same level, plus perhaps CPI, in future years? Will they continue to be retained within OCBA or is there some proposal that there will some contribution from the state government to the federal government in establishing this? Can she advise how NOLA is being funded from 1 January perhaps for this current financial year and the four out years, both from the state and other jurisdictions, including other states and territories and the commonwealth government?

My esteemed colleague the Hon. Stephen Wade will make some comments in relation to the national law issue which is something the Liberal Party feels quite strongly about. With those comments, and a plea that this proposal will not lead to a vast increase in fees and charges for registration fees as we have seen for other professions and a burgeoning of a new bureaucracy, I provide in-principle support for this bill.

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) (12:31): I thank honourable members for their second reading contributions and support. There are a series of questions that have been placed on record and, with the indulgence of the chamber, I will attempt to provide answers to those during clause 1 of the committee stage. Again, I thank members for their support and I look forward to expeditiously dealing with the committee stage.

Bill read a second time.

In committee.

Clause 1.

The Hon. G.E. GAGO: A number of questions were asked during the second reading. One was from the Hon. Tammy Franks on the training standards. I have been advised that one of the objectives of the national licensing system is to facilitate a consistent skills base for licensed occupations by using the existing national vocational education system and aligning skill-related licence eligibility with industry standards established by national training packages.

The national training packages provide a nationally consistent base for skills-related requirements of most of the licensed occupations covered by the national licensing system. The training standards under the national licensing system will be based on inherent risk and will not be simply a harmonising of existing requirements.

It is expected that the proposed training standards for the first wave of occupations will be released by the end of 2010. We understand that they are well underway but obviously they have not been released as yet. They will be released for widespread consultation, so the industry will have an opportunity to have input into that. In addition, the proposed training requirements will be subject to national consultation as part of the regulation review process. That is all the detail we have in relation to that at this point.

I have been advised that South Australia has reps on the interim advisory committees for plumbing, gasfitting and also electrical. In terms of the question as to who else has passed the application law, at this point both Queensland and New South Wales have.

I was also asked a question about the process for including new occupational areas. The jurisdiction that proposes to license an occupational area may make a nomination to the ministerial council to have that occupation area included in the national licensing system. The national licensing authority assesses whether the occupational area meets the criteria for admission and reports to the ministerial council detailing any recommendations for inclusion of the new occupational area, and there are a number of criteria around that.

If the ministerial council unanimously agrees that the occupational area should be covered by the national licensing system, a national regulation may be made to incorporate that occupation in the system. Where only a majority of ministerial council members agree to license the new occupational sub-group of an occupation, the national licensing requirements for that occupation will only apply in the jurisdictions that agreed it should be licensed, and the inclusion of the occupation must be reviewed annually.

In terms of questions about national payments, a portion of future reward payments are at risk if we do not show good faith in passing the bill, and we believe that a show of good faith would be to pass the bill in at least one house this session. As the Hon. Michelle Lensink rightly pointed out, the application model legislation was late coming from Victoria. It was due in June, but it was not passed there until, I think, September; other jurisdictions did not have access to it until it was passed there, so we are all running a little behind.

As I said, passing this bill through at least one house shows good faith to the federal government, and we believe that that will suffice in showing our commitment to fulfilling our part of that COAG agreement. In total there is $14.725 million at risk in the 2011-12 payment in full; that is dependent on the progress against 10 of the 27 priority reforms, and that includes national occupational licensing. We are not able to disaggregate which specific proportion of that payment may be at stake if we do not fulfil the NOLS part of our agreement. At present, they are all tied together so we are not able to disaggregate, but we can certainly assume that some proportion of that could be at risk.

There were questions about the funding of the national licensing authority. I have been advised that the Ministerial Council for Federal Financial Relations agreed that states and territories will fund the costs of the national licensing system on an equal per capita basis for the period of 2009-10 until 2012-13, consistent with the basis and duration of the national partnership agreement to deliver a seamless national economy. The basis of sharing ongoing costs and funding requirements of the national licensing authority from 2013-14 will be decided after the system commences in 2012-13. South Australia's per capita share is approximately 7 per cent.

I was asked questions about the role of the regulators for OCBA and the OTR. I am advised that the National Occupational Licensing Authority will be responsible for developing licence policy on licence categories, scopes of work and eligibility criteria including training requirements, and assessing future occupations for inclusion into NOLS. They will delegate the

enforcement and administration of the system into existing jurisdictional regulators (so that will become South Australia's responsibility), and issuing and renewal of licences. Monitoring and enforcement, and disciplinary proceedings will remain state and territory responsibilities. I have just been advised that NOLA does not cover technical regulation, just so that the record is quite clear.

I was asked a question on national licence fees: I have been advised that the intergovernment agreement for the national licensing system provides for states and territories to continue to set and collect licence fees. The national law provides safeguards to eliminate applicants from shopping for the lowest fee. An applicant must apply for a national licence in their primary jurisdiction, that is, an individual's principal place of residence or a body corporate's principal place of business.

In terms of how we compare with other jurisdictions, a range of factors determine how licence fees are currently set. On balance, the fees in South Australia are similar to other states. For some categories across the licence occupations, the fees are lower; whereas for others they are higher. Further work will be needed to determine the fee structure in South Australia for the licensed occupations under the national licensing system once the licence categories and scope of work for each occupation have been finalised.

The Hon. J.M.A. LENSINK: I thank the minister for those responses. One of those responses related to how much South Australia's contribution to NOLA is, which was approximately 7 per cent: that is 7 per cent of what? What is the funding for NOLA for 2009-10, 2010-11 and 2012-13 across the board?

The Hon. G.E. GAGO: I have been advised that, to date, South Australia's contribution in establishing NOLA has been $140,000 in 2009-10 and $370,000 in 2010-11. Contributions beyond the current financial year have yet to be confirmed but are estimated at $1.07 million for both 2011-12 and 2012-13.

Clause passed.

Clause 2 passed.

Clause 3.

The CHAIR: The first indicated amendment is in the name of the Hon. Mr Wade. The minister has exactly the same amendment, but the Hon. Mr Wade's was on file first—

The Hon. G.E. GAGO: There is a slight variation.

The CHAIR: Obviously it does not need a long debate, because there is agreement.

The Hon. S.G. WADE: I move:

Page 2, after line 14—Insert:

'South Australian Occupational Licensing National Law text' means the Occupational Licensing National Law set out in the Schedule (as in force for the time being).

Page 2, lines 15 to 17—Delete subclause (2) and substitute:

(2) Terms used in Parts 1, 2 and 3 of this Act and also in the South Australian Occupational Licensing National law text have the same meaning in those Parts as they have in that text.

I would like to respond to the disorderly comments by the minister which suggest that there is a slight difference. In relation to amendment No. 1 there is no slight difference; it is in later amendments that there will be a difference. I will speak to the first amendment, because I think I need to explain to the chamber what I propose to do by the amendments as a set, including the ones on which the minister and I do not agree.

The opposition, particularly in this parliament, has highlighted its concern that this parliament needs to be cautious in implementing national law in South Australia. We have focused on three primary factors: first, the need to maintain an appropriate federal/state balance; second, the need to maintain an appropriate balance between the executive and the parliament; and, third, the need to maintain citizens' access to the law. In that context, the opposition has indicated that it will consider proposals in relation to national law on a case by case basis.

On policy grounds the opposition does support the national occupational licensing regime being proposed by this bill, but we believe it is the case—similar to the health practitioner legislation—that it is a significant area of state responsibility and that state parliaments need to

maintain oversight of their respective executives. In that regard, the opposition does not believe it is appropriate to have applied law, in other words, a Victorian statute which is applied in this state as though it were a statute of this state.

However, we commend to the parliament—and I acknowledge that the government has accepted, and that it too thinks that this is an appropriate model in this case—that it be implemented as a schedule to the South Australian act and that, to maintain the consistency between the national law, as passed by the Victorian parliament, and the act in our statutes book, the consistency be maintained by regulations affecting amendments to the law.

The Hon. G.E. GAGO: The government reluctantly supports the Hon. Stephen Wade's amendments Nos 1, 2 and 3 (we may as well put them all on record now). We understand that this issue has been debated in this place under the health practitioners act, and the principle is the same. The government understands the numbers and knows too well the sentiment of this place. It would prefer that the amendments not go ahead, but nevertheless it can live with this. It does allow for amendments to the future act to be dealt with as if they were a regulation and allows for disallowance. The government will support the Hon. Stephen Wade's amendments Nos 1, 2 and 3.

Amendments carried; clause as amended passed.

Clause 4.

The Hon. S.G. WADE: I move:

Page 3, lines 2 to 8—Delete this clause and substitute:

4—Application of Occupational Licensing National Law

The South Australian Occupational Licensing National Law text—

(a) applies as a law of South Australia; and

(b) as so applying may be referred to as the Occupational Licensing National Law (South Australia); and

(c) as so applying, forms a part of this Act.

4A—Amendments to Schedule to maintain national consistency

(1) If—

(a) the Parliament of Victoria enacts an amendment to the Occupational Licensing National Law set out in the Schedule to the Occupational Licensing National Law Act 2010 of Victoria; and

(b) the Governor is satisfied that an amendment that corresponds, or substantially corresponds, to the amendment made by the Parliament of Victoria should be made to the Occupational Licensing National Law (South Australia),

the Governor may, by regulation, amend the South Australian Occupational Licensing National Law text.

(2) The Governor may, as part of a regulation made under subsection (1), make any additional provision (including so as to modify the terms of an amendment that has been made to the Occupational Licensing National Law by the Parliament of Victoria or to provide for related or transitional matters) considered by the Governor to be necessary to ensure that the amendment to the Occupational Licensing National Law has proper effect in South Australia.

(3) A regulation made under this section may, if the regulation so provides, take effect from the day of the commencement of an amendment to the Occupational Licensing National Law made by the Parliament of Victoria (including a day that is earlier than the day of the regulation's publication in the *Gazette*).

In moving the amendment, could I thank the government for its appreciation of the parliament on this issue. I would suggest, in the interests of the parliament and the government, it would be helpful to regularise how we deal with national law in the South Australian jurisdiction. That is perhaps something we could think about during the break and consider next year.

The Hon. G.E. GAGO: The government's amendment is similar to the opposition's amendment.

Amendment carried; new clauses 4 and 4A inserted.

Clause 5.

The Hon. S.G. WADE: I move:

Page 3, line 10—Delete 'the following Acts' and substitute:

Subject to subsections (2) and (3), the following Acts

Perhaps if I could in some way speak on behalf of the minister and myself, the cluster of amendments 4, 5 and 6, standing in my name, and amendment No. 4, standing in the minister's name, I would suggest to the committee, are alternatives.

We have an option here about how we deal with national regulation. We have already agreed that we will allow amendments to the national law appearing in schedule 1 by way of regulation, but once the scheme is running, the scheme itself will be fed, if you like, by a set of national regulations.

It is the view of the opposition, and it is our submission to this committee, that this chamber should maintain an executive oversight by preserving the right for a regulation made under the national scheme to be disallowed by this council. That is the joint effect of my amendments 3, 4 and 5. The government has an alternative amendment which would reaffirm the current situation, on my current reading of the bill, namely, that national regulations would not be disallowable by either house of this parliament.

So, I would urge this house to maintain its responsibilities. After all, the government has been encouraging us to do what we are paid for. One of the things we do is scrutinise regulations and I believe we should maintain our responsibilities.

The Hon. G.E. GAGO: The government opposes amendments 4, 5 and 6. The effect that these amendments would have is that clause 164 requires the majority of jurisdictions to agree to disallow a regulation before an amendment could be made to the national law. The opposition's amendment removes that requirement, so an amendment could be made simply by a disallowance being successful just in this state.

Of course, that would mean that our national law would then be amended and then would be out of step with the rest of the nation's legislation. So, this would obviously increase the risk of local variations to the national scheme and create confusion and complexity for licensees and, we believe, consumers.

On balance, clause 164 is considered necessary to ensure the workability of a national scheme. So, we think this step then takes us completely out of step with what would be occurring nationally. As time marched on, and amendments went through, we would be increasingly more out of step. A single jurisdiction could disallow a regulation, depending on the particular regulation. This could unfairly affect the licensees in an occupation, with all the legal uncertainty, consumer risk and practical complications that that could entail.

The very reason we are putting this in place is that occupations, which often work across borders, can do so and have their industry regulated in a nationally consistent way. This amendment would allow for inconsistencies slowly to be able to creep in and for us to end up in exactly the same mess in five or 10 years' time—that is, inconsistencies within occupations across states.

Further departing from the disallowance mechanism in the national law is more likely to put at risk the reward payments under the national partnership agreement to deliver a seamless economy as this will not meet the objectives of a truly national licensing system. We believe South Australia could be penalised and have our payments withdrawn because this measure has that effect, and would mean that our legislation could and is most likely to be out of step nationally over time. That might not satisfy the federal government's desire and commitment it has gained from us, which is to move towards a nationally consistent approach.

I have already said that, as one of the 10 priority areas against which progress is assessed for the reward payment, in 2011-12 it is $14.725 million. It is not unreasonable to assume that up to 10 per cent of that amount, that is, $1.4725 million, could be put at risk by allowing this amendment through. We have a backstop here, a safety net for South Australia: a disallowance provision is in place and, if at any time the national law was determined not to be in the best interests of South Australians, South Australia may withdraw from this national system by giving notice of our intention to return to a state-based licensing scheme.

We ultimately have the power and safety net if this system does not deliver what it should. I do not think we need to go the one step further that Stephen Wade is proposing. The preferred approach, as set out in the national law, is that regulations should not be validly disallowed unless the reasons are so compelling that the majority of jurisdictions have made the decision to do so.

The Hon. S.G. WADE: I should not presume on a decision of this committee, but none of the contributions I have heard from members to this point have suggested that the Parliament of South Australia does not see merit in consistency in occupational licensing. For our part, the opposition will vote for this bill; we do see the value in consistency. We also see the value in maintaining oversight of federal/state relations, maintaining oversight of executive versus parliament and maintaining oversight of how citizens access law and a range of other factors.

The government has already accepted the risk of inconsistency by agreeing to the amendments in relation to amendment of the national law by regulation only. Surely the risk of inconsistency in the overarching statute is more of a concern than the risk of inconsistency in the regulations. It is almost as though the minister had her speech ready for my first set of amendments and then decided she would agree with them but thought that she would use the same speech for the national regs amendment. If we believe it is important for the Legislative Council and the House of Assembly, for this parliament, to have oversight of regulations which change the act, why would we be any less concerned about maintaining oversight of regulations made under this scheme?

The minister wanted to use emotive language in relation to withdrawal of payments. She must know where my hot buttons are. To have a state minister, in relation to a state licensing scheme, telling us that we should be scared of a commonwealth government that wants to use its financial leverage to bully us, is hardly convincing. In relation to the point of emerging inconsistency, which the minister continually repeated, this national regulation set of clauses that I propose to insert do not make it mandatory for the Legislative Council to disallow all national regulations. In fact, we actually have to take action to disallow them. It is not as though they will not take effect until they are endorsed.

If the government tells us, which I understand it does, that we can amend the act at any time, and if it tells us it is happy for us to disallow a regulation that amends the act, why would the government tell us that we are not competent to review national regulations? If the government, in response to a disallowance motion by a non-government member, wants to tell us that this risks national consistency and national payments, the house could consider that at the time.

I do not see why we should be stepping away from our traditional role as a parliament to maintain oversight of the executive, and whether it is a federal government bullying us or a state minister getting hysterical, I do not believe that we should step away from our responsibilities.

The committee divided on the amendment:

AYES (13)

Bressington, A.	Brokenshire, R.L.	Darley, J.A.
Dawkins, J.S.L.	Franks, T.A.	Hood, D.G.E.
Lee, J.S.	Lensink, J.M.A.	Lucas, R.I.
Parnell, M.	Ridgway, D.W.	Vincent, K.L.
Wade, S.G. (teller)		

NOES (6)

Gago, G.E. (teller)	Gazzola, J.M.	Holloway, P.
Hunter, I.K.	Wortley, R.P.	Zollo, C.

PAIRS (2)

Stephens, T.J.	Finnigan, B.V.

Majority of 7 for the ayes.

Amendment thus carried.

The Hon. S.G. WADE: I move:

Page 3, after line 21—Insert:

(2) To avoid doubt, the Subordinate Legislation Act 1978 applies to a regulation made under section 4A.

(3) In connection with the operation of section 164 of the Occupational Licensing National Law (South Australia)—

(a) the minister must, after a regulation made under that law is tabled in each house of parliament, forward a copy of the regulation to the Legislative Review Committee of the parliament for inquiry and report; and

(b) if a regulation is disallowed under that section, the disallowance will have effect in this state despite any provision in the Occupational Licensing National Law.

Amendment carried; clause as amended passed.

Clauses 6 to 9 passed.

Clause 10.

The Hon. S.G. WADE: I move:

Clause 10—Leave out this clause

This amendment is consequential to my amendments Nos 4 and 5.

Amendment carried; clause negatived.

Clause 11 passed.

New Schedule.

The Hon. S.G. WADE: I move:

After clause 11 insert:

Schedule—Occupational Licensing National Law

Part 1—Preliminary

1—Short title

This Law may be cited as the Occupational Licensing National Law.

2—Commencement

This Law commences in a participating jurisdiction as provided by the Act of that jurisdiction that applies this Law as a law of that jurisdiction.

3—Objectives

The objectives of the national licensing system are as follows:

(a) to ensure that licences issued by the Licensing Authority allow licensees to operate in all participating jurisdictions;

(b) to ensure that licensing arrangements are effective and proportionate to ensure consumer protection and worker and public health and safety while ensuring economic efficiency and equity of access;

(c) to facilitate a consistent skill and knowledge base for licensed occupations;

(d) to ensure effective coordination exists between the Licensing Authority and jurisdictional regulators;

(e) to promote national consistency in—

(i) licensing structures and policy across comparable occupations; and

(ii) regulation affecting the requirements relating to the conduct of licensees; and

(iii) the approach to disciplinary arrangements for licensees;

(f) to provide flexibility to deal with issues specific to particular jurisdictions or occupations;

(g) to provide the public with access to information about licensees.

4—Definitions

In this Law—

Advisory Committee means an Occupational Licence Advisory Committee established under section 132;

approved form means a form that, under section 154, has been approved by the Licensing Authority and notified on its website;

authorised officer means an authorised officer appointed under section 125 by the Licensing Authority;

Authority Fund means the National Occupational Licensing Authority Fund established by section 142;

chief executive officer means the chief executive officer of the Licensing Authority appointed under section 119;

COAG means the Council of Australian Governments;

COAG agreement means the Intergovernmental Agreement for a National Licensing System for Specified Occupations signed by COAG on 30 April 2009;

criminal history, of a person, includes the following:

(a) convictions of the person for an offence, in a participating jurisdiction or elsewhere, and whether before or after the commencement of this Law;

(b) pleas of guilty or findings of guilt by a court of the person for an offence, in a participating jurisdiction or elsewhere, and whether before or after the commencement of this Law and whether or not a conviction is recorded for the offence;

(c) charges made against the person for an offence, in a participating jurisdiction or elsewhere, and whether before or after the commencement of this Law;

(d) the person's history in relation to traffic offences, in a participating jurisdiction or elsewhere, and whether before or after the commencement of this Law;

disciplinary action see section 47;

disciplinary body means—

(a) the Licensing Authority; or

(b) a tribunal or court of a participating jurisdiction; or

(c) another person or body declared by or under an Act of a participating jurisdiction to be a disciplinary body for the purposes of this Law;

entity includes a person and an unincorporated body;

First Minister's Department means the department of government of a participating jurisdiction that is administered by the Premier or Chief Minister of that jurisdiction;

former licensee means a person who was, but is no longer, a licensee;

immediate suspension ground means a ground referred to in section 49 for the immediate suspension of a licence;

jurisdictional regulator means an entity that is prescribed by the national regulations as being a jurisdictional regulator for a licensed occupation;

jurisdictional regulator members see section 103(3)(b);

licence means a licence, registration or accreditation granted under this Law authorising a person to carry out a licensed occupation;

licensed occupation means any of the following occupations:

(a) airconditioning and refrigeration;

(b) electrical;

(c) plumbing and gasfitting;

(d) property-related occupations;

(e) any other occupation prescribed by the national regulations as being a licensed occupation;

Note—

When an occupation is prescribed by the national regulations as being a licensed occupation it is envisaged each jurisdiction will need to return to Parliament to make consequential amendments to existing legislation regulating the occupation. This would enable this Law to be amended to include the occupation in this definition and, to the

extent it is practicable, describe the scope of work that may be carried out under a licence for that occupation.

Licensing Authority means the National Occupational Licensing Authority established by section 97;

Licensing Board means the National Occupational Licensing Board established by section 103;

Ministerial Council means the Ministerial Council nominated by COAG and published on the COAG website as being the Ministerial Council for the purposes of this Law;

national licensing system means the system established under this Law for the national licensing of persons working in licensed occupations;

national regulations means the regulations made under section 160;

nominee means an individual nominated by an applicant for a licence or a licensee as being the nominee for the licence;

participating jurisdiction means a State or Territory in which—

(a) this Law applies as a Law of the State or Territory; or

(b) a law that substantially corresponds to the provisions of this Law has been enacted;

participation day, in relation to a participating jurisdiction, means the day on which the jurisdiction becomes a participating jurisdiction;

place includes land or premises but does not include a vehicle;

premises includes a caravan being used as residential premises;

prescribed work means work that under the national regulations is within the scope of work that may only be carried out under the authority of a licence;

Note—

When an occupation is prescribed by the national regulations as being a licensed occupation (see paragraph (e) of the definition of *licensed occupation*) it is envisaged each jurisdiction will need to return to Parliament to make consequential amendments to existing legislation regulating the occupation. This would enable this Law to be amended to include the occupation in the definition of *licensed occupation* and, to the extent it is practicable, describe the prescribed work in relation to the occupation.

primary jurisdiction means—

(a) for an applicant for a licence or a licensee who is an individual (other than an individual acting in the individual's capacity as a member of a partnership), the jurisdiction in which the individual's principal place of residence is located; or

(b) for an applicant for a licence or a licensee that is a body corporate or an individual acting in the individual's capacity as a member of a partnership, the jurisdiction in which the body corporate's or partnership's principal place of business is located;

relevant place means a place at which prescribed work has been, is being or is about to be, carried out;

relevant tribunal or court, for a participating jurisdiction, means a tribunal or court that has been declared by a law of that jurisdiction to be the relevant tribunal or court for that jurisdiction for the purposes of this Law;

State or Territory entity means—

(a) an entity, or the chief executive of an entity or department of government, of a participating jurisdiction to whom the Licensing Authority has delegated any of its functions; or

(b) an entity to which a function delegated by the Licensing Authority has been subdelegated;

vehicle includes—

(a) a group of vehicles, known as a combination, that consists of a motor vehicle connected to 1 or more vehicles; and

(b) a caravan being towed by a motor vehicle; and

(c) a train, tram or vessel; and

(d) a crane or earthmoving machinery; and

(e) any other type of transport, machine or equipment prescribed by the national regulations.

5—Interpretation generally

Schedule 1 applies in relation to this Law.

6—Single national entity

(1) It is the intention of the Parliament of this jurisdiction that this Law as applied by an Act of this jurisdiction, together with this Law as applied by Acts of the other participating jurisdictions, has the effect that an entity established by this Law is one single national entity, with functions conferred by this Law as so applied.

(2) An entity established by this Law has power to do acts in or in relation to this jurisdiction in the exercise of a function expressed to be conferred on it by this Law as applied by Acts of each participating jurisdiction.

(3) An entity established by this Law may exercise its functions in relation to—

(a) 1 participating jurisdiction; or

(b) 2 or more or all participating jurisdictions collectively.

(4) In this section, a reference to this Law as applied by an Act of a jurisdiction includes a reference to a law that substantially corresponds to this Law enacted in a jurisdiction.

7—Extraterritorial operation of Law

It is the intention of the Parliament of this jurisdiction that the operation of this Law is to, as far as possible, include operation in relation to the following:

(a) things situated in or outside the territorial limits of this jurisdiction;

(b) acts, transactions and matters done, entered into or occurring in or outside the territorial limits of this jurisdiction;

(c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Law, be governed or otherwise affected by the law of another jurisdiction.

8—Law binds the State

(1) This Law binds the State.

(2) In this section—

State means the Crown in right of this jurisdiction, and includes—

(a) the Government of this jurisdiction; and

(b) a Minister of the Crown in right of this jurisdiction; and

(c) a statutory corporation, or other entity, representing the Crown in right of this jurisdiction.

Part 2—Licensing

Division 1—Licensed occupations and scope of work

9—Offence for individual to carry out prescribed work unless licensed or exempt

(1) An individual must not carry out, or enter into a contract to carry out, prescribed work unless the individual—

(a) holds a licence to carry out the prescribed work; or

(b) is exempt under the national regulations from the requirement to hold a licence to carry out the prescribed work; or

(c) is exempted by the Licensing Authority, in accordance with the national regulations, from the requirement to hold a licence to carry out the prescribed work.

Penalty:

(a) for an offence involving a specified licensed occupation—

(i) for a first or second offence—$50,000; or

(ii) for a third or subsequent offence—$50,000 or 12 months imprisonment or both; or

(b) for any other offence—$50,000.

(2) In this section—

specified licensed occupation means a licensed occupation that the national regulations have declared to be a specified licensed occupation for the purposes of this section.

10—Offence for body corporate or partnership to enter into contract for prescribed work unless licensed or exempt

(1) A body corporate or a partnership must not enter into a contract to carry out prescribed work unless the body corporate or the partnership—

(a) holds a licence authorising the body corporate or partnership to carry on a business that involves carrying out the prescribed work; or

(b) is exempt under the national regulations from the requirement to hold a licence authorising the body corporate or partnership to carry on a business that involves carrying out the prescribed work; or

(c) is exempted by the Licensing Authority, in accordance with the national regulations, from the requirement to hold a licence authorising the body corporate or partnership to carry on a business that involves carrying out the prescribed work.

Penalty: $250,000.

(2) A body corporate or a partnership that enters into a contract to carry out prescribed work must not engage an individual to carry out the prescribed work unless the individual—

(a) holds a licence to carry out the prescribed work; or

(b) is exempt under the national regulations from the requirement to hold a licence to carry out the prescribed work; or

(c) is exempted by the Licensing Authority, in accordance with the national regulations, from the requirement to hold a licence to carry out the prescribed work.

Penalty: $250,000.

(3) A reference in this section to a partnership means the individuals who are members of the partnership.

11—Offence to advertise or offer to do prescribed work unless licensed or exempt

(1) A person must not advertise that the person is able to carry out, or offer to carry out, prescribed work unless the person—

(a) holds a licence to carry out the prescribed work; or

(b) is exempt under the national regulations from the requirement to hold a licence to carry out the prescribed work; or

(c) is exempted by the Licensing Authority, in accordance with the national regulations, from the requirement to hold a licence to carry out the prescribed work.

Penalty:

(a) for an individual for an offence involving a specified licensed occupation—

(i) for a first or second offence—$50,000; or

(ii) for a third or subsequent offence—$50,000 or 12 months imprisonment or both; or

(b) for an individual for any other offence—$50,000; or

(c) for a body corporate—$250,000.

(2) It is a defence to a prosecution for an offence against subsection (1)(a) if the defendant proves that—

(a) at the time the advertisement was placed the person (the *relevant person*) the subject of the advertisement was licensed to carry out the prescribed work referred to in the advertisement; and

(b) the defendant took all reasonable action to prevent the advertisement, or to stop it from continuing, once the relevant person ceased being licensed to carry out the work.

(3) A person does not commit an offence against subsection (1) merely because the person, as part of the person's business, prints or publishes an advertisement for another person.

(4) A reference in this section to carrying out prescribed work includes carrying on a business that involves carrying out prescribed work.

(5) In this section—

advertise includes tout or solicit;

specified licensed occupation means a licensed occupation that the national regulations have declared to be a specified licensed occupation for the purposes of this section.

12—Offence to hold out unlicensed person as being licensed

(1) A person must not hold out that the person is licensed—

(a) to carry out a licensed occupation unless the person holds a licence for the licensed occupation; or

(b) to carry out prescribed work unless the person holds a licence to carry out the prescribed work.

Penalty:

(a) for an individual for an offence involving a specified licensed occupation—

(i) for a first or second offence—$50,000; or

(ii) for a third or subsequent offence—$50,000 or 12 months imprisonment or both; or

(b) for an individual for any other offence—$50,000; or

(c) for a body corporate—$250,000.

(2) A person must not hold out that another person (the *second person*) is licensed—

(a) to carry out a licensed occupation unless the second person holds a licence for the licensed occupation; or

(b) to carry out prescribed work unless the second person holds a licence to carry out the prescribed work.

Penalty:

(a) for an individual for an offence involving a specified licensed occupation—

(i) for a first or second offence—$50,000; or

(ii) for a third or subsequent offence—$50,000 or 12 months imprisonment or both; or

(b) for an individual for any other offence—$50,000; or

(c) for a body corporate—$250,000.

(3) A reference in this section to carrying out prescribed work includes carrying on a business that involves carrying out prescribed work.

(4) In this section—

specified licensed occupation means a licensed occupation that the national regulations have declared to be a specified licensed occupation for the purposes of this section.

13—Injunction stopping person from engaging in conduct in contravention of Law or national regulations

(1) If a person has engaged in, is engaging in or is proposing to engage in conduct in a participating jurisdiction that constituted, constitutes or would constitute a contravention of this Law or the national regulations, the Licensing Authority may apply to the relevant tribunal or court for that participating jurisdiction for an injunction in relation to the conduct.

(2) If the relevant tribunal or court is satisfied the person has engaged in, is engaging in or is proposing to engage in conduct that constituted, constitutes or would constitute a contravention of this Law or the national regulations, the relevant tribunal or court may grant an injunction restraining the person from engaging in the conduct.

(3) The relevant tribunal or court may grant the injunction on the terms the tribunal or court considers appropriate.

(4) Without limiting subsection (3), the injunction may state that it applies not only in the participating jurisdiction in which it is made but in other participating jurisdictions.

Note—

See section 7 which provides for the extraterritorial operation of this Law.

(5) The relevant tribunal or court may grant an interim injunction until the application is finally decided.

14—Licensee must not lend or otherwise allow use of licence by another person

(1) A licensee must not—

(a) lend the licensee's licence to another person; or

(b) otherwise allow another person to use the licensee's licence or licence number.

Penalty:

(a) for an individual for an offence involving a specified licensed occupation—

(i) for a first or second offence—$50,000; or

(ii) for a third or subsequent offence—$50,000 or 12 months imprisonment or both; or

(b) for an individual for any other offence—$50,000; or

(c) for a body corporate—$250,000.

(2) In this section—

specified licensed occupation means a licensed occupation that the national regulations have declared to be a specified licensed occupation for the purposes of this section.

Division 2—Application for licence

15—Who may apply for a licence

(1) An application for a licence for a licensed occupation may be made by a person who is a member of a prescribed class of persons for the occupation.

(2) For the purposes of subsection (1), the national regulations may provide that applications for licences for a licensed occupation may be made by any of the following:

(a) individuals;

(b) individuals acting in their capacity as members of a partnership;

(c) bodies corporate.

(3) An application for a licence cannot be made by a trust.

16—Application for licence

(1) An application for a licence must be—

(a) made to the Licensing Authority; and

(b) in the approved form; and

(c) accompanied by the prescribed fee payable to the prescribed person; and

(d) accompanied by any other documents, identified in the approved form, the Licensing Authority reasonably requires.

(2) Without limiting subsection (1)(b), a form approved by the Licensing Authority for the purposes of that paragraph must require an applicant—

(a) to provide a declaration about the applicant's primary jurisdiction; and

(b) if the applicant is a body corporate, to nominate an adult as the nominee for the proposed licence.

(3) An individual may be nominated as the nominee for the proposed licence only if the individual—

(a) holds a licence personally for the licensed occupation; and

(b) is a director or employee of the body corporate as provided by the national regulations.

(4) The national regulations may prescribe further requirements in relation to the nominees for licences.

17—Licensing Authority may require further information or document

(1) Before deciding an application for a licence, the Licensing Authority may, by written notice given to the applicant, require the applicant to give the Authority, within a reasonable time stated in the notice, further information or a document the Authority reasonably requires to decide the application.

(2) The Licensing Authority may require the information or document to be verified by a statutory declaration.

(3) The applicant is taken to have withdrawn the application if the applicant does not comply with the written notice.

Division 3—Eligibility for licence

18—Eligibility for licence

(1) A person is eligible for a licence for a licensed occupation if—

(a) the person or, if the person is a body corporate, the person's nominee, has the prescribed qualifications, skills, knowledge and experience for the licence; and

(b) the person and, if the person is a body corporate, the person's nominee, satisfy the prescribed personal probity requirements for the licence; and

(c) the person satisfies the prescribed financial probity requirements for the licence; and

(d) the person and, if the person is a body corporate, the person's nominee, are not excluded persons for the licence; and

(e) the person or, if the person is a body corporate, the person's nominee, satisfies any other requirements prescribed by the national regulations for the licence.

Note—

Section 24 of Schedule 1 provides that a regulation may—

(a) apply generally to all persons, matters or things or be limited in its application to particular persons, matters or things or classes of persons, matters or things; or

(b) apply generally or be limited in its application; or

(c) apply differently according to different specified factors.

Accordingly, the national regulations may prescribe different eligibility requirements for different licensed occupations or different types of licences for the same licensed occupation.

(2) For the purposes of subsection (1), if an individual in the individual's capacity as a member of a partnership would not be eligible for a licence for a licensed occupation but the individuals who are members of the partnership would jointly be eligible for the licence, the individuals are, in their capacity as members of the partnership, taken to be eligible for the licence.

19—Personal probity

(1) For the purposes of section 18(1)(b), the national regulations may provide for—

(a) the personal probity requirements a person must satisfy to be eligible for a licence; and

(b) the personal probity requirements a person must satisfy to be eligible to be a nominee for a licensee that is a body corporate.

(2) Without limiting subsection (1), the national regulations may provide for requirements in relation to the following for persons who are applicants for licences, licensees, nominees or relevant persons for a body corporate that is an applicant or licensee:

(a) matters relating to the criminal history of the persons, to the extent there is a connection between the criminal history of the persons and the inherent requirements of the occupation for which the persons are applicants, licensees, nominees or relevant persons;

Note—

Matters relating to the criminal history of persons will be subject to legislation of participating jurisdictions that prohibits, or does not require, the disclosure of spent convictions.

(b) matters relating to the conduct of persons in carrying out business including, for example, matters relating to duties as a director of a corporation or the imposition of civil penalties or orders in relation to carrying out business;

(c) security clearances to be held by the persons, to the extent that it is an inherent requirement of the occupation for which the persons are applicants, licensees, nominees or relevant persons.

(3) In this section—

relevant person, for a body corporate, means a person who—

(a) will have authority or influence in the conduct of the business of the body corporate; and

(b) is prescribed by the national regulations as being a relevant person for the body corporate.

20—Financial probity

(1) For the purposes of section 18(1)(c), the national regulations may provide for the financial probity requirements a person must satisfy to be eligible for a licence.

(2) Without limiting subsection (1), the national regulations may provide—

(a) for the financial requirements a person must satisfy to be eligible for a licence; or

(b) a person who is an applicant or a licensee is not eligible for a licence if—

(i) the person is bankrupt, insolvent, compounds with creditors, enters into a compromise or scheme of arrangement with creditors or otherwise applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

(ii) the person fails to pay a penalty, fine or other amount ordered by a court or tribunal to be paid or required to be paid under this Law.

21—Excluded person

(1) For the purposes of section 18(1)(d), a person is an excluded person for a licence for a licensed occupation if—

(a) the person is prohibited by an order of a disciplinary body from carrying out work that is within the scope of the licence; or

(b) the person's licence under this Law to carry out the licensed occupation has been cancelled by a disciplinary body and any period ordered by the disciplinary body during which the person is disqualified from applying for a new licence has not ended; or

(c) the person's licence under a corresponding prior Act to carry out the licensed occupation was cancelled as a result of disciplinary action taken by a corresponding disciplinary body and—

(i) any period ordered by the disciplinary body during which the person is disqualified from applying for a new licence has not ended; or

(ii) if the disciplinary body did not disqualify the person from applying for a new licence, a period of 2 years from the day the cancellation occurred has not ended; or

(d) the person's application for a licence for the licensed occupation under this Law or a corresponding prior Act within the previous 2 years has been refused on the basis that the person provided information or a document in relation to the application that was false or misleading; or

(e) a business partner or other close associate of the person is a person whose licence under this Law to carry out the licensed occupation has been cancelled by a disciplinary body and any period ordered by the disciplinary body during which the person is disqualified from applying for a new licence has not ended; or

(f) a business partner or other close associate of the person is a person whose licence under a corresponding prior Act to carry out the licensed occupation was cancelled by a court, tribunal or other entity and—

(i) any period ordered by the court, tribunal or other entity during which the person is disqualified from applying for a new licence has not ended; or

(ii) if the court, tribunal or other entity did not disqualify the person from applying for a new licence, a period of 2 years from the day the cancellation occurred has not ended; or

(g) the person is an excluded person under the national regulations; or

(h) the person has, within the previous 5 years, been convicted of an offence under section 9, 10, 11 or 12 or a provision of a corresponding prior Act that corresponds to section 9, 10, 11 or 12.

(2) In this section—

close associate, of a person, means a person who exercises a significant influence over the person or the operation or management of the person's business;

corresponding disciplinary body means an entity that has been declared by a law of a participating jurisdiction to be a corresponding disciplinary body for the purposes of this section;

corresponding prior Act means a law of a participating jurisdiction that—

(a) was in force before the day on which the jurisdiction became a participating jurisdiction; and

(b) has been declared by a law of that jurisdiction to be a corresponding prior Act for the purposes of this section;

licence, in relation to a corresponding prior Act, means a licence, registration, approval, certificate or other form of authorisation required under the corresponding prior Act to carry out a licensed occupation.

Division 4—Decision about application for licence

22—Decision about application

After considering an application for a licence, the Licensing Authority must decide to—

(a) grant the licence to the applicant if the applicant is eligible for the licence; or

(b) refuse to grant the licence to the applicant if the applicant is not eligible for the licence.

23—Notice of decision to be given to applicant

(1) Within 28 days after making the decision to grant or refuse to grant a licence to the applicant, the Licensing Authority must—

(a) give the applicant written notice of its decision; and

(b) if the decision was to grant the licence, give the applicant a licence.

(2) If the Licensing Authority decides not to grant the licence, the notice must state—

(a) the reasons for the decision; and

(b) that the applicant may apply for a review of the decision; and

(c) how an application for review may be made and the period within which the application must be made.

24—Failure to decide application

If the Licensing Authority fails to decide an application for a licence within 120 days after its receipt, or the longer period agreed between the Authority and the applicant, the failure by the Authority to make a decision is taken to be a decision to refuse to grant a licence to the applicant.

Division 5—Licences

25—Form of licence

A licence is to be in the approved form.

26—Period of licence

A licence may be granted for the period, not more than 5 years, prescribed by the national regulations.

27—Conditions

A licence is subject to the following conditions:

(a) any conditions prescribed by the national regulations for a licence of that category;

(b) any conditions imposed on the licence by a disciplinary body.

28—Change in details or circumstances

A licensee must, as soon as practicable but not later than 14 days after any of the following changes occurs, give the Licensing Authority written notice of the change and any evidence providing proof of the change required by the Authority, unless the licensee has a reasonable excuse:

(a) if the licensee is an individual, a change in the licensee's principal place of residence;

(b) if the licensee is a body corporate or an individual acting in the individual's capacity as a member of a partnership, a change in the body corporate's or partnership's principal place of business;

(c) a change in the licensee's criminal history prescribed by the national regulations;

(d) any other change prescribed by the national regulations.

Penalty:

(a) for an individual—$10,000; or

(b) for a body corporate—$50,000.

29—Return of licence

(1) If a person is given written notice by the Licensing Authority that the person's licence has been suspended, cancelled or revoked and the licence is for a specified licensed occupation, the person must return the person's licence to the Authority within seven days after receiving the notice, unless the person has a reasonable excuse.

Penalty:

(a) for an individual—$5,000;

(b) for a body corporate—$25,000.

(2) The Licensing Authority must, immediately after the suspension of a licensee's licence ends, return the licence to the licensee.

(3) In this section—

specified licensed occupation means a licensed occupation that the national regulations have declared to be a specified licensed occupation for the purposes of this section.

30—Licence not transferrable

(1) A licence may not be transferred.

(2) A licence is not personal property for the purposes of the *Personal Property Securities Act 2009* of the Commonwealth.

Division 6—Renewal, restoration, variation and surrender of licences

Subdivision 1—Renewal of licences

31—Application for renewal of licence

(1) A licensee may, before the licensee's licence expires, apply to renew the licence.

(2) An application for the renewal of a licence must—

(a) be made to the Licensing Authority; and

(b) be in the approved form; and

(c) be accompanied by the prescribed fee payable to the prescribed person; and

(d) be accompanied by any other documents, identified in the approved form, the Licensing Authority reasonably requires; and

(e) comply with any other requirement prescribed by the national regulations, including any requirement about when the application must be made.

32—Licensing Authority may require further information or document

(1) Before deciding an application for renewal of a licence, the Licensing Authority may, by written notice given to the applicant, require the applicant to give the Authority, within a reasonable time stated in the notice, further information or a document the Authority reasonably requires to decide the application.

(2) The Licensing Authority may require the information or document to be verified by a statutory declaration.

(3) The applicant is taken to have withdrawn the application if the applicant does not comply with the written notice.

33—Eligibility for renewal of licence

Divisions 3 and 4 apply to the renewal of a licence, with any changes prescribed by the national regulations, as if the application for the renewal of the licence were an application for the grant of a licence.

34—Licence continues in force until application decided

If a person applies under section 31 to renew the person's licence, the licence is taken to continue in force from the day it would, apart from this section, have ended until—

(a) if the Licensing Authority decides to renew the licence, the day the new licence is given to the person; or

(b) if the Licensing Authority decides to refuse to renew the licence, the day the person is given notice of the decision.

Subdivision 2—Restoration of licences

35—Application for restoration of licence

(1) If a person's licence has expired and the licence is for a specified licensed occupation, the person may apply for the restoration of the licence within 3 months after the expiry.

(2) However, an application for the restoration of a licence may not be made—

(a) during any period in which the licence is suspended; or

(b) if the licence has been cancelled.

(3) An application for the restoration of a licence must—

(a) be made to the Licensing Authority; and

(b) be in the approved form; and

(c) be accompanied by the prescribed fee payable to the prescribed person; and

(d) be accompanied by any other documents, identified in the approved form, the Licensing Authority reasonably requires; and

(e) comply with any other requirement prescribed by the national regulations.

(4) In this section—

specified licensed occupation means a licensed occupation that the national regulations have declared to be a specified licensed occupation for the purposes of this section.

36—Licensing Authority may require further information or document

(1) Before deciding an application for restoration of a licence, the Licensing Authority may, by written notice given to the applicant, require the applicant to give the Authority, within a reasonable time stated in the notice, further information or a document the Authority reasonably requires to decide the application.

(2) The Licensing Authority may require the information or document to be verified by a statutory declaration.

(3) The applicant is taken to have withdrawn the application if the applicant does not comply with the written notice.

37—Eligibility for restoration of licence

Divisions 3 and 4 apply to the restoration of a licence, with any changes prescribed by the national regulations, as if the application for the restoration of the licence were an application for the grant of a licence.

38—Licence continues in force until application decided

If a person applies under section 35 to restore an expired licence, the licence is taken to have continued in force from the day it would, apart from this section, have ended until—

(a) if the Licensing Authority decides to restore the licence, the day the new licence is given to the person; or

(b) if the Licensing Authority decides to refuse to restore the licence, the day the person is given notice of the decision.

39—Period of restored licence

If the Licensing Authority decides to restore a person's licence, the licence is taken to have commenced immediately after the person's previous licence expired.

Subdivision 3—Variation of licences on application of licensees

40—Application for variation of licence

(1) A licensee may apply to vary the licensee's licence.

(2) An application for the variation of a licence must—

(a) be made to the Licensing Authority; and

(b) be in the approved form; and

(c) be accompanied by the prescribed fee payable to the prescribed person; and

(d) be accompanied by any other documents, identified in the approved form, the Licensing Authority reasonably requires; and

(e) comply with any other requirement prescribed by the national regulations.

41—Eligibility for variation of licence

Divisions 3 and 4 apply to the variation of a licence, with any changes prescribed by the national regulations, as if the application for the variation of the licence were an application for the grant of a licence.

Subdivision 4—Variation of licences on initiative of Licensing Authority

42—Varying licence on Licensing Authority's initiative

(1) This section applies if the Licensing Authority reasonably believes it is necessary to vary a licensee's licence.

(2) The Licensing Authority must give the licensee a written notice stating—

(a) that the Authority proposes to vary the licence; and

(b) how the Authority proposes to vary the licence; and

(c) the reason for the proposed variation; and

(d) that the licensee may, within 28 days after receipt of the notice, make a written submission to the Authority about the proposed variation.

(3) The licensee may make a written submission about the proposed variation as stated in the notice.

(4) The Licensing Authority must consider a submission made under subsection (3) and decide whether or not to vary the licence.

(5) The Licensing Authority's decision must be made—

(a) within 28 days after receiving the licensee's submission; or

(b) if the licensee does not make a submission, within 28 days after the last day on which the licensee may make a submission.

(6) As soon as practicable after making its decision, the Licensing Authority must give written notice of the decision to the licensee.

(7) If the Licensing Authority decides to vary the licence, the notice must state—

(a) the decision made by the Authority; and

(b) that the licensee may apply for a review of the decision; and

(c) how an application for a review must be made and the period within which the application must be made.

Subdivision 5—Surrender of licences

43—Surrender of licence

(1) A licensee may surrender the licensee's licence.

(2) In surrendering a licence, the licensee must comply with any requirements prescribed by the national regulations.

Subdivision 6—Revocation of licences

44—Revocation of licence

(1) The Licensing Authority may decide to revoke a person's licence if the Authority reasonably believes the licence was issued in error.

(2) The Licensing Authority may decide to revoke a licence under this section only if the decision is made not more than 28 days after the Authority becomes aware of the ground that forms the basis for believing the licence was issued in error.

(3) If the Licensing Authority decides to revoke a licence, it must give a notice to the licensee stating—

(a) the decision made by the Authority; and

(b) that the person may apply for a review of the decision; and

(c) how an application for a review must be made and the period within which the application must be made.

(4) The decision takes effect on—

(a) the day the notice is given to the person; or

(b) the later day stated in the notice.

Subdivision 7—Replacement of licence

45—Replacement of licence

(1) A licensee may apply to the Licensing Authority for the replacement of the licensee's licence if it has been lost, stolen, destroyed or damaged.

(2) The application must be—

(a) in the approved form; and

(b) accompanied by the prescribed fee payable to the prescribed person.

(3) The Licensing Authority must issue a replacement licence to the licensee.

Part 3—Disciplinary proceedings and action

Division 1—Preliminary

46—Part applicable to former licensees

(1) Disciplinary proceedings may be taken under this Part in relation to a former licensee's behaviour while a licensee as if the former licensee were still a licensee.

(2) However, disciplinary proceedings may be taken against a former licensee only in relation to behaviour that occurred not more than 6 years before the day the disciplinary proceedings start.

(3) For the purposes of subsection (1), this Part (other than Division 3) applies, with any necessary changes, as if a reference to a licensee included a former licensee.

47—Meaning of disciplinary action

(1) *Disciplinary action*, in relation to a licensee, means one or more of the following:

(a) reprimand the licensee;

(b) direct the licensee to do or not to do something;

(c) require the licensee to give the Licensing Authority an undertaking;

(d) impose a condition on the licensee's licence;

(e) impose demerit points on the licensee as provided for in the national regulations;

(f) require the licensee to pay to the Licensing Authority a penalty of not more than the prescribed amount;

(g) suspend the licensee's licence for a stated period;

(h) cancel the licensee's licence and disqualify the person from applying for a specified licence for a period of not more than 5 years;

(i) cancel the licensee's licence and disqualify the person from applying for a specified licence for life.

(2) *Disciplinary action*, in relation to a former licensee, means—

(a) direct the former licensee to do or not to do something;

(b) require the former licensee to pay to the Licensing Authority a penalty of not more than the prescribed amount;

(c) disqualify the former licensee from applying for a specified licence for a period of not more than 5 years;

(d) disqualify the former licensee from applying for a specified licence for life.

(3) The disciplinary action referred to in subsection (1) or (2) is listed in a hierarchy from the least serious action that may be taken to the most serious action.

Division 2—Grounds for disciplinary action

48—Grounds for disciplinary action

(1) Each of the following is a ground for which disciplinary action may be taken against a licensee:

(a) the licensee has contravened this Law or the national regulations;

(b) the licensee has contravened—

(i) a prescribed Act or regulation of the Commonwealth or a State or Territory; or

(ii) a prescribed provision of an Act or regulation of the Commonwealth or a State or Territory;

(c) the licensee is no longer eligible for a licence or the particular licence held by the licensee;

(d) the licensee has not completed the prescribed skills maintenance requirements or prescribed training requirements;

(e) the licensee has not paid a fee or other amount required to be paid under—

(i) this Law; or

(ii) a prescribed Act of the Commonwealth or a State or Territory;

(f) the licensee has not complied with an order made by a disciplinary body in relation to the licensee's licensed occupation;

(g) the licensee has not complied with a direction given by a disciplinary body to do or not to do something;

(h) the licensee has not complied with a direction given by the Licensing Authority to the licensee under section 101;

(i) the licensee's licence was obtained on the basis of information or a document that was false or misleading;

(j) the licensee has contravened a condition of the licensee's licence or an undertaking given by the licensee to the Licensing Authority;

(k) the licensee has failed to maintain insurance the licensee is required by the national regulations to maintain;

(l) an immediate suspension ground exists in relation to the licensee.

(2) However, disciplinary action may not be taken against a licensee on a ground referred to in subsection (1) if the ground is prescribed under the national regulations as being a ground for which the licensee's licence is automatically suspended or cancelled.

Division 3—Immediate suspension

49—Grounds for immediate suspension

(1) A ground for the immediate suspension of a licensee's licence exists if—

(a) the licensee is bankrupt or insolvent; or

(b) the licensee has contravened a relevant law; or

(c) the licensee has misappropriated funds held on trust by the licensee; or

(d) the licensee has been charged with or convicted of an offence that, under the national regulations, would make the person ineligible to hold a licence.

(2) Subsection (1)(a) applies only in relation to a licensee who is a member of a prescribed class of licensees.

(3) In this section—

bankrupt or insolvent, in relation to a licensee, means the licensee—

(a) has become bankrupt or insolvent; or

(b) has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

(c) has compounded with creditors or made an assignment of remuneration for the benefit of creditors; or

(d) has entered into a compromise or scheme of management with creditors;

convicted, of an offence, includes a plea of guilty or a finding of guilty and includes whether or not a conviction is recorded;

relevant law means an Act, regulation, code of practice or standard that is prescribed by the national regulations.

50—Immediate suspension of licence

(1) The Licensing Authority may, by written notice given to a licensee, immediately suspend the licensee's licence if the Authority reasonably believes—

(a) an immediate suspension ground exists in relation to the licensee; and

(b) it is necessary in the public interest to immediately suspend the licensee's licence.

(2) The written notice must state the following:

(a) the decision;

(b) the reasons for the decision;

(c) the period of the suspension;

(d) that the licensee may apply to the Licensing Authority for a review of the decision within 14 days;

(e) the way the licensee may apply for the review of the decision.

(3) The suspension—

(a) takes effect when the notice is given to the licensee; and

(b) continues until the earlier of the following days:

(i) the day the suspension is revoked by the Licensing Authority;

(ii) the day the suspension is revoked on appeal under Division 3 of Part 5.

Division 4—Show cause process

51—Application of Division

The Licensing Authority may start disciplinary proceedings against a licensee under this Division only if an Act of the participating jurisdiction in which the conduct that provides the grounds for the disciplinary proceedings occurred has declared that this Division applies to licensees carrying out the licensed occupation for which the licensee is licensed.

52—Show cause notice

(1) If the Licensing Authority reasonably believes a ground for taking disciplinary action against a licensee exists, the Authority must give the licensee a notice under this section (a *show cause notice*).

(2) The show cause notice must state the following:

(a) that the Licensing Authority proposes to take disciplinary action (the *proposed action*);

(b) the licence in relation to which the proposed action is to be taken;

(c) the ground for the proposed action;

(d) an outline of the facts and circumstances forming the basis for the ground;

(e) an invitation to the licensee to show within a stated period (the *show cause period*) why the proposed action should not be taken.

(3) The show cause period must be a period ending at least 14 days after the show cause notice is given to the licensee.

53—Representations about show cause notice

(1) The licensee may—

(a) make written representations about the show cause notice to the Licensing Authority within the show cause period; or

(b) make oral representations about the show cause notice to the Licensing Authority at the time within the show cause period, and at the place, agreed by the Licensing Authority and the licensee.

(2) The Licensing Authority must keep a record of oral representations made to it under subsection (1)(b).

54—Decision about whether to take disciplinary action

Within 28 days after the show cause period ends, the Licensing Authority must decide whether a ground exists to take disciplinary action against the licensee.

55—Ending show cause process without further action

If the Licensing Authority no longer believes a ground exists to take disciplinary action against the licensee, the Authority—

(a) must not take further action about the show cause notice; and

(b) must, as soon as practicable after making its decision, give notice to the licensee that no further action will be taken about the show cause notice.

56—Taking disciplinary action after show cause notice

(1) If the Licensing Authority still believes a ground exists to take disciplinary action against the licensee, the Authority may—

(a) take the proposed action; or

(b) take one or more disciplinary actions that, in accordance with the hierarchy specified in section 47, are less serious than the proposed action.

(2) In making its decision about what disciplinary action should be taken, the Licensing Authority must have regard to the following:

(a) the licensee's licensing history;

(b) whether the ground for the disciplinary action is that the licensee has contravened—

(i) this Law or the national regulations; or

(ii) another Act or regulation;

(c) if the ground for disciplinary action is a contravention referred to in paragraph (b), the severity of the contravention and the period for which the contravention continued.

(3) The Licensing Authority may not take action referred to in section 47(1)(f) with respect to a ground for disciplinary action if the licensee has already been fined by a court or a tribunal with respect to the same behaviour.

(4) The Licensing Authority must, as soon as practicable after making its decision, give a written notice about the decision to the licensee.

(5) The written notice must state the following:

(a) the decision;

(b) the reasons for the decision;

(c) that the licensee may apply for a review of the decision within 28 days;

(d) the way the licensee may apply for the review of the decision.

(6) The decision takes effect on—

(a) the day the notice is given to the licensee; or

(b) the later day stated in the notice.

Division 5—Disciplinary proceedings before tribunal or court

57—Application of Division

The Licensing Authority may start disciplinary proceedings against a licensee under this Division only if an Act of the participating jurisdiction in which the conduct that provides the grounds for the disciplinary proceedings occurred has declared that this Division applies to licensees carrying out the licensed occupation for which the licensee is licensed.

58—Application to relevant tribunal or court

If the Licensing Authority reasonably believes a ground for taking disciplinary action against a licensee exists, the Authority may apply to the relevant tribunal or court for the participating jurisdiction.

59—Decision by relevant tribunal or court

(1) After hearing the matter about the licensee, the relevant tribunal or court must decide—

(a) the licensee has no case to answer; or

(b) that a ground exists to take disciplinary action against the licensee.

(2) If the relevant tribunal or court decides that a ground exists to take disciplinary action against the licensee, the tribunal or court may decide to take one or more disciplinary actions against the licensee.

(3) However, the relevant tribunal or court may not take action referred to in section 47(1)(f) with respect to a ground for disciplinary action if the licensee has already been fined by a court or a tribunal with respect to the same behaviour.

60—Licensing Authority to give effect to decision of relevant tribunal or court

The Licensing Authority must give effect to a decision of the relevant tribunal or court, unless the decision is stayed on appeal.

Part 4—Monitoring and enforcement

Division 1—Power to obtain information

61—Powers of authorised officers

(1) This section applies if an authorised officer reasonably believes—

(a) an offence against this Law or a prescribed Act has been committed; and

(b) a person may be able to give information about the offence.

(2) The authorised officer may, by written notice given to a person, require the person to—

(a) give stated information to the authorised officer within a stated reasonable time and in a stated reasonable way; or

(b) attend before the authorised officer at a stated reasonable time and a stated reasonable place to answer questions or produce documents.

62—Offence for failing to produce information or attend before authorised officer

(1) A person required to give stated information to an authorised officer under section 61(2)(a) must not fail, without reasonable excuse, to give the information as required by the notice.

Penalty:

(a) for an individual—$10,000; or

(b) for a body corporate—$50,000.

(2) A person given a notice to attend before an authorised officer under section 61(2)(b) must not fail, without reasonable excuse, to—

(a) attend as required by the notice; and

(b) continue to attend as required by the authorised officer until excused from further attendance; and

(c) answer a question the person is required to answer by the authorised officer; and

(d) produce a document the person is required to produce by the notice.

Penalty:

(a) for an individual—$10,000; or

(b) for a body corporate—$50,000.

(3) For the purposes of subsections (1) and (2), it is a reasonable excuse for an individual to fail to give stated information, answer a question or produce a document, if giving the information, answering the question or producing the document might tend to incriminate the individual.

63—Power to require licensee to produce documents

(1) An authorised officer may require a licensee to make available, or produce, for inspection by the authorised officer at a reasonable time and place nominated by the authorised officer, a document to which the licensee has access and that the licensee is required to keep under this Law or a prescribed Act or that otherwise relates to the licensee's obligations under this Law or a prescribed Act.

(2) A licensee required to make available or produce a document under subsection (1) must not fail, without reasonable excuse, to comply with the requirement.

Penalty:

(a) for an individual—$10,000;

(b) for a body corporate—$50,000.

64—Inspection of documents

(1) If a document is produced to an authorised officer under section 61 or 63, the authorised officer may—

(a) inspect the document; and

(b) make a copy of, or take an extract from, the document; and

(c) keep the document while it is necessary for an investigation being carried out by the authorised officer.

(2) If the authorised officer keeps the document, the authorised officer must—

(a) give the person who produced the document a receipt for the document; and

(b) permit a person otherwise entitled to possession of the document to inspect, make a copy of, or take an extract from, the document at the reasonable time and place decided by the authorised officer.

Division 2—Power to enter places

65—Entering places

(1) An authorised officer may enter and inspect a place for the purpose of investigating—

(a) whether this Law or a prescribed Act is being complied with; or

(b) whether work being carried out under a licence has been, or is being, carried out in accordance with this Law or a prescribed Act.

(2) An authorised officer may only enter and inspect a place—

(a) if the place is a relevant place—

(i) with the consent of the occupier or person in control of the place; or

(ii) during times prescribed work is being carried out at the place; or

(iii) if it is a public place and the entry is made when it is open to the public; or

(iv) if the entry is authorised by a warrant; or

(b) if the place is not a relevant place, if the entry is authorised by a warrant.

(3) For the purpose of asking the occupier or person in control of a relevant place for consent to enter, an authorised officer may, without the consent of the occupier or person in control, enter the place to the extent that is reasonable to contact the person.

(4) Subsection (2)(a) does not allow entry to a home without the occupier's consent or a warrant.

(5) In this section—

home means any part of a building, caravan or other structure in which an individual lives;

public place means—

(a) a place, or a part of a place, that the public is entitled to use, that is open to members of the public or that is used by the public, whether or not on payment of money; or

(b) a place, or part of a place, that the occupier allows members of the public to enter, whether or not on payment of money.

66—Application for warrant

(1) An authorised officer may apply to a magistrate of a participating jurisdiction for a warrant for a place.

(2) The authorised officer must prepare a written application that states the grounds on which the warrant is sought.

(3) The written application must be sworn.

(4) The magistrate may refuse to consider the application until the authorised officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

67—Issue of warrant

(1) The magistrate may issue the warrant only if the magistrate is satisfied—

(a) there are reasonable grounds for suspecting there is a particular thing or activity that may provide evidence of an offence against this Law or a prescribed Act at the place; or

(b) it is necessary for the purpose of determining whether work being carried out under a licence has been, or is being, carried out in accordance with this Law or a prescribed Act at the place.

(2) The warrant must state—

(a) that a stated authorised officer may, with necessary and reasonable help and force—

(i) enter the place and any other place necessary for entry; and

(ii) exercise the authorised officer's powers under this Part; and

(b) the matter for which the warrant is sought; and

(c) the evidence that may be seized under the warrant; and

(d) the hours of the day or night when the place may be entered; and

(e) the date, within 14 days after the warrant's issue, the warrant ends.

68—Application by electronic communication

(1) An authorised officer may apply for a warrant by phone, facsimile, email, radio, video conferencing or another form of communication if the authorised officer considers it necessary because of—

(a) urgent circumstances; or

(b) other special circumstances, including the authorised officer's remote location.

(2) The application—

(a) may not be made before the authorised officer prepares the written application under section 66(2); but

(b) may be made before the written application is sworn.

(3) The magistrate may issue the warrant (the *original warrant*) only if the magistrate is satisfied—

(a) it was necessary to make the application under subsection (1); and

(b) the way the application was made under subsection (1) was appropriate.

(4) After the magistrate issues the original warrant—

(a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the authorised officer, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the authorised officer; or

(b) otherwise—

(i) the magistrate must tell the authorised officer the date and time the warrant is issued and the other terms of the warrant; and

(ii) the authorised officer must complete a form of warrant including by writing on it—

(A) the magistrate's name; and

(B) the date and time the magistrate issued the warrant; and

(C) the other terms of the warrant.

(5) The copy of the warrant referred to in subsection (4)(a), or the form of warrant completed under subsection (4)(b) (in either case the *duplicate warrant*), is a duplicate of, and as effectual as, the original warrant.

(6) The authorised officer must, at the first reasonable opportunity, send to the magistrate—

(a) the written application complying with section 66(2) and (3); and

(b) if the authorised officer completed a form of warrant under subsection (4)(b), the completed form of warrant.

(7) The magistrate must keep the original warrant and, on receiving the documents under subsection (6), file the original warrant and documents in the court.

(8) Despite subsection (5), if—

(a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and

(b) the original warrant is not produced in evidence,

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.

(9) This section does not limit section 66.

69—Procedure before entry under warrant

(1) Before entering a place under a warrant, an authorised officer must do or make a reasonable attempt to do the following:

(a) identify himself or herself to a person present at the place who is an occupier of the place or the person apparently in control of the place by producing the authorised officer's identity card or another document evidencing the authorised officer's appointment;

(b) give the person a copy of the warrant;

(c) tell the person the authorised officer is permitted by the warrant to enter the place;

(d) give the person an opportunity to allow the authorised officer immediate entry to the place without using force.

(2) However, the authorised officer need not comply with subsection (1) if the authorised officer reasonably believes that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

70—Powers after entering places

(1) This section applies if an authorised officer enters a place under section 65.

(2) The authorised officer may for the purposes of the investigation do the following:

(a) search any part of the place;

(b) inspect, measure, test, photograph or film any part of the place or anything at the place;

(c) take a thing, or a sample of or from a thing, at the place for analysis, measurement or testing;

(d) copy, or take an extract from, a document at the place;

(e) take into or onto the place any person, equipment and materials the authorised officer reasonably requires for exercising a power under this Part;

(f) require the occupier of the place, or a person at the place, to give the authorised officer reasonable help to exercise the authorised officer's powers under paragraphs (a) to (e);

(g) require the occupier of the place, or a person at the place, to give the authorised officer information, including, for example, the person's name, address or licence number, to help the authorised officer ascertain whether this Law or the prescribed Act is being complied with.

(3) The authorised officer may also require any of the following persons to do, or refrain from doing, something at the place if the officer reasonably believes it is necessary to do so to prevent injury or other harm to persons at the place:

(a) a licensee who has been carrying out prescribed work at the place or a person acting under the direction of the licensee;

(b) a person who has been carrying out prescribed work at the place under the direction of or on behalf of a licensee;

(c) the occupier of the place or a person at the place.

(4) When making a requirement mentioned in subsection (2)(f) or (g) or (3), the authorised officer must warn the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.

71—Offences for failing to comply with requirement under section 70

(1) A person required to give reasonable help under section 70(2)(f) must comply with the requirement, unless the person has a reasonable excuse.

Penalty:

(a) for an individual—$10,000; or

(b) for a body corporate—$50,000.

(2) A person of whom a requirement is made under section 70(2)(g) or (3) must comply with the requirement, unless the person has a reasonable excuse.

Penalty:

(a) for an individual—$10,000; or

(b) for a body corporate—$50,000.

(3) It is a reasonable excuse for an individual not to comply with a requirement under section 70(2)(f) or (g) that complying with the requirement might tend to incriminate the individual.

Division 3—Power to stop and search vehicles

72—Division applies only to certain licensed occupations

This Division applies only in relation to a licensed occupation that is prescribed as being a relevant occupation for the purposes of this Division.

73—Power to stop and search vehicles

(1) An authorised officer may enter a vehicle and exercise the powers set out in section 70(2) if—

(a) the authorised officer is investigating whether work being carried out under a licence has been, or is being, carried out in accordance with this Law or a prescribed Act; or

(b) the authorised officer suspects on reasonable grounds that—

(i) the vehicle is being, or has been, used in the commission of an offence against this Law or a prescribed Act in relation to a relevant occupation; or

(ii) the vehicle, or anything on or in the vehicle, may afford evidence of the commission of an offence against this Law or a prescribed Act in relation to a relevant occupation.

(2) The authorised officer may enter the vehicle and exercise the powers with necessary and reasonable help and force, and without consent or a warrant.

(3) Without limiting subsection (2), the authorised officer may require the driver of the vehicle or the person otherwise in control of the vehicle—

(a) to give the authorised officer reasonable help to enable the vehicle to be entered; or

(b) to bring the vehicle to a specified place and remain in control of the vehicle to enable the authorised officer to exercise the authorised officer's powers in relation to the vehicle.

(4) A person must not, without reasonable excuse, contravene a requirement under subsection (3).

Penalty: $10,000.

(5) If the vehicle is moving or about to move the authorised officer may signal the driver of the vehicle to stop or not to move the vehicle.

(6) A person must not, without reasonable excuse, disobey a signal under subsection (5).

Penalty: $10,000.

(7) It is a reasonable excuse for the person to fail to stop or to move the vehicle if—

(a) to immediately obey the signal would have endangered, or damaged the property of, the person or another person; and

(b) the person obeys the signal as soon as it is practicable to obey the signal.

Division 4—Power to seize evidence

74—Seizing evidence at place entered with consent or warrant

(1) If an authorised officer enters a place with the consent of the occupier or person in control of the place, the authorised officer may seize a thing at the place if—

(a) the authorised officer reasonably believes the thing is evidence that is relevant to the investigation being conducted by the authorised officer; and

(b) seizing the thing is consistent with the purpose of the entry as told to the occupier or person in control when asking for the occupier's or person in control's consent.

(2) If an authorised officer enters a place with a warrant, the authorised officer may seize the evidence for which the warrant was issued.

(3) For the purposes of subsections (1) and (2), the authorised officer may also seize anything else at the place if the authorised officer reasonably believes—

(a) the thing is evidence that is relevant to the investigation; and

(b) seizing the thing is necessary to prevent the thing being hidden, lost or destroyed.

75—Seizing evidence from other places

(1) This section applies if an authorised officer does any of the following without consent or a warrant:

(a) enters a place during times when prescribed work is being carried out at the place;

(b) enters a public place when the place is open to the public;

(c) enters a vehicle.

(2) The authorised officer may seize a thing at the place, or on or in the vehicle, if the authorised officer reasonably believes the thing is evidence that is relevant to the investigation being conducted by the authorised officer.

76—Securing evidence

(1) Having seized a thing, an authorised officer may—

(a) move the thing from the place where it was seized; or

(b) leave the thing at the place where it was seized but—

(i) take reasonable action to restrict access, or prevent or mitigate damage, to it; or

(ii) direct the person the authorised officer reasonably believes is in control of the seized thing to take reasonable action to restrict access, or prevent or mitigate damage, to it; or

(iii) for equipment, make it inoperable, or direct the person the authorised officer reasonably believes is in control of the thing to make it inoperable.

(2) A person to whom a direction is given under subsection (1)(b)(ii) or (iii) must comply with the direction.

Penalty: $10,000.

77—Tampering with seized things

(1) If an authorised officer or a person acting at the officer's direction restricts access to a seized thing, a person must not tamper or attempt to tamper with it, or something restricting access to it, without an authorised officer's approval.

Penalty: $25,000.

(2) If an authorised officer or a person acting at the officer's direction makes a seized thing inoperable, a person must not tamper or attempt to tamper with the thing, without an authorised officer's approval.

Penalty: $25,000.

78—Receipt for seized things

(1) As soon as practicable after an authorised officer seizes a thing, the authorised officer must give a receipt for it to the person from whom it was seized.

(2) However, if for any reason it is not practicable to comply with subsection (1), the authorised officer must leave the receipt at the place where it was seized in a conspicuous position and in a reasonably secure way.

(3) The receipt must describe generally the seized thing and its condition.

(4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt given the thing's nature, condition and value.

79—Forfeiture of seized thing

(1) A seized thing is forfeited to the Licensing Authority if the Authority—

(a) cannot find its owner, after making reasonable inquiries; or

(b) cannot return it to its owner, after making reasonable efforts.

(2) In applying subsection (1)—

(a) subsection (1)(a) does not require the Licensing Authority to make inquiries if it would be unreasonable to make inquiries to find the owner; and

(b) subsection (1)(b) does not require the Licensing Authority to make efforts if it would be unreasonable to make efforts to return the thing to its owner.

(3) Regard must be had to a thing's nature, condition and value in deciding—

(a) whether it is reasonable to make inquiries or efforts; and

(b) if making inquiries or efforts, what inquiries or efforts, including the period over which they are made, are reasonable.

80—Dealing with forfeited things

(1) On the forfeiture of a thing to the Licensing Authority, the thing becomes the Authority's property and may be dealt with by the Authority as the Authority considers appropriate.

(2) Without limiting subsection (1), the Licensing Authority may destroy or dispose of the thing.

81—Return of seized things

If a seized thing has not been forfeited, the Licensing Authority must immediately return the thing to its owner if the Authority is no longer satisfied its continued retention as evidence is necessary.

82—Access to seized things

(1) Until a seized thing is forfeited or returned, the Licensing Authority must allow its owner to inspect it and, if it is a document, to copy it.

(2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection.

Division 5—General

83—Compensation

(1) A person may claim from the Licensing Authority the cost of repairing or replacing property damaged because of the exercise or purported exercise of a power under this Part by an authorised officer.

(2) Without limiting subsection (1), compensation may be claimed for damage to property incurred in complying with a requirement made of the person under this Part.

(3) Compensation is not payable for damage caused to the property of a relevant person if the exercise or purported exercise of the power under this Part by the authorised officer occurred in the course of an investigation of the relevant person.

(4) Compensation may be claimed and ordered to be paid in a proceeding brought in a court with jurisdiction for the recovery of the amount of compensation claimed.

(5) A court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

(6) The national regulations may provide for matters to which a court may, must or must not have regard in deciding whether to make an order under this section.

(7) In this section—

relevant person means the following:

(a) a licensee;

(b) a person, other than a licensee, who is or was carrying out prescribed work;

(c) a person, other than a licensee, who is or was advertising or holding out that he or she was licensed to carry out a licensed occupation.

84—False or misleading information

A person must not, in relation to a licence or a licensed occupation, state anything to an authorised officer that the person knows is false or misleading in a material particular.

Penalty:

(a) for an individual—$25,000; or

(b) for a body corporate—$125,000.

85—False or misleading documents

(1) A person must not give an authorised officer a document containing information the person knows is false or misleading in a material particular.

Penalty:

(a) for an individual—$25,000; or

(b) for a body corporate—$125,000.

(2) Subsection (1) does not apply to a person who, when giving the document—

(a) informs the authorised officer, to the best of the person's ability, how it is false or misleading; and

(b) gives the correct information to the authorised officer if the person has, or can reasonably obtain, the correct information.

86—Obstructing authorised officers

(1) A person must not obstruct an authorised officer in the exercise of a power, unless the person has a reasonable excuse.

Penalty:

(a) for an individual—$25,000; or

(b) for a body corporate—$125,000.

(2) If a person has obstructed an authorised officer and the authorised officer decides to proceed with the exercise of the power, the authorised officer must warn the person that—

(a) it is an offence to obstruct the authorised officer, unless the person has a reasonable excuse; and

(b) the authorised officer considers the person's conduct is an obstruction.

(3) In this section—

obstruct includes hinder and attempt to obstruct or hinder.

87—Impersonation of authorised officers

A person must not pretend to be an authorised officer.

Penalty: $25,000.

Part 5—Reviews and Appeals

Division 1—Preliminary

88—Definitions

In this Part—

affected person, for a reviewable decision, means a person prescribed by the national regulations as being a person who may apply for an internal review of the reviewable decision;

reviewable decision means any of the following decisions made under this Law:

(a) a decision to refuse to grant a licence;

(b) a decision to refuse to renew or vary a licence;

(c) a decision to vary a licence at the Licensing Authority's initiative;

(d) a decision to immediately suspend a licence;

(e) a decision by the Licensing Authority to take disciplinary action against a licensee;

(f) a decision to revoke a licence;

(g) a decision to give a licensee, or a member of a class of licensees, a direction under section 101;

(h) another decision prescribed by the national regulations as being a decision for which a person may apply for an internal review under this Part;

review decision see section 91;

reviewer means a person deciding an internal review of a reviewable decision under this Part.

Division 2—Reviews

89—Applying for internal review

(1) An affected person for a reviewable decision may apply to the Licensing Authority for an internal review of the decision.

(2) The application must be made within 28 days after the day the affected person is given notice of the reviewable decision.

(3) The Licensing Authority may, at any time, extend the time for applying for the internal review.

(4) The application for an internal review must be in writing and state fully the grounds of the application.

90—Internal review

(1) An internal review must not be decided by—

(a) the person who made the reviewable decision; or

(b) a person who holds a less senior position than that person.

(2) The reviewer must conduct the review on—

(a) the material before the Licensing Authority that led to the reviewable decision; and

(b) the reasons for the reviewable decision; and

(c) any other relevant material the reviewer allows.

(3) For the review, the reviewer must give the affected person a reasonable opportunity to make written or oral representations to the reviewer.

91—Review decision

(1) The reviewer must make a decision (the *review decision*) to—

(a) confirm the reviewable decision; or

(b) amend the reviewable decision; or

(c) substitute another decision for the reviewable decision.

(2) If the review decision confirms the reviewable decision, for the purpose of an appeal, the reviewable decision is taken to be the review decision.

(3) If the review decision amends the reviewable decision, for the purpose of an appeal, the reviewable decision as amended is taken to be the review decision.

(4) If the review decision substitutes another decision for the reviewable decision, for the purpose of an appeal, the substituted decision is taken to be the review decision.

92—Notice of review decision

(1) The Licensing Authority must, as soon as practicable after the review decision is made, give the affected person notice (the *review notice*) of the review decision.

(2) If the review decision is not the decision sought by the affected person, the review notice must also state the following:

(a) the reasons for the decision;

(b) that the affected person may appeal against the decision in accordance with the national regulations;

(c) how to appeal.

(3) If the Licensing Authority does not give the review notice within the review period the Authority is taken to have made a review decision confirming the reviewable decision.

(4) In this section—

review period means—

(a) the period ending 28 days after the application is made; or

(b) the period, ending not more than 56 days after the application is made, agreed between the Authority and the affected person.

Division 3—Appeals

93—Appellable decisions

(1) A person who has applied for an internal review of a reviewable decision under Division 2 and is dissatisfied with the review decision may appeal against the review decision to the relevant tribunal or court for a participating jurisdiction.

(2) Also, the relevant tribunal or court for a participating jurisdiction may deal with an appeal by a person against a reviewable decision if the person did not apply for an internal review of the reviewable decision under Division 2 but only if—

(a) the relevant tribunal or court is satisfied—

(i) the person was an affected person for the reviewable decision; and

(ii) the person made a late application for the internal review; and

(iii) the person dealing with the application unreasonably refused to consider the application; and

(iv) the appeal was lodged within a reasonable time after the making of the reviewable decision; or

(b) the relevant tribunal or court is satisfied—

(i) the person was an affected person for the reviewable decision; and

(ii) it is necessary for the relevant tribunal or court to deal with the appeal to protect the applicant's interests; and

(iii) the appeal was lodged within a reasonable time after the making of the reviewable decision.

94—Proceedings and decision

(1) After hearing the matter, the relevant tribunal or court must—

(a) confirm the review decision or reviewable decision; or

(b) amend the review decision or reviewable decision; or

(c) substitute another decision for the review decision or reviewable decision.

(2) In substituting another decision for the review decision or reviewable decision, the relevant tribunal or court has the same powers as the entity that made the review decision or reviewable decision.

Part 6—Ministerial Council

95—Functions of Ministerial Council

The Ministerial Council is responsible for the effective implementation and operation of the national licensing system.

96—Directions

(1) The Ministerial Council may give directions to the Licensing Authority about the policies to be applied by the Licensing Authority in exercising its functions.

(2) However, neither the Ministerial Council nor a Minister may give a direction to the Licensing Authority about—

(a) a particular person; or

(b) a particular application; or

(c) a particular disciplinary proceeding or disciplinary action.

Part 7—National Occupational Licensing Authority

Division 1—Establishment, functions and powers

97—Establishment of Licensing Authority

(1) The National Occupational Licensing Authority is established.

(2) The Licensing Authority—

(a) is a body corporate with perpetual succession; and

(b) has a common seal; and

(c) may sue and be sued in its corporate name.

(3) The Licensing Authority represents the State.

98—General powers of Licensing Authority

The Licensing Authority has all the powers of an individual and, in particular, may—

(a) enter into contracts; and

(b) acquire, hold, dispose of, and deal with, real and personal property; and

(c) do anything necessary or convenient to be done in the performance of its functions.

99—Functions of Licensing Authority

(1) The principal functions of the Licensing Authority are—

(a) to develop policy about, and administer, the national licensing system; and

(b) to provide advice to the Ministerial Council about matters relating to the national licensing system.

(2) In exercising its functions, the Licensing Authority must have regard to the objectives of the national licensing system set out in section 3

(3) Without limiting subsection (1), the functions of the Licensing Authority include the following:

(a) to give effect to policy directions and other decisions made by the Ministerial Council;

(b) to undertake reviews of legislation, and develop and review policy matters, relating to occupational licensing and provide advice to the Ministerial Council about matters arising out of the reviews;

(c) to analyse, and prepare projections about, its budget and provide the analysis and projections to the Ministerial Council;

(d) to manage its resources in a way that ensures the national licensing system is as efficient as possible;

(e) to review and make recommendations about any national licensing fees provided for under this Law;

(f) to undertake research and consultation to support the development, monitoring and maintenance of policy about—

(i) the regulation of licensed occupations; and

(ii) the licensing of persons carrying out licensed occupations; and

(iii) requirements relating to the conduct of licensees;

(g) to regulate the conduct of licensees;

(h) to prosecute persons who commit offences against this Law or the national regulations;

(i) to keep up-to-date and publicly accessible national registers of licensees;

(j) to develop, for approval by the Ministerial Council, measures and processes for assessing its performance and to report on the measures and processes to the Council;

(k) to advise the Ministerial Council on issues relevant to the national licensing system;

(l) to liaise with participating jurisdictions in a way that is transparent and provides for the sharing of information with State or Territory entities, relevant jurisdictional regulators and statutory bodies having functions in relation to licensed occupations or licensees;

(m) to co-operate with any entity reviewing the national licensing system;

(n) to establish, as appropriate, committees and other mechanisms to assist the Authority in performing its functions.

100—Consultation

In exercising its functions in relation to reviewing legislation or developing or reviewing policy matters about licensed occupations, the Licensing Authority must, to the extent the Authority considers reasonable in the circumstances, consult with—

(a) stakeholders from relevant licensed occupations; and

(b) the community.

101—Directions

(1) The Licensing Authority may give a direction to a licensee, or a class of licensees, about a matter relating to the way in which the licensee or class of licensees carries out the licensed occupation.

(2) A direction must be given by written notice given to the licensee, or each licensee who is a member of the class of licensees, the subject of the direction.

102—Delegation

(1) The Licensing Authority may delegate any of its functions, other than developing policy about the national licensing system, to—

(a) an entity, or the chief executive of an entity or department of government, of a participating jurisdiction nominated by the member of the Ministerial Council that represents that jurisdiction; or

(b) a member of the police force or police service of a participating jurisdiction.

(2) The Licensing Authority may delegate any of its functions to the chief executive officer or another member of the Authority's staff.

(3) An entity or chief executive to whom a function has been delegated under subsection (1)(a) by the Licensing Authority may subdelegate the function (including this power of subdelegation).

Division 2—Governing Board of Licensing Authority

Subdivision 1—Establishment and functions

103—National Occupational Licensing Board

(1) The Licensing Authority has a governing board known as the National Occupational Licensing Board.

(2) The Licensing Board consists of not more than 10 members appointed by the Ministerial Council.

(3) The members of the Licensing Board consist of—

(a) one person appointed by the Ministerial Council as Chairperson, being a person who is not a licensee or otherwise involved in any licensed occupation; and

(b) 2 persons (*jurisdictional regulator members*) who are jurisdictional regulators or members of the staff of jurisdictional regulators, nominated by the chief executives of First Ministers' Departments; and

(c) other persons the Ministerial Council considers have appropriate skills or experience in unions, employer representation, consumer advocacy or training.

(4) In appointing members of the Licensing Board, the Ministerial Council must have regard to the need for the Board to have an appropriate balance of skills and expertise among its members.

104—Functions of Licensing Board

(1) The affairs of the Licensing Authority are to be controlled by the Licensing Board.

(2) All acts and things done in the name of, or on behalf of, the Licensing Authority by or with the authority of the Licensing Board are taken to have been done by the Licensing Authority.

(3) The Licensing Board must ensure the Licensing Authority performs its functions in a proper, effective and efficient way.

(4) The Licensing Board has any other functions given to the Licensing Board by or under this Law.

Subdivision 2—Members

105—Terms of office of members

(1) Subject to this Division, a member holds office—

(a) for a jurisdictional regulator member, for 2 years; and

(b) otherwise, for the period, not more than 3 years, specified in the member's instrument of appointment.

(2) If otherwise qualified, a member is eligible for reappointment.

106—Remuneration

(1) A member, other than a jurisdictional regulator member, is entitled to be paid the remuneration and allowances decided by the remuneration tribunal from time to time.

(2) In this section—

remuneration tribunal means a tribunal prescribed by the national regulations.

107—Vacancy in office of member

(1) The office of a member becomes vacant if the member—

(a) completes a term of office; or

(b) resigns the office by signed notice given to the Chairperson of the Ministerial Council; or

(c) is removed from office by the Chairperson of the Ministerial Council under this section; or

(d) is absent, without leave first being granted by the Licensing Board, from three or more consecutive meetings of the Board of which reasonable notice has been given to the member personally or by post; or

(e) dies.

(2) The Chairperson of the Ministerial Council may remove a member from office if—

(a) the member has been found guilty of an offence (whether in a participating jurisdiction or elsewhere) that, in the opinion of the Chairperson of the Ministerial Council, renders the member unfit to continue to hold the office of member; or

(b) the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with member's creditors or makes an assignment of member's remuneration for their benefit; or

(c) the Licensing Board recommends the removal of the member, on the basis that the member has engaged in misconduct or has failed or is unable to properly exercise the member's functions as a member.

108—Vacancies to be advertised

(1) Before the Ministerial Council appoints a member of the Licensing Board, other than a jurisdictional regulator member, the vacancy to be filled is to be publicly advertised.

(2) It is not necessary to advertise a vacancy in the membership of the Licensing Board before appointing a person to act in the office of a member.

109—Extension of term of office during vacancy in membership

(1) If the office of a member becomes vacant because the member has completed the member's term of office, the member is taken to continue to be a member during that vacancy until the date on which the vacancy is filled, whether by re-appointment of the member or appointment of a successor to the member.

(2) However, this section ceases to apply to the member if—

(a) the member resigns the member's office by signed notice given to the Chairperson of the Ministerial Council; or

(b) the Chairperson of the Ministerial Council decides the services of the member are no longer required.

(3) The maximum period for which a member is taken to continue to be a member under this section after completion of the member's term of office is six months.

110—Members to act in public interest

A member of the Licensing Board is to act impartially and in the public interest in the exercise of the member's functions as a member.

111—Disclosure of conflict of interest

(1) If—

(a) a member has a direct or indirect pecuniary or other interest in a matter being considered or about to be considered at a meeting of the Licensing Board; and

(b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

(2) Particulars of any disclosure made under this section must be recorded by the Licensing Board in a register of interests kept for the purpose.

(3) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Ministerial Council or the Licensing Board otherwise decides—

(a) be present during any deliberation of the Board with respect to the matter; or

(b) take part in any decision of the Board with respect to the matter.

(4) For the purposes of the making of a decision by the Licensing Board under subsection (3), a member who has a direct or indirect pecuniary or other interest in a matter to which the disclosure relates must not—

(a) be present during any deliberation of the Board for the purpose of making the decision; or

(b) take part in the making by the Board of the decision.

(5) A contravention of this section does not invalidate any decision of the Licensing Board but if the Board becomes aware a member of the Board contravened this section the Board must reconsider any decision made by the Board in which the member took part in contravention of this section.

Subdivision 3—Meetings

112—General procedure

The procedure for the calling of meetings of the Licensing Board and for the conduct of business at the meetings is, subject to this Law, to be decided by the Board.

113—Quorum

The quorum for a meeting of the Licensing Board is a majority of its members.

114—Chief executive officer may attend meetings

(1) The chief executive officer may attend meetings of the Board and participate in discussions of the Board, but is not entitled to be present during the consideration by the Board of any matter in which the chief executive officer has a direct personal interest.

(2) The chief executive officer is not entitled to vote at a meeting.

115—Presiding member

(1) The Chairperson is to preside at a meeting of the Board.

(2) However, in the absence of the Chairperson the following person is to preside at a meeting of the Licensing Board:

(a) if the Chairperson has nominated another person who is present at the meeting to preside at the meeting, that person;

(b) otherwise, a person elected by the members of the Licensing Board who are present at the meeting.

(3) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

116—Voting

A decision supported by a majority of the votes cast at a meeting of the Licensing Board at which a quorum is present is the decision of the Board.

117—First meeting

The Chairperson may call the first meeting of the Licensing Board in any manner the Chairperson thinks fit.

118—Defects in appointment of members

A decision of the Licensing Board is not invalidated by any defect or irregularity in the appointment of any member of the Board.

Division 3—Chief executive officer

119—Chief executive officer

(1) There is to be a chief executive officer of the Licensing Authority.

(2) The chief executive officer is to be appointed by the Licensing Board with the approval of the Ministerial Council.

(3) The chief executive officer is to be appointed for a period, not more than five years, specified in the officer's instrument of appointment.

(4) The chief executive officer is eligible for re-appointment.

(5) The chief executive officer is taken, while holding that office, to be a member of the staff of the Licensing Authority.

120—Functions of chief executive officer

The chief executive officer—

(a) is responsible for the day to day management of the Licensing Authority; and

(b) has any other functions conferred on the chief executive officer by the Licensing Board.

Division 4—Staff

121—Staff

(1) The Licensing Authority may, for the purpose of exercising its functions, employ staff.

(2) The staff of the Licensing Authority are to be employed on the terms and conditions prescribed by the national regulations.

122—Staff seconded to Licensing Authority

The Licensing Authority may make arrangements for the services of a person who is a member of the staff of a government agency of a participating jurisdiction or the Commonwealth to be made available to the Licensing Authority in connection with the exercise of its functions.

Division 5—Authorised officers

123—Powers of authorised officers

(1) An authorised officer has the powers given by this Law.

(2) In exercising the powers, the authorised officer is subject to the directions of the Licensing Authority.

124—Functions of authorised officer

An authorised officer has the following functions:

(a) to enforce this Law;

(b) to monitor compliance with this Law;

(c) to determine whether work being carried out under a licence has been, or is being, carried out in accordance with this Law or a prescribed Act.

125—Appointment of authorised officers

(1) The Licensing Authority may appoint any of the following persons as an authorised officer:

(a) a member of the Licensing Authority's staff;

(b) an employee of a jurisdictional regulator;

(c) a member of the police force or police service of a participating jurisdiction;

(d) a person prescribed for the purposes of this section by the national regulations;

(e) a person who is a member of a class of persons prescribed for the purposes of this section by the national regulations.

(2) The Licensing Authority may appoint a person as an authorised officer only if satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

126—Appointment conditions and limits on powers

(1) An authorised officer holds office on the conditions—

(a) stated in the authorised officer's instrument of appointment; or

(b) stated in a notice given by the Licensing Authority to the authorised officer; or

(c) prescribed by the national regulations.

(2) The instrument of appointment, a notice given by the Licensing Authority or the national regulations may limit the authorised officer's powers under this Law.

127—Identity card

(1) The Licensing Authority must issue an identity card to each authorised officer.

(2) The identity card must—

(a) contain a recent photograph of the authorised officer; and

(b) contain a copy of the authorised officer's signature; and

(c) identify the person as an authorised officer under this Law; and

(d) include an expiry date.

(3) This section does not prevent the issue of a single identity card to a person for this Law and other Acts.

128—Production and display of identity card

(1) An authorised officer may exercise a power in relation to someone else (the *other person*) only if the authorised officer—

(a) first produces the authorised officer's identity card for the other person's inspection; or

(b) has the identity card displayed so it is clearly visible to the other person.

(2) However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the authorised officer must produce the identity card for the other person's inspection at the first reasonable opportunity.

129—When authorised officer ceases to hold office

(1) An authorised officer ceases to hold office if any of the following occurs:

(a) the term of office stated in a condition of office ends;

(b) under another condition of office, the authorised officer ceases to hold office;

(c) the authorised officer's resignation takes effect.

(2) Subsection (1) does not limit the ways an authorised officer may cease to hold office.

130—Resignation

An authorised officer may resign by signed notice given to the Licensing Authority.

131—Return of identity card

A person who ceases to be an authorised officer must return the person's identity card to the Licensing Authority within 7 days after ceasing to be an authorised officer, unless the person has a reasonable excuse.

Penalty: $5,000.

Division 6—Occupational Licence Advisory Committees

132—Establishment of Advisory Committee

The Licensing Authority must establish an Occupational Licence Advisory Committee for each licensed occupation.

133—Function of Advisory Committee

The function of an Advisory Committee is to give advice to the Licensing Authority about—

(a) the development, maintenance and performance of licensing policy in relation to the licensed occupation for which the Advisory Committee is established; and

(b) any other matter referred to the Advisory Committee by the Licensing Authority.

134—Membership and procedures of Advisory Committee

(1) An Advisory Committee is to consist of the members appointed in writing by the Licensing Board.

(2) Before appointing members of an Advisory Committee, the Licensing Authority must invite nominations for membership of the Advisory Committee from—

(a) national peak bodies who represent the licensed occupation; or

(b) if there is not a national peak body that represents the licensed occupation, another peak body that represents the licensed occupation.

(3) Without limiting subsection (2), peak bodies include the following:

(a) unions and employer bodies;

(b) occupational professional associations;

(c) consumer advocacy organisations;

(d) bodies that regulate the licensed occupation;

(e) if relevant, peak insurance bodies;

(f) bodies involved in the national training system.

(4) In appointing members to an Advisory Committee, the Licensing Board must have regard to the need for the Advisory Committee to have a balance of expertise relevant to the licensed occupation including in relation to the following areas:

(a) regulation of the licensed occupation;

(b) occupational operations and practices, including from a union and employer perspective;

(c) workplace health and safety;

(d) consumer advocacy;

(e) training;

(f) if relevant, insurance.

(5) The national regulations may provide for—

(a) the appointment of members of Advisory Committees; and

(b) the procedures of Advisory Committees.

Part 8—Information and privacy

Division 1—Privacy

135—Application of Commonwealth Privacy Act

(1) Subject to subsection (3), the Privacy Act applies as a law of a participating jurisdiction for the purposes of the national licensing system.

(2) However, the Privacy Act does not apply to the national licensing system to the extent that functions, other than functions relating to the national registers, are being exercised under this Law by a State or Territory entity.

(3) The national regulations may modify the Privacy Act for the purposes of this Law.

(4) Without limiting subsection (3), the national regulations may—

(a) provide that the Privacy Act applies as if a provision of the Privacy Act specified in the national regulations were omitted; or

(b) provide that the Privacy Act applies as if an amendment to the Privacy Act made by a law of the Commonwealth, and specified in the national regulations, had not taken effect; or

(c) confer jurisdiction on a tribunal or court of a participating jurisdiction.

(5) In this section—

Privacy Act means the *Privacy Act 1988* of the Commonwealth, as in force from time to time.

Division 2—Disclosure of information and confidentiality

136—Definition

In this Division—

protected information means information that comes to a person's knowledge in the course of, or because of, the person exercising functions under this Law or a prescribed Act.

137—Application of Commonwealth FOI Act

(1) Subject to subsection (3), the FOI Act applies as a law of a participating jurisdiction for the purposes of the national licensing system.

(2) However, the FOI Act does not apply to the national licensing system to the extent that functions are being exercised under this Law by a State or Territory entity.

(3) The national regulations may modify the FOI Act for the purposes of this Law.

(4) Without limiting subsection (3), the national regulations may—

(a) provide that the FOI Act applies as if a provision of the FOI Act specified in the national regulations were omitted; or

(b) provide that the FOI Act applies as if an amendment to the FOI Act made by a law of the Commonwealth, and specified in the national regulations, had not taken effect; or

(c) confer jurisdiction on a tribunal or court of a participating jurisdiction.

(5) In this section—

FOI Act means the *Freedom of Information Act 1982* of the Commonwealth, as in force from time to time.

138—Duty of confidentiality

(1) A person who is, or has been, a person exercising functions under this Law must not disclose to another person protected information.

Penalty:

(a) for an individual—$25,000; or

(b) for a body corporate—$125,000.

(2) However, subsection (1) does not apply if—

(a) the information is disclosed in the exercise of a function under, or for the purposes of, this Law; or

(b) the disclosure is authorised or required by any law of a participating jurisdiction; or

(c) the disclosure is otherwise required or permitted by law; or

(d) the disclosure is with the agreement of the person to whom the information relates; or

(e) the disclosure is in a form that does not identify the identity of a person; or

(f) the information relates to proceedings before a court or tribunal and the proceedings are or were open to the public; or

(g) the disclosure is the publication of information about disciplinary action taken against persons under this Law or the national regulations or the conviction of persons for offences against this Law or the national regulations and the publication is in accordance with the national regulations; or

(h) the information is, or has been, accessible to the public, including because it is or was recorded in a national register; or

(i) the disclosure is to a prescribed entity or is otherwise authorised by the national regulations.

139—Disclosure to jurisdictional regulators and other Commonwealth, State and Territory entities

A person exercising functions under this Law may disclose protected information to any of the following entities if the disclosure is in connection with functions exercised by that entity:

(a) a jurisdictional regulator;

(b) another Commonwealth, State or Territory entity.

Division 3—Registers and other records

140—National Registers and records

(1) The Licensing Authority must keep the national registers and other records required by the national regulations.

(2) Without limiting subsection (1), the national regulations may provide for—

(a) the information that must be collected and recorded by the Licensing Authority about licensees; and

(b) the information that is to be included in public registers about licensees; and

(c) the way the public registers are to be kept; and

(d) the inspection of the public registers by members of the public; and

(e) the publication of information included in public registers.

141—Application of Commonwealth Archives Act

(1) Subject to subsection (3), the Archives Act applies as a law of a participating jurisdiction for the purposes of the national licensing system.

(2) However, the Archives Act does not apply to the national licensing system to the extent that functions are being exercised under this Law by a State or Territory entity.

(3) The national regulations may modify the Archives Act for the purposes of this Law.

(4) Without limiting subsection (3), the national regulations may—

(a) provide that the Archives Act applies as if a provision of the Archives Act specified in the national regulations were omitted; or

(b) provide that the Archives Act applies as if an amendment to the Archives Act made by a law of the Commonwealth, and specified in the national regulations, had not taken effect; or

(c) confer jurisdiction on a tribunal or court of a participating jurisdiction.

(5) In this section—

Archives Act means the *Archives Act 1983* of the Commonwealth, as in force from time to time.

Part 9—Miscellaneous

Division 1—Finance

142—National Occupational Licensing Authority Fund

(1) The National Occupational Licensing Authority Fund is established.

(2) The Authority Fund is a fund to be administered by the Licensing Authority.

(3) The Licensing Authority may establish accounts with any financial institution for money in the Authority Fund.

(4) The Authority Fund does not form part of the consolidated fund or consolidated account of a participating jurisdiction or the Commonwealth.

143—Payments into Authority Fund

There is payable into the Authority Fund—

(a) all money appropriated by the Parliament of any participating jurisdiction or the Commonwealth for the purposes of the Fund; and

(b) the proceeds of the investment of money in the Fund; and

(c) all grants, gifts and donations made to the Licensing Authority, but subject to any trusts declared in relation to the grants, gifts or donations; and

(d) all money directed or authorised to be paid into the Fund by or under this Law, any law of a participating jurisdiction or any law of the Commonwealth; and

(e) any other money or property prescribed by the national regulations; and

(f) any other money or property received by the Licensing Authority in connection with the exercise of its functions.

144—Payments out of Authority Fund

Payments may be made from the Authority Fund for the purpose of—

(a) paying any costs or expenses, or discharging any liabilities, incurred in the administration or enforcement of this Law; and

(b) any other payments recommended by the Licensing Authority and approved by the Ministerial Council.

145—Investment by Licensing Authority

(1) The Licensing Authority must invest its funds in a way that is secure and provides a low risk so that the Authority's exposure to the loss of funds is minimised.

(2) The Licensing Authority must keep records that show it has invested in a way that complies with subsection (1).

146—Financial management duties of Licensing Authority

The Licensing Authority must—

(a) ensure its operations are carried out efficiently, effectively and economically; and

(b) keep proper books and records in relation to the Authority Fund; and

(c) ensure expenditure is made from the Authority Fund for lawful purposes only and, as far as possible, that reasonable value is expended from the Fund; and

(d) ensure its procedures, including internal control procedures, afford adequate safeguards with respect to—

(i) the correctness, regularity and propriety of payments made from the Authority Fund; and

(ii) receiving and accounting for payments made to the Authority Fund; and

(iii) prevention of fraud or mistake; and

(e) take any action necessary to ensure the preparation of accurate financial statements in accordance with Australian Accounting Standards for inclusion in its annual report; and

(f) take any action necessary to facilitate the audit of the financial statements in accordance with this Law; and

(g) arrange for any further audit by a qualified person of the books and records kept by the Licensing Authority, if directed to do so by the Ministerial Council.

Division 2—Reporting and planning arrangements

147—Annual report

(1) The Licensing Authority must, within 3 months after the end of each financial year, give the Ministerial Council an annual report for the financial year.

(2) Despite subsection (1), the first annual report of the Licensing Authority must—

(a) relate to the period starting on 1 January 2011 and ending on 30 June 2012; and

(b) be made by 30 September 2012.

(3) The annual report must—

(a) include for the period to which the report relates—

(i) the financial statements that have been audited by an auditor decided by the Ministerial Council; and

(ii) information about the consultation processes used by the Licensing Authority in exercising its functions of reviewing legislation and developing and reviewing policy matters about licensed occupations; and

(iii) other matters required by the national regulations; and

(b) be prepared in the way required by the national regulations.

(4) Without limiting subsection (3)(b), the national regulations may provide—

(a) that the financial statements are to be prepared in accordance with Australian Accounting Standards; and

(b) for the auditing of the financial statements.

(5) The Ministerial Council is to make arrangements for the tabling of the Licensing Authority's annual report in each House of the Parliament of each participating jurisdiction.

(6) As soon as practicable after the annual report has been tabled in at least one House of the Parliament of a participating jurisdiction, the Licensing Authority must publish a copy of the report on its website.

(7) In this section—

Australian Accounting Standards means Accounting Standards issued by the Australian Accounting Standards Board.

148—Strategic and operational plans

(1) The Licensing Authority must prepare and give to the Ministerial Council for approval by the Council—

(a) a strategic plan for each 3-year period; and

(b) an annual operational plan.

(2) The strategic plan must be given to the Ministerial Council—

(a) for the Licensing Authority's first strategic plan, within six months after the commencement of this section; and

(b) for subsequent strategic plans, not later than six months before the preceding strategic plan is due to expire.

Division 3—Provisions relating to persons exercising functions under Law

149—General duties of persons exercising functions under this Law

(1) A person exercising functions under this Law must, when exercising the functions, act honestly and with integrity.

(2) A person exercising functions under this Law must exercise the person's functions under this Law—

(a) in good faith; and

(b) with a reasonable degree of care, diligence and skill.

(3) A person exercising functions under this Law must not make improper use of the person's position or of information that comes to the person's knowledge in the course of, or because of, the person's exercise of the functions—

(a) to gain an advantage for himself or herself or another person; or

(b) to cause a detriment to the development, implementation or operation of the national licensing system.

Penalty: $25,000.

150—Application of Commonwealth Ombudsman Act

(1) Subject to subsection (3), the Ombudsman Act applies as a law of a participating jurisdiction for the purposes of the national licensing system.

(2) However, the Ombudsman Act does not apply to the national licensing system to the extent that functions are being exercised under this Law by a State or Territory entity.

(3) The national regulations may modify the Ombudsman Act for the purposes of this Law.

(4) Without limiting subsection (3), the national regulations may—

(a) provide that the Ombudsman Act applies as if a provision of the Ombudsman Act specified in the national regulations were omitted; or

(b) provide that the Ombudsman Act applies as if an amendment to the Ombudsman Act made by a law of the Commonwealth and specified in the national regulations, had not taken effect; or

(c) confer jurisdiction on a tribunal or court of a participating jurisdiction.

(5) In this section—

Ombudsman Act means the *Ombudsman Act 1976* of the Commonwealth, as in force from time to time.

151—Protection from personal liability for persons exercising functions

(1) A person who is or was a protected person is not personally liable for anything done or omitted to be done in good faith—

(a) in the exercise of a function under this Law; or

(b) in the reasonable belief that the act or omission was the exercise of a function under this Law.

(2) Any liability resulting from an act or omission that would, but for subsection (1), attach to a protected person attaches instead to the Licensing Authority.

(3) In this section—

protected person means any of the following:

(a) a member of the Licensing Board;

(b) a member of a committee of the Licensing Authority;

(c) a member of the staff of the Licensing Authority;

(d) an authorised officer;

(e) a person to whom the Licensing Authority has delegated any of its functions;

(f) a person to whom an entity, or the chief executive of an entity or department of government, of a participating jurisdiction has subdelegated a function delegated to the chief executive by the Licensing Authority;

(g) a member of the staff of an entity or department referred to in paragraph (f);

(h) a person acting under the authority or direction of a person referred to in paragraphs (a) to (g).

Division 4—Legal proceedings

152—Limitation on time for starting proceedings

A proceeding for an offence against this Law or the national regulations must start within 6 years after the commission of the offence.

153—Evidentiary certificates

(1) A certificate purporting to be signed by the chief executive officer of the Licensing Authority and stating any of the following matters is prima facie evidence of the matter:

(a) a stated document is one of the following things made, given, issued or kept under this Law:

(i) an appointment or decision;

(ii) a notice, direction or requirement;

(iii) a licence;

(iv) a register, or an extract from a register;

(v) a record, or an extract from a record;

(b) a stated document is another document kept under this Law;

(c) a stated document is a copy of a document referred to in paragraph (a) or (b);

(d) on a stated day, or during a stated period, a stated person was or was not a licensee;

(e) on a stated day, or during a stated period, a licence was or was not subject to a stated condition or undertaking;

(f) on a stated day, a licence was suspended or cancelled;

(g) on a stated day, or during a stated period, an appointment as an authorised officer was or was not in force for a stated person;

(h) on a stated day, a stated person was given a stated notice or direction under this Law;

(i) on a stated day, a stated requirement was made of a person.

(2) If functions are being exercised under this Law by a State or Territory entity, a certificate purporting to be signed by any of the following, and stating any of the matters referred to in subsection (1), is prima facie evidence of the matter:

(a) if there is a chief executive of the entity, the chief executive;

(b) if there is no chief executive of the entity but there is a chairperson (however described) of the entity, the chairperson;

(c) otherwise, a member of the entity.

Division 5—Miscellaneous

154—Approved forms

(1) The Licensing Authority may approve forms for use under this Law.

(2) The approval of a form must be notified on the Licensing Authority's website.

155—Extrinsic materials

The COAG Agreement is declared to be extrinsic material for the purposes of paragraph (h) of the definition of *extrinsic material* in section 8(1) of Schedule 1.

156—References to laws includes references to instruments made under laws

(1) In this Law, a reference (either generally or specifically) to a law or a provision of a law (including this Law) includes a reference to the statutory instruments made or in force under the law or the provision.

(2) In this section—

law means a law of the Commonwealth or a State or Territory.

157—Service of documents

(1) If this Law or the national regulations require or permit a document to be served on a person, the document may be served by—

(a) on an individual—

(i) delivering it to the person personally; or

(ii) leaving it at, or by sending it by post to, the address of the place of residence or business of the person last known to the person serving the document; or

(iii) sending it by facsimile transmission to a facsimile number notified to the sender by the individual as an address at which service of notices under this Law will be accepted; or

(iv) sending it by email to an internet address notified to the sender by the individual as an address at which service of notices under this Law will be accepted; or

(b) on a body corporate—

(i) leaving it at, or sending it by post to, the head office, a registered office or the principal place of business of the body corporate; or

(ii) sending it by facsimile transmission to a facsimile number notified to the sender by the body corporate as an address at which service of notices under this Law will be accepted; or

(iii) sending it by email to an internet address notified to the sender by the body corporate as an address at which service of notices under this Law will be accepted.

(2) Subsection (1) applies whether the word 'deliver', 'give', 'notify', 'send' or 'serve' or another expression is used.

(3) Subsection (1) does not affect the power of a court or tribunal to authorise service of a document otherwise than as provided in that subsection.

158—Service by post

If a document authorised or required to be served (whether the word 'deliver', 'give', 'notify', 'send' or 'serve' or another expression is used) on a person is served by post, service of the document—

(a) may be effected by properly addressing, prepaying and posting a letter containing the document; and

(b) in Australia or in an external Territory—is, unless evidence sufficient to raise doubt is adduced to the contrary, taken to have been effected on the fourth business day after the letter was posted; and

(c) in another place—is, unless evidence sufficient to raise doubt is adduced to the contrary, taken to have been effected at the time when the letter would have been delivered in the ordinary course of post.

159—Review of Law

(1) The Ministerial Council is to conduct independent public reviews of the operation of the national licensing system and this Law to determine whether the system and the Law continue to comply with the objectives and principles set out in clause 4 of the COAG Agreement.

(2) The reviews are to be undertaken—

(a) for the first review, as soon as possible after the period of 5 years from the date on which this Law commences in at least one participating jurisdiction; and

(b) for subsequent reviews, at intervals of not more than 10 years.

(3) A report on the outcome of each review is to be tabled in each House of the Parliament of each participating jurisdiction within 3 months after the end of the review.

Division 6—Regulations

160—National regulations

(1) The Ministerial Council may make regulations for the purposes of this Law.

(2) The regulations may provide for the following:

(a) the occupations to which this Law is to apply;

(b) the licensing of persons carrying out licensed occupations;

(c) other matters relating to licences including—

(i) applications for licences; and

(ii) the requirements to be satisfied by persons to be eligible for a licence or to continue to hold a licence; and

(iii) the granting of licences; and

(iv) the renewal, variation or surrender of licences;

(d) fees under this Law including—

(i) the fees to be paid for applications made under this Law for licences or the renewal or variation of a licence; and

(ii) the refunding of fees; and

(iii) the waiver of fees; and

(iv) late fees and fees for dishonoured payments;

(e) arrangements for the publication of fees prescribed under Acts of participating jurisdictions that relate to licensees or licensed occupations;

(f) the conduct of licensees, including the making and adoption of codes of practice applicable to licensees;

(g) matters relating to compliance with and enforcement of this Law and the regulations, including, for example—

(i) monitoring and auditing of licensees and work undertaken by licensees; and

(ii) complaints about licensees or former licensees; and

(iii) the grounds on which licences are automatically suspended or cancelled and other matters relating to those suspensions or cancellations; and

(iv) the establishment of a demerit point scheme for licensees; and

(v) the establishment of an infringement notice scheme for persons who allegedly contravene this Law or the regulations; and

(vi) other matters relating to disciplinary proceedings and disciplinary action;

(h) matters relating to nominees for licences;

(i) matters relating to directors and members of licensees who are bodies corporate, including—

(i) the duties and obligations of directors and members; and

(ii) matters relating to the liability of directors and members;

(j) matters relating to persons who are employed or otherwise engaged by licensees, including—

(i) the duties and obligations of licensees in relation to those persons; and

(ii) the duties and obligations of those persons; and

(iii) matters relating to vicarious liability for the actions of those persons;

(k) matters relating to persons who are receivers, managers or administrators appointed to carry out, wind up or otherwise administer or operate businesses conducted by licensees or persons whose licences have been suspended or cancelled, including matters relating to the appointment of those persons and the obligations and responsibilities of those persons in carrying out, winding up or otherwise administering or operating the businesses;

(l) matters relating to fidelity funds and indemnity funds held in relation to licensees;

(m) matters relating to trust funds held by licensees;

(n) the payment of penalties and fines imposed under this Law, including who the penalties and fines are to be paid to;

(o) the imposition of penalties, of not more than $5,000 for individuals or $25,000 for bodies corporate, for a contravention of a provision of the regulations;

(p) criteria or procedures to be used by the Licensing Authority in developing policy about the national licensing system and the admission of new occupations to the system;

(q) the publication of information about disciplinary action taken against persons under this Law or the regulations or the conviction of persons for offences against this Law or the regulations;

(r) provisions of a savings or transitional nature—

(i) consequent on the enactment of this Law in a participating jurisdiction or the making of the regulations under this Law; or

(ii) to otherwise allow or facilitate the change from the operation of a law of a participating jurisdiction relating to the licensing of persons carrying out licensed occupations to the operation of this Law or the regulations made under this Law;

(s) any other matter that is necessary or convenient to be prescribed for carrying out or giving effect to this Law.

(3) Savings and transitional provisions consequent on the enactment of this Law in a participating jurisdiction, or to allow or facilitate the licensing of persons carrying out a licensed occupation in a participating jurisdiction, may have retrospective operation to a day not earlier than the participation day for that participating jurisdiction.

161—Regulations about licensing, registration and accreditation of persons carrying out licensed occupations

(1) Without limiting section 160(2)(b), the national regulations may provide for—

(a) the different categories of licences, registration and accreditation that may be granted for licensed occupations; and

(b) the scope of work that may be carried out under the authority of the different categories of licences, registration and accreditation; and

(c) the different types of licences, registration and accreditation that may be granted for licensed occupations; and

(d) the ways in which licensed occupations are to be carried out, including, for example, the way in which work is to be carried out under licences, registration and accreditation and the records to be kept by persons who hold licences, registration and accreditation.

(2) The national regulations may not provide for the licensing, registration or accreditation of persons carrying out, in a participating jurisdiction, prescribed work that is within the scope of a licensed occupation if—

(a) immediately before the occupation became a licensed occupation for the participating jurisdiction under this Law, persons carrying out that prescribed work in the participating jurisdiction were not required to hold a licence, registration or accreditation or be otherwise authorised to carry out the work; and

(b) the Minister who is the member of the Ministerial Council representing the participating jurisdiction has not agreed to the making of the regulation.

162—Inclusion of new occupations in national regulations

(1) A regulation may be made prescribing an occupation as being a licensed occupation only if the requirements of this section have been satisfied.

(2) A participating jurisdiction that licences or proposes to licence an occupation may make a nomination to the Ministerial Council that the occupation should be a licensed occupation.

(3) If the Ministerial Council unanimously agrees that the occupation is to be a licensed occupation a regulation may be made prescribing the occupation as a licensed occupation.

(4) If a majority of the members of the Ministerial Council agrees that the occupation is to be a licensed occupation, a regulation may be made—

(a) prescribing the occupation as a licensed occupation; and

(b) providing that the occupation is a licensed occupation only in specified participating jurisdictions.

(5) A regulation made under subsection (4) must be reviewed by the Ministerial Council at intervals of not more than 12 months.

(6) This section does not apply to an occupation referred to in clause 3.5 of the COAG agreement.

163—Publication of national regulations

(1) The national regulations are to be published on the NSW legislation website in accordance with Part 6A of the *Interpretation Act 1987* of New South Wales.

(2) A regulation commences on the day or days specified in the regulation for its commencement (being not earlier than the date it is published).

164—Parliamentary scrutiny of national regulations

(1) The member of the Ministerial Council representing a participating jurisdiction is to make arrangements for the tabling of a regulation made under this Law in each House of the Parliament of the participating jurisdiction.

(2) In addition, any other requirement of a law of a participating jurisdiction relevant to the disallowance of a regulation in that jurisdiction is to be complied with in that jurisdiction in relation to a regulation made under this Law as if the regulation had been made under an Act of that jurisdiction.

(3) A regulation made under this Law may be disallowed in a participating jurisdiction by a House of the Parliament of that jurisdiction in the same way, and within the same period, that a regulation made under an Act of that jurisdiction may be disallowed.

165—Effect of disallowance of national regulation

(1) If a regulation ceases to have effect under section 164 any law or provision of a law repealed or amended by the regulation is revived as if the disallowed regulation has not been made.

(2) The restoration or revival of a law under subsection (1) takes effect at the beginning of the day on which the disallowed regulation by which it was amended or repealed ceases to have effect.

(3) A reference in this section to the repeal or amendment of a law or a provision of a law extends to the revocation or variation of a regulation or a provision of a regulation.

Schedule 1—Miscellaneous provisions relating to interpretation

(Section 5)

Part 1—Preliminary

1—Displacement of Schedule by contrary intention

The application of this Schedule may be displaced, wholly or partly, by a contrary intention appearing in this Law.

Part 2—General

2—Law to be construed not to exceed legislative power of Legislature

(1) This Law is to be construed as operating to the full extent of, but so as not to exceed, the legislative power of the Legislature of this jurisdiction.

(2) If a provision of this Law, or the application of a provision of this Law to a person, subject matter or circumstance, would, but for this section, be construed as being in excess of the legislative power of the Legislature of this jurisdiction—

(a) it is a valid provision to the extent to which it is not in excess of the power; and

(b) the remainder of this Law, and the application of the provision to other persons, subject matters or circumstances, is not affected.

(3) This section applies to this Law in addition to, and without limiting the effect of, any provision of this Law.

3—Every section to be a substantive enactment

Every section of this Law has effect as a substantive enactment without introductory words.

4—Material that is, and is not, part of this Law

(1) The heading to a Part, Division or Subdivision into which this Law is divided is part of this Law.

(2) A Schedule to this Law is part of this Law.

(3) Punctuation in this Law is part of this Law.

(4) A heading to a section or subsection of this Law does not form part of this Law.

(5) Notes included in this Law (including footnotes and endnotes) do not form part of this Law.

5—References to particular Acts and to enactments

In this Law—

(a) an Act of this jurisdiction may be cited—

(i) by its short title; or

(ii) by reference to the year in which it was passed and its number; and

(b) a Commonwealth Act may be cited—

(i) by its short title; or

(ii) in another way sufficient in a Commonwealth Act for the citation of such an Act,

together with a reference to the Commonwealth; and

(c) an Act of another jurisdiction may be cited—

(i) by its short title; or

(ii) in another way sufficient in an Act of the jurisdiction for the citation of such an Act,

together with a reference to the jurisdiction.

6—References taken to be included in Act or Law citation etc

(1) A reference in this Law to an Act includes a reference to—

(a) the Act as originally enacted, and as amended from time to time since its original enactment; and

(b) if the Act has been repealed and re-enacted (with or without modification) since the enactment of the reference—the Act as re enacted, and as amended from time to time since its re-enactment.

(2) A reference in this Law to a provision of this Law or of an Act includes a reference to—

(a) the provision as originally enacted, and as amended from time to time since its original enactment; and

(b) if the provision has been omitted and re-enacted (with or without modification) since the enactment of the reference—the provision as re-enacted, and as amended from time to time since its re-enactment.

(3) Subsections (1) and (2) apply to a reference in this Law to a law of the Commonwealth or another jurisdiction as they apply to a reference in this Law to an Act and to a provision of an Act.

7—Interpretation best achieving Law's purpose

(1) In the interpretation of a provision of this Law, the interpretation that will best achieve the purpose or object of this Law is to be preferred to any other interpretation.

(2) Subsection (1) applies whether or not the purpose is expressly stated in this Law.

8—Use of extrinsic material in interpretation

(1) In this section—

extrinsic material means relevant material not forming part of this Law, including, for example—

(a) material that is set out in the document containing the text of this Law as printed by the Government Printer; and

(b) a relevant report of a Royal Commission, Law Reform Commission, commission or committee of inquiry, or a similar body, that was laid before the Parliament of this jurisdiction before the provision concerned was enacted; and

(c) a relevant report of a committee of the Parliament of this jurisdiction that was made to the Parliament before the provision was enacted; and

(d) a treaty or other international agreement that is mentioned in this Law; and

(e) an explanatory note or memorandum relating to the Bill that contained the provision, or any relevant document, that was laid before, or given to the members of, the Parliament of this jurisdiction by the member bringing in the Bill before the provision was enacted; and

(f) the speech made to the Parliament of this jurisdiction by the member in moving a motion that the Bill be read a second time; and

(g) material in the Votes and Proceedings of the Parliament of this jurisdiction or in any official record of debates in the Parliament of this jurisdiction; and

(h) a document that is declared by this Law to be a relevant document for the purposes of this section;

ordinary meaning means the ordinary meaning conveyed by a provision having regard to its context in this Law and to the purpose of this Law.

(2) Subject to subsection (3), in the interpretation of a provision of this Law, consideration may be given to extrinsic material capable of assisting in the interpretation—

(a) if the provision is ambiguous or obscure—to provide an interpretation of it; or

(b) if the ordinary meaning of the provision leads to a result that is manifestly absurd or is unreasonable—to provide an interpretation that avoids such a result; or

(c) in any other case—to confirm the interpretation conveyed by the ordinary meaning of the provision.

(3) In determining whether consideration should be given to extrinsic material, and in determining the weight to be given to extrinsic material, regard is to be had to—

(a) the desirability of a provision being interpreted as having its ordinary meaning; and

(b) the undesirability of prolonging proceedings without compensating advantage; and

(c) other relevant matters.

9—Effect of change of drafting practice

If—

(a) a provision of this Law expresses an idea in particular words; and

(b) a provision enacted later appears to express the same idea in different words for the purpose of implementing a different legislative drafting practice, including, for example—

(i) the use of a clearer or simpler style; or

(ii) the use of gender-neutral language,

the ideas must not be taken to be different merely because different words are used.

10—Use of examples

If this Law includes an example of the operation of a provision—

(a) the example is not exhaustive; and

(b) the example does not limit, but may extend, the meaning of the provision; and

(c) the example and the provision are to be read in the context of each other and the other provisions of this Law, but, if the example and the provision so read are inconsistent, the provision prevails.

11—Compliance with forms

(1) If a form is prescribed or approved by or for the purpose of this Law, strict compliance with the form is not necessary and substantial compliance is sufficient.

(2) If a form prescribed or approved by or for the purpose of this Law requires—

(a) the form to be completed in a specified way; or

(b) specified information or documents to be included in, attached to or given with the form; or

(c) the form, or information or documents included in, attached to or given with the form, to be verified in a specified way,

the form is not properly completed unless the requirement is complied with.

Part 3—Terms and references

12—Definitions

(1) In this Law—

Act means an Act of the Legislature of this jurisdiction;

adult means an individual who is 18 or more;

affidavit, in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration and promise;

amend includes—

(a) omit or omit and substitute; or

(b) alter or vary; or

(c) amend by implication;

appoint includes reappoint;

Australia means the Commonwealth of Australia but, when used in a geographical sense, does not include an external Territory;

business day means a day that is not—

(a) a Saturday or Sunday; or

(b) a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done;

calendar month means a period starting at the beginning of any day of one of the 12 named months and ending—

(a) immediately before the beginning of the corresponding day of the next named month; or

(b) if there is no such corresponding day—at the end of the next named month;

calendar year means a period of 12 months beginning on 1 January;

commencement, in relation to this Law or an Act or a provision of this Law or an Act, means the time at which this Law, the Act or provision comes into operation;

Commonwealth means the Commonwealth of Australia but, when used in a geographical sense, does not include an external Territory;

confer, in relation to a function, includes impose;

contravene includes fail to comply with;

country includes—

(a) a federation; or

(b) a state, province or other part of a federation;

date of assent, in relation to an Act, means the day on which the Act receives the Royal Assent;

definition means a provision of this Law (however expressed) that—

(a) gives a meaning to a word or expression; or

(b) limits or extends the meaning of a word or expression;

document means any record of information and includes—

(a) any paper or other material on which there is writing; or

(b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for a person qualified to interpret them; or

(c) any computer, disc, tape or other article or any material from which sounds, images, writings or messages are capable of being reproduced (with or without the aid of another article or device);

(d) a map, plan, drawing or photograph;

electronic communication means—

(a) a communication of information in the form of data, text or images by means of guided or unguided electromagnetic energy, or both; or

(b) a communication of information in the form of sound by means of guided or unguided electromagnetic energy, or both, where the sound is processed at its destination by an automated voice recognition system;

estate includes easement, charge, right, title, claim, demand, lien or encumbrance, whether at law or in equity;

expire includes lapse or otherwise cease to have effect;

external Territory means a Territory, other than an internal Territory, for the government of which as a Territory provision is made by a Commonwealth Act;

fail includes refuse;

financial year means a period of 12 months beginning on 1 July;

foreign country means a country (whether or not an independent sovereign State) outside Australia and the external Territories;

function includes a power, authority or duty;

Gazette means the Government Gazette of this jurisdiction;

gazetted means published in the Gazette;

Gazette notice means notice published in the Gazette;

Government Printer means the Government Printer of this jurisdiction, and includes any other person authorised by the Government of this jurisdiction to print an Act or instrument;

individual means a natural person;

information system means a system for generating, sending, receiving, storing or otherwise processing electronic communications;

insert, in relation to a provision of this Law, includes substitute;

instrument includes a statutory instrument;

interest, in relation to land or other property, means—

(a) a legal or equitable estate in the land or other property; or

(b) a right, power or privilege over, or in relation to, the land or other property;

internal Territory means the Australian Capital Territory, the Jervis Bay Territory or the Northern Territory;

Jervis Bay Territory means the Territory mentioned in the *Jervis Bay Territory Acceptance Act 1915* (Cwlth);

make includes issue or grant;

minor means an individual who is under 18;

modification includes addition, omission or substitution;

month means a calendar month;

named month means 1 of the 12 months of the year;

Northern Territory means the Northern Territory of Australia;

number means—

(a) a number expressed in figures or words; or

(b) a letter; or

(c) a combination of a number so expressed and a letter;

oath, in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration or promise;

office includes position;

omit, in relation to a provision of this Law or an Act, includes repeal;

party includes an individual or a body politic or corporate;

penalty includes forfeiture or punishment;

person includes an individual or a body politic or corporate;

power includes authority;

prescribed means prescribed by, or by regulations made or in force for the purposes of or under, this Law;

printed includes typewritten, lithographed or reproduced by any mechanical means;

proceeding means a legal or other action or proceeding;

property means any legal or equitable estate or interest (whether present or future, vested or contingent, or tangible or intangible) in real or personal property of any description (including money), and includes things in action;

provision, in relation to this Law or an Act, means words or other matter that form or forms part of this Law or the Act, and includes—

(a) a Chapter, Part, Division, Subdivision, section, subsection, paragraph, subparagraph, subsubparagraph or Schedule of or to this Law or the Act; or

(b) a clause, section, subsection, item, column, table or form of or in a Schedule to this Law or the Act; or

(c) the long title and any preamble to the Act;

repeal includes—

(a) revoke or rescind; or

(b) repeal by implication; or

(c) abrogate or limit the effect of this Law or instrument concerned; or

(d) exclude from, or include in, the application of this Law or instrument concerned any person, subject matter or circumstance;

sign includes the affixing of a seal or the making of a mark;

statutory declaration means a declaration made under an Act, or under a Commonwealth Act or an Act of another jurisdiction, that authorises a declaration to be made otherwise than in the course of a judicial proceeding;

statutory instrument means an instrument (including a regulation) made or in force under or for the purposes of this Law, and includes an instrument made or in force under any such instrument;

swear, in relation to a person allowed by law to affirm, declare or promise, includes affirm, declare or promise;

word includes any symbol, figure or drawing;

writing includes any mode of representing or reproducing words in a visible form.

(2) In a statutory instrument—

the Law means this Law.

13—Provisions relating to defined terms and gender and number

(1) If this Law defines a word or expression, other parts of speech and grammatical forms of the word or expression have corresponding meanings.

(2) Definitions in or applicable to this Law apply except so far as the context or subject matter otherwise indicates or requires.

(3) In this Law, words indicating a gender include each other gender.

(4) In this Law—

(a) words in the singular include the plural; and

(b) words in the plural include the singular.

14—Meaning of 'may' and 'must' etc

(1) In this Law, the word *may*, or a similar word or expression, used in relation to a power indicates that the power may be exercised or not exercised, at discretion.

(2) In this Law, the word *must*, or a similar word or expression, used in relation to a power indicates that the power is required to be exercised.

(3) This section has effect despite any rule of construction to the contrary.

15—Words and expressions used in statutory instruments

(1) Words and expressions used in a statutory instrument have the same meanings as they have, from time to time, in this Law, or relevant provisions of this Law, under or for the purposes of which the instrument is made or in force.

(2) This section has effect in relation to an instrument except so far as the contrary intention appears in the instrument.

16—Effect of express references to bodies corporate and individuals

In this Law, a reference to a person generally (whether the expression 'person', 'party', 'someone', 'anyone', 'no-one', 'one', 'another' or 'whoever' or another expression is used)—

(a) does not exclude a reference to a body corporate or an individual merely because elsewhere in this Law there is particular reference to a body corporate (however expressed); and

(b) does not exclude a reference to an individual or a body corporate merely because elsewhere in this Law there is particular reference to an individual (however expressed).

17—Production of records kept in computers etc

If a person who keeps a record of information by means of a mechanical, electronic or other device is required by or under this Law—

(a) to produce the information or a document containing the information to a court, tribunal or person; or

(b) to make a document containing the information available for inspection by a court, tribunal or person,

then, unless the court, tribunal or person otherwise directs—

(c) the requirement obliges the person to produce or make available for inspection, as the case may be, a document that reproduces the information in a form capable of being understood by the court, tribunal or person; and

(d) the production to the court, tribunal or person of the document in that form complies with the requirement.

18—References to this jurisdiction to be implied

In this Law—

(a) a reference to an officer, office or statutory body is a reference to such an officer, office or statutory body in and for this jurisdiction; and

(b) a reference to a locality or other matter or thing is a reference to such a locality or other matter or thing in and of this jurisdiction.

19—References to officers and holders of offices

In this Law, a reference to a particular officer, or to the holder of a particular office, includes a reference to the person for the time being occupying or acting in the office concerned.

20—Reference to certain provisions of Law

If a provision of this Law refers—

(a) to a Part, section or Schedule by a number and without reference to this Law—the reference is a reference to the Part, section or Schedule, designated by the number, of or to this Law; or

(b) to a Schedule without reference to it by a number and without reference to this Law—the reference, if there is only one Schedule to this Law, is a reference to the Schedule; or

(c) to a Division, Subdivision, subsection, paragraph, subparagraph, subsubparagraph, section, subsection, item, column, table or form by a number and without reference to this Law—the reference is a reference to—

(i) the Division, designated by the number, of the Part in which the reference occurs; and

(ii) the Subdivision, designated by the number, of the Division in which the reference occurs; and

(iii) the subsection, designated by the number, of the section in which the reference occurs; and

(iv) the paragraph, designated by the number, of the section, subsection, Schedule or other provision in which the reference occurs; and

(v) the paragraph, designated by the number, of the section, subsection, item, column, table or form of or in the Schedule in which the reference occurs; and

(vi) the subparagraph, designated by the number, of the paragraph in which the reference occurs; and

(vii) the subsubparagraph, designated by the number, of the subparagraph in which the reference occurs; and

(viii) the clause, section, subsection, item, column, table or form, designated by the number, of or in the Schedule in which the reference occurs,

as the case requires.

21—Reference to provisions of this Law or an Act is inclusive

In this Law, a reference to a portion of this Law or an Act includes—

(a) a reference to the Chapter, Part, Division, Subdivision, section, subsection or other provision of this Law or the Act referred to that forms the beginning of the portion; and

(b) a reference to the Chapter, Part, Division, Subdivision, section, subsection or other provision of this Law or the Act referred to that forms the end of the portion.

Example—

A reference to 'sections 5 to 9' includes both section 5 and section 9.

It is not necessary to refer to 'sections 5 to 9 (both inclusive)' to ensure that the reference is given an inclusive interpretation.

Part 4—Functions and powers

22—Performance of statutory functions

(1) If this Law confers a function or power on a person or body, the function may be performed, or the power may be exercised, from time to time as occasion requires.

(2) If this Law confers a function or power on a particular officer or the holder of a particular office, the function may be performed, or the power may be exercised, by the person for the time being occupying or acting in the office concerned.

(3) If this Law confers a function or power on a body (whether or not incorporated), the performance of the function, or the exercise of the power, is not affected merely because of vacancies in the membership of the body.

23—Power to make instrument or decision includes power to amend or repeal

If this Law authorises or requires the making of an instrument or decision—

(a) the power includes power to amend or repeal the instrument or decision; and

(b) the power to amend or repeal the instrument or decision is exercisable in the same way, and subject to the same conditions, as the power to make the instrument or decision.

24—Matters for which statutory instruments may make provision

(1) If this Law authorises or requires the making of a statutory instrument in relation to a matter, a statutory instrument made under this Law may make provision for the matter by applying, adopting or incorporating (with or without modification) the provisions of—

(a) an Act or statutory instrument; or

(b) another document (whether of the same or a different kind),

as in force at a particular time or as in force from time to time.

(2) If a statutory instrument applies, adopts or incorporates the provisions of a document, the statutory instrument applies, adopts or incorporates the provisions as in force from time to time, unless the statutory instrument otherwise expressly provides.

(3) A statutory instrument may—

(a) apply generally throughout this jurisdiction or be limited in its application to a particular part of this jurisdiction; or

(b) apply generally to all persons, matters or things or be limited in its application to—

(i) particular persons, matters or things; or

(ii) particular classes of persons, matters or things; or

(c) otherwise apply generally or be limited in its application by reference to specified exceptions or factors.

(4) A statutory instrument may—

(a) apply differently according to different specified factors; or

(b) otherwise make different provision in relation to—

(i) different persons, matters or things; or

(ii) different classes of persons, matters or things.

(5) A statutory instrument may authorise a matter or thing to be from time to time determined, applied or regulated by a specified person or body.

(6) If this Law authorises or requires a matter to be regulated by statutory instrument, the power may be exercised by prohibiting by statutory instrument the matter or any aspect of the matter.

(7) If this Law authorises or requires provision to be made with respect to a matter by statutory instrument, a statutory instrument made under this Law may make provision with respect to a particular aspect of the matter despite the fact that provision is made by this Law in relation to another aspect of the matter or in relation to another matter.

(8) A statutory instrument may provide for the review of, or a right of appeal against, a decision made under the statutory instrument, or this Law, and may, for that purpose, confer jurisdiction on any court, tribunal, person or body.

(9) A statutory instrument may require a form prescribed by or under the statutory instrument, or information or documents included in, attached to or given with the form, to be verified by statutory declaration.

25—Presumption of validity and power to make

(1) All conditions and preliminary steps required for the making of a statutory instrument are presumed to have been satisfied and performed in the absence of evidence to the contrary.

(2) A statutory instrument is taken to be made under all powers under which it may be made, even though it purports to be made under this Law or a particular provision of this Law.

26—Appointments may be made by name or office

(1) If this Law authorises or requires a person or body—

(a) to appoint a person to an office; or

(b) to appoint a person or body to exercise a power; or

(c) to appoint a person or body to do another thing,

the person or body may make the appointment by—

(d) appointing a person or body by name; or

(e) appointing a particular officer, or the holder of a particular office, by reference to the title of the office concerned.

(2) An appointment of a particular officer, or the holder of a particular office, is taken to be the appointment of the person for the time being occupying or acting in the office concerned.

27—Acting appointments

(1) If this Law authorises a person or body to appoint a person to act in an office, the person or body may, in accordance with this Law, appoint—

(a) a person by name; or

(b) a particular officer, or the holder of a particular office, by reference to the title of the office concerned,

to act in the office.

(2) The appointment may be expressed to have effect only in the circumstances specified in the instrument of appointment.

(3) The appointer may—

(a) determine the terms and conditions of the appointment, including remuneration and allowances; and

(b) terminate the appointment at any time.

(4) The appointment, or the termination of the appointment, must be in, or evidenced by, writing signed by the appointer.

(5) The appointee must not act for more than 1 year during a vacancy in the office.

(6) If the appointee is acting in the office otherwise than because of a vacancy in the office and the office becomes vacant, then, subject to subsection (2), the appointee may continue to act until—

(a) the appointer otherwise directs; or

(b) the vacancy is filled; or

(c) the end of a year from the day of the vacancy,

whichever happens first.

(7) The appointment ceases to have effect if the appointee resigns by writing signed and delivered to the appointer.

(8) While the appointee is acting in the office—

(a) the appointee has all the powers and functions of the holder of the office; and

(b) this Law and other laws apply to the appointee as if the appointee were the holder of the office.

(9) Anything done by or in relation to a person purporting to act in the office is not invalid merely because—

(a) the occasion for the appointment had not arisen; or

(b) the appointment had ceased to have effect; or

(c) the occasion for the person to act had not arisen or had ceased.

(10) If this Law authorises the appointer to appoint a person to act during a vacancy in the office, an appointment to act in the office may be made by the appointer whether or not an appointment has previously been made to the office.

28—Powers of appointment imply certain incidental powers

(1) If this Law authorises or requires a person or body to appoint a person to an office—

(a) the power may be exercised from time to time as occasion requires; and

(b) the power includes—

(i) power to remove or suspend, at any time, a person appointed to the office; and

(ii) power to appoint another person to act in the office if a person appointed to the office is removed or suspended; and

(iii) power to reinstate or reappoint a person removed or suspended; and

(iv) power to appoint a person to act in the office if it is vacant (whether or not the office has ever been filled); and

(v) power to appoint a person to act in the office if the person appointed to the office is absent or is unable to discharge the functions of the office (whether because of illness or otherwise).

(2) The power to remove or suspend a person under subsection (1)(b) may be exercised even if this Law provides that the holder of the office to which the person was appointed is to hold office for a specified period.

(3) The power to make an appointment under subsection (1)(b) may be exercised from time to time as occasion requires.

(4) An appointment under subsection (1)(b) may be expressed to have effect only in the circumstances specified in the instrument of appointment.

29—Delegation of functions

(1) If this Law authorises a person or body to delegate a function, the person or body may, in accordance with this Law and any other applicable law, delegate the function to—

(a) a person or body by name; or

(b) a specified officer, or the holder of a specified office, by reference to the title of the office concerned.

(2) The delegation may be—

(a) general or limited; and

(b) made from time to time; and

(c) revoked, wholly or partly, by the delegator.

(3) The delegation, or a revocation of the delegation, must be in, or evidenced by, writing signed by the delegator or, if the delegator is a body, by a person authorised by the body for the purpose.

(4) A delegated function may be exercised only in accordance with any conditions to which the delegation is subject.

(5) The delegate may, in the performance of a delegated function, do anything that is incidental to the delegated function.

(6) A delegated function that purports to have been exercised by the delegate is taken to have been properly exercised by the delegate unless the contrary is proved.

(7) A delegated function that is properly exercised by the delegate is taken to have been exercised by the delegator.

(8) If, when exercised by the delegator, a function is dependent on the delegator's opinion, belief or state of mind, then, when exercised by the delegate, the function is dependent on the delegate's opinion, belief or state of mind.

(9) If—

(a) the delegator is a specified officer or the holder of a specified office; and

(b) the person who was the specified officer or holder of the specified office when the delegation was made ceases to be the holder of the office,

then—

(c) the delegation continues in force; and

(d) the person for the time being occupying or acting in the office concerned is taken to be the delegator for the purposes of this section.

(10) If—

(a) the delegator is a body; and

(b) there is a change in the membership of the body,

then—

(c) the delegation continues in force; and

(d) the body as constituted for the time being is taken to be delegator for the purposes of this section.

(11) If a function is delegated to a specified officer or the holder of a specified office—

(a) the delegation does not cease to have effect merely because the person who was the specified officer or the holder of the specified office when the function was delegated ceases to be the officer or the holder of the office; and

(b) the function may be exercised by the person for the time being occupying or acting in the office concerned.

(12) A function that has been delegated may, despite the delegation, be exercised by the delegator.

(13) The delegation of a function does not relieve the delegator of the delegator's obligation to ensure that the function is properly exercised.

(14) Subject to subsection (15), this section applies to a subdelegation of a function in the same way as it applies to a delegation of a function.

(15) If this Law authorises the delegation of a function, the function may be subdelegated only if the Law expressly authorises the function to be subdelegated.

30—Exercise of powers between enactment and commencement

(1) If a provision of this Law (the *empowering provision*) that does not commence on its enactment would, had it commenced, confer a power—

(a) to make an appointment; or

(b) to make a statutory instrument of a legislative or administrative character; or

(c) to do another thing,

then—

(d) the power may be exercised; and

(e) anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment, instrument or other thing into effect,

before the empowering provision commences.

(2) If an instrument, or a provision of an instrument, is made under subsection (1) that is necessary for the purpose of—

(a) enabling the exercise of a power mentioned in the subsection; or

(b) bringing an appointment, instrument or other thing made or done under such a power into effect,

the instrument or provision takes effect on the making of the instrument.

(3) If an appointment is made under subsection (1) the appointment, instrument or provision takes effect—

(a) on the commencement of the relevant empowering provision; or

(b) on such later day (if any) on which, or at such later time (if any) at which, the appointment, instrument or provision is expressed to take effect.

(4) Anything done under subsection (1) does not confer a right, or impose a liability, on a person before the relevant empowering provision commences.

(5) In the application of this section to a statutory instrument, a reference to the enactment of the instrument is a reference to the making of the instrument.

Part 5—Distance, time and age

31—Matters relating to distance, time and age

(1) In the measurement of distance for the purposes of this Law, the distance is to be measured along the shortest road ordinarily used for travelling.

(2) If a period beginning on a given day, act or event is provided or allowed for a purpose by this Law, the period is to be calculated by excluding the day, or the day of the act or event and—

(a) if the period is expressed to be a specified number of clear days or at least a specified number of days—by excluding the day on which the purpose is to be fulfilled; and

(b) in any other case—by including the day on which the purpose is to be fulfilled.

(3) If the last day of a period provided or allowed by this Law for doing anything is not a business day in the place in which the thing is to be or may be done, the thing may be done on the next business day in the place.

(4) If the last day of a period provided or allowed by this Law for the filing or registration of a document is a day on which the office is closed where the filing or registration is to be or may be done, the document may be filed or registered at the office on the next day that the office is open.

(5) If no time is provided or allowed for doing anything, the thing is to be done as soon as possible, and as often as the prescribed occasion happens.

(6) If, in this Law, there is a reference to time, the reference is, in relation to the doing of anything in a jurisdiction, a reference to the legal time in the jurisdiction.

(7) For the purposes of this Law, a person attains an age in years at the beginning of the person's birthday for the age.

Part 6—Effect of repeal, amendment or expiration

32—Time of Law ceasing to have effect

If a provision of this Law is expressed—

(a) to expire on a specified day; or

(b) to remain or continue in force, or otherwise have effect, until a specified day,

this provision has effect until the last moment of the specified day.

33—Repealed Law provisions not revived

If a provision of this Law is repealed or amended by an Act, or a provision of an Act, the provision is not revived merely because the Act or the provision of the Act—

(a) is later repealed or amended; or

(b) later expires.

34—Saving of operation of repealed Law provisions

(1) The repeal, amendment or expiry of a provision of this Law does not—

(a) revive anything not in force or existing at the time the repeal, amendment or expiry takes effect; or

(b) affect the previous operation of the provision or anything suffered, done or begun under the provision; or

(c) affect a right, privilege or liability acquired, accrued or incurred under the provision; or

(d) affect a penalty incurred in relation to an offence arising under the provision; or

(e) affect an investigation, proceeding or remedy in relation to such a right, privilege, liability or penalty.

(2) Any such penalty may be imposed and enforced, and any such investigation, proceeding or remedy may be begun, continued or enforced, as if the provision had not been repealed or amended or had not expired.

35—Continuance of repealed provisions

If an Act repeals some provisions of this Law and enacts new provisions in substitution for the repealed provisions, the repealed provisions continue in force until the new provisions commence.

36—Law and amending Acts to be read as one

This Law and all Acts or regulations amending this Law are to be read as one.

Part 7—Instruments under Law

37—Schedule applies to statutory instruments

(1) This Schedule applies to a statutory instrument, and to things that may be done or are required to be done under a statutory instrument, in the same way as it applies to this Law, and things that may be done or are required to be done under this Law, except so far as the context or subject matter otherwise indicates or requires.

(2) The fact that a provision of this Schedule refers to this Law and not also to a statutory instrument does not, by itself, indicate that the provision is intended to apply only to this Law.

Part 8—Application to coastal sea

38—Application

This Law has effect in and relation to the coastal sea of this jurisdiction as if that coastal sea were part of this jurisdiction.

I commend this amendment to the committee, and I ask that the committee support my amendment rather than the government's amendment, because the disallowance arrangements to which the committee has agreed are reflected in this schedule.

New schedule inserted.

Title passed.

Bill reported with amendment.

Bill read a third time and passed.

[Sitting suspended from 13:09 to 14:15]

PAPERS

The following papers were laid on the table:

By the President—

District Council Reports, 2009-10—
Tatiara
Wudinna

Supplementary Report of the Auditor-General, 2009-10 on State Finances and Related Matters, November 2010

By the Minister for Mineral Resources Development (Hon. P. Holloway)—

Reports, 2009-10—
Australian Energy Market Commission

Department for Transport, Energy and Infrastructure
Department of Trade and Economic Development
Rail Safety Regulator
South Australian Police—Keeping SA Safe
South Australian Tourism Commission
Report on SAPOL Passive Alert Drug Detector Dogs (PADD), August 2010

By the Minister for Urban Development and Planning (Hon. P. Holloway)—

Reports, 2009-10—
Adelaide Cemeteries Authority
Department of Planning and Local Government
West Beach Trust

By the Minister for Industrial Relations (Hon. P. Holloway)—

Reports, 2009-10—
Construction Industry Long Service Leave Board
Construction Industry Long Service Leave Board—Evaluation of Long Service Leave Liabilities
Industrial Relations Advisory Committee
Mining and Quarrying Occupational Health and Safety Committee
SafeWork SA Advisory Committee
Senior Judge of the Industrial Relations Court and the President of the Industrial Relations Commission

By the Minister Assisting the Premier in Public Sector management (Hon. P. Holloway)—

Reports, 2009-10—
Administration of the State Records Act 1997
Freedom of Information Act 1991
Privacy Committee of South Australia

By the Minister for State/Local Government Relations (Hon. G.E. Gago)—

Reports, 2009-10—
Adelaide Dolphin Sanctuary Advisory Board
Children on Anangu Pitjantjatjara Yankunytjatjara (APY) Lands Commission of Inquiry—A Report into Sexual Abuse
Maralinga Lands Unnamed Conservation Park Board
South Australian Water Corporation

By the Minister for Consumer Affairs (Hon. G.E. Gago)—

Barring Orders, Liquor Licensing Act 1997—Report, 2009-10

LEGISLATIVE REVIEW COMMITTEE

The Hon. R.P. WORTLEY (14:23): I bring up the 15th report of the committee.

Report received.

NATURAL RESOURCES COMMITTEE

The Hon. R.P. WORTLEY (14:24): I bring up the report of the committee 2009-10 on its inquiry into the Upper South East Dryland Salinity and Flood Management Act 2002.

Report received.

The Hon. R.P. WORTLEY: I bring up the annual report of the committee 2009-10.

Report received.

QUESTION TIME

MINING INDUSTRY

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:24): I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development a question about the minerals resources sector and, in particular, the Digging Deep document that members would have received this week.

Leave granted.

The Hon. D.W. RIDGWAY: At lunch today, Queensland Premier Anna Bligh—

Members interjecting:

The PRESIDENT: Order!

The Hon. D.W. RIDGWAY: Chuck them out, will you, Mr President? At lunch today, Queensland Premier Anna Bligh launched a new website showing how much the mineral and energy resources sector is worth to the Sunshine State. The sector accounts for 21 per cent of Queensland's economy, 13 per cent of Queensland's total employment, 23 per cent of Brisbane's total employment and, within 10 years, will pay more than $6 billion in annual royalties.

According to the research, all Queenslanders have a stake in their resources sector at $707 a second; that is how much the sector already spends on goods and services from local businesses, wages and salaries to its Queensland employees and voluntary contributions to the Queensland communities. My questions to the minister are:

1. In South Australia, what is the value of the mineral and energy resources sector's community contributions?

2. What did it cost South Australian taxpayers to produce this glossy, almost 40-page advertisement claiming widespread social benefits of mining in South Australia, and why is this advertisement called a Social Inclusion Initiative?

3. If this document has been prepared by the South Australian Social Inclusion Board, why does it contains the following disclaimer? It states:

> No responsibility is accepted by the minister or the department for any errors or omissions contained within this publication and no liability will be accepted for loss or damage arising from the reliance upon any information in this publication.

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): In relation to the latter, I imagine that is a standard disclaimer that is put in most documents.

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: It is not that at all. It is a standard disclaimer that one would put in both government and private publications. In relation to the document that the honourable member has referred to, the reason that it has involved the Social Inclusion Unit was that the Premier announced that he had asked the Social Inclusion Unit, Monsignor Cappo in particular, to do some work on it to ensure that, with the growing mining sector which we have in this state—and it is now the largest export sector in the state, having reached that level—it is important that we ensure that the benefits of the growing mining industry are spread across the community. It was exactly for that reason that the government had requested this particular work.

During the budget, the government has taken the decision to increase the return from the mining industry through royalties. Our royalties are still more than competitive with those in any other state. We still have some advantages, like the preferential rate of royalty in the start-up years (the first five years) of a mine. In other respects, those mineral royalties are competitive, but we have moved to increase the return. It is also important that the mining industry not only contributes to the community at large—and Indigenous communities, since much of the mineral resources are located in remote areas—but also that the good work that is being done by the industry should be recognised.

I think it is only appropriate that we should recognise those mining companies such as OZ Minerals and the Beverley uranium mine and others which have a very high level of Indigenous employment and provide significant benefits to the local community. There is no doubt, if one looks

at a local community like Cooper Pedy, that it has benefited enormously from the growth of the mining industry in that area as, indeed, such cities such as Port Augusta and Whyalla do from their service industries for the mining industry.

The mining industry, while its direct employment is relatively small, because of the wealth of that industry it does generate a significant multiplier effect throughout the community. It is important that, as I said, the contribution of the mining industry to the community be acknowledged but also that we ensure that the industry does give a return across the community.

As I have said, the mining industry will often really be the only source of employment for Indigenous communities in many of the remote parts of the country. I mentioned Beverley and Oz Minerals as having particularly good records in relation to Indigenous employment, and I should mention Iluka as well because, with its mineral sands mine on the Far West Coast year Yalata, it also has a very high level of Indigenous employment. As for the actual cost of the report, I will have to refer that to my colleague. It was done through that particular unit and not through my department, so I will seek information on that part of the question.

MINING INDUSTRY

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:30): I have a supplementary question. Could the minister also provide information on how many copies were produced and to whom they have been circulated?

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) (14:30): I will take that on notice.

STATE HERITAGE

The Hon. J.M.A. LENSINK (14:31): I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning a question on the subject of heritage.

Leave granted.

The Hon. J.M.A. LENSINK: Honourable members would be aware that, with the recent decision by the environment minister to remove Union Hall from the Heritage Register after it had been provided with interim listing by the Heritage Council, and with the reduction in funding to the heritage branch of DENR, there is concern, particularly among organisations such as the National Trust, that this government's attitude towards South Australian heritage will see it further marginalised and destroyed. Can the minister confirm whether there has been any discussion for the heritage branch, or portions of it, currently located within the Department of Environment and Natural Resources to be moved to his department?

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) (14:31): I am aware that earlier this year there was a reshaping of portfolios, and there were some changes to agencies made at that time. There was some discussion as to where that agency would be but, as far as I understand it, decisions were taken at that time. A number of agencies were reshuffled but, as far as I am aware, there has been no recent discussion. However, I am happy to refer that to the environment minister to see whether or not it is still a live issue from his point of view. As far as I am concerned, decisions were taken when a number of government agencies were repositioned following the recent election, and those matters were resolved then.

LOCAL GOVERNMENT ELECTIONS

The Hon. S.G. WADE (14:32): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations a question relating to local government elections.

Leave granted..

The Hon. S.G. WADE: Last week, on Monday 15 November, the Minister for State/Local Government Relations said on ABC radio, in relation to voter turnout in local government elections, 'The final result was excellent.' Due to an opt-in voter roll system being introduced for businesses and property holders, there were approximately 15 per cent fewer voters on the roll at this election. As the percentage of enrolled voters who turned out was almost equal to that in 2006, this equates to a drop in voter turnout of approximately 15 per cent. My questions are:

1. Does the minister accept that there has been a reduction in voters at the recent local government elections?

2. Why does the minister think it is 'excellent' to see fewer people voting in elections?

3. What measures is the minister introducing to ensure that local government voter participation increases rather than falls?

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) (14:33): I thank the honourable member for his important questions. I did have some figures but, unfortunately, I do not have them with me at present. However, I have recently been briefed in terms of the outcomes from the local government elections and I am very pleased to say that, in fact, the results so far look very promising. I do have some figures here, if you will just bear with me.

This local government election was one which demonstrated a great degree of interest and vibrancy from the local government sector. I have been very impressed with the outcome. This year, we saw 67 councils elect their representatives. I am informed that 1,274 people nominated for 709 available positions. This is an increase of nearly 2 per cent over the 2006 elections. As well, this year, 362 women, or 28.41 per cent of nominees, nominated to stand as a candidate. This is a record for the total number of women nominating, as well as the percentage of nominations.

Members will recall that South Australia has a Strategic Plan target to increase voter turnout to 50 per cent by 2014. This is an ambitious target, but nevertheless we are on our way, or at least we are trending in the right direction. It is obviously a stretch target, an aspirational target, but this year we have faced the hurdle of three elections being held in South Australia over an eight-month period of time. Most of the analysis done determined that that was likely to have a negative impact in terms of voter fatigue. The final results are obviously not yet available from the Electoral Commission, but no doubt they will be shortly and we are looking forward to seeing those.

This was the first election that was held following amendments to the Local Government (Elections) Act 1999 that came into force on 21 December 2009. Those amendments introduced reforms designed to improve the election process, increase voter participation and also enhance representation in local government. The changes were informed, as I have reported here previously, by an independent review that we did of local government elections in 2008.

One of the most significant of the amendments provides for the Electoral Commissioner, after consultation with the Local Government Association, to conduct a central promotional campaign for the local government elections to inform electors and encourage voting. The costs are covered by council and I think the feedback has been that that was a very successful campaign. People were most impressed with the quality of it, and although we saw that the voting got off to a very slow start in terms of returns of votes in the early stages, we believe that the concentration of campaign efforts and also media efforts resulted in quite a comparable turnout.

It is pleasing that there were elections for mayoral positions in 49 of the 67 councils. This year, we have also seen an increase in the number of women who take up mayoral positions. I think that has increased, I have been advised, by 3.35 per cent, which is great. This year, from 709 elected member positions, 193, or 27.2 per cent, of those elected were women, which is an improvement from 180, or 24.3 per cent, females elected after the 2006 election. That now brings South Australia on par with the national average. In the past, I have always been very disappointed that we have sat below the national average—that has now brought our average up.

There were 17 new mayors in total and 10 of those new mayors are replacing other mayors. I certainly congratulate those individuals who took part in the election and those who were successful in being elected to council, and I believe the changes we have put in place in relation to addressing improvements in participation in local council elections are off to a good start, although I believe the impacts have been masked by voter fatigue. However, I do believe that in the long term those changes will generate ongoing improvements in voter turnout.

WHYALLA MINERAL EXPLORATION

The Hon. I.K. HUNTER (14:41): I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development a question regarding investment in Whyalla.

Leave granted.

The Hon. I.K. HUNTER: OneSteel directly employs about 1,700 people in Whyalla and a further 1,200 contractors. Some 700 people are employed directly at the mines in the Middleback Ranges, and OneSteel's Project Magnet has provided Whyalla with a new lease of life. OneSteel's steelworks, mines and iron ore exports continue to play a key role in the economic development of the region, with significant investments during the past decade extending the life of the steelworks and Middleback mining operations. Will the minister please provide the chamber with an update on any investment programs in Whyalla that can help support this important regional city's continued economic prosperity?

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) (14:42): I thank the honourable member for his important and timely question. I am delighted to inform members that in Whyalla last week the Premier announced that OneSteel's Iron Chieftain iron ore mine will be the 13th mine in South Australia. This builds on the four mines that were in operation when Labor took office in 2002.

The Iron Chieftain mine development, located in the southern Middleback Ranges 40 kilometres west of Whyalla, involves the construction of a new open cut hematite mine and a 4km haul road to Iron Knight, where the ore will be processed. From there the product will be railed to Whyalla and exported. This development provides continued job security for about 700 people directly employed at the mines as employees of OneSteel, Henry Walker Engineering and Brambles Industrial Services.

The Iron Chieftain development forms part of OneSteel's Project Magnet phase 2, supporting a hematite production target of 6 million tonnes a year for 10 years. As the ore will be blended to meet export grade targets, the actual mine life for Iron Chieftain will depend on the detailed sequencing of production and beneficiation across all of OneSteel's southern Middleback Ranges mines. OneSteel's Project Magnet phase 2 is being actively facilitated by the state government's case management service through Primary Industries and Resources SA.

The completion of Project Magnet phase 1 in 2008 converted the Whyalla Steelworks from a hematite to a magnetite ore feed, moving from a dry process to a wet process and releasing hematite reserves for export. Initiatives, including closing and capping the northern stockpiles, removing redundant equipment from the pelletising plant and reducing spillage at the pellet plant, have also contributed to a significant reduction in red dust.

As a consequence of these improvements OneSteel recorded zero exceedences of its community dust target in the 2009 calendar year, and in May 2010 the Whyalla red dust action group disbanded after successfully meeting its objectives. This government welcomes and supports initiatives to further develop mineral production in this state that will further underpin our vibrant and sustainable resources industry. More than $1.28 billion has been spent on mineral exploration since July 2002, supported since 2004 by the introduction of the plan for accelerating exploration.

PACE has been extended and enhanced in the latest state budget with the new PACE 2020 program being rolled out by PIRSA. Mineral exploration expenditure for the financial year to June 2010 was $166.5 million, up from $29 million in 2002-03, to account for 7.5 per cent of total spending in Australia on mineral exploration. South Australia's 2009-10 exploration expenditure of $166.5 million continues to exceed the South Australian Strategic Plan target of maintaining exploration expenditure above $100 million per year.

Mineral exports have grown to 34 per cent of total South Australian exports in 2009-10, up from 13 per cent in 2003-04, to become South Australia's largest single contributor to exports. Mineral exports were worth $2.8 billion in 2009-10, more than double the $1.17 billion in 2003-04. The value of minerals production in South Australia has continued to increase steadily, reaching $3.1 billion for the 2009 calendar year, exceeding the $3 billion South Australian Strategic Plan target for the first time.

Commodities produced in this state now include iron ore, gold, copper, zinc, lead, uranium and heavy metal sands. Iron Chieftain is the 13th mine in South Australia, with first stage construction works expected to begin this year. Other mines are also in the process of being developed in South Australia to increase this number even further. Construction work has begun at the Kanmantoo copper gold mine in the Adelaide Hills and the Antaka underground mine to the west of the open pit at Prominent Hill.

PIRSA is currently assessing the mining and rehabilitation program lodged by Western Plains, which is final mining approval required for their Peculiar Knob iron ore mining development near Coober Pedy. Heathgate's Beverley North Uranium mining development is also in the final stages of the formal state and commonwealth assessment processes. Behind these is a steady pipeline of projects in various stages of exploration and development. All of this bodes well for the future of mining in South Australia.

POPULATION TARGETS

The Hon. M. PARNELL (14:46): I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning a question about population targets.

Leave granted.

The Hon. M. PARNELL: On Friday, BankSA and Access Economics released their latest Trends report. The report stated that the state's population would reach the two million mark by the year 2038. This is 10 years later than the two million by 2029 population target that underpins the Water for Good plan and the 30-Year Plan for Greater Adelaide. The reasons for this marked slowdown are not surprising, and they include a tightening of regulations by the federal government in relation to international students qualifying for permanent residence, the high Australian dollar and the ongoing political debate at the federal level about the wisdom of a big Australia.

The two million by 2029 population target was premised on an extremely optimistic triumvirate of high fertility rates, positive interstate migration and expansive international migration. In the background technical document to the 30-year plan, which, incidentally, has disappeared from the Department of Planning and Local Government's website, the justification for the higher population target was based on just one to two years of population growth, not the long-term authoritative forecast of the Australian Bureau of Statistics.

Getting the population projections right has huge implications for how much land needs to be released on the urban fringe to meet demand and the time frame for ensuring our water security. In an answer to a previous question on this issue in September last year, the minister said:

> The projections adopted for the 30-year plan were produced by a team of very experienced and highly regarded demographers and statisticians within the Department of Planning and Local Government using ABS data.

My understanding is that it is consultants outside the department who were largely responsible for preparing the population figures but, nevertheless, I have recently been informed that the demography unit within DPLG has been severely targeted under the Public Service budget cuts, with a proposed reduction of five positions and a proposal for significant functions to be outsourced. My questions are:

1. Will there be reductions in the staffing and functions of the demography unit at DPLG and, if so, how many staff will be reduced and what functions will be outsourced?

2. Will the outsourced functions go to the same consultants who assisted in the preparation of the population forecast for the 30-year plan?

3. What will be the impact of outsourcing on the collaboration and data sharing arrangements that currently exist between DPLG and the ABS?

4. Do you accept the need to review the time frame for fringe land release around metropolitan Adelaide in the wake of the latest population forecast?

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) (14:49): In relation to the latter question, I thought I effectively addressed that yesterday in relation to a question from the Deputy Leader of the Opposition, when I indicated that if we took the fluctuations in that growth rate from each year and projected out 30 years, based on that we would have targets out all over the place. Sometimes we can expect that there will be a decline in growth rates, other years they will increase. What is important is that we do plan for the future.

As I indicated yesterday, if the growth rate declines, it will simply mean that, if we have planned properly for 30 years, it will effectively be a plan for longer than 30 years. If we have a higher growth rate, it will be fewer than 30 years that we will need to have that planning in place.

Either way, I would have thought that it does not remove the need for planning. Thirty years seems to me like the ideal sort of projection one should be considering into the future.

Obviously, you try to make your projection as accurate as possible, based on the best information at the time. However, as I have also said in this house in past years, I am sure that, in 30 years' time, the outcome inevitably will be somewhat different from what we are predicting now. That is also why we need to update our predictions regularly. Indeed, just as population projections are updated regularly, so should we look at our housing and employment estimates.

The Housing and Employment Land Supply Program (HELSP), which I announced in this house just a couple of weeks ago, is to be updated every 12 months, and that is how one can take into account movements in actual demand and requirements, and we will need to do that. Again, I would like to make the point that the amount of zoned-ready land within the urban growth boundary has been declining for some time—it is something like six or seven years, or thereabouts.

That is lower than the government would wish, which was a 15-year target recommended by the planning and development review. We would like to have sufficient land on there to provide some stability over a 15-year period, and that is something we hope to address within the next year or two when current rezoning exercises are completed. I think that should address the issues in relation to the latter part of the honourable member's question.

The honourable member also asked about staff issues within the Department of Planning and Local Government. In relation to the arrangement of staff within that department, the targets were announced in the budget. There is to be some reduction from about the 180 or so members within the department; there will be a relatively small reduction over that period of time. It is really up to the chief executive to handle how those reductions will be achieved.

What I can tell the honourable member is that we will ensure that the department has adequate resources to deal with the demographic issues. There may not be a need for us to duplicate services that are available elsewhere. If the chief executive of the department determines that the best way to meet those targets is to reduce resources in that area, that is something for which he would have my support. However, I will take that part on notice and seek to get the honourable member some direct information in relation to what the impact will be upon the department. However, I can assure the honourable member that we will certainly have sufficient resources to ensure that the state's population targets can be adequately monitored by the Department of Planning and Local Government.

POPULATION TARGETS

The Hon. R.L. BROKENSHIRE (14:54): I have a supplementary question. Given that the Leader of Government Business has advised the house that there will be a lower population growth than predicted in the 30-year plan period, will he agree to a moratorium with the community on stages 1, 2 and 3, or at least of stages 2 and 3, of the Seaford Heights development, given that there will not be the urgency for its completion?

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): I have not agreed that there will necessarily be a lower population growth over 30 years. What I have said we do get, from year to year, is some fluctuation in population growth. In the previous 12 months, there may well have been some reduction in the population growth, which could be due to commonwealth policies on immigration and so on.

They may well be temporary measures. We could find that, next year or the year after, if the world economy recovers or conditions change, our population growth does resume. I am certainly not conceding that in 30 years' time we will necessarily have a lesser number of people than in the population target. In any case, doesn't it make sense that we should plan 30 years ahead? As I said, if our population growth is a bit lower, and it takes 35 or 40 years, isn't it still a sensible thing to plan in advance for where that population growth should be located? Finally, in relation to the latter stages, I think I have addressed the issue of Seaford Heights and the staging adequately enough in previous questions.

POPULATION TARGETS

The Hon. M. PARNELL (14:56): As a supplementary, who was responsible for preparing the projections of land availability that you referred to? Was it internal departmental officers or external consultants?

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): I am not sure exactly what land availability the honourable member is referring to. Is it the entire HELS program? Is it what was in the 30-year plan or in other documents? The honourable member well knows that we did have a growth area forecast as part of the 30-year plan. It was done through an external consultancy. In relation to population projections, as I said, the department makes the final projection based on input from a number of sources.

Clearly, the Australian Bureau of Statistics is one source, but there is other information that the department takes into account. I should probably also indicate in relation to population that it is not just the actual growth rate, but it is the changes in the demographic which are at least as significant a driver of planning policy within this state. The fact is that our population is ageing—and it is ageing more rapidly than anywhere else in the country—and we will have this significant growth in the number of people aged over 65. By 2036 the percentage of people older than 65 will increase from 18 per cent to 22 per cent of the population under current projections.

That will have significant impacts upon our community about how we house people of that age group, and that will at least be as big a challenge for the government in facing that issue as dealing with the population growth rate itself. It is not only just the growth rate but the composition of the growth rate of our population which is an important factor in planning. If we do not plan for it, we will suffer horribly, because we will not be prepared for the impact that a rapidly ageing population has upon our community and our capacity to pay for it.

SECOND-HAND VEHICLES

The Hon. CARMEL ZOLLO (14:58): I seek leave to make a brief explanation before asking the Minister for Consumer Affairs a question about consumer protection.

Leave granted.

The Hon. CARMEL ZOLLO: Second-hand vehicle purchasers will soon have greater protection when purchasing a second-hand vehicle. Will the minister inform the chamber of some of the new protections that South Australian consumers will have when buying a vehicle from a second-hand vehicle dealer?

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 most important question. As members would be aware, the Second-hand Vehicle Dealers (Cooling-off Rights) Amendment Act 2009, which amends the Second-hand Vehicle Dealers Act 1995, commences on 29 November of this year. One of the key features of that new law is a cooling-off period of two clear business days during which consumers are able to consider their purchase a little more carefully without being caught up in the excitement of the moment and possibly having to live to regret a decision that might be a poor decision that they might not be able to afford, upon reflection.

The cooling-off provision applies to second-hand vehicles, including demonstration vehicles, and allows the purchaser to rescind the sales contract by giving the dealer written notice before the expiry of the two-day cooling-off period. It will be an offence for the dealer to demand or require that a purchaser make a payment other than a deposit before the expiry of the cooling-off period. The legislation does, however, allow buyers to waive their cooling-off rights if they need, for instance, a vehicle right away. That particularly accommodates purchasers such as those in country South Australia who may make a trip to Adelaide expressly for the purpose of buying a vehicle the same day.

The new legislation provides that a dealer is entitled to seek a deposit of up to a maximum of 10 per cent of the contract price. If the purchaser decides to rescind the contract, the dealer will be required to refund the money by the end of the next clear business day after receiving the cooling-off notice. The dealer may keep an amount of up to 2 per cent of the contract price or $100, whichever is the lesser.

Another feature of the legislation is the introduction of a negative licensing scheme for salespersons. The scheme requires that dealers check that there are no disqualifying factors, such as criminal convictions, for the salespeople they employ. A person must not act or be employed by a dealer as a salesperson if he or she has been convicted of an indictable offence of dishonesty; or has been convicted of a summary offence of dishonesty during the last 10 years; or is suspended

or disqualified from practising or carrying on an occupation, trade or business under a law of a state or territory or commonwealth. The legislation will make it an offence for both the dealer and the salesperson.

Another great feature of the reforms is that from 29 November a person will be presumed to be a dealer if he or she buys or offers to buy, or sells or offers for sale, at least four second-hand vehicles during a period of 12 months, unless they can demonstrate that the vehicles were bought or sold for private purposes. A person and a close associate will be presumed to be dealers if, between them, they buy or offer to sell six or more second-hand vehicles during a 12-month period, unless they can demonstrate that the vehicles were bought or sold for private purposes.

OCBA has written and provided information and brochures detailing the changes directly to dealers. Consumers and traders can obtain further information about the reforms from the Office for Consumer and Business Affairs website. I am confident that dealers are ready for these reforms, which have been made in consultation with the Motor Trade Association, the Royal Automobile Association of South Australia and the Australian Finance Conference. I look forward to the introduction of the new laws on 29 November.

PRIVATISATION

The Hon. R.L. BROKENSHIRE (15:02): I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning representing the Treasurer a question regarding privatisation.

Leave granted.

The Hon. R.L. BROKENSHIRE: This afternoon I was privileged to listen to and see constituents from the South-East primarily (but not only the South-East)—some estimating their number at 800 or more, including people who had made the long bus trip from the South-East—send a strong message to this government on their opposition to the privatisation of the forests that they have tended and harvested for generations in the South-East and, of course, throughout South Australia, including Kuitpo and areas in my own region. I note that the Sustainable Budget Commission, commonly called the 'razor gang', in its report to the government before the September state budget 2010-11, stated:

> Asset sales with an estimated total value of $144 million have been recommended by the commission in this report.

It goes on:

> These include the commission's recommendation that the government should explore the options for the sale of SA Lotteries and Forestry SA, noting that the government has previously announced the intention to sell the harvesting rights of Forestry SA's plantations for up to three harvesting cycles.

The razor gang made a range of recommendations, adding to a host of things that the government has considered for privatisation, such as the TAFE system, SA Lotteries, HomeStart Finance, the Land Management Corporation, Shared Services, Adelaide's bus services and Housing SA. These are items that the government has considered. My questions to the minister are:

1. Is anything that is not bolted down fair game for this government to sell to fund its out-of-control spending promises?

2. Does this government remain committed to its policy of no privatisations, particularly when they do not have a State Bank debacle to deal with and it is cashed up, in a sense?

3. For the sake of clarity, will it add to that no outsourcing and no forward selling of timber assets?

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) (15:05): It is rather extraordinary that the person who asked this question was, I think, at the time a minister in the government which in 1996 introduced the South Australian Timber Corporation (Sale of Assets) Act and sold Forwood Products. It sold the shares of Forwood Products and related operating assets which were owned by the old South Australian Timber Corporation to Carter Holt Harvey.

The honourable member and members opposite who have been wearing the T-shirts today—that is what they did it back in 1996. They sold the old Timber Corporation, and that was

real jobs. It was the timber mills that were sold that employed workers. This government has considered—and it was nothing new; it was first raised in a budget at least a couple of years back or a Mid-Year Budget Review—and the Treasurer announced that the state would be looking at harvesting rights. That is quite a different thing than selling the actual assets, which was what the honourable member, when he was in the Liberal Party in another place, sold back in 1996.

For the honourable member to suggest, 'Will this government sell anything that is not bolted down?'—well, this government has consistently had a no-privatisation policy, and it is one that this government has adhered to. It was not this state that sold off the Timber Corporation, the TAB, the ports, the Electricity Trust and a whole lot of other businesses at the time. For members opposite to suddenly try and sound pure on the subject of privatisation is total hypocrisy.

The honourable member who asked the question, as I say, should know better in relation to the history of this government. We have consistently had the attitude. In relation to harvesting rights, that was something that was canvassed by the Treasurer in a Mid-Year Budget Review some time ago and that the government would be investigating it. It is something that is being investigated, and the decision will be made following the investigation.

The honourable member did talk about what he called the razor gang and the Sustainable Budget Commission. Well, there were a lot of things in the Sustainable Budget Commission which this government did not accept. What the honourable member and members opposite have not done is put up their own alternative.

It is all very well to criticise the decisions that this government is making in trying to make our budget balance to try to ensure that future generations are not saddled with the burden of debt because of the operations of this government. They have not put any alternative forward as to how they would deal with it, nor have they put forward any alternative about how they will deal with the growing burden that will inevitably come to this state as a result of the ageing of the population, the rising health bill, the rising bill for disabilities and other sectors.

Whatever happens in the future, the demand for services within health and other sectors is going to grow and this government—or whatever government is in power in the future—will have to deal with them. It is all very well for members opposite to criticise decisions made by this government but, of course, what they have not done is come up with any feasible alternative whatsoever about how they would deal with the challenges before us. All we have had through question time today is criticism of every measure that we are taking. We had criticism of cuts within the department for—

The Hon. J.M.A. Lensink: Heritage.

The Hon. P. HOLLOWAY: Yes, we had heritage, that's right. There is the shadow minister saying, 'No, we should not make any cuts there.' The Hon. Mr Parnell was asking about the population sector. Is that what all the non-government members in this place stand for: just do nothing, just keep spending on what we have done in the past and have no attempt to balance the budget whatsoever? We just keep doing what we have done? Now—

Members interjecting:

The PRESIDENT: Order! Opposition members should not let their past haunt them so much.

The Hon. P. HOLLOWAY: My comment to the honourable member who asked the question and to members opposite is: yes, of course; we are a democracy. They can criticise the decisions of this government, but I challenge them to put up some alternatives. We know that they will not. Every financial decision this government has made should be judged on the basis of the alternatives available. At the end of the day we will be judged on that, but the opposition pretends that you can just do nothing, that you can just leave the situation as it is and not make the billion dollar cuts that are necessary to bring the budget into balance.

If you do not do it, you see what happens. In the United Kingdom you can see some real austerity measures; they have cut 500,000 public servants, increased retirement ages, cut government programs by 20 per cent and done a whole lot of other things. Those are the sorts of austerity measures that other countries in the world are facing. This government is trying to deal with our budget challenges in a way that has minimum impact upon the people of this state.

SOUTH ROAD

The Hon. J.S. LEE (15:11): I seek leave to make a brief explanation before asking the Leader of the Government a question about planning for South Road.

Leave granted.

The Hon. J.S. LEE: Broadcast on the afternoon of Monday 22 November and also yesterday morning on ABC radio was information about an accident that occurred on South Road between Torrens Road and Port Road near Ridleyton. Many constituents mentioned that this section of South Road has Stobie poles that lean into the road, where signs tell trucks to travel on the inside lane to avoid collisions. The Executive Director of the Road Transport Association, Mr Steve Shearer, stated on ABC radio yesterday that 'it is a major freight route and it has been our number one priority for infrastructure improvements for the better part of the last decade'. Minister Conlon sent in a statement to the ABC on 22 November confirming that 'approximately 4,500 trucks use this particular section of South Road'. My questions to the minister are:

1. What recent consultations has the government had with the Road Transport Association regarding the problems?

2. Does the government believe it is an adequate and safe measure to use signage to warn the 4,500 truck drivers of hazardous sections of South Road?

3. In 2006 the government released a policy that announced $47 million to be spent to widen South Road between Port Road and Torrens Road. Can the minister outline whether the government still intends to implement that policy for that section of South Road?

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) (15:13): As the honourable member said in her question, South Road has been recognised as a major freight road for a decade. Of course, that encapsulates the time in which the Rann government has been in office.

The Hon. J.S.L. Dawkins interjecting:

The Hon. P. HOLLOWAY: The sorts of roads that members opposite like are one-way roads—

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: The South Road that we had from members opposite was a one-lane road that went one way in morning and the other way in the afternoon.

Members interjecting:

The PRESIDENT: Order! The Hon. Ms Lee is one of the very well behaved members in this chamber, and she has the right to hear the minister's answer in silence.

The Hon. P. HOLLOWAY: South Road is, of course, a major freight route for this state, and I know that my colleague the Minister for Transport is in regular contact with the major freight providers in relation to that road. This government intends to upgrade South Road, and it has been doing that progressively: we have the Gallipoli Underpass, there is planning for the Sturt Road intersection that the government recently released, and we are duplicating the Southern Expressway and building a proper overpass at the junction of that road.

Of course, with commonwealth support we are building the superway, which will be a very busy section for traffic in the future with the opening of the Northern Expressway. There will be lots of heavy traffic around the northern part of South Road, so that South Road Expressway is being built. There are still a number of other sections that need improvement and, of course, the section of road the honourable member refers to is one of the problem areas, but it is not the only part of South Road. The other piece of major infrastructure on South Road that I have not mentioned is the tram overpass.

During the term of this government, we have spent a lot of money on improving South Road, but there are still a number of other hiccups occurring on that road, not only the section of road the honourable member refers to. You could also look at the area around Castle Plaza through Edwardstown which is also a heavily constricted section of road. It is going to take a number of years. Even if one were to start tomorrow, as my colleague the Minister for Transport has pointed out, it will take a significant amount of time to actually do the physical work, because

you have to keep the road operating at the same time. However, with the section of South Road in question, it is not as though those Stobie poles have got there recently. They have been there for as long as I can remember, probably going back to at least the 1960s.

An honourable member: It's always somebody else's fault.

The Hon. P. HOLLOWAY: Well, what about you? If it was such a big issue, what did you do during the eight years the Liberals were in government? Was it a priority for you? I can tell you those Stobie poles have not moved in that time: they have not shifted or bent a bit closer to the road. I think the honourable member is correct: yes, there is a hazard on that section of road, as there are hazards, unfortunately, on many other roads, but the rate at which we can improve them is somewhat limited.

I again make the point that this government has spent a lot of money on improving South Road. It will continue to spend significant amounts of money in the near future, and we will continue to upgrade it. Unfortunately, the practical reality is that we cannot do it all at once. If there are any other specifics to the question in relation to how often, or when the minister most recently met the freight providers, if the Minister for Transport has anything further to add, I will invite him to do so.

The PRESIDENT: The Hon. Mr Finnigan.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. Lucas: They ought to cut you down rather than the forest.

The PRESIDENT: Order!

ADELAIDE SHORES

The Hon. B.V. FINNIGAN (15:17): My question is to the Minister for Urban Development and Planning. Will the minister advise the chamber of recent awards granted to the West Beach Trust?

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) (15:18): I thank the honourable member for his important question. The West Beach Trust, which is known to South Australians as Adelaide Shores, manages the 135-hectare West Beach Recreation Reserve on behalf of the South Australian government as a sporting, cultural and recreational complex.

This complex incorporates the Adelaide Shores Resort and the BIG4 Adelaide Shores Caravan Park, along with high quality facilities for golf, boating, sport and functions. There would be few South Australians who have not visited Adelaide Shores, either for a family getaway or as part of a school or sporting group outing. These combined operations bring an estimated 500,000 people a year to the western suburbs of Adelaide for holidays, events and recreation. This high level of visitors to Adelaide Shores in turn generates significant income for South Australia.

The precinct was once again recognised as an industry leader on 18 November, when it was successful in two categories of the 2010 South Australian Tourism Awards. Adelaide Shores Resort won the Deluxe Accommodation category within a large field of 11 entrants. The BIG4 Adelaide Shores Caravan Park was successful in the Tourist and Caravan Parks category against a high quality field including a past category winner. Adelaide Shores also associated with the Festivals and Events category at the 2010 South Australian Tourism Awards for successfully providing the Special Olympics Australia IX National Games in Adelaide with its games village.

In April this year the Adelaide Shores precinct accommodated about 850 athletes, provided catering and hosted four sports. The West Beach Trust has advised me that the provision of a single games village at the Adelaide Shores precinct was a first for the Special Olympics. The South Australian Tourism Awards are considered the peak awards for excellence within the tourism industry. These awards reward innovation and foster best business practice by setting benchmarks to which all tourism operators can aspire. The South Australian Tourism Awards are peer endorsement for the Adelaide Shores capital investment program, commitment to environmental sustainability and strategic vision for the precinct as a premier holiday destination and community sporting hub.

The dedicated management team at the West Beach Trust, headed by Kate Williams, who succeeded Gareth Smith in May this year as chief executive officer, along with all their staff are

commended for their enthusiasm and hard work in winning the South Australian Tourism Awards. I also take this opportunity to commend the work undertaken by the West Beach Trust Board, chaired by Mr Bernie Lange. Adelaide Shores continues to provide good value, high quality tourism accommodation. Adelaide Shores Caravan Park has maintained its AAA 4.5 star rating and Adelaide Shores resort has retained its AAA four-star rating.

It is pleasing that the West Beach Trust, trading as Adelaide Shores, is continually looking to improve so that it can retain its enviable reputation as a provider of high quality tourist accommodation. A program for continuing investment into new and refurbished accommodation has been crucial to the success of Adelaide Shores. Adelaide Shores resort's ongoing refurbishment program has resulted in 30 villas and eight holiday units receiving comprehensive interior upgrades. In November last year Adelaide Shores Caravan Park introduced an innovative new product—the first eco-tents in South Australia—and in January this year added 11 new deluxe cabins with five-star energy efficiency. I know the team at Adelaide Shores will not rest on its laurels as it continually strives to provide outstanding tourism, sport and community facilities to the people of South Australia and visitors to our state.

TORRENS ISLAND

The Hon. A. BRESSINGTON (15:22): I seek leave to make a brief explanation before asking the minister representing the Treasurer a question on the proposed development of Torrens Island.

Leave granted.

The Hon. A. BRESSINGTON: As members will recall, some months ago I moved a motion calling on the government to abandon its plans to further industrially develop Torrens Island and instead take steps to preserve its significant environmental and heritage value. Unfortunately, both Labor and Liberal parties revealed themselves to be pro-development, regardless of the cost, and rejected that motion. As a result I was fully expecting the South Australian Government Financing Authority to proceed with the application to the Development Assessment Commission for subdivision, which I might add had been requested by the Treasurer to be put on hold until the motion had gone to a vote.

For this reason it was to my surprise last week to learn that the Treasurer had instructed the South Australian Government Financing Authority to withdraw the application for subdivision. I was further surprised to learn that a recommendation had been made to transfer ministerial responsibility for Torrens Island to the Minister for Transport, Energy and Infrastructure. The advice I have received is that the transfer of ministerial responsibility would not have precluded the continuation of the South Australian Government Financing Authority's application for subdivision, meaning that the government must have another motive for withdrawing the application.

While no official explanation has been given, it is my suspicion that the government this time, through the Department for Transport, Energy and Infrastructure, will soon reapply to the Development Assessment Commission for subdivision and also development approval under section 49 of the Development Act. As the previous application only related to subdivision, it was assumed that the proposed developers of each allotment would have to seek development approval and, as such, the environment and heritage impact of each development could be reviewed individually. If my suspicions are correct, however, these developments will now avoid the scrutiny applicable to private developments under the Development Act and consequently deny those who seek the preservation of the pristine coastal environment and heritage-listed quarantine station the right to object. My questions to the minister are:

1. Is it the government's intention to proceed with further industrial development of Torrens Island?

2. Why did the Treasurer give instructions to withdraw the application to subdivide Torrens Island?

3. Did the Treasurer give these instructions, knowing that the Department for Transport, Energy and Infrastructure would be making fresh application to the Development Assessment Commission?

4. If so, is it the government's intention to reapply for both subdivision and development approval for Torrens Island? If so, why, and, if not, is it to avoid public scrutiny?

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): As I understand it, the Treasurer is the local member for the area down there. I imagine he would feel a lot more comfortable in representing his constituents if the agencies that are making decisions down there were reporting to another minister so that he would be able to be involved in that. As for what the transfer means, I think the honourable member is reading a lot more into it than that, but I will seek—

The Hon. D.W. Ridgway interjecting:

The Hon. P. HOLLOWAY: For a start, the honourable member mentioned the station down there which is heritage listed. As it is on the state heritage list, that quarantine station is absolutely protected. If the suggestion is that, if there are to be any further proposals down there, they could avoid scrutiny, I do not see how transferring control from one minister to another is going to have any impact on that at all.

As I understand it, the only reason that the issue of Torrens Island was under the Treasurer was that it was part of the fallout from the sale of the electricity trust, where one of those corporations that was dealing with those assets that came with the sale of ETSA was incorporated into the Treasurer's portfolio. It certainly seems to me to make more sense that the Minister for Infrastructure would be the appropriate minister to be involved in the consideration of such issues.

As I said, it is probably just a historical accident that the Treasurer would be involved in these matters, because the land was owned by a corporation that was left over from the sale of the electricity trust 1½ decades ago. As I said, I think the honourable member might well be reading much more into this than is the case.

In relation to future plans for the area, I know for some time now there have been plans for an additional power station adjacent to the current location, but that was on cleared land. That is something that has been well known. Clearly, the future of Torrens Island is important. I will seek a response from the Minister for Infrastructure as to what current plans, if any, the government is considering in relation to the future of this land.

MATTERS OF INTEREST

MORRISON, MR R.

The Hon. J.M. GAZZOLA (15:27): I rise today to pay tribute to Rodney Morrison who died in October. Rod was a delegate for the Yorke Peninsula sub-branch of the ALP, a former union official and committed community activist. Rod was born in Pakenham Victoria to dairy farmers and attended the Marist Brothers School, along with his two brothers, Darryl and Michael. Rod, fortunately, turned his considerable mischievous energies to school sport, becoming school captain and captain of the swimming, football and tennis teams and, to reassure his parents of some academic leanings, was also captain of the debating team.

Such was his authority and presence in his preferred school interests that his wife to be, then a student at the same school, thought that he was also the captain of the girls' basketball team. Rod carried this passion and conviction throughout his life. At 18 years of age, Rod answered the call to go to New Guinea as a Kiap, an administrative field officer, Australia's in the field answer to managing its territorial responsibilities in Papua New Guinea until independence in 1974. His new wife, of course, followed; two of their three children, Stuart and Cassie, being born in Lae.

What is a Kiap deserves some explanation not only for its interesting history but for the light it sheds on the character of Rod Morrison. The term is pidgin English for captain from the German kapitan, a legacy of the German colonial era. What did they do? A short answer would be everything. The country is daunting enough: impenetrable jungles, high mountain ranges, wide and wild rivers, isolated and hostile tribal groups, not to mention 700 languages and living with the ever-present danger of attack. Many Kiaps were murdered by spear, axe or poison-tipped arrows, not to mention snakes and crocodiles, as well as having to live with sicknesses like malaria and dysentery. Theirs is an untold story.

The work as a patrol officer was to be a master of everything—a judicial officer, diplomat, mechanic, you name it—but it is best summed up as a lifestyle by C.A.W. Monckton, a past resident magistrate in Papua, who said, and I quote selectively:

> He must also be prepared to spend weeks alone with the natives, spend most of his pay on living expenses and, at the end, to have his health shattered...for an officer to remain in the service he must practise monastic celibacy...he must be prepared to live in subhuman habitation...and to remain sane, possess a sense of humour.

Rod's family and friends testify to his unique qualities and his sense of humour. The year 1978 saw the family back in Australia, with Rod employed as a fisheries officer in what is now PIRSA. After obtaining his degree, majoring in labour studies, Rod's passion for social justice and his election as a worksite representative saw him elected in 1992 to the PSA council and PSA executive. His fight for workers' rights and workers' occupational health and safety continued with his election to the ACTU Occupational Health and Safety Committee in 1996, his election to assistant general secretary of the PSA in 1996 and his re-election in 2000, as well as his becoming vice president of SA Unions in the same year. These were just some of his notable union responsibilities.

Rod would have shaken his head at the current plight in relation to workers' rights. He was most unhappy with the changes to workers compensation, and he would have been equally irate in relation to the current budget dispute, which would have seen him on the steps of Parliament House and, indeed, in my office. As we can see and imagine, Rod Morrison led an interesting life and all who knew him remark on the constant themes that summed up Rod: passion, honesty and integrity. In his later years, concerned with poor health, Rod retired to Wallaroo, where his continuing interest in union concerns and workers' rights saw him as a contributing member of the Yorke Peninsula ALP sub-branch. Rod leaves behind his ex-wife, Jane, and children, Stuart, Cassie and Tiki. I and the York Peninsula ALP sub-branch extend our sympathies to them. Vale, Rod Morrison.

NORTHERN ADVANCED MANUFACTURING INDUSTRY GROUP

The Hon. J.S.L. DAWKINS (15:32): I rise today to speak about the Northern Advanced Manufacturing Industry Group (NAMIG), a group formed by a number of northern suburbs businesses looking for talented young people to join their industries. NAMIG's core focus is helping students to form advanced manufacturing pathways. In the words of NAMIG's brochure, this translates to the following:

> The utilisation of enabling technologies, incorporating design and business process innovation to deliver high value-added processes and products in ways that are novel and competitive.

In bringing these advanced manufacturing pathways to life, NAMIG has produced the Concept 2 Creation programs (otherwise known as C2C), which enables students to see a product from concept (the planning stage) through to creation (the final product), which is then displayed at yearly expos at Golden Grove, showcasing the students' hard work. I have attended these expos over the previous two years. I am also pleased to note that the Governor attended those expos in his capacity as patron of C2C, and he obviously showed great interest in the exhibits on display.

The projects are innovative and tailored to our current living situation. For example, some of the projects currently on show on NAMIG's website include an auto fish feeder, a water management system, musical pool tables and a communication device to help a student who is not able to speak. These unique and diverse ideas show that the students' imagination is limitless, as they are able to design and produce their own creations. This helps to keep them interested in the project in hand and encourages them to strive to finish their final product.

Through the continual growth of the C2C program, more and more industry sectors are becoming involved with this cause and donating their time and effort to helping students realise their potential in fields such as engineering by providing scholarship money and the opportunity for a select number of students to undertake TAFE traineeships, as well as different fields of study than they would otherwise complete within the school curriculum.

Throughout NAMIG's existence as a leading manufacturing advancement group, it has won several awards, including last year's Engineering Excellence Awards—Taking Advanced Manufacturing to our Next Generation, and at the 2009 Technology Industry Association Awards, it was awarded the Support of Education Award. This partnership of industry and education plays a big role in the lives of the students that participate, helping them to decide career pathways they might like to pursue in the industry sector—pathways they may have otherwise not given lasting thought to. I commend the NAMIG Group and its chair, Brian Wildman, and its CEO, Bernie Fitzsimons, for paving the way for our youth to expand their education and to develop skills worthy of employment within the engineering industry sector—a pathway possibly overlooked otherwise.

In addition to the C2C Expo, I was fortunate enough to attend the NAMIG second industry forum in October where Mr Jim McDowell, Chief Executive of BAE Systems Edinburgh, and

Mr Martyn Cray, Executive Director of General Motors Holden were in attendance, representing two of the largest employers in the northern suburbs industry sectors. These two gentlemen and their companies are well aware of the benefits of working with schools to ensure future employees.

I urge the state government to continue funding for this program through DFEEST. I know that at the moment NAMIG has 12 months' funding for 2011, but I think that extra security would be very valuable. I understand that the federal funding runs out at the end of this year. There is a range of schools involved, and I will mention some of them: Craigmore High School, Fremont-Elizabeth City High School, Parafield Gardens High School, Para Hills High School, Riverton and District High School, Salisbury East High School, Salisbury High School, St Mary's College, St Patrick's Technical College, St Paul's College and a number of others.

Time expired.

MARIE STOPES INTERNATIONAL

The Hon. I.K. HUNTER (15:37): I rise today to bring attention to an organisation which is helping women in remote communities and developing countries around the world. Today I want to talk about the work of Marie Stopes International, particularly the organisation's Five by Fifteen initiative.

Five by Fifteen provides family planning and reproductive health care to women living in remote areas. The initiative was developed specifically to help meet the United Nations' fifth Millennium Development Goal for improved maternal health by 2015. The goal calls for a reduction in the maternal mortality ratio by three-quarters along with universal access to reproductive health information.

Marie Stopes International was established in London in 1976 and grew out of the organisation originally set up by Dr Marie Stopes, the family planning pioneer who opened the UK's first family planning clinic in 1921. The World Health Organisation has estimated that currently only 25 to 35 per cent of women use modern day contraceptives. Last year alone there were 80 million unplanned pregnancies, 19 million of which resulted in unsafe abortions. The simple truth is that lives can be saved with family planning.

Research shows that women in isolated communities, who have consecutive pregnancies in quick succession, put themselves and their children at risk. This can result in children being born prematurely and malnourished, with low weight or anaemia. The mothers face increased risk of nutrient deficiency, physical injury and even the possibility of chronic illness or death. Tragically, there are around 530,000 pregnancy-related deaths every year around the world. A woman dies every eight minutes due to pregnancy-related complications. Tragically, their surviving infants are 10 times more likely to die before their second birthday than babies with mothers.

Many die from medical complications such as severe bleeding, infection, eclampsia, obstructed labour and unsafe abortions, all of which are entirely preventable. For every woman that has died from pregnancy complications, an additional 20 will suffer serious long-term or lifelong illness or injury. Apart from the physical risks, many are not financially capable of providing for their families, especially in some cases where women have up to 10 children or more.

It is estimated by organisations working in the field that 215 million women around the world want better access to family planning information. These 215 million women seek contraceptive choices so that they can make sure that every pregnancy is a wanted one. Unfortunately, many of these women live in isolated communities where there is no reproductive health care available. The good news is that Marie Stopes International's outreach teams can now reach more than 5,800 communities in 27 different countries. These outreach teams use any means possible to reach these isolated women. They travel by boat, motorbike, truck, bicycle, canoe, or sometimes even on foot.

Marie Stopes International provides approximately 143 million condoms, 7.1 million contraceptive pills, 779,000 contraceptive injections, 502,000 intrauterine devices and 90,000 contraceptive implants every year. Marie Stopes International estimates that its work has so far spared the world 36,000 maternal deaths, 9.3 million unwanted pregnancies and 2.6 million unsafe abortions, simply by giving women health advice and a choice of contraception.

Offering preventive measures such as contraceptives is often not sufficient. Women who fall pregnant are still at risk of infection after unsafe births. Ensuring that women have access to skilled birth attendants during the birth, and also emergency care if they experience complications, can reduce the risk of illness or possible death. In countries where abortion is legal, Marie Stopes

International tries to provide high quality, safe abortion services to women who choose to have one.

Where abortion is a restricted medical service, they not only aim to provide long-term family planning methods but they also educate on safe birthing methods and provide post-abortion care for women who have either undergone an unsafe abortion or who have self-aborted. If the United Nations fifth millennium development goal is to be reached by 2015, if we are to ensure universal access to reproductive health information and a reduction in the maternal mortality ratio by 75 per cent, then we need to do whatever we can to help.

A $20 donation to Marie Stopes International can easily provide a month's worth of reproduction healthcare and contraception for 100 women around the world. Women in countries such as Papua New Guinea, China, Timor-Leste, Mongolia, Myanmar, Philippines, the Pacific Islands and even here in remote areas of Australia, would benefit. I encourage all of my parliamentary colleagues to consider giving to this important initiative, as I have done and will continue to do.

Time expired.

INTERNET SAFETY

The Hon. D.G.E. HOOD (15:42): Today I want to raise the important contribution made to internet safety for our children by a company called Internet Education and Safety Services. This company is actively involved in the education of children on the dangers of cyber bullying and avoiding internet predators, something strongly supported by not only Family First but, I would imagine, every member of this chamber.

Mr Brett Lee, managing director of the company, emailed me the following account of a recent trip he undertook to schools around the Yorke Peninsula. He states:

> I was addressing the teachers at Ardrossan when one of the staff recounted that only the previous weekend her and her daughter were watching an internet safety program on the ABC which highlighted dangers surrounding teens online. After the program the staff member told her daughter that they were going to get into her (the daughter's) internet accounts such as MSN Messenger and MySpace and remove some photos and change the friends lists. Her daughter then said to her, 'I've already done it, mum, a guy came and spoke to us last week and I went straight home and got rid of some of the pictures, made my site private and removed people I didn't know.' It is stories like this that retain my passion and help me know I am on the right track with my programs. Thank you again for your interest in this issue.

The prevalence of cyber bullying and the use of the internet by paedophiles to prey on children has been identified as a major issue facing educators not only in South Australia but worldwide. iNESS Australia's mission is to equip and educate young Australians with the skills and knowledge to enable them to use the internet safely, whilst making them aware of their rights and responsibilities in the cyber world.

This unique business is the first of its type in Australia specialising in internet safety and cyber bullying presentations. Mr Brett Lee—no relation to the fast bowler, as I understand it—worked as a Queensland police officer for some 22 years, 16 of those as a detective in the field of child exploitation. In his last five years of service he was a specialist in the field of undercover internet child exploitation investigations.

Brett has been personally involved in the online investigation, arrest and prosecution of numerous offenders, whose medium for preying on children was the internet. This inspired a passion to impart his expert knowledge to as many children as possible to ensure that they remain as safe as possible online.

Brett has delivered training and instruction to members of many law enforcement agencies, including the New South Wales and Western Australian police services and Australian Customs and, of particular interest, was instrumental in providing training and assistance in the development of internet investigators within the South Australian police force.

Brett has trained and worked with the FBI in Maryland in the USA, the Department of Homeland Security Cyber Crimes Center in Virginia, USA and the San Jose Internet Crimes Against Children Task Force in California.

Brett received the Queensland Police Commissioner's Gold Award and the Crime and Misconduct Commissioner's award for his role in the development and implementation of software that is now utilised by various Australian law enforcement agencies to identify and track online child offenders. Brett left the Queensland Police Service in 2008 to establish iNESS, the first privately

owned Australian business to specifically target the education of children in the dangers of the internet, cyber safety and cyber bullying.

I call on the minister to make available sufficient funding for South Australian schools to take advantage of this important protection tool. I am obviously happy to pass on any of the details of iNESS and any of the specifics and, indeed, the contact details for Mr Brett Lee, who understandably is eager to give students, teachers and parents of South Australia the skills to protect themselves online and to protect our most vulnerable online. The reality is that this is where most children are subject to such predators in our current day and age, and I am really very pleased to bring this matter to the council's attention.

NONNO-NIPOTE PROJECT

The Hon. CARMEL ZOLLO (15:46): Around the middle of last year, I was approached by the president of the Campania Sports and Social Club in South Australia, Mr Mark Quaglia, to lend my support to a wonderful project whereby the Federation of Campani Associations of South Australia (FAECSA) was hoping to attract funding from the Campania region of Italy.

As a brief overview, the project sponsored grandparents and their grandchildren to return to the place of birth of the grandparent in order for the grandchildren to immerse themselves in their heritage with the guidance of their grandparents.

I was pleased to be asked to be involved in this project and to see it to fruition. I had the opportunity not only to make written representation and many follow-ups but also to personally lobby the then minister in Campania. I believe I was able to express the very strong wishes of the community in South Australia to see the project funded, bearing in mind that it captures the very special bond that we see between grandparents and their grandchildren.

It was, of course, the grandparents who made that leap of faith, leaving behind everything that was familiar, hoping for a new beginning for themselves, but more importantly, for those who would come after them.

A multicultural reception was held to farewell those whom the Federation chose for the experience. The role that grandparents play in the continuity of culture, traditions and language is paramount in the migration story. It is, of course, one thing to hear about the past but altogether another for grandchildren to see first hand where their families come from and to be part of their own heritage even for a short period of time.

The three grandparents and their grandchildren, Mrs. Rosa Morelli and her granddaughter Cassandra Sianis, Mrs. Alberina Luongo and her grandson Cristian Ricciardi, and Mr Carmine Barone and his grandson Alec Barone, were chosen from South Australia to be part of this inaugural project. FAECSA describes the aim of the Nonno-Nipote Project as:

> a journey back to new discoveries—is to use the strong relationship between the grandparent and their grandchild as a conduit from which the grandchild can both deepen their understanding of their 'family story' and also use this experience as a catalyst towards exploring, expanding and further affirming their relationship with their forefathers' country of origin.
>
> During their stay, each nonno/nonna, with their nipote, shall spend time in the area where their 'family' originated so as to give the nipote a 'deeper understanding' of their heritage. The grandchild's school in Adelaide will be linked with the school in the grandparent's town so as to enable the grandchild to undertake extracurricular activities while in Italy. And for the nonno/nonna, this experience shall be both a time that will awaken the 'memories of a time long past' and also to experience and appreciate the significant changes that have occurred in Italy over the past 50 years. The region of Campania also organised various tours and educational activities for the participants of this project.

I am pleased to say that those participants fortunate enough to be chosen for this project have returned with praise for their experiences and the wonderful cooperation and assistance shown by all. The grandchildren attended their respective education institutions and study trips were organised for both grandparents and grandchildren. The project well and truly fulfilled its aim, and the students will now be preparing their reports for the various authorities. Anybody who is the grandparent would understand the enormous bonds that exist between grandchildren and their grandparents and so it is not difficult to appreciate the pride such a return visit would instil.

I congratulate the President of the Campania Club, Mr Mark Quaglia and Mr Teo Spiniello, the Vice Secretary of the Federation, for their commitment in seeing this project to fruition. Mark Quaglia, in particular, was passionate in ensuring its success. I wish future projects the same success. I want to thank the Campania regional government and, in particular, the now retired minister of (among other things) youth affairs and migration, the Hon. Alfonsina De Felice (who

also visited Adelaide several years ago), for their commitment in providing the entire funding for this special project. I especially thank the Campania regional government for understanding that providing educational and cultural links is so very important in ensuring that the history of migration is not lost, sending a clear message to those who made the sacrifices that their efforts were not in vain.

GOVERNMENT PERFORMANCE

The Hon. R.I. LUCAS (15:50): I would like to talk about a government in its death throes, one that is tearing itself apart while seeking to damage itself and its colleagues. Sadly for South Australians, the fact is that, whilst this government and its members seek to damage themselves, they will also damage the future of South Australia for the next 3½ years, as we await the next election.

One cannot walk the corridors of this place, or take a telephone call, without running into some Labor source wanting to leak damaging information against another government MP, wanting to damage first the Premier or the Treasurer and then the leadership contenders as well. The sources from the left are leaking against the Premier and the Treasurer, and any of the contenders from the right, whether it be Messrs Koutsantonis, Snelling or Rau; the sources on the right, of course, are busily trying to undermine and damage the reputation of minister Weatherill.

One amusing aspect to all this is that one Labor source said to me only last week, being critical of the Premier himself and his arrogance, that the man who sees himself as the 'King Twit' has evidently 'de-tweeted' his own spin doctors and banned them from tweeting on Twitter. He apparently allows them to be Twitter voyeurs; they are allowed to look at, or follow, other tweeters but they are not allowed to participate. Perhaps Premier Rann is concerned that the tweets of his spin doctors might outshine the 'King Twit' himself in relation to the use of Twitter.

This damaging outbreak of hostilities within the Labor Party has spread to the floor of the other place. We understand that today open warfare has broken out between minister O'Brien and the Treasurer on the floor of the parliament in a very unedifying spectacle for the people of South Australia in terms of the state's long-term future. Evidently minister O'Brien has taken strong exception to the stories that Treasurer Foley and his spin doctors have been spreading in the corridors—not only to MPs but also to members of the media—about minister O'Brien's performance.

It seems that minister O'Brien could no longer control himself, and got up in question time and openly disagreed with the views of the Treasurer. Of course, the Treasurer is mightily displeased with anyone disagreeing with his views, and we are also reliably informed that the media is chasing minister O'Brien, but he has holed himself up in the House of Assembly chamber, refusing to come out. He has to come out at some stage, and I am sure that the media will wait around long enough to cover all the doors and exits to get a comment from him.

When the Treasurer was asked, in the first instance, about whether or not he agreed with the views expressed by minister O'Brien about the privatisation of SA Forests in the South-East, minister O'Brien was heard to issue a loud expletive in the chamber, indicating his displeasure. He was then asked a question about whether he agreed with the Treasurer, and my lower house colleagues inform me that he said he did not, and proceeded to explain why he, the self-proclaimed best qualified, most magnificent primary industries minister this state has ever seen, apparently, was also the expert on privatisation and Treasury—albeit he did get a small matter wrong in relation to finances: according to the Mount Gambier transcript, he still had not caught up with the fact that South Australia gets all the GST revenue and has done so since the deal was negotiated almost a decade ago.

So, perhaps his own magnificence, in terms, as he sees it, of forestry issues, does not really extend to matters financial as perhaps he might think himself. Sadly, we see, as I said, a government in its death throes. The problem is not just for the government. The problem we see is for the people of South Australia because, for the next 3½ years, all this government and its members are going to do is seek to do damage to each other, rather than seek to do good for the people of South Australia.

The ACTING PRESIDENT (Hon. I.K. Hunter): As we segue from that fantasy back to reality, I call the Hon. Mr Parnell.

LOCAL GOVERNMENT ELECTIONS

The Hon. M. PARNELL (15:55): I rise today to speak about openness and transparency in local council elections. One of the myths of local council elections, and it was as true in the elections this year as it has always been, is that local councils are not political, that the only people who run for and are elected to local councils are unaligned Independents. We know that that is not true. It has probably never been true, and in fact, in some areas, it is probably fair to say that local government has been the plaything of political parties—the grounds on which they train their up-and-coming state and federal MPs. We know that a large number of councils are dominated by party aligned elected members—Charles Sturt springs to mind. Now, at the election this year—

Members interjecting:

The ACTING PRESIDENT: Order!

The Hon. M. PARNELL: —the Port Adelaide branch of the Australian Greens, took the principled decision—

The Hon. R.I. Lucas interjecting:

The ACTING PRESIDENT: Order, the Hon. Mr Lucas!

The Hon. M. PARNELL: —to declare up-front the party affiliations of three local members who wished to run as candidates. Now, there was some nervousness about how that would be received, given the myth of non-political councils but, as it turns out, there was very little reaction at all, and certainly very little negative reaction. In fact, there was a fair bit of positive support, even from those who could not see their way clear to voting for them; they at least acknowledged that these people were upfront about what they stood for in terms of their party affiliations.

Members might be aware that, at the recent local government annual general meeting, Campbelltown council moved, and Tea Tree Gully council seconded, a motion as follows:

> That the LGA petition the State Government to amend the *Local Government (Elections) Act 1999* to include a requirement, consistent with that which applies to Elected Members through the register of interest provisions of the *Local Government Act 1999*, that all candidates in Local Government elections must declare in their nomination any membership of professional bodies including political parties in the preceding two years and that this disclosure be publicly available for the information of electors.

Now, that motion was amended in a minor way to provide for even more disclosure, but at the heart of it, it remained the same and was carried by the LGA at their AGM.

Now, what is important in this motion, and what I believe is important, is that voters have as much relevant information as possible about candidates before they vote, not afterwards. I would point out that my local mayor is a staffer to a Labor member of parliament, and one of the ward councillors in my area is a staffer to a Family First member of parliament. I congratulate all members who had the courage to run for election and were subsequently elected, so my comments are not against either those two or any particular candidates.

I presume that members who are staffers of MPs are probably, but not always, party members, and I think that information should be made available to voters. The disclosure rules should be consistent. It should not just be good enough to hope that parties will do what the Port Adelaide Greens did—that is, declare their affiliation. That is why I believe that the Campbelltown motion, as supported by the LGA, should be supported, and I would urge the government to introduce legislation to bring this about.

While we are at it, we should seriously review the caretaker provisions that applied during these last local council elections. It is one thing to prevent councils making important decisions during caretaker mode, but preventing candidates and elected councillors from speaking out during an election campaign was absolutely ridiculous and a gross breach of the basic rights of free speech. As I understand it, one mayoral candidate was actually told off as it were by a senior staffer for handing out business cards during the pre-election period. So, there are two important reforms this parliament should look at, and I urge the government to bring forward the bills, declaring party affiliations and fixing up the caretaker provisions.

DEVELOPMENT (PRINCIPLES OF DEVELOPMENT CONTROL—MINING OPERATIONS—FLINDERS) AMENDMENT BILL

The Hon. D.W. RIDGWAY (Leader of the Opposition) (16:01): Obtained leave and introduced a bill for an act to amend the Development Act 1993. Read a first time.

The Hon. D.W. RIDGWAY (Leader of the Opposition) (16:01): I move:

That this bill be now read a second time.

When we debated the Mining Act some weeks ago, the Hon. Mark Parnell introduced an amendment to ban mining in Arkaroola. At the time there were a number of discussions around his amendment and quite a deal of discussion in the media about mining in Arkaroola. At the time we indicated we would not support the Hon. Mark Parnell's amendment, as we were dealing with the Mining Act, and we preferred to put some extra protection for Arkaroola in the Development Act. That particular region, which is an area outside the council area of Flinders, I think it is called, has a development plan that has some principles around the environmental zone A, so we are attempting with this amendment bill to put those principles from the development plan into the Development Act. It is reasonably self-explanatory.

The purpose for doing this on the last private members' day before getting up for the summer break is to have this out for public consultation. The Hon. Mark Parnell indicated in the debate that he would be happy to help with what we were trying to achieve here, and there have been a number of other stakeholders. Marathon Resources currently has a lapsed exploration licence over that area in Arkaroola, but there are also a number of other mining players in that particular area: Bonanza Gold I think has a particular interest. Quasar Exploration, Alliance Resources, Lynka and Cauldron Energy are all companies with interests in this area.

We are looking to have discussions with those operators to see exactly whether this amendment affords the protection we are after but also to ensure that it does not impact on existing operations so as to cause environmental harm or damage to that area. It has been brought to my attention that the local traditional owners of the land in that area might have a view on this legislation as well. I certainly would welcome some contribution and some correspondence from them, and we will be making an attempt to speak to them over the summer break as well.

Certainly, where extra environmental controls have been put in place in other parts of the nation—and the one that springs to mind is the wild rivers legislation from the Queensland government—they have caused some debate in some of the local and Indigenous communities that maybe they have gone a little too far and that they do not allow the local communities to have viable businesses and also to gain employment in their communities.

While we do not believe that this amendment will have a negative impact on the local Indigenous community and their opportunities for jobs and economic activity, we would certainly welcome some input from them. What we are hoping to do with this amendment bill is to insert into the Development Act the area known as an 'environmental class A zone'. I think it is important to read the principles into *Hansard*. Subsection (5b) states:

The principle of development control under this subsection is that no mining operation should be conducted in the Environmental Class A zone except where—

(a) the deposits of minerals are of such paramount significance that all other environmental, heritage or conservation considerations may be overridden; and

(b) the exploitation of those deposits is in the National or State interest; and

(c) investigations have shown that alternative deposits are not available on other land in the locality outside the Environmental Class A Zone; and—

I know that parliamentary counsel does a fabulous job 99.9 per cent of the time, but paragraph (c) does say 'on other land in the liability outside the Environmental Class A Zone', but it should be 'locality'. I continue:

(d) the operations to be carried out in pursuance of the tenement are to be subject to stringent safeguards to protect the landscape and natural environment.

They are the principles that we are wanting to be inserted into the Development Act to add another level of protection for Arkaroola. With those few words, I will not prolong the debate. We have a very full agenda today with the last private member's day before the break, but I do look forward to members giving this some consideration over the summer and look forward to their contributions in the new year.

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

NATURAL RESOURCES COMMITTEE: LEVY PROPOSALS 2010-11

The Hon. R.P. WORTLEY (16:09): I move:

That the reports of the Natural Resources Committee on Natural Resources Management Board Levy Proposals, 2010-2011, on Adelaide and Mount Lofty Ranges, Eyre Peninsula, Kangaroo Island, Northern and Yorke, South Australian Arid Lands, South Australian Murray-Darling Basin and South-East, be noted.

One of the Natural Resources Committee's statutory obligations is to consider and make recommendations on any levy proposed by a natural resources management board where the increase exceeds the annual CPI rise. For 2010-11, the committee received above CPI proposals for all of the seven NRM boards that collect levies. This was a factor of the CPI rate for the relevant period being unusually low at 1.4 per cent, which is less than many boards had budgeted for.

This year the committee chose not to object to any of the proposed levy increases for a number of reasons: first, the proposed increases were generally modest; secondly, the proposed increases were consistent with those flagged in preceding years' budgets; and, thirdly, the committee was generally satisfied that the levies and the work of the NRM boards enjoyed a high level of community support.

I do not intend to run through the boards one by one, but I take this opportunity to speak generally about the committee's experiences with the South Australian Arid Lands NRM Board in 2010. Every year, the Natural Resources Committee aims to visit at least two of the NRM regions to meet the board members and staff and, importantly, members of the local unpaid NRM groups, mainly comprised of landholders from that region with an interest in NRM. This year, members of the committee have been privileged to visit the South Australian Arid Lands NRM region not once but twice, so I will talk briefly about what we found.

The reason we visited the Arid Lands twice is that our first trip in July 2010 was cut short by wet weather which, although we were able to get as far as Arkaroola, prevented us from landing at our other intended destinations, with our plane being forced to turn back to Adelaide. Needless to say, committee members, our NRM board hosts and the landholders we had arranged to meet were all very disappointed. Consequently, members resolved to undertake a return trip to the region as soon as we could, which was early in November 2010.

The Arid Lands NRM region covers more than 50 per cent of the state and includes the Gawler Ranges, Far North, North East and Flinders Ranges. The South Australian Arid Lands region is well named, encompassing both arid and semi-arid lands systems, and it generally receives less than 250 millimetres of rainfall per year. This is even drier than Central Australia, and this 250 millimetres is by no means guaranteed, with many localities often going many consecutive years without rainfall at all.

In spite of this aridity, the region contains a greater percentage of intact ecosystems and natural biological diversity than any other region in the state. These ecosystems are generally characterised by boom and bust, with animals and plants responding rapidly and opportunistically to rain when and where it falls. The region is currently undergoing a boom time ecologically, thanks to local rains and floodwaters from Queensland. While fantastic for indigenous species, this rain-induced boom is a double-edged sword, with pest plants and animals also experiencing a major boost to their population and ranges. Responding to these kinds of intermittent threats from a limited and static NRM budget presents many challenges to the NRM boards.

Members were fortunate to be given an excellent and informative tour of this extremely complex and beautiful region by the officers and presiding member of the South Australian Arid Lands NRM Board. Committee members were all very impressed by the dedication and commitment shown by NRM board management staff. In particular, John Gavin, the General Manager, and officers Janet Walton, Reece Pedler and Travis Gotch all provided committee members with a wealth of invaluable interpretation and information on diverse topics, including rare and endangered wildlife, such as the plains wanderer and the world renowned 'mound springs' of the Great Artesian Basin.

While travelling south along the Oodnadatta track, members observed first-hand a number of these mound springs. For members who have not yet seen them, they are a natural expression of underground waters of the Great Artesian Basin. Over tens of thousands of years, these springs have created characteristic mound shapes, as precipitates and sediments from the springs, together with wind-blown sediments, have built mounds up to 40 metres in height, with the springs perched on top.

Being a veritable oases in the desert, these springs have immense ecological, scientific, cultural and economic significance, and they served as stopping points for Aboriginal trade routes between the Flinders Ranges and Central Australia, as well as providing water for John McDouall

Stuart's first crossing of the interior in 1862, the overland telegraph line and the Great Northern Railway. These springs are also key refuges for local flora and fauna and most contain unique species of small aquatic animals not found anywhere else on the planet.

Members heard how these unique wetland environments were variously threatened by Great Artesian Basin groundwater pressure reduction as a result of thousands of unregulated bores; watering and trampling by stock, campers, tourists and off-road vehicles; and water extraction from mining. Members heard that, thanks to the Great Artesian Basin Sustainability Initiative providing commonwealth matching funds to cap and regulate hundreds of free-flowing bores, many mound springs close to extinction have been given a new lease of life.

As well as the Arid Lands board's work on mound springs, members heard about its innovative volunteer-run bucket-trapping project, capturing and recording reptiles and other animals that fall down some of Coober Pedy's million or so open mineshafts; best practice soil conservation; road-grading practices for local roads; dingo management along the dog fence; pest camels, donkeys and feral cat projects; and visitor management at Lake Eyre.

The South Australian Arid Lands NRM region that we toured is truly spectacular; however, it presents immense management challenges due to its size and remoteness and associated costs of managing such an enormous area. The committee is currently drafting a report outlining evidence gathered on our trip that will offer recommendations on a number of fronts to try to support the South Australian Arid Lands Board in a number of ways in its management of this critical area.

I commend the members of the committee: the Hon. Steph Key (Presiding Member), Mr Geoff Brock MP, Mrs Robyn Geraghty MP, Mr Lee Odenwalder MP, Mr Don Pegler MP, Mr Dan van Holst Pellekaan MP, the Hon. Robert Brokenshire MLC and the Hon. John Dawkins MLC. Finally, thanks to the committee staff for their assistance. I commend these reports to the council.

The Hon. J.S.L. DAWKINS (16:17): I rise to support the motion to note the 39th to 45th reports of the Natural Resources Committee. They are the first reports produced since I have been a member of that committee, and I am pleased to support the comments made by my colleague the Hon. Mr Wortley.

As a new member of the Natural Resources Committee, as a number of others were, it was a very valuable experience to hear the evidence that was presented by all the NRM boards earlier this year. I think they understand the committee's role in relation to the act that has created those boards, and we want to work with them to make sure they provide the NRM services to the areas at the most appropriate cost to the communities. I think it is important that they work with their communities in doing so.

I would like also to support the comments made by the Hon. Mr Wortley in relation to the visits that we made to the South Australian Arid Lands NRM Board region. The first trip was curtailed because of rain to some extent but also because of very thick cloud. There were some amazing features in the Outback that we apparently flew over but we could not see them at all because of that cloud level. However, the second trip was enlightening, and I reiterate the remarks of the Hon. Mr Wortley in thanking the South Australian Arid Lands NRM Board and their staff for the work they did to present the projects and express the desires they have in their vast region.

I would also like to make particular reference to the retiring presiding member, Mr Chris Reed. He has been the presiding member for a large number of years and was previously very much involved in the Eastern Districts Soil Conservation Board. Mr Reed is passionate about the arid lands of this state and it was invaluable to have him with us throughout both of those trips.

Another key feature of the trip that the Hon. Mr Wortley did not mention is that we hear a lot about the water coming into the Lake Eyre system from Queensland, but in the flight that we made from William Creek we actually flew over the Neales and Peake rivers at some great length, and to see the amount of water coming through that system, which I think is the first time for many years, into Lake Eyre from the north-west of the state was quite extraordinary and very enlightening for all of us on the committee.

I join the Hon. Mr Wortley in thanking the Hon. Steph Key for the manner in which she chairs the committee. In taking witnesses she is always vigilant in making sure that we do not run over time, while making sure that the witnesses are given the best opportunity to present their evidence, and I congratulate her on that.

We are a large committee. I believe that the Hon. Mr Wortley and the Hon. Ms Key are the only continuing members from the previous committee, but we have come together pretty well. I am surprised that we have been able to get all nine members together on a couple of occasions, which was always a concern for me. The committee is working well together and I look forward to doing further work in the very near future.

In concluding my comments, I thank Patrick Dupont, who this year has moved from acting as the executive officer of the committee to taking on that position, and also the new research officer, Mr David Trebilcock, who is new to the job but is very passionate about the environment and keen to assist the committee. I commend these reports to the house.

The Hon. R.P. WORTLEY (16:22): Leading on from the comments of the Hon. Mr Dawkins, it was a very informative trip. I have a certain amount of sympathy for the board. We met a number of volunteers of the board who gave us a few stories regarding grading of their roads, a lack of funding and the like, and hopefully our recommendations may help to some extent. I would like to thank the council for its indulgence.

Motion carried.

EQUALITY MARRIAGE BILL

The Hon. T.A. FRANKS (16:23): By leave, I move Notice of Motion: Private Business No. 4 standing in the name of the Hon. I.K. Hunter:

That I have leave to introduce a bill for an act providing for marriage between adults of the same sex.

The Hon. R.I. LUCAS: I rise on a point of order. Mr President, can you outline to the chamber what is occurring in relation to this? The Hon. Mr Hunter has been listed as the mover of the bill. He has done considerable pre-publicity in the media that he was moving it. I have been informed that he has been banned, evidently by his own party, from speaking to the bill and from moving it and that this is a device in some way to get around that. So, under what standing order is the Hon. Mr Hunter not speaking and moving his own bill, now being moved by another member in this chamber?

The PRESIDENT: I am just following my *Notice Paper*, but the Hon. Ms Franks has moved it by leave, which allows it.

The Hon. R.I. LUCAS: Under what standing order?

The PRESIDENT: Standing order 115.

The Hon. R.I. LUCAS: Standing order 115, as you have indicated, applies in the absence of a member. The Hon. Mr Hunter is not absent; he is present in the chamber at the time of this motion.

The PRESIDENT: Leave has been granted. Is the honourable member denying leave?

The Hon. R.I. LUCAS: I asked under what standing order, and you referred me to 115. The standing order 115 says 'in the absence of another who has given notice of a motion'. The Hon. Mr Hunter is not absent. He is in the chamber, fully present. I am sure he can attest to the fact that he is not absent. He is available and he can move his motion.

The PRESIDENT: He is feeling sick, though, isn't he?

The Hon. I.K. Hunter: I could be very soon.

The Hon. R.I. LUCAS: If the Hon. Mr Hunter is going to be taken sick and leave the chamber at this stage, standing order 115 makes it quite clear it is only in the absence of the number that such a device can be used.

The PRESIDENT: There has been a point of order and under standing order 115, I rule that the Hon. Mr Lucas has a point of order.

Leave withdrawn.

The Hon. I.K. HUNTER: Mr President, I ask for your direction on this. I understand that, after I gave notice on the last Wednesday of sitting, the Hon. Ms Franks also gave notice of moving a bill. Is it competent for her now to activate that notice and move her bill?

The PRESIDENT: Her notice was after yours. I understand the Hon. Ms Franks' notice was not given in the correct form and therefore it is not on the *Notice Paper*. She should have given notice this morning, and it will have to be dealt with on the next Wednesday of sitting.

The Hon. I.K. HUNTER (16:28): I move:

That Notice of Motion: Private Business No. 4 be made an order of the day for the next Wednesday of sitting.

Motion carried.

BUDGET AND FINANCE COMMITTEE: ANNUAL REPORT

The Hon. R.I. LUCAS (16:28): I move:

That the report on the operations of the Budget and Finance Committee, 2009-2010, be noted.

I will speak briefly to this particular motion. This is a procedural issue. It allows the annual report to be noted, but it also allows all the evidence taken by the Budget and Finance Committee in 2009-10 to be tabled. We have this issue with a particular standing order which does cause a little bit of difficulty in the ongoing operations of various committees and could potentially be a problem in relation to the issues of the Budget and Finance Committee. The Budget and Finance Committee is resolved, on a regular basis and possibly six monthly in the future, to table its evidence in the council to prevent any potential problems there might be under standing orders.

In moving the motion, I thank our hard-working secretary Mr Guy Dickson, who is long-suffering in terms of organising the administration of the committee, the witnesses and the interminable changes in dates for those witnesses. The only other point I would make is that I am disappointed in the response of the government. The motion in establishing this committee approved the provision of a full-time assistant to the Budget and Finance Committee. The Clerk, on behalf of the committee, sought funding from the government to meet that decision of the Legislative Council, but that request was refused by this government.

As I have indicated before, the ongoing success of this committee requires quality long-term staffing, as occurs with other standing committees or ongoing committees of the parliament. It has been our party's view that this ought to be a standing committee of the parliament and an ongoing committee, and it needs that corporate history or memory and long-term assistance, and that is something we will seek to achieve at some stage in the future.

The committee may, with the assistance of the Legislative Council, need to do as it has done in the past and advertise for short-term or part-time assistance, but that is something the committee will address in the coming months. Given the position of the public sector at the moment, where a lot of people are losing their jobs, early in the new year may be an opportune time, when someone could be available who has good knowledge of public sector finances for some ongoing part-time work on behalf of the Budget and Finance Committee. That is certainly something worth considering.

Debate adjourned on motion of Hon. Carmel Zollo.

PARLIAMENTARY REMUNERATION (BASIC SALARY DETERMINATIONS) AMENDMENT BILL

The Hon. M. PARNELL (16:32): Obtained leave and introduced a bill for an act to amend the Parliamentary Remuneration Act 1990. Read a first time.

The Hon. M. PARNELL (16:33): I move:

That this bill be now read a second time.

This is a very simple piece of legislation and is identical to a bill I introduced in this place two years ago. Basically, the bill does three main things: first, it breaks the nexus between the salaries paid to state members of parliament and the salaries paid to federal members of parliament; secondly, it provides that the South Australian Remuneration Tribunal should be the proper authority for determining the salary levels of state members of parliament; and, thirdly, it provides for any pay rise recommended by the Remuneration Tribunal not to come into effect until it has been put into a regulation, which is then able to be disallowed by either house of state parliament.

It will come as no surprise to members as to why I have reintroduced this bill now: it is because there is currently a debate occurring at the federal level for a radical reorganisation of the remuneration of members of parliament. If media reports are accurate, federal members of

parliament are looking to get a substantial increase in salary of maybe $30,000 to $40,000 per year, but that will be at the expense of a reorganisation of other allowances paid to those members of parliament. As people here would be aware, our federal colleagues get a considerable amount of printing allowance. They get electorate allowances, travel allowances—they get a range of allowances that are different to the ones that we get here.

The difficulty we have in this state is that, in the absence of a thorough review of the entire package of remuneration and allowances payable to state members of parliament, we are locked in by law to receiving the sum of $2,000 less than the base rate of our federal colleagues. I think that would be regarded as unacceptable by the majority of South Australians.

We do not know exactly how the federal system will play out. We do not know what the ultimate increase in base salary will be for our federal colleagues, but we know, as soon as they do get an increase, it automatically flows on to us. So, this bill quite simply says that the base salary for state MPs is not linked to that of our federal colleagues. It is a salary that will be set by the Remuneration Tribunal here in South Australia, and members of parliament will be able to vote for or against receiving that salary, using the mechanism of disallowance of regulations.

Because the situation at the federal level is uncertain, and because we know that there will be a deal of movement some time over the next few months, I would like now to seek leave to conclude my remarks. I will conclude when we come back in the new year, by which time we will hopefully know what is happening at the federal level, and we will know whether any changes need to be made to this very simple bill that I have introduced today. I now seek leave to conclude my remarks.

Leave granted; debate adjourned.

SELECT COMMITTEE ON MATTERS RELATED TO THE GENERAL ELECTION OF 20 MARCH 2010

The Hon. R.I. LUCAS (16:38): On behalf of the Hon. Stephen Wade, I move:

That the select committee have power to sit during the present session and that the time for bringing up the report be extended until Wednesday 9 February 2011.

Motion carried.

BUDGET AND FINANCE COMMITTEE

The Hon. R.I. LUCAS (16:38): I move:

That the committee have power to sit during the present session and that the time for bringing up the report be extended until Wednesday 9 February 2011.

Motion carried.

HOUSING TRUST REGULATIONS

Orders of the Day: Private Business, No 3: Hon. R.P. Wortley to move:

That the general regulations under the South Australian Housing Trust Act 1995, made on 29 July 2010 and laid on the table of this council on 14 September 2010, be disallowed.

The Hon. J.M. GAZZOLA (16:39): On behalf of the Hon. R.P. Wortley, I move:

That this order of the day be discharged.

Motion carried; order of the day discharged.

DISABILITY EQUIPMENT AND SERVICES

Adjourned debate on motion of the Hon. J.M.A. Lensink:

1. That a select committee of the Legislative Council be appointed to inquire and report upon—
   - (a) Disability equipment payments made to non-government organisations raised in the 2009-2010 Auditor-General's Report;
   - (b) The appropriateness of one-off funding commitments for disability services in comparison to increased recurrent expenditure; and
   - (c) Any other related matter.
2. That standing order No.389 be so far suspended as to enable the chairperson of the committee to have a deliberative vote only.

3. That this council permits the select committee to authorise the disclosure or publication, as it sees fit, of any evidence or documents presented to the committee prior to such evidence being presented to the council.

4. That standing order No.396 be suspended to enable strangers to be admitted when the select committee is examining witnesses unless the committee otherwise resolves, but they shall be excluded when the committee is deliberating.

(Continued from 10 November 2010.)

The Hon. T.A. FRANKS (16:40): I rise briefly to support this motion, which has been put up by the Hon. Ms Lensink and is a very worthy motion. Most of us would be aware that disability funding in this state is a debacle. I was very pleased to join the Hon. Stephen Wade, the member for Bragg (Vickie Chapman) and the Hon. Ann Bressington yesterday, along with the Hon. Kelly Vincent and the Dignity for Disability grouping, in a Christmas carol calling for better treatment of those who suffer from disabilities in South Australia, and certainly a better deal from this government. We Greens think that this call for a committee has great merit. We think there are some anomalies here that need to be addressed, and with that I indicate that the Greens support the motion.

The Hon. K.L. VINCENT (16:42): I put on the record my support for the Hon. Ms Lensink's motion to establish a select committee. I, and many if not most of the people in the disability community, are concerned by the necessity of one-off funding for disability services in South Australia. However, from the outset I stress that, if established, the committee must not be used as a vehicle for a witch-hunt against the then minister for disability or the Julia Farr Association.

I have spoken with Robbi Williams at Julia Farr, who told me that as far he was concerned the Julia Farr Association (JFA) has acted above board in all the circumstances. I also met with the former minister for disability, the Hon. Mr Weatherill, yesterday and I must say that I am satisfied that there is nothing sinister about these two payments made to JFA. The former disability minister advised me that he effectively put up his hand for surplus moneys that were found to be in the government coffers toward the end of the financial year.

From my reading of the Auditor-General's Report and discussions with the minister, these funds were distributed to a non-government organisation because it was too late in a budget cycle for the department to purchase the equipment and there was a risk that, if the moneys were not spent, they would not be carried on to the next budget cycle. I understand that, whilst Julia Farr was not a provider or distributor of equipment, it was provided with the funding for equipment, that the department then purchased the equipment and invoiced Julia Farr for the cost of that equipment.

Whilst I had concerns surround how the grant moneys were spent, I now note that the current Minister for Disability on 9 November gave a run-down of this in the other place, outlining what equipment was bought with the funds, although I must say that I am still concerned at the slow rollout of the funds. Therefore, the government should not be worried about this inquiry. If it has acted in good faith to improve the situation for people with disabilities, that will come to light in the proposed committee's report.

While I think that it is great that the government sought to use surplus funds for the funding of equipment, I cannot accept that there were and still are people waiting for equipment in this state, and it seems as though the government is treating our people with contempt by expecting us to wait for budget surpluses before funding much needed equipment that is essential for people with disabilities, equipment that will enable us to live full and meaningful lives. The government must stop treating people with disabilities as charity cases who are fed only the scraps.

The government must put these people as a high priority on its list. These people have the right to services and equipment. It is a disgrace that people in this state are waiting for lifters, wheelchairs and handrails, just as people are waiting on the unmet needs list for some in-home support, accommodation and respite. These are essential items and services, not luxuries, and must be funded appropriately, in view of the need that is out there.

That is where we come to the second point of the inquiry in Ms Lensink's proposed committee—and this is the point that I am interested in exploring further—that is, the appropriateness of one-off funding commitments for disability services in comparison to increased recurrent expenditure. While it may look good for the government to clear unmet needs waiting lists, quite frankly, it is ridiculous that these waiting lists are so long that the government tries to score a few cheap points by clearing them.

The government needs to look at the crisis in our community now. It needs to ensure that disability services are adequately funded both now and in the long-term so that we do not have people who are waiting for funding. If the government wants to make a real commitment to people with disabilities, it will ensure that disability services and equipment are equally funded. One-off funding should be used for one-off projects, not the provision of disability equipment and services in this state.

As Ms Lensink has so rightly pointed out, we cannot continue to drip-feed people with disabilities with one-off grants and the associated media circus and self-congratulatory backslapping that goes along with it. It is about time that we looked at the appropriateness of one-off funding commitments for disability services in comparison to increased recurrent expenditure, and that is why I support this motion.

The Hon. J.M. GAZZOLA (16:47): The government opposes this committee because it is a witch-hunt and a waste of the council's time. The reality is the Auditor-General is highly respected by this government, unlike how he was treated under the Liberals. The Auditor-General has already made many inquiries in relation to this matter, and let's be very, very clear about what he has said.

The Auditor has raised various concerns about the government's ongoing control of our grant payments made to Julia Farr Association during 2006-07 and 2007-08. He has also made comments about payments in 2009-10 and the improvements that have been made by this government and this department. The Auditor-General identified that the grants to Julia Farr Association were used for the purpose intended, and I quote from page 446:

> Of crucial importance, it is acknowledged that the grant funds allocated to the Department were used to facilitate the purchase of disability equipment as was approved by Cabinet.

Further, it is clear that the Auditor-General is satisfied that DFC has new processes in place that demonstrate good management and accountability practices. Again I quote from page 447:

> Audit is satisfied that managing Department funds through JFA has ceased. In April 2010 the Department received additional approved funding for the supply and management of disability equipment. Again this was too late in the year to allow the full funding to be spent prior to 30 June. However, approval for the funding included approval to carry forward unspent funding at 30 June 2010. This and other actions taken to administer the funding demonstrated good management and accountable practice and indicated no repeat of the abovementioned or similar practice used in relation to JFA.

Those opposite can add two and two together as much as they like but these are the facts. The state government has a very strong record when it comes to providing equipment and support to people with a disability. We have spent $44.5 million since coming to office.

In this instance, minister Weatherill asked cabinet to provide one-off money to NGOs to spend on people in need, and that is what occurred. JFA was given $2.9 million in June 2007 to facilitate the provision of disability equipment. In 2008, the state government then decided to provide a further $2.15 million to continue to allow JFA to facilitate the provision of more equipment. This money was spent (and accounted for) on equipment for people who needed it. During the entire process, JFA continued to provide the money it was granted to fund disability equipment and home modifications for South Australians who needed assistance.

Let us look at some of the results of this funding, which has provided for about 2,100 pieces of equipment and more than 250 home modifications. Going back to the Auditor-General's concerns, this government respects the Auditor's long-held concerns regarding the lack of documentation and formal conditions surrounding non-recourse grants. However, it is worth noting that non-recourse grants, by their very nature, are without recourse. Vitally, along with acknowledging that the money provided by cabinet was spent on the purpose cabinet wanted, the Auditor concludes that:

> ...there can be circumstances sometimes where those responsible for decision making (as in the Executive) may consider that the benefits of certain actions outweigh the adherence to generally accepted process for good management accountability. In this case the department was able to secure additional funding available to achieve reductions in the adult disability equipment waiting list by making grant payments to JFA.

Again, about 2,100 pieces of equipment and more than 250 home modifications were provided because of this funding, and the committee is nothing but a nonsense.

The Hon. J.M.A. LENSINK (16:52): I thank all honourable members for their contributions, in particular, the Hon. Tammy Franks, the Hon. Kelly Vincent and the Hon. John Gazzola, although, as usual, there was much hubris in his response. I am not sure that the government has learnt yet that that approach does not gain them any friends in this chamber.

In response to those comments, I think that my speech in favour of this motion was fairly clear about what this involved. Indeed, as highlighted by the Auditor-General, this was quite a breach of the government's own policy. So, when the government says that it is a witch-hunt, I am not quite sure how they would describe what they did to poor Kate Lennon, in her position, when she did something she believed was part of government practice at the time.

There are two terms of reference: first, that this is limited to the matters raised within the Auditor-General's Report and, secondly, the appropriateness of one-off funding commitments. We have had contributions made by the crossbenchers on that, who I think recognise that reform can be made in this regard.

I am not going even to respond to some of the nonsense the government has placed on the record, because they are clearly trying to avoid the matter and muddy the issues. I encourage all members to support an investigation into this matter, which I do not anticipate will be particularly extensive or longwinded. I think such an investigation will be quite beneficial to reforming the way in which disability services are funded in South Australia.

Motion carried.

The council appointed a select committee consisting of the Hon. Rob Lucas, the Hon. Kelly Vincent, the Hon. Ian Hunter, the Hon. Russell Wortley and the Hon. Michelle Lensink; the committee to have power to send for persons, papers and records, and to adjourn from place to place; the committee to report on 9 February 2011.

CORRECTIONAL SERVICES DEPARTMENT

Adjourned debate on motion of Hon. T.J. Stephens:

1. That a select committee of the Legislative Council be appointed to inquire into the Department for Correctional Services and report upon—

   (a) whether sufficient resources exist for the safe, effective and efficient operation of South Australia's prison system;

   (b) claims of bullying and harassment within the department;

   (c) claims that correct departmental practices and procedures are regularly ignored by management;

   (d) claims of drug use and sales within the prison system;

   (e) claims of poor occupational health and safety management in prisons; and

   (f) any other relevant matter.

2. That standing order No. 389 be so far suspended as to enable the chairperson of the committee to have a deliberative vote only.

3. That this council permits the select committee to authorise the disclosure or publication, as it sees fit, of any evidence or documents presented to the committee prior to such evidence being presented to the council.

4. That standing order No. 396 be suspended to enable strangers to be admitted when the select committee is examining witnesses unless the committee otherwise resolves, but they shall be excluded when the committee is deliberating.

(Continued from 10 November 2010.)

The Hon. T.A. FRANKS (16:56): I rise to indicate the Greens' support for the Hon. Terry Stephens' motion for a select committee. We, too, have some grave concerns about some of the recent incidents that many of us would have heard about in the media with regard to what is going on in our correctional services system. In particular, members would be aware of a woman recently in the women's prison who died after suffering an epileptic seizure. In fact, she had suffered quite a gross and unbelievable situation where she was in her cell and there were faeces on the wall, and she was in that cell while it was hosed down. This was a woman who suffered from epilepsy who died in that cell from epilepsy, and clearly no great duty of care was paid to that woman nor any reasonable reaction given to her medical condition.

I also note that the Greens have had expressions of concern from the prison health sector as well about bullying and intimidation within the correctional services system. We would like to see this inquiry take a look at that, and we will be happy to pass that information on to the committee. In particular, we have had concerns raised about inappropriate purchases of equipment that were unnecessary and a culture of harassment and bullying that meant there was an unnecessarily high

attrition level of staff. We would hope that these issues were not rife throughout the system and that perhaps they were one-off examples. As I said, we will be happy to pass that information on to the committee for its deliberation. We look forward to the report.

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

The Hon. J.M. GAZZOLA: Mr President, I draw your attention to the state of the council.

A quorum having been formed:

The PRESIDENT: I remind honourable members that if they are in their office they should be listening to the council proceedings so that they will know when they are about to speak and can make their way to the chamber, otherwise we will start skipping over them to finish business. The Hon. Mr Brokenshire.

HEALTH AND COMMUNITY SERVICES COMPLAINTS COMMISSIONER

The Hon. R.L. BROKENSHIRE (17:01): Thank you, Mr President. I do apologise. I am not as perfect as the government members and I was actually in a meeting. So, apologies that the only people who are perfect in this place tend to be the government. We are happy to have ministers go out and have meetings because they have important jobs to do.

The PRESIDENT: Order! This is about the Statutory Authorities Review Committee. You had better get onto it, the Hon. Mr Brokenshire, otherwise I will remind people of how much time we have to spend waiting for you.

The Hon. R.L. BROKENSHIRE: I move:

That the Statutory Authorities Review Committee inquire into and report on the effectiveness of the Office of the Health and Community Services Complaints Commissioner having regard to—

1. Any concerns that members of the public or the committee have regarding the office's responsiveness to complaints to the office;
2. Any proven outcomes since the creation of the office;
3. The adequacy of reporting by the office;
4. The adequacy in quantity and quality of reports produced by the office pursuant to section 54 of the Health and Community Services Complaints Act 2004;
5. Examples of use of the office's discretionary powers under the said Act;
6. The staffing levels in the office and the efficiency and effectiveness of resource use by the office;
7. The number of complaints processed by the office in comparison to—
   (a) the Ombudsman's office prior to the formation of the office; and
   (b) comparable offices interstate;
8. The extent to which the state government has contributed by acts or omissions to any shortcomings identified in the foregoing including by virtue of failures to meet its obligations under sections 19(2) and 67 of the said act;
9. Whether persons appointed to the Health and Community Services Advisory Council properly represent the intent of the said act;
10. Whether the term of office for the commissioner is appropriate in the circumstances;
11. Whether any amendments to the act are necessary to improve the effectiveness of the office; and
12. Any other relevant matter.

I have tabled the 12 points that I would ask that the committee look into with regard to the Office of the Health and Community Services Complaints Commissioner, and I will highlight a couple of the reasons why. First, under the former health minister, the Hon. Lea Stevens, the situation was that she, for the government, made a commitment at an election that there would not only be a commissioner but that there would be an ombudsman for health.

The appointment of an ombudsman for health never occurred and whilst the Hon. Lea Stevens, to give her credit, stuck to her word and wanted to have an ombudsman, it was softened down by the government to become a commissioner. I must say that it has cost the taxpayer several millions of dollars—I do not know if everyone knows that: they have an office but there does not appear to be a lot happening.

The Hon. J.M.A. Lensink: No-one's home.

The Hon. R.L. BROKENSHIRE: No-one is home, as the honourable member says. Because it is a busy day I will move straight into the key points. As I said, there are 12 points, and I will not go through them again, but the important thing is that members of the public be permitted to attend proceedings of the committee investigations into this matter and that honourable members of either house of parliament be permitted to attend meetings of the committee, ask questions of witnesses and receive transcripts of proceedings upon giving not less than seven days' notice to the chair of the committee of his or her intended attendance at a given meeting. Obviously, we want to have members of the community come in and air their concerns to the committee.

I had hoped not to move this motion concerning the performance of the Office of the Health and Community Services Complaints Commissioner, but unfortunately the performance of the office has given my constituents enough reason to be concerned about it and convince me that there is merit in moving this motion. I will direct all of my comments in relation to this motion to the office, as it may well be that the commissioner has good reason to be in the position that she is in.

It is not a personal situation about the commissioner: it is about the office per se and the government's responsibility, under the act, to ensure that the office performs its work. I direct my comments to the outcomes of the office of the commissioner, for which ultimately the commission does have responsibility, but how the responsibility is brought home is a matter for the committee, if it believes the witnesses have made a case to be answered.

The principal constituent with whom I have been dealing, and with whom other colleagues in here may also have dealt, is Ms Pam Moore, who is the founder of the Health Rights and Community Action Group, which was established before the formation of the commissioner's office. Pam's group lobbied the current government—she is a dedicated person who at the moment has her own special needs—when it was in opposition, not when it was in government; this is a promise from back then—for the establishment of a health complaints commissioner, not with jurisdiction on community services as ended up being the case, but specifically on health.

I want to say very early on that I think the office itself is a visionary one and has great potential if it is being run properly. I am not canning the government completely on this. It is about the running of it. I note that the Northern Territory has a commissioner by the same name, though I am not sure how similar they are in function. That is most likely a matter for the committee to investigate.

Before 2002, the Ombudsman had jurisdiction to receive health complaints. He handled hundreds a year and conducted perhaps 20 to 40 inquiries into the performance of our health services. It is not clear to me, but it may be that the Ombudsmen retains of some residual jurisdiction to look into health matters. However, to my mind the government's intention in creating a commissioner was that the commissioner would be the first port of call for health complaints.

Pam lobbied Labor opposition members before the 2002 election to establish a specific health complaints commissioner. To her credit, the then shadow minister, the Hon. Lea Stevens, agreed and, after 2002, the Hon. Lea Stevens, as health minister, moved for the creation of a Health and Community Services Complaints Commissioner, adding capacity to complain to this commissioner about, for example, Families SA.

The 2003-04 act required the government to create an advisory committee and also a charter of rights but this is where my concerns are: until now, 2010, six years later (and, I am advised, over $1 million a year spent running the office), neither has been done. We have possibly had $4 million to $6 million worth of taxpayers' money spent and we have not had an advisory committee or a charter of rights. In a sense, the government has been in breach of the act and yet it has not been taken to task on that issue alone.

In conclusion, I would like to continue to put other matters on the record including comparison with the performance of equivalent offices interstate and the outcomes of the office itself. Much as I would like to do that now, I pause at this point, as evidently this select committee will not be established before the new year, given this is our last private members' day for this year. I have other matters to place on record, so I seek leave to conclude when we return in the new year.

Leave granted; debate adjourned.

DESALINATION PLANT PROJECT

Adjourned debate on motion of Hon. T.A. Franks:

1. That a select committee of the Legislative Council be appointed to inquire into and report upon the Lonsdale-based Adelaide desalination plant project including the following matters:

    (a) the management and administration of the project;

    (b) the procedures and practices with regard to workplace safety;

    (c) the related matters of worker deaths and injuries; and

    (d) any other relevant matter.

2. That standing order No. 389 be so far suspended as to enable the chairperson of the committee to have a deliberative vote only.

3. That this council permits the select committee to authorise the disclosure or publication, as it sees fit, of any evidence or documents presented to the committee prior to such evidence being presented to the council.

4. That standing order No. 396 be suspended to enable strangers to be admitted when the select committee is examining witnesses unless the committee otherwise resolves, but they shall be excluded when the committee is deliberating.

(Continued from 27 October 2010.)

The Hon. R.I. LUCAS (17:09): I rise briefly to support the motion from the Hon. Tammy Franks to establish a select committee to inquire into the desal plant. In doing so, I move to amend the motion, as follows:

Paragraph 1(a)—Leave out this paragraph and insert new paragraph 1(a)—

(a) the management and administration of the project, including all issues relating to the cost and financing of this project;

Paragraph 1(b)—Leave out this paragraph and insert new paragraph 1(b)—

(b) the procedures and practices used to deliver the project, including those with regard to workplace safety;

Paragraph 2—At the beginning of the paragraph insert before 'That standing order no. 389' the words—

That the committee consist of six members and that the quorum of members necessary to be present at all meetings of the committee be fixed at four members and

We suspect that these issues would have been clearly covered even in the initial drafting but, out of an excess of caution, we propose these amendments, and I understand that the mover is relaxed and comfortable with that (to use a phrase). They make it clear that issues in relation to the costs and financing of this project, for example, would be a term of reference of the select committee if it were established.

The reason for that is that some of the allegations or claims made in relation to workplace safety obviously relate to issues of cost and financing, that is, the need for speed, perhaps the need to meet various contractual time lines or to meet financial benefits or prevent the occurrence of financial penalties under a particular contract. Clearly, they will be important issues. First, I guess we need to establish the extent and nature of the workplace safety breaches, although there has been much publicity about them already thus far, and, therefore, a fair bit of public information about them.

Having established that we will need to look at the issues that may have been a cause of workplace safety breaches, and it will therefore be essential to look at issues that relate to the contract. Obviously, to a very large part the contract governs the behaviour of the contractors and sub-contractors. If the contract says that certain things have to be achieved by a certain deadline or certain financial penalties will occur, that could govern a pattern of behaviour that may have led—and I say this advisedly—to workers being placed in a dangerous position. So the issues of the contract, and the costs and financing of the contract, clearly relate to workplace safety issues.

Regarding the second amendment, as I said, we believe that this is probably covered in the existing wording but, in an excess of caution, we make it quite clear that the procedures and practices we talk about cover all the procedures and practices used to deliver the total project, including those with regard to workplace safety. This is just to make it absolutely clear that those issues are covered.

The fact that the mover has very sensibly incorporated those wonderful few words, 'any other relevant matter' in the terms of reference—which are the save-all for all committee inquiries—would, we believe, have covered it anyway. The only other point I would speak to is that, upon

discussion with the mover, we understand that there are two non-government, non-opposition members of this place who are very interested in serving on the committee.

With two Labor members and two Liberal members it necessitates moving an amendment to the motion to allow the committee to consist of six persons, which will facilitate that. I do not speak on behalf of the government, but I assume that government members will participate and will insist on the convention of two government members; certainly, the Liberal Party's view is that this is such an important committee that two Liberal members should serve on the committee as well. With that, I indicate my support for the motion, with the amendments I have moved.

Debate adjourned on motion of Hon. I.K. Hunter.

CONSENT TO MEDICAL TREATMENT AND PALLIATIVE CARE (END OF LIFE ARRANGEMENTS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 10 November 2010.)

The Hon. CARMEL ZOLLO (17:15): As I have on previous occasions, more recently late last year, I indicate that I cannot support legislating the voluntary act of euthanasia. My reasons for not supporting it have not changed either. Above all, I believe it is not good legislation, from a legal point of view, to have on any statute book because I see it fraught with danger.

As this matter is one of conscience for Labor members, I am able to make a personal judgment rather than one based on my party ideology. How the numbers ultimately fall will obviously determine the outcome, as is the case with all legislation before us.

I again acknowledge the very many people who have contacted my office, putting both sides of the story. Whilst I do not agree with very many of them, I nonetheless respect their right to disagree with me. I also acknowledge that the member for Ashford, in the other place, and the Hon. Mark Parnell, hold their views with all sincerity.

In his second reading speech, the Hon. Mark Parnell said that this bill is, in its most basic respects, similar to the one that we debated last year. I note that the Hon. Mark Parnell also believes that this version of his legislation is different from last year's because he has included what he believes to be some sound safeguards. I disagree that he has done that, and one wonders what would have happened if this parliament were to have passed his previous legislation, seeing that he now has included what he believes to be some sound safeguards.

I do not agree with the objects of the bill, in that it allows voluntary active euthanasia for certain adult persons who have an illness, injury or other terminal illness condition, other than a mental illness, that irreversibly impairs the person's quality of life, so that life has become intolerable to that person.

I will probably refer on several occasions throughout my contribution to the forum that was held on Wednesday 10 November, organised by the Hon. Dennis Hood and the member for Newland, in the other place. The forum speakers were Dr Daniel Thomas, a cancer specialist in the Royal Adelaide Hospital; Emeritus Professor Ian Maddocks, Professor of Palliative Medicine from Flinders University; Dr Gregory Pyke, Director of Southern Cross Bioethics Institute; and Ms Elizabeth Keam, the former director of the Mary Potter Hospice.

Professor Maddocks shared the same concerns in relation to those objects of the bill before us: first, that clinicians can cater very well with palliative care services for those in the terminal stage of a terminal illness and have the ability to control even severe pain. In relation to an illness, injury or other medical condition, other than a mental illness, that irreversibly impairs a person's quality of life so that life has become intolerable to that person, he is of the view that this is a courageous extension beyond terminal illness.

As we all know, people die in so very many different ways and circumstances. Of course, no one size fits all. People die an individual death, as they have lived an individual life. I say that, surely when one does not die an immediate unexpected death, it should be one of the few times in life where we do not need to have another piece of legislation involved. Shouldn't we want it to be personal and private with one's doctor and family, or at least a matter of trust between patient and doctor, and not have to involve another legal framework for the request and administration of voluntary euthanasia?

We are fortunate in this state that people can already make an advance directive as to their future medical treatment and palliative care. The safeguard in our present Consent to Medical Treatment and Palliative Care Act means that the direction given must relate to a terminal phase of a terminal illness, or permanent vegetative state, and it must also be documented on the prescribed form.

I wrote most of these notes some time ago and my next comments were along the following lines: why wouldn't those who are advocating this legislation already be taking advantage of the safeguard? I was about to actually print my notes the other week when an email came through from the Hon. Mark Parnell, telling us he would be moving an amendment to remove from the bill the proposed new section 36—Advance requests. He now recognises that our current act does cover such advance requests and makes the use of voluntary euthanasia in these circumstances redundant.

I also know that elderly people who present at an emergency department in a serious state or who suffer a serious setback in hospital are already now requested whether they wish to be resuscitated on subsequent relapses. Recognising the futility of ongoing treatment in some circumstances, their families are also asked, and it is quite common for family members to have medical power of attorney. Also, people can refuse medical treatment in particular circumstances now. There are circumstances now when a doctor will discuss with a patient and family the futility of continuing to administer further treatment.

If I may I will quote from a pastoral letter from September this year to the Christian faithful from the Bishop of the Diocese of Port Pirie, Gregory O'Kelly SJ, concerning the sacredness of life in a secular society:

> There sometimes can be confusion about what Catholics understand by the word euthanasia. The church teaches that we are bound to take the ordinary medical means to preserve our God-given lives. We are not bound to take extraordinary means. So, life support can be withdrawn when it is seen to be futile, and any continuation of treatment is merely prolonging the act of dying. For people suffering from cancer there can be treatments of a surgical nature or a drug regime that is simply beyond what might be described as ordinary medical practice, and hence no obligation to undergo them.

Bishop O'Kelly goes on to talk about palliative care and makes the point that the church would always urge proper palliative care as the means to honour the lives of our loved ones. In relation to our aged, he makes the same observation I remember making in my contribution last year. Euthanasia puts enormous pressure on the frail aged to do away with themselves in order to lessen the distress they believe they are causing their family. People come to aged care homes in order to be cared for and not to have their lives terminated before time.

I had reason to visit Port Pirie recently and know of Bishop O'Kelly's commitment to the aged in his diocese. It matters little that I have quoted from correspondence from a Catholic bishop as I have received similar correspondence from other Christian churches. I make the comment, however, that it might not just be Catholics who may be confused about end of life issues: it may well be very many other people as well, and hence we get the poll results we see. A similar letter from His Grace the Most Reverend Philip Wilson, Archbishop of Adelaide, has also been provided to all in the Catholic community.

I also would like to quote from a recent letter—and I am sure all of us have received it—from a medical clinician, Dr Lucia Migliore:

> It should also be recognised and acknowledged that there are limitations to medicine. There are times when a specific treatment is futile (i.e. does not work to benefit a patient) and thus should not be instituted. There are also times when treatments pose great burdens on parents. It is also legitimate to not institute or even withdraw such treatments. This is not the equivalent to euthanasia because in the above scenarios it is the treatments that are problematic, not the patient, which euthanasia suggests. The intention is care of the patient and not direct killing.

I also reject the issue of double effect because, to me, paramount is the intention to assist in pain relief in the terminal phase of an illness. We are not talking about a criminal act but about administering pain relief. To borrow some words that I read somewhere in the information I had (I think it was Professor Colleen Cartwright, Foundation Professor of Aged Services at Southern Cross University), 'The patient dies because of their illness, not because of the doctor.'

It was good to hear both Dr Daniel Thomas and Professor Maddocks also reaffirm the sentiment that we should be grateful to those clinicians who work with their patients and very often their families at the end of life. They do it as part of their job every day and do not receive accolades for their service. Mrs Keam rightly made the comment at the forum that the work of clinicians is largely hidden from society. In circumstances when death does not come suddenly, we

are talking about nature—and I stress the word 'nature'—taking its course at the end of life. It may not be as quick and beautifully administratively packaged as legislation for voluntary active euthanasia, but I think we all know life is not like that.

News Weekly has been running a series of articles on the euthanasia debate and the view that palliative care is the answer to euthanasia. I think it worthwhile reading onto the record Mr Muehlenberg's comments from 16 October this year. It is called 'Palliative care the answer to euthanasia'. He states:

> Palliative care is one of the great overlooked issues in the euthanasia debate. What the terminally ill want and need is pain relief, not an end to life. While suffering certainly exists, so too does substantial hope for healing and wellbeing. This is what palliative care is all about.

He goes on to say:

> The World Health Organisation defines palliative care as 'the active total care of patients whose disease is not responsive to curative treatment'. It says: 'Control of pain, of other symptoms, and of psychological, social and spiritual problems, is paramount. The goal of palliative care is achievement of the best quality of life for patients and their family.

It goes on to say:

> Although relatively new, palliative care has made tremendous advances in recent years…But palliative care, if used, can now relieve suffering in the majority of cases. As even a pro euthanasia doctor in Holland, Dr Pieter Admiraal, has admitted, 'Essentially all pain can be controlled…euthanasia for pain relief is unethical.'

A well-known Australian cancer sufferer, Dr Ian Gawler has said:

> In many years of working with people facing death I have never been confronted by a situation where the urge to provide ongoing compassionate care was outweighed by the pragmatic need for a prematurely induced death.

There has been fervour like no other time in relation to this issue in the media. We have seen more polls on this matter recently than any other time. Excluding the most important election day poll, I would ask: why would we as politicians take too much notice of polls on specific matters, they can be a great means of people to vent everything from their current frustration to racism, to their perceived sense of justice and punishment?

We would all acknowledge that how a question is asked and how much is asked can give you different responses. I would put it that, if we were to follow polls, we would still have capital punishment for some crimes. We do not do that anymore because we are a humane and civilised society that does not purposefully take the life of another living human being—we do rightly place a high value on the sanctity of human life.

I am also certain that another reason why capital punishment was abandoned in Australia was surely because of the concern that one could not always be 100 per cent certain whether the person convicted had perpetrated the crime. What if the convicted person was really innocent? Police and the courts do occasionally get it wrong—we see examples of wrong convictions brought to our attention from time to time.

If this legislation were to pass, even with the new safeguards, can it always be guaranteed it is what the patient wanted? What if somebody is lonely and full of fear at what is likely to happen at the end of their life as the illness progresses and, more importantly, is able to hide their depression? At different times I have seen reported between one-third and a half of those euthanased in the Netherlands and Belgium did not request euthanasia. Those figures were confirmed at the forum that I have been referring to.

What I am worried about is the elderly at a vulnerable time in their life not wanting to be a bother to their families. They could be made to feel they should exit the world before their time when we have legislation that actually could allow them to do so. I noticed those sentiments were also expressed in a media release from the Care Not Killing organisation from the UK.

Many countries have seen the possibility of this legislation becoming law and we have seen many a select committee along the way. In their media release of April 2006, they quoted the chair of the 1994 Lords select committee on euthanasia when he said:

> We concluded that it was virtually impossible to ensure that all acts of euthanasia were truly voluntary and that any liberalisation of the law in the UK could not be abused. We were also concerned that vulnerable people—the elderly, the lonely, sick or distressed—would feel pressure, whether real or imagined, to request early death.

It was not an issue that was exercising my mind in 1994, but to me it would appear that nothing has changed. The media release goes on to state:

> Opinion polls showing public support for euthanasia are unreliable. Most polls are based on simple yes/no answers and are not based on detailed understanding of the issues involved or the attendant risks of abuse.

It may be incongruous to some, not the least me, but I quote from a New South Wales Council for Civil Liberties background paper on the death penalty in Australia and overseas, which is dated March 2005. It states:

> The state should not have power of life and death over its citizens…It was the view of Sir Owen Dixon, Chief Justice of the High Court of Australia, that the state should not pay people to kill its own citizens.

The then chief justice made those comments in 2004. I hasten to add that there is no comparison between those who are responsible for executing the wishes of the court in relation to capital punishment and those medical practitioners who, under this proposed new legislation, would assist in voluntary active euthanasia.

On another level, we should ask ourselves: if this legislation were to become law, wouldn't the state be asked to ensure equality under that law and ensure that everyone has access to whatever means of medication or service is used for voluntary active euthanasia? In short, it would be publicly funded through Medicare. If I can borrow those words again: the state should not pay people to kill its own citizens. I probably do not need to point out that a quick end is also cheaper than palliative care. My advice is also that the majority of the medical profession are not comfortable with or behind this legislation. So, one should ask why we are seeking the assistance of those who take the Hippocratic Oath.

Whilst I am aware that most states have introduced, or are about to introduce, voluntary active euthanasia legislation, most recently in Western Australia, we have seen voluntary active euthanasia legislation being resoundingly defeated. I know that I will sleep better at night knowing that, if someone is in the terminal phase and dying of their illness, in this state people have the opportunity now, under the Consent to Medical Treatment and Palliative Care Act 1995, to make an advanced directive regarding their medical treatment if they so wish. Even if they have not done so, the care we provide in this state, with palliative care, clinician support and, where available, the support of their families, ensures that the overwhelming majority of people die pain free.

As pointed out by one of the forum members I have referred to (Mrs Elizabeth Keam, the former director of the Mary Potter Hospice), when we talk about pain, it is not just physical pain that can worry people at the end of their life: it is frailty, fatigue and depression. The comment was made by Professor Maddocks that 'sometimes, when it is physical pain, the act of medication to induce sleep will often give the patient a reprieve to enable them to continue with a renewed hope'.

I believe that, if patients are not in the terminal phase of a terminal illness but seek an earlier exit to life, that is not something the state should be involved in—and by that I do not mean that we should be turning a blind eye. As legislators, we can promote and lobby for greater resources to go to palliative care for in-patients and out-patients and to respite care and mental health, to name but a few—all actions that are more difficult than simply casting a vote for this legislation when the time comes. In the same vein, I would like to read onto the record some notes provided to members by Professor Maddocks. At the conclusion of his remarks, under the heading 'My hope', he says:

> The discussions regarding euthanasia that were begun in this parliament about 25 years ago, led not to legislation approving assisted dying for a few individuals with a terminal illness, but to innovations in and support for palliative care which has been most salutary and effective in South Australia. But more needs to be done. In particular, the advocacy for good basic palliative care for the elderly needs to extend more strongly to our general public and to the staff of our aged care institutions. Old persons are still dying miserably in hospitals and nursing homes in this State, still being given treatments they do not want nor need, struggling on with discomfort when they would be happy to stop. The answer is not to kill them, as this legislation might permit, but to bring them effective comfort through compassionate and skilled palliative care, letting them die in peace. And their families need to understand this, when they would, I believe, have more sympathy and support for care rather than a desperate hope for cure.
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> My hope is that the current parliamentary debate will proceed as it did formerly, and bring into place better palliative care for a wider range of individuals than can now access it.

In relation to polls, which we have heard a lot about recently, I would also like to bring to the chamber's attention the view of Mr Ralph Bonig, the President of the South Australian Law Society. He commented in his column in *The Advertiser* on Monday 25 October this year:

> In order to obtain an accurate, representative view of the general population it would be more appropriate for a referendum to be held so that Parliament can have a clear mandate. If a majority of the vote supports the introduction of voluntary euthanasia then issues such as the appropriate safeguards are matters that Parliament can properly debate.

I have to admit that I am not always a fan of holding a referendum, but at least it would allow both sides of the story to be put to the people, to see an informed debate and, more importantly, to remove confusion as to what is already available for those at the end of life.

I would like to mention a few other strong messages that I took away from the forum that was organised by the Hon. Dennis Hood and the member for Newland in the other place, apart from what has already been placed on record by the Hon. Dennis Hood that all major medical bodies are opposed to this legislation. What we have seen in those countries that have legalised voluntary active euthanasia is a culture shift—a shift not to accept best treatment available but to accept euthanasia.

Professor Maddocks and Dr Thomas both made the point that the ability to control pain is the best it has ever been. Dr Thomas talked about the erosion of trust between patient and doctor that could occur and the fact that there may well be some clinicians who would see it as an easy solution, in particular in relation to cost, when euthanasia is cheaper than the best treatment available.

In the caucus yesterday the Minister for Health, the Hon. John Hill, advised that he was tabling some advice obtained from the Department of Health which further cements in my mind how poor is the legislation that we have before us. Minister Hill is quoted in today's paper, as follows:

> The Minister said advice obtained through the Health Department had indicated various shortcomings in the proposed legislation. 'It points out there are some ambiguities and there is a lack of definition in a range of places,' he said. 'I think that the model they are proposing is unnecessarily bureaucratic.'

He then told parliament that he had asked parliamentary counsel to draft an alternative amendment, which he then tabled. He advised his chamber that he would ask the Department of Health to review his amendment and its practical implications.

Further, this morning, the Hon. Mark Parnell emailed us all with another amendment. So here we are debating, as we have many times before, an important social issue, and what we appear to have in both chambers is an evolving piece of legislation, authorised by three members of parliament. It hardly should give any of us any confidence to support this legislation.

One could go on and on with this legislation. The Right to Life went to the trouble of getting a legal opinion from Melbourne QC Nicholas Green, who picked up on what a significant shift it would be in the law of homicide and the authority of a medical practitioner, probably not dissimilar to the point I made about not legislating for the state to be involved in voluntary active euthanasia.

I ask those in this chamber who still have not made up their mind to think carefully about casting their vote for legislation that can never be guaranteed to have sufficient safeguards. If I could make one final comment, Dr Daniel Thomas said something to the forum which I think astounded all of us. He believed that around 6 per cent of his patients who had their treatment withdrawn for all the right reasons then went on to make a level of recovery. I would say that, clearly, the human body and the human spirit can still surprise us. I believe voluntary active euthanasia should have no place on the statute books of this state.

The Hon. T.J. STEPHENS (17:41): My contribution will be brief. I have spoken on this issue a couple of times already. I have not changed my position at all. In my last contribution I spoke about how, sadly, I had witnessed my father's demise, which was an incredibly harrowing experience, and I still look at that and know that my position has not changed. I respect other members' opinions and I respect that everyone in this chamber is genuine in their belief, but I put it on the record that I am continuing to oppose this particular measure.

The Hon. J.M. GAZZOLA (17:41): I too will be brief and, like the Hon. Terry Stephens, my position has not changed on the euthanasia bills. The bill repeats the processes that began with the Dignity in Dying Bill in 2002 and then the Consent to Medical Treatment (Voluntary Euthanasia) Amendment Bill 2009. With regard to the present bill, I thank all who have written to me or contacted my office with their thoughts on this important matter, however, my thoughts on this issue have not changed and I will be supporting the bill.

The Hon. I.K. HUNTER (17:42): I last spoke on the matter of euthanasia in this place on 28 October 2009, and I refer anyone who is interested to the *Hansard* for my opinion on this issue. It has not changed in that time and I will be supporting this bill. There are a couple of comments I might repeat from my *Hansard* speech at this stage when we are talking about the issue of religion and religious leaders having an opinion, which of course is quite valuable, but it is worth no more than anybody else's opinion. I would like to read into the record what I said back then:

> This issue even crosses the religious divide, with 85 per cent of people in a 2007 Newspoll survey who indicated that they supported voluntary euthanasia identifying themselves as Christian. I note that result with interest; it seems that the vast majority of self-professed Christians know very clearly where they stand on this issue, notwithstanding what religious leaders might be saying about it.

I think people, in the state of South Australia at the very least, have made up their minds on where they stand on this issue; there are not that many who do not have an opinion, and the opinion polls seem to be consistent. Whilst I take the Hon. Ms Zollo's views about opinion polls and that we do not legislate on the basis of opinion polls, they certainly can be informative. People know what they think on this issue and have expressed that to all of us, I expect, through their contact with our offices.

I repeat what I said on that night of Wednesday 28 October. It does not really matter, in a sense, what my personal view is on this issue; for me the question is this: do I have the right to impose my ethical position on this issue on others who may or may not share that view, or should I allow individuals to make their own choice? I believe very firmly that in matters of this nature, for people who are suffering terribly with no hope of recovery, let them have the dignity to decide for themselves. For this reason back then, and for this reason tonight, I support the bill of the Hon. Mr Parnell.

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) (17:44): I too rise to support this most important bill. I have spoken on a number of occasions in this place on voluntary euthanasia, and my arguments and views are well documented and, therefore, I will not repeat all of those arguments and debate here tonight, except to make a few major points. It is a position that most Australians support. Most Australians support voluntary euthanasia and I think it is quite insulting to suggest that those people are simply confused. It does reflect a general view and no doubt some of those views are better informed than others but, nevertheless, to dismiss that by simply saying that they are confused is insulting.

My position is fundamentally that of choice. I do not seek to impose my views about voluntary euthanasia on other people. I believe that people should have the right to die with dignity if they are terminally ill. I absolutely respect the values and ideals of other people who may seek not to choose to participate in voluntary euthanasia—that is their right. I am not too sure whether I would but I am very grateful not to have been faced with such a ghastly personal consequence. I am not sure whether I would, in fact, make the decision to pursue voluntary euthanasia for myself. However, I seek to have the choice to do so if I desire.

We know that this practice already occurs. There has been research and other documentation showing that health care professionals participate in illegal activities and that it has gone on for a long time. We are leaving those professionals at risk because the practices continue and they participate in those practices out of a deep sense of humanity. I believe that this legislation will help protect those health care professionals.

I have also put on record in this place before that, as a former health care professional, I have certainly witnessed firsthand the limitations of palliative care and the pharmacological developments around analgesia and other methods of pain relief and acknowledge that they are limited. Although it is some time since I have practised clinically and I know that there have been advances in those areas, nevertheless, I have remained reasonably well informed, and there are still significant limitations in those areas.

I have also received many letters and emails from members of the public putting forward a range of different views and opinions. I have read all of those arguments but I have not received anything that has persuaded me from my views on this, and so my views remain firm. I believe that the legislation and other legislative frameworks contain sound safeguards that provide protection for those people who wish to participate in euthanasia, health care professionals and other family members. I think that those measures provide a sound set of protections and a degree of transparency which, as I said, is currently sadly lacking.

We know that these things are occurring and there is no accountability and no transparency. I believe it is a dangerous practice not only for patients but for health care professionals who, having such a strong sense of duty, participate in those activities. I believe very strongly that individuals have the right to die with dignity, and I believe that this bill assists towards that measure.

The Hon. D.W. RIDGWAY (Leader of the Opposition) (17:50): As members could well recall, last year, before the election, when we debated the Hon. Mark Parnell's last bill in regard to voluntary euthanasia, I think the expectation of everybody that night was that I would maintain my previous position of being a supporter. Members would also remember that the debate we held that particular night was between the death of my mother and her funeral, so that was also a bit of a difficult time for me personally and I thank members for their support and offers of condolence at that time too. I certainly do appreciate that.

Having said that, I did vote against the measures that were proposed in the last bill. I have given a lot of consideration to my position since then, especially on this particular piece of legislation that we are dealing with this evening. I make some general comments that, with a conscience vote, from the Liberal Party's perspective, I think you have to be, wherever possible, 100 per cent certain that what you are doing is the right thing. I do not quite know how other parties work internally, but certainly in the Liberal Party, if there is an issue that is being debated as a party issue, you might not be absolutely personally 100 per cent comfortable with it, but the body of information and collective wisdom, which is substantial in the Liberal Party, often gives people some comfort if they are not 100 per cent happy themselves. However, with a conscience vote, I think you do actually have to be very comfortable that what you are doing is the right thing.

It has also been said that, those of us who are under the age of 75, or not elderly, may not be in a position to make these decisions. I remember my colleague, and reasonably good friend, the Hon. Diana Laidlaw, when she was here in this place, saying to me, 'If ever I am incontinent, I would like to be euthanased.' As members know, I was a supporter of the measures at that time. I put it to her one afternoon that, if she still enjoyed in 30 years' time everything she enjoyed in her life then—and she was a cigarette smoker at the time—such as a cigarette, a glass of wine, her love of the arts and of her nieces and nephews (and probably grand-nieces and nephews), and the only problem in her life was that she suffered some incontinence, she really should be very careful about saying something at the age of 50 that would determine what she would like to have happen at a later point in her life.

I think that is why so many people in the community have a narrow view of the circumstances they might see themselves in and say, 'Well, I certainly wouldn't want that position' or 'I wouldn't want to have to endure that particular set of circumstances, so yes, I would be in favour of euthanasia.' They may also have had a family member with such an experience, so it is a very narrow perspective.

Members opposite have spoken of the opinion polls about this issue, and I think that is why the approval rating in the community is as high as is often stated. I think people are coming from a narrow perspective. It becomes increasingly difficult when you try to put that in legislation. I think it was the Hon. Anne Levy who introduced a bill many years ago; then of course, in 2002, the Hon. Sandra Kanck had a bill; the member for Fisher, Dr Bob Such, has had a bill; the Hon. Mark Parnell had a bill last parliament; and now we have the Parnell/Key bill.

I am a bit surprised at the evolution of these attempts. Even at the last minute, we are seeing amendments proposed to this bill. I know that with the legislative process, people say that you do not always get it right, it is a bit of an evolutionary thing and if things do not work we can come back to the parliament, but I am a little bit surprised that we are seeing further amendments proposed very late in the journey of this particular piece of legislation.

I have had a number of discussions—and I do not think the Hon. Mark Parnell will mind me saying that one of the discussions I had with him this afternoon was an attempt, perhaps even by way of amendment, to narrow this down even further. I raised the issue that the Hon. Diana Laidlaw made that comment about the advance directives, and I am pleased that the Hon. Mark Parnell has seen fit to have that removed by way of amendment.

Even with my own mother, who said she did not wish to be in the nursing home that she finally ended up in, when she was unable to communicate with us due to severe dementia, we had no way of telling whether that was still her wish. While it might have been, from my perspective, a pretty ordinary place she was in as far as her own personal mental capacity, we had no idea

whether she still enjoyed watching the birds in the trees, the sun getting up, the television and all of the things that were commonplace life in the nursing home—I do not know. That is why I have always had difficulty with the advance directive, so I was pleased when the Hon. Mark Parnell proposed some amendments to remove that.

Late this morning the Hon. Mark Parnell was talking to me about some possible amendments to narrow it down even further. I have not seen it written down, but—I will try an explain what he said—to narrow this down to be only available to those people who are suffering a terminal illness and who are in the final phases of a terminal illness, again, is very narrow. He made the comment to me that 'it would be good to get something up'. I think that is the wrong way to come at this legislation, to say, 'Well, we've got to try and get something up,' because it has to be right. You do not want to get it up for the sake of getting it up. Of course, in that situation, the woman—and I always forget her surname.

The Hon. J.M.A. Lensink: Jo Shearer.

The Hon. D.W. RIDGWAY: Jo Shearer. Thanks. My colleague, the Hon. Michelle Lensink reminded me. Those were her circumstances. I have a tremendous amount of sympathy for the circumstances that Jo Shearer faced when Mary Gallnor took me to meet her eight or nine years ago.

If the legislation was narrowed down to the point where it is only somebody who is in the final phases of a terminal illness who will have that option, then the people suffering in the situation that Jo Shearer was in would not be in the final phase of a terminal illness. I suspect that would then not be a satisfactory outcome for people such as Jo Shearer and others who are either desperately ill or hopelessly ill—I cannot remember the exact term. I see all of these amendments being proposed and suggested to narrow down the scope of the legislation as an attempt to get something across the line, and I do not think that is the way we should be approaching this. We should not be legislating or making a law that just gets something over the line.

If you look at what happens today to people that are in the final phases of a terminal illness—sadly, my father-in-law last year, my father, Terry's father; there have been a whole range of them and we all have personal experiences—I think the system still works very well. The Hon. Gail Gago talked about health professionals who are working outside the law and perhaps breaking the law. At the end of the day, I think the system works very well. We have health professionals (doctors, nurses, etc.) who are providing excellent care for people who are very ill and in the final phases of a terminal illness. I think the system works well to provide those people with some comfort and, in most cases, an exit from this life that is comfortable and reasonably dignified.

So, I am sure that members can tell from my comments that I will not be supporting the bill as we see it before us tonight. I do want to thank all the people who have contacted my office. I think this time the emails have probably been more prolific than last time, and certainly a lot of standard letters have come in: I think I received about 60, all in the same-shaped envelope, on the same day last week. People have taken the time to write an envelope, although in that case they did not stick a stamp on them, because they were lodged internally within Parliament House. People have taken the time to contact me by email or by post, and I thank them for that.

I have not had a chance to read every bit of correspondence, but I have read a lot of it, and there is a diverse range of views from people drawing on their own personal experiences. As usual, that body of people is pretty evenly divided on what they would like us to do. I would like to put on the record that I thank them for making their views known to me. It is important that we as legislators get that information. I thank them, but indicate that I will not be supporting the legislation tonight.

Debate adjourned on motion of Hon. B.V. Finnigan.

CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) (EXEMPTIONS AND APPROVALS) AMENDMENT BILL

The House of Assembly disagreed to the amendments made by the Legislative Council.

Consideration in committee.

The Hon. P. HOLLOWAY: I move:

That the council do not insist on its amendments.

I do so formally, so that we can seek to resolve the disagreement between the houses through the agency of a conference. It is necessary that, if the council continues to insist on its amendments, the appropriate measures can be taken to establish a conference. I understand that there have been discussions between the Attorney and the shadow attorney and other relevant members that this should take place, so I will not take up any more time of the chamber on this matter. I will not be insisting on a division if the motion is rejected.

The Hon. S.G. WADE: For all the reasons put in debate, the opposition will be opposing the minister's motion. We believe that the council should insist on its amendments and hope that, as the minister indicated, the foreshadowed conference may be able to facilitate progress between the houses.

Motion negatived.

[Sitting suspended from 18:04 to 19:45]

CONSENT TO MEDICAL TREATMENT AND PALLIATIVE CARE (END OF LIFE ARRANGEMENTS) AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

The Hon. T.A. FRANKS (19:48): I rise to speak in support of this bill moved by the Hon. Mark Parnell, and I do so recognising that previous speakers have gone before me. I would also like to take this opportunity to counter some of the statements made so far. I would like to put on the record that I am agnostic. I do have beliefs, but they are certainly not rooted in the Christian faith, and they will certainly guide my conscience on this decision.

Numerous times the Hon. Dennis Hood claimed that he rejected the 80 per cent figure in the polls showing that the majority of Australians do, in fact, support the intent of this bill. He said:

> I believe that many of the people surveyed had those types of passive actions in mind, that is, the withdrawal of treatment for the administration of pain relief with a double effect. None of these things are considered to fall under the category of active euthanasia. Certainly, I feel convinced that nothing like 80 per cent of the population would support the deliberate intention to kill a patient who may not even be terminally ill, as permitted by this bill.

Over the past 40 years, opinion supporting voluntary euthanasia has been in the majority and, over the past 15 years, support has been consistently at least 75 per cent for the following clear and unambiguous question in Australian Morgan and Newspoll surveys: if a hopelessly ill patient experiencing unrelievable suffering with absolutely no chance of recovering asks for a lethal dose, should a doctor be allowed to give a lethal dose or not?

This very explicitly refers to a lethal dose, not the withdrawal of treatment. The latest Newspoll conducted in October 2009 showed that 85 per cent of Australians support voluntary euthanasia, with a similar level of support shown here in South Australia. Despite the statements of some church leaders, the Newspoll research shows that three out of four Catholics and four out of five Anglicans want the option of voluntary euthanasia to be available.

The Hon. Dennis Hood appeared to put greater weight in one unrepresentative Adelaidenow online poll of a non-statistically valid sample than a consistent finding of Newspoll for the last 15 years. There is another online poll today that I like this comment from. Esme Benet, at 5.19pm yesterday in response to the question, 'Should euthanasia be legalised in South Australia?' posted: 'This poll sucks. I've just managed to cast 10 votes.' That was comment 92 out of 103 in yesterday's Adelaidenow poll.

It is also wrong to highlight the electoral result for two pro-voluntary euthanasia groups in the March state election as an indicator of support. Using this logic, support for issues such as saving the Murray or safe communities would be woefully low and we know that this is not the case. We can actually have a debate about how much weight we should attach to public opinion but there is simply no debate over the consistent, overwhelming support for voluntary euthanasia in our community from credible polls.

There are safeguards in this bill. The Hon. Dennis Hood once again called for safeguards and consultation. Members would have seen the paper sent around from the Hon. Mark Parnell—a whole page of increased safeguards. At some point, safeguards—which, ironically, minister Hill has

also described as 'clunky' and 'bureaucratic'—become so restrictive that it stops people from being able to use these laws. I would suggest that we are almost at that point.

Opponents often claim that it is impossible to make a bill that will not be abused. That is equivalent to saying that there should not be road speed limit laws because people might speed. The point of law is to spell out to our citizens what is acceptable and, conversely, what will be prosecuted. Unlike current clandestine medical practice, in which patients are euthanased with no operational framework, no ethical guidelines, no requirement for multiple medical opinions, no specific assessment of the patient's mental capacity, no cooling-off period, no documentary trail, no witnesses or signatures and no oversight or reporting, this voluntary euthanasia bill makes the process explicit.

Those failing to follow the law are also open to prosecution. Surveys show that voluntary euthanasia already exists within medical practice in South Australia. It is dangerous, in fact, to leave it unregulated. It should be controlled by this parliament. In response to claims that there has been no consultation on this bill, there has been an extensive consultation process. A lot of the work over the 12 months since the last debate—when I was not in this chamber but, of course, many members were—has involved consultation with medical and legal experts and, finally, with members of parliament themselves in preparation for tonight's debate. From the consultation has come some of the amendments to the bill that we see before us.

The operation of the board has been questioned by the Hon. Dennis Hood as well. The board will not routinely tick off on every single application, but it does have powers to intervene and stop or defer a request. They can do this after being approached by people listed in clause 41(1), but there is also absolutely nothing at all stopping the board initiating its own inquiry on its own motion. I think this strikes a balance between oversight and autonomy. It acts as a reserve protection that the board will only intervene when necessary.

Referral to a psychiatrist was also mentioned in our previous speeches. There was a call for a mandatory referral to a psychiatrist to be part of any process. This is, in fact, not practical, especially for those living in regional or rural South Australia. The Hon. Dennis Hood referred to the Oregon experience where, of the 59 people who sought physician-assisted dying, none referred to a psychiatrist. The answer is pretty simple: the requesting practitioner made an assessment and found the person did not have any mental health or psychiatric concerns. This betrays the belief that anyone requesting voluntary euthanasia must be sad or mad. Could it be, perhaps, that they are instead making an entirely sensible, rational decision?

We have heard the example of Daniel James, the 23 year old young rugby player from Worcester in the United Kingdom who went to Switzerland to die. Quoting the UK tabloid newspaper, the *Daily Mail*, as his reference, the Hon. Dennis Hood said:

> Daniel was paralysed after being crushed in a rugby scrum during training and was confined to a wheelchair. He was not terminally ill; he was not dying. He simply believed that being confined to a wheelchair was intolerable and so he was killed at the Dignitas Clinic.

I am grateful to Associate Professor Arnold Gillespie for pointing me towards an alternative description found in *The Times* and, in particular, a quote from his mother*:*

> He couldn't walk, had no hand function, but constant pain in all of his fingers. He was incontinent, suffered uncontrollable spasms in his legs and upper body and needed 24-hour care.

His condition was not one which would have caused him to be merely confined to a wheelchair. However, having said all that, I do not know whether he would have qualified for voluntary euthanasia under this bill, but I am very confident that the blind artist (one of the other examples put forward) would not qualify under this bill, and I note that there have been many fine blind artists such as Lloyd Rees and in fact, Monet, one of the finest artists ever.

This bill provides potential assistance to those suffering intolerable and unrelievable suffering from advanced illness. Not only does the individual need to assert that their suffering is intolerable and unrelievable but, to qualify for assistance, they need to convince other independent objective persons including the individual's attending doctor, a second specialist, a psychiatrist through an inevitable referral, an independent witness and the medical, legal and community members of the board and registrar.

While the experience of the individual is paramount, there are a significant number of moderating influences and opinions to ensure that the full range of medical, psychological, palliative, social and spiritual care can be brought to bear in each case, and sadly, if the individual

is simply so desperate to end their life, they will do it anyway, voluntary euthanasia law or no law. Insurance concerns were also raised by the Hon. Dennis Hood, in particular, a concern raised by the Financial Services Council that there was potential for conflict between the commonwealth and state acts.

As I understand it, this concern is completely unfounded. There is specific provision in the commonwealth act that expressly allows the commonwealth legislation to be read concurrently with state legislation. The issue of jurisdictional application is another furphy. Most major insurers are not based in Adelaide and an insurance company with, for example, its head office in Zürich and a major branch in Sydney will still be able to reconcile cross-jurisdictional issues because they need to do it all the time.

The scenario that the Hon. Mr Hood painted, that potentially we could have people walking into a euthanasia clinic, buying life insurance over the phone on the way and then being given a lethal injection, is ludicrous. Can you imagine any insurance company willing to grant an expensive life insurance policy over the phone without a medical examination or even a single question: 'Have you any pre-existing conditions?'

The Hon. Mr Hood claims that a medical practitioner will be forced to forward a request to the registrar of the euthanasia board and that there is no scope for conscientious objection in that regard. I respectfully suggest that he has not read the bill properly. There are obligations on a 'request practitioner', that is, someone who has already agreed to participate in the process, to forward through the necessary paperwork in a timely fashion.

However, if a doctor does not want to become a 'request practitioner' then all they have to do is say so. There is absolutely no risk to them whatsoever of imprisonment. There was another claim that this bill will erode the trust between doctors and patients, supported by this quote:

> The Netherlands experience has shown frail elderly people become reluctant to seek medical attention—refusing to take pain medications, and refusing hospital and nursing home admission for fear they may be killed by their doctor.

This claim has been debunked and debunked time and time again. There is good evidence from Oregon, from Belgium and other countries that is the opposite to this claim. It is simply untrue. A survey of nine European countries put levels of trust in doctors in the Netherlands at the very top, in fact. Only a small number of doctors are likely to participate in this; their participation will not affect the level of patient trust towards other doctors who do not. This message of supporting suicide also came through in previous speeches. Again there is a complete lack of evidence to back this claim, but the biggest howler I would like to address concerns Els Borst, the health minister in the Netherlands at the time euthanasia was legalised there. It was said in the previous debate:

> It is little wonder that Els Borst, who was health minister in the Netherlands at the time euthanasia was legalised, now says that she thinks it was the wrong move and that the country should have focused instead on palliative medicine. That was recently reported in LifeSiteNews in December 2009. There we have the minister responsible for bringing it in now wishing they had not, very publicly and clearly.

This claim could in fact not be further from the truth. Els Borst, in a letter written to the Dutch newspaper NRC on 1 December 2009, stated (and this has been translated from the original Dutch):

> I am not of the opinion that euthanasia become law too soon. In two articles about the book 'Redeemers Beside God' by Anne Mei The (NRC, 28-11) it was put that I was of the opinion that the euthanasia law come into force too soon. Nothing of the sort. What I did say during the conversation with Mrs The was that palliative care in the Netherlands had a relatively slow start... Because I attach great importance to the wide availability of good palliative care and I consider euthanasia only to be the rounding off of good palliative care, I have in 1998 as health minister promoted a five-year stimulus program for palliative care, with an annual budget of seven million guilders. This worked well: Palliative care made up for lost time. While in 2002 euthanasia legislation become effective, the balance has been restored sufficiently to welcome this path wholeheartedly.

These are her actual words; they are clunky because they are translated from the original language. This example of not only getting something wrong but in fact 180 degrees wrong is not unusual in this debate.

As I understand, the source for the erroneous claims about Els Borst's words was once again the UK tabloid the *Daily Mail*. It highlights the often hysterical misrepresentation of much of the Netherlands experience. Far from being a place that callously knocks off their elderly and sick without a second thought, I respectfully encourage those who believe this to examine the evidence and, in particular, the latest country-wide comprehensive investigation, the latest instalment of what

is known as the Remmelink report. The third Remmelink report shows the real experience from the Netherlands. Some key findings and quotes from this report are:

> There is no empirical support for the supposition that the Netherlands are going downhill with regard to life terminating treatment by physicians.
>
> The rate of euthanasia and assisted suicide, and the practice of medical decision making relating to the end of life in the Netherlands, appears to have stabilised in recent years.
>
> Both life-terminating treatment on explicit request and life-terminating treatment without an explicit request are no more frequent than six years ago.
>
> There are no signs indicating an increase in life-terminating treatment among vulnerable patient groups.
>
> The influence of the social economic status of patients on medical decisions concerning the termination of life seems to be very limited.

Significantly, the authors of this report found in 2001-02 physicians reported more often than in previous years that they had become more restrictive about euthanasia and less often that they had become more permissive. The report also found:

> The requirements of due care are being met more extensively than previously, and public control has increased further.

We were also told that this would be a slippery slope and that the duty was upon us to protect the weak and vulnerable from this slippery slope. Again, there is clear and compelling evidence against this assertion.

A multi-year analysis of data from Oregon and the Netherlands found no evidence that people in nine of 10 vulnerable groups died more often as a result of either physician-assisted suicide or euthanasia. If anything, the studies showed that people taking advantage of the laws tended to be slightly better off economically and better educated than average. A further study from the Netherlands found there is no evidence for a higher frequency of euthanasia among the elderly, people with low socio-economic status, the poor, the physically disabled, the chronically ill, minors, people with psychiatric illnesses, including depression, or racial or ethnic minorities compared with background populations.

The overseas experience from the Netherlands, Belgium, Oregon and Washington State is clear: safeguards and transparency are in place. At the end of day, patients who are in terrible suffering are being killed by doctors now in Australia. While I have no doubt it is for the best of reasons—and in my own personal family I have seen this happen and I know that these things go on—this practice is now completely unregulated. In fact, when researchers have compared the experience of the Netherlands with practice in Australia, they found the rate of doctors ending life without an explicit request was five times higher in Australia than in the Netherlands.

We have also heard that the answer here is more palliative care. To cast it as either or—palliative care or voluntary euthanasia—is a false choice; we need both. The overseas experience is very clear: voluntary euthanasia drives improved investment in palliative care. The Netherlands, Belgium and Luxembourg all rank highly in palliative care services. Belgium doubled funding to palliative care services when it introduced its law. Oregon rates in the top 10 states in America regarding PC access to hospitals.

Palliative care in the Netherlands has improved since legislation, with the rise in the number of specialist PC facilities and beds. Oregon has amongst the best palliative care in the US, and yet 96 per cent of those seeking assisted dying do so from within those services. When the Northern Territory laws were passed, investment in palliative care was increased. At the end of the day, even our first-rate palliative care services won't and don't work for every one.

We have all had the correspondence both for and against this bill. We have heard in the debates that there is always enough medication to address the pain that some people experience as they near the end of their life. I know from my personal experience that this is not the case. I also know from many of the letters that I have received in the previous weeks that this is not the case for many people.

I think it is clear that I will be supporting this bill. It is reasonably clear that this bill will not be getting up, but I do think that we all have it on our conscience to give those people who would like the choice to die with dignity that choice. We do not have to exercise the choice for ourselves or our family members, but we do have to enable others who would like the choice to be given it. I commend the bill to the house.

The Hon. R.L. BROKENSHIRE (20:07): I will not go into as much detail on this bill tonight as I did just a year ago, and I will explain why as I go through my remarks, but given events that have moved along since the last time we debated this bill, there are some other comments that I would like to make to my colleagues and put on the public record. Firstly, I acknowledge the many letters that I have received both for and against this bill.

Clearly, it is a difficult and emotive bill for all of us to vote on. I say to the people who have provided briefings and education about this important issue that I appreciate very much the efforts that they put into briefing my colleagues and me, and also I feel a better educated debate will occur as a result. Tomorrow we will be lodging a petition against this bill signed by 5,000 signatories and it will be tabled in this house.

I have to say that, in monitoring my emails and written correspondence, this time I have clearly had an absolute overwhelming majority of correspondence in opposition to the bill—much more than I had in 2009. I acknowledge that some parties have a particular policy on this. When I was in the other house, it was also a conscience vote. I was always opposed to euthanasia then and I continue to be, and I am strongly committed to the policy of Family First that we do not support euthanasia.

However, we do support palliative care and, in fact, in the other house, I was strongly supportive of the former Liberal government's initiatives to bring in palliative care and better legislation and support. However, I believe that South Australia can do a lot better when it comes to palliative care, and I would dearly like to see much more money put into palliative care in this state.

We should have a challenge as a state to have the best practice palliative care in the world. We could have R&D as part of our university and hospital precinct as well doing that, because I believe that would be an absolute positive for South Australians and, indeed, a positive for all members of society here on this planet earth.

It is interesting that a Sydney study found that, of people entering palliative care services, 2.8 per cent wanted euthanasia but, once palliative care was started, less than 1 per cent wanted euthanasia. This supports the evidence given to us by experts in the field who felt that the pain of the illness and the desire to end the pain was the dominant factor. Therefore, once the pain was dealt with, the desire for euthanasia was much lessened to that percentage of people.

I will return later to comments others have made about palliative care. It seems almost universal across the commonwealth that exploring euthanasia has seen a renewed desire to invest more heavily in palliative care, which I believe is the appropriate response of our parliament and state and, as I said, is certainly Family First policy.

In my opinion, euthanasia erodes trust in the medical profession. It runs against the Hippocratic oath. AMA policy is that euthanasia is fundamentally inconsistent with the physician's role as a healer. Medical experts told us passionately that they are seen as life savers in the community but, with this bill, they become life takers. In the eyes of the public, these noble doctors—without their consent, I might add—suddenly lose a lot of trust in the community.

I have been told that in the Northern Territory Aboriginal people became less inclined to see a doctor for fear of being euthanased. I have no doubt others in our community will do the same. The honourable member promoting the bill might say this can be tackled with education but, sadly, it is the uneducated who are often unreached by information campaigns and end up too scared to go to a doctor when they are seriously ill. We do not want that erosion of trust in the medical profession.

In this bill there is no time limit on when the terminal illness might cause death. Medical experts told us that in at least 6 per cent of cases their diagnosis of the disease being terminal can be wrong. Six per cent is a significant percentage, in my opinion. So, conceivably, over one in 20 deaths under the euthanasia regime proposed by this bill could happen after a mistaken diagnosis of a terminal illness. I note, on safeguards, that this bill has fewer safeguards and lower thresholds than a bill that was recently comprehensively rejected by the Western Australian Legislative Council.

On that issue, I want to make my point, as I see the argument, about Newspoll's surveys supposedly showing that 80 per cent of people are in favour of euthanasia. I have to say that I do not pick up the 80 per cent of people being in favour of euthanasia wherever I go across the state, and I spend a fair amount of my time (like the rest of my colleagues, I am sure) across the state. Push polling can bring a skewed answer, and I want to read into *Hansard* the Newspoll of October

2009, because I am not sure that we are all aware of the questions that gave those results. These are the two questions asked of the respondents to the survey:

> Thinking now about voluntary euthanasia, if a hopelessly ill patient, experiencing unrelievable suffering, with absolutely no chance of recovering, asks for a lethal dose, should a doctor be allowed to provide a lethal dose or not?

The result of that question was 84.9 per cent said yes and 9.7 per cent said no. A Newspoll in February 2007 asked:

> Thinking now about voluntary euthanasia, if a hopelessly ill patient, experiencing unrelievable suffering, with absolutely no chance of recovering, asks for a lethal dose, should a doctor be allowed to provide a lethal dose or not?

The result was: yes, 80 per cent and no, 14 per cent. I wonder what people would think if political parties started wording their questions in that way.

What I really want to highlight to the house is that this bill is not so well defined. It is not that tight. There are lots of anomalies and issues that can come up that do not make this bill anywhere near as tight as those questions, and that is an absolute fact. You only have to read the bill yourself to know that.

Amendments are coming into this house again, right now, before we actually debate this bill. So, clearly, as late as today, we have amendments on what is a serious bill. We see all the time problems with bills that we debate in this parliament. Members only have to look at the most recent one, the decision of the High Court on the government's bill with respect to outlaw motorcycle gangs and others, and what happened there. The consequences of this are far more horrendous.

In an open letter to Premier Rann, Associate Professor Nicholas Tonti-Filippini of Melbourne (Australia's first hospital ethicist and a former director of bioethics, and, importantly, presently suffering a terminal illness—sadly, renal failure, heart disease and auto-immune disease) wrote:

> I cannot speak for all people who suffer from illness and disability, but I think I can speak more credibly about suffering, illness and disability than those people who advocate for euthanasia presenting an ideological view of suffering and disability. Facing illness and disability takes courage and we do not need those euthanasia advocates to tell us that we are so lacking in dignity and have such poor quality of life that our lives are not worth living.

Then, on palliative care, the associate professor writes tellingly:

> In Australia too little is done to make adequate palliative care available to those who need it. Current entry requirements for palliative care usually exclude people with chronic pain and is often limited to people who are in the last stage of cancer with a prognosis of less than eight weeks. The pharmaceutical studies for more effective forms of pain relief are often restricted to cancer patients. People living outside major cities have little access to palliative care facilities. Few doctors are adequately trained to provide palliative care. Most pain clinics are oversubscribed and have long waiting lists.

He goes on to note that the United Kingdom has opted for improved palliative care rather than euthanasia, and that is where I come back to our policy of more effort into palliative care.

I do not have a lot more to say, but I would like to put a couple more things on the record, and I thank my colleagues for allowing me to do that. To illustrate the feeling among medical practitioners who we feel have not been consulted about this bill, Dr Rudi Zacest asked that his views be represented in parliament, and so I am going to represent them. He said that, in his Hippocratic oath, he declared:

> I will neither prescribe or administer a lethal dose of medicine to any patient even if asked, nor counsel any such thing.

Dr Zacest says that as a consulting physician he saw, not infrequently, patients who confided that they changed their GP because they learnt that he or she was sympathetic to euthanasia. He never encountered the change of GP going the other way, and this is with the law as it already is, not with this bill in place.

He was concerned that the claim for a need for regulation suggested that covert euthanasia was occurring. He feels that this is an insult to the medical profession. Dr Zacest also observed that the natural consequence of the bill passing is that deans of medical schools will feel obliged to introduce courses on patient killing. Who, he asks, would become the first chair of euthanasia medicine?

We have been referred to commentary by Reverend Dr Gondarra from the 1996 debate on euthanasia that the Yolngu people said that the Northern Territory euthanasia bill was perceived by most Yolngu as 'sorcery' and that some people are refusing to go to hospital. Older people who think they have no rights to refuse do what the doctor says and go to hospital in deathly fear of what is going to happen to them.

In essence, one Aboriginal people, the Yolngu in the Northern Territory, believed that the bill was against customary law. We do not have a position from the Kaurna, Ngarrindjeri, the APY lands and other Aboriginal groups on whether this bill is likewise against customary law. At least it can be reasonably inferred that this bill will drive Aboriginal people away from health services, not towards them.

I commend my colleague the Hon. Dennis Hood's comments in this house, and I refer others to my contribution on the bill that the Greens introduced on 28 October last year. I believe there are simply too many problems with the current bill.

I have my doubts that South Australia could ever pass safe euthanasia laws, given the ethical issues, including the converting of doctors from life savers to life takers, the loopholes and flaws in this bill, the difficulty in ever having adequate safeguards, and the experience from jurisdictions with euthanasia legislation that has seen the killing of people against their will. There is a saying I have been taught over the years, and I wish I practised it more. The saying is a simple one, namely, 'If in doubt, leave out'. I have far too many doubts in relation to this bill, and that is why I will not be supporting the bill.

The Hon. J.M.A. LENSINK (20:21): This is probably one of the most difficult issues that any of us as legislators have to deal with. This is the third time I will be considering this issue. The first time was in 2003 when, as a new MLC at that time, I voted against that bill; and then again in October last year, I voted in favour of the Hon. Mark Parnell's bill. I would have to say that I come to this issue fresh each time because of the significance, depth and weight of issues we have to deal with. In principle, I believe in the liberal position that people should have the right to choose, and this extends to those who are suffering in an irretrievable situation in terminal illness.

I acknowledge that many Australians and South Australians want to have control over their end-of-life decisions. They do not wish to die in pain, and they do not wish for their life to continue if they are demented or if they have lost control of bodily functions and so on. I think a particular part of that is a fear of prolonged suffering, which is an important consideration to which I will return later. My colleague and the leader, the Hon. David Ridgway, articulated examples in relation to those, so I will not go over those again.

I would have to say that many people who are particularly vocal about expressing their wishes are educated and articulate and know what they want. We hope that, in reality, very few people will ever be in a situation of needing to access the provisions we have before us. I would like to refer to an article, which I think gave me a bit of a jolt, in *The Australian*, on the weekend of 2 and 3 October 2010. The article was written by Angela Shanahan, and it is entitled 'Right-to-die polls no basis for radical change'. We have had a lot of discussion in the debate tonight and in previous discussions about what the polls mean. They should not be seen as a blunt instrument either way; I think the debate is much more nuanced than that. In this article, Angela Shanahan says:

> The 45 to 65 age group showed the most support, with 80 per cent in favour. But the age breakdown of the poll showed the greatest opposition—

and this is in relation to a poll published by News Limited—

> came from the people who are always portrayed as avid supporters of euthanasia: the elderly. Those aged 65 to 74 had only 18 per cent approval. A more nuanced poll would reveal that rather than fearing being a dribbling demented mess, most old people feared the Dr Death at the nursing home.

End-of-life decisions are hypothetical, and I think that is the point that Angela Shanahan makes, and I think it is often an issue that is lost in this debate.

I am currently a joint custodian, together with my father, for my mum. She has had her third bout of cancer. She has had her third operation and, happily, she is alive and well. She is angry about not being as educated as she would have liked, but that is a product of her upbringing. She is articulate, and she knows what she wants.

In the lead-up to this latest round (I am not entirely sure of the terminology, but it is in relation to provisions that exist in the Consent to Medical Treatment and Palliative Care Act as they

are), I think it was an anticipatory direction she applied for, which means that, should the worst happen and she is unable to make decisions or express them herself, she does not want to continue to have futile treatment. But it went to the point where it would involve my dad and me having to make decisions about whether machines were turned off and so forth and whether medical treatment was withdrawn.

At the point before she went in for her operation, I said, 'What's your intention?' She had written her intentions down, but I certainly was not getting the intention that she was ready to throw it all in. She said, 'No, no, no; I still want to fight.' I think she has felt rather tired of her many medical illnesses over the years, and at times she has felt like it is all just too hard and she wants to give in, but then the spark will come back.

I relate that story because I would take the precautionary approach with my mum and I would want to follow her wishes as closely as possible. From what I understand, clauses have been taken out of this bill which relate to those advance directives, and I think that is a wise thing because, as I say, those advance directives are hypotheticals.

The assessment needs to be made continuously for those people in order to match their wishes as closely as possible. However, ultimately, if my dad and I were faced with that choice I would not want to let her go, because I would not be convinced that that is the decision that she would want to make for herself. I think the Hon. David Ridgway articulated that quite well in his second reading contribution.

This issue was debated recently on ABC Radio National in an interview on 7 October 2010, where Mark Colvin, as compere, interviewed an academic from Oregon who is involved in the process, Associate Professor Barbara Glidewell, and the federal AMA President, Dr Andrew Pesce. The associate professor referred to the situation in Oregon and said:

> It's really incredibly important to have structure and to have safeguards and, further, to provide for patients to understand the process.

I think we have been struggling with the issue of structure and safeguards. There have been amendments which reflect that structure and safeguards are incredibly important, and for us to support this we have to be confident individually that they are right; I do not feel that I have that situation. I have not been able to reconcile all the different pieces of how this fits together which has, quite frankly, been a question of time in terms of not being able to pull those parts together.

On these conscience matters occasionally I find myself on the same side as the Hon. Robert Brokenshire, and occasionally not. The examples that he has talked about concern Aboriginal communities, and I think there are other communities who would be similarly affected and who do not necessarily understand that, just because it is legal for voluntary euthanasia to take place under very certain strict conditions, when they seek treatment that is not going to happen to them. That has also tipped me against supporting the bill on this occasion.

In Oregon the process is that a person will request the option. I am not saying that I necessarily support that model. That is a big question I have in my mind as to which model would be ideal. If the patient meets the requirements they will receive a prescription. However, interestingly, a number of patients do not use the medication in the end. I think that goes to the point that people want to have a safeguard.

I think that many people feel that, if they are in a situation that is irretrievable and they feel it is unbearable and they are going to die anyway and they would like to have that option there, when faced with that situation they do not necessarily feel the need. I am clearly concerned about vulnerable people. I have spoken about that in my speeches before. I have seen people, having worked as a physio in hospitals, who may feel coerced, that they have become a burden on society and there is nobody to look after them, and maybe it is just better for everyone if their life was to come to an end.

There is a further issue about a potential shift in culture in our health system. We had a bit of a discussion on ABC radio about doctors this morning, and I note that the AMA remains opposed to euthanasia. As far as the medical profession is concerned, doctors are governed by a code of ethics which, to quote Dr Andrew Pesce, 'does not allow administering of a treatment whose sole fundamental purpose is to end a person's life'. There is a balance that we need to take, and some might take the view that doctors ought to comply with patients' wishes, but I think that it is important to frame this situation against what is a fundamental tenet of being a doctor and the Hippocratic Oath, which is to do no harm.

Trust is also a cornerstone of the doctor-patient relationship, and that plays again into issues of people who may not understand what their rights are and may not understand that the laws do not apply to them and that they can safely seek treatment from their doctors without fear of euthanasia. The educated and articulate people in our community will always know their rights and will have done their homework, checked it on the internet, asked questions, etc.

I am very bemused by the fact that evidence from the Netherlands is being used by both sides of this debate, and I have not had an opportunity to review that evidence. I would really like to see a full literature review conducted by an independent source such as a journal of the calibre of *The Lancet*. I understand the scientific process and I think that the truth lies somewhere in between.

I feel rushed in this process and I am not seeking to say anything against the honourable mover, who has sought in good faith to have a proper debate on this bill but I think, given the weight of it, I do not think that I can make a decision on something which is as important as this under the circumstances. Really, we are debating the circumstances around deliberately ending someone's life which, under other circumstances, is considered murder and is a criminal act, and the highest safeguards need to be ensured. Under the circumstances, I am unable to support the bill at this time.

The Hon. S.G. WADE (20:32): In rising to speak on this bill I thank all of my constituents who have had taken the time and trouble to provide input to my considerations. I will not be supporting this bill. The bill is substantially the same as the bill before the council last year, so accordingly I will summarise my position rather than repeat it.

I would describe myself as a person who is conservative on euthanasia, rather than a person who is opposed to euthanasia in principle. While my Christian faith teaches me that it is not an option that I should see as available to myself, in a pluralist society and as a Liberal I accept that others make other choices, so I do not rule out euthanasia being made legally available to South Australian adults, including adult Christians who have a different understanding of our faith.

But I am in no rush to see legislation put in place that I believe would be a significant risk to a large number of people. I have been disturbed at the extent to which this debate is polarised into whether you support euthanasia or you do not. If you do, the expectation is you have to support every euthanasia bill, whether it is a good bill or a bad bill. I do not see this bill as a good bill. This is confirmed by events in the last two days.

The Department of Health advice, tabled by the health minister in the other place yesterday, highlighted a whole series of flaws in this bill. Further, today the Hon. Mark Parnell has tabled a series of amendments to the bill—46 amendments on the very day that this bill is due to be considered. This is no way to handle complex and delicate legislative issues. I will not support this bill at the second reading and will not support any future bill that has not been the subject of an orderly, thorough review.

Issues such as end-of-life decisions are too important to be left to chamber haggling and lobbying to remove enough obstacles to slip them over the line; that does not lead to good legislation. In terms of current practice, I appreciate that the current law and practice is open to abuse and that medical practice in palliative care can take us into grey areas that are morally and legally challenging. However, I think we need to be careful that, in our attempts to eliminate grey areas through euthanasia laws, we do not merely shift the grey areas and in the process put more people at risk.

I urge the council to see that this bill is so broadly drawn that it would effectively provide assisted suicide. The eligibility criteria effectively provide euthanasia on demand to people with no life-threatening illness. This bill does not merely follow the lead of overseas jurisdictions which provide euthanasia, it leapfrogs them and takes us into unchartered waters.

I do not propose to go through the bill in detail, but I want to focus on what for me is the fundamental issue, and that is the gate, the threshold eligibility criteria. When the general public talks about euthanasia they are usually talking about providing relief to people in the terminal phase of a terminal illness. People in this situation are covered by clause 6, the new section 3(d)(a) of the bill. However, this bill goes further. Clause 6, the new section 3(d)(b)(ii), entitles an adult to voluntary euthanasia if that person has:

> ...an illness, injury or other medical condition (other than a mental illness within the meaning of the Mental Health Act 2009) that...irreversibly impairs the person's quality of life so that life has become intolerable to that person.

These terms are vague and ill-defined. The Hon. Mr Mark Parnell argued in his second reading explanation:

> ...it does set the bar very high. It needs to be an illness, injury or medical condition that irreversibly impairs the person's quality of life. We are not talking about any disease, condition or illness from which you might recover and where your quality of life will improve: it is a narrow field of qualification.

I do not agree. The terms 'illness, injury or medical condition' are very broad. It is neither a high bar or a narrow field of qualification. It is not a high bar in that the injury, illness or medical condition could be medically relatively minor and yet irreversible. If a person with such a condition, for whatever reason, wishes to end their life this bill would deem them eligible and effectively give them access to assisted suicide.

It is also not a narrow field of definition. For example, what is meant by the term 'medical condition'? The bill does not even try to define a medical condition. The concept does not defy definition, in fact the South Australian Public Health Bill, which is currently before the other place, includes a definition of exactly that term. That bill describes 'medical condition' as:

> a medical symptom or pattern of medical symptoms, including symptoms discerned from any signs or results of investigations...

It goes on in another clause to talk about:

> an illness or injury arising from a person being contaminated by one or more substances or biological pathogens:

That, for example, is a very broad definition. Likewise, the government's road safety website lists a range of what it deems as medical conditions that are legally relevant in terms of fitness to drive. They include conditions such as: diabetes, epilepsy, heart disease, stroke, arthritis, glaucoma, cataracts, macular degeneration, sleep disorders, ADD, ADHD, alcohol or drug dependency, fainting, Parkinson's disease and neurological conditions, dementia, Alzheimer's, giddiness, dizziness, high or low blood pressure.

Without a definition, how are we supposed to interpret this bill? All of these medical conditions are likely to come within the public health definition of medical condition. Why would they not come under the definition in this act? An euthanasia bill is dangerous if it allows criteria which are so broad and ill-defined. As I highlighted in my contribution on the previous bill, people with a disability are likely to be deemed to have an illness, injury or medical condition that irreversibly impairs the person's quality of life.

From the moment a person with a disability reaches the age of majority or from the moment of acquisition of the disability if they already are of majority, they would be entitled to voluntary euthanasia under this bill even though they might be expected to live for decades and, for that matter, live fulfilling and contributing lives.

There may not be any sign of a life-threatening illness. A person could ask for euthanasia when that person had only recently acquired a disability and before they had even had the opportunity to re-frame their life expectations in the context of that disability. I consider that the ready access in this bill of euthanasia for people with a disability is effective discrimination, but then the bill compounds the discrimination by excluding people with a psychiatric disability. The Hon. Mark Parnell in his explanation justified this double discrimination by saying:

> The reference to mental illness is important because, as most of us know, mental illnesses can be treated, and can be treated successfully.

This is simply not true. There are a number of mental illnesses that can be treated in the sense of being alleviated but they are not treatable in the sense of being able to be eliminated. If a residual non-psychiatric, chronic disability which a person finds intolerable meets an eligibility criteria for euthanasia why should a residual psychiatric disability fail to do so? To me it is yet another example of the dog's breakfast that this bill has become. I urge the council to reject the bill and to do so at the second reading.

The Hon. A. BRESSINGTON (20:40): I also rise to speak to the bill put before us by the Hon. Mark Parnell to allow voluntary euthanasia to be available via palliative care in South Australia. First, I want to say that I believe that the Hon. Mark Parnell has put together a bill in good faith and I believe that he has done it for the reasons that he says. However, at the outset let me say that I believe that individuals in the final stage of a terminal illness should have the right to say, 'I have suffered enough.' I do not believe that this decision should be left up to the treating physician and other family members, as occurs now, with what is known as double effect, which

technically allows a physician to administer pain relief in doses that will see the person who is ill eventually die as a result of trying to achieve pain relief. I have difficulty accepting that double effect is the ideal situation.

However, I have difficulty in coming to terms with the notion that we are all terminally ill. I must say it was this statement that caused me to rethink long and hard about how this bill could and possibly would be amended in the future. This is not a moral issue for me, nor is it one of religious belief. It is an issue of responsible legislation which I am paid by the people of this state to undertake. Those who are pro voluntary euthanasia deny such a thing as a slippery slope but I have seen for myself how that slippery slope works over years and years of persistence. The effort that goes into changing people's perception often causes confusion. First, it is my observation that this occurs by creating a problem through recruiting individuals to tell of their hardship and heartbreak so that the wider community is struck with a sense of compassion. I do not believe that compassion is why we should put together legislation in this place.

Then, of course, we see government's inability or unwillingness to address the core issue and, in this case, it is effective, accessible and affordable palliative care for the sick and dying. Then we allow the debate to rage for years, if not decades, allowing time for the message to sink in and for people to be literally worn down by the stories and the dysfunction of the system. I am also not afraid to say that, during that recruitment period of years and even decades, we are fed all sorts of statistics to ensure that, if you are opposed to the idea, you will feel as though you are in the minority and, of course, if we speak out publicly we are led to believe that we are in need of serious medication or that we are heartless fiends.

One such example is the imbalance of information. I agree with the Hon. Michelle Lensink, I might say, that we do need an absolutely independent review of all the literature because both sides of this argument (and every other argument) will come up with their own stats and research to prove their point of view. We are seeing that happen more and more. Science is being discredited in one way or another and none of us know who to believe anymore. I think that is a sad case.

Over 6,300 people participated In the Adelaidenow poll and 25.1 per cent said yes to the question 'Should euthanasia be legalised in South Australia?' That was conducted last night and today and I think these figures were obtained at 10 o'clock last night—74.17 per cent said no, and 0.73 per cent remained unsure. Then there was a poll which said that 87 per cent of Australians are in favour of euthanasia. We all know, as the Hon. Robert Brokenshire pointed out, that it is actually how we ask the question that will probably determine the answer.

I do not believe that these sorts of polls are what we should be basing our decisions on. If we are going to get down to the nitty-gritty of it, I believe, let's have the absolute poll. Let's have a referendum on this and make sure that, if we are going to vote for or against euthanasia, it is done through the will of the people. We know that, before referendums, both sides will be educating people who are prepared to listen but, at the end of the day, this voluntary euthanasia bill should be the decision of the people. I do not believe that any of us in here are qualified, or unbiased or uninfluenced enough to be able to make a decision that is going to affect every person in this state, one way or another.

The decision should be up to the people who are going to actually be accessing it or are going to be affected by it. There is a rising concern out there in the ability of the major parties to protect the best interests of the people, and I say that concern is probably well deserved. Experience shows that the best indicator for the future is the past and present. Again, I stress that I see little that convinces me that this, or any other, government is grown-up enough, or fit and proper enough, to monitor, oversee or report on what the true effects of voluntary euthanasia may be in five, 10 or 15 years' time.

We all witness every day that apologising or rectifying mistakes is not a strong point of the major parties, let alone acknowledging that a mistake has ever even occurred. It seems it is so much easier to create a story of spin to cover up any misdeeds or to persecute anyone or any person who may blow the whistle on the fact that all is not well. If there is anyone who does not believe that this occurs daily in this state, then I invite you to come into my office for a month and listen to the story upon story where public policy and legislation are being abused and our average citizens have absolutely no recourse.

I will just refresh members' memory on issues that remain unresolved and adversely affect the people of this state: drug addiction, mental health, child abuse (past and present), WorkCover,

the child protection system, disabilities, the Housing Trust, victims of abuse in state care and abortion. I have got to say that the issue that absolutely was my tipping point was forced water fluoridation. I say that, not because I believe that I should be believed about the science that I have read. What has absolutely gobsmacked me is the reluctance to look at the science and then do our own studies and find out for ourselves.

If that is the case with this and with all of those other issues—child abuse, WorkCover, all of those that I mentioned—I guarantee you that most members in this place have a solution to those problems. We know what the core issue is of each one of those problems. We can put up pieces of legislation time and time again and have them rejected because it is going to cost money. What do you think is going to happen with VE down the line? If we cannot solve these problems now, and we are allowing them to roll on for decade after decade, with the same inquiries going now that were going 40 years ago, how many lives with voluntary euthanasia would be lost in the process of trying to turn that around?

That is the guts of my problem with this—no faith. I have no faith at all in governments' ability to review honestly and fix problems. Then of course, we had the breaking of the EBAs with the Public Service, which is sort of off-track again, but this government cannot keep its word. It cannot keep its promises. I stress that trust and confidence in any authority must be earned, and that is done by governments keeping their word and doing their best to solve problems for their constituents and by governments, and every member of parliament, serving the people who pay us to do so.

I believe that this issue should go to a referendum and I do not believe we are going to resolve it in any other way. I also stress that my comments should not be seen to reflect poorly on the Hon. Mark Parnell. As I said in the beginning, I believe that he has tried to put the best into this bill that could be done. He has tried to be careful but I do not think we can be careful enough. Right here and right now, I can only base my judgement on what I have seen over the past 4½ years and consider how this legislation would play out in the future. In this case, a slippery slope is a deadly slope.

Let us go back very quickly to the issue of abortion where we were told, when that legislation came in, that it would be for medical purposes only—if a mother is at risk of dying giving birth to or carrying a child—and a few minor exclusions. I have heard from a number of young women who have literally been forced to have abortions: they have been offered no other option. We are told that that is a pro-choice issue, just as we are being told that euthanasia is a pro-choice issue, but these young girls did not feel that they had a choice.

I met with a woman who had an ultrasound on her unborn baby and the doctor told her that there was a possibility that the baby could be Down syndrome; before the end of that consultation that doctor had her booked in to go over the border to Victoria to have an abortion, because she had to be there by the following Thursday. She had to go home and break the news to her husband that the baby could possibly be Down syndrome. He said, 'I don't want a disabled kid; yep, have an abortion,' but she insisted—insisted—on an amniocentesis test, and that test came back negative. It was a fine, healthy baby.

These things are happening here every day; we were promised with abortion that they would not happen, and now we are talking about a debate on decriminalising abortion, which will involve what has happened in Victoria—full-term abortions. I do not care what anyone says and I do not care if it is just not hip to be pro-life, but we cannot keep a handle on this. There are slippery slopes; they do exist and they are allowed to exist, and people's perceptions are allowed to be changed until they are confused between what is right and what is wrong. I believe that that would happen with voluntary euthanasia no matter how many safeguards we have.

There being a disturbance in the Strangers' Gallery:

The PRESIDENT: Order! The gallery will not applaud any speech or I will have you all put out on the street.

The Hon. J.S. LEE (20:53): I rise tonight to contribute to this bill introduced by the Hon. Mark Parnell. I acknowledge that I have received a total of 658 pieces of correspondence to date, consisting of 419 emails, 212 letters and 27 phone calls. I have personally opened each letter and email every day since the bill was introduced. Many letters were handwritten and very moving. I appreciate the time taken by people to submit their views with much consideration and sincerity.

I note that this is one of the few bills in this place that involves a conscience vote. As a new member of parliament, I have not spoken on the subject of voluntary euthanasia publicly before and this will be the first time I have the opportunity to place on record my views on this matter. I thank the many people who have attempted to meet with me, write to me and provide me with details of their strongly-held views, based on their own circumstances, on religious or moral grounds, or through work that they do as medical or legal professionals.

I came into parliament with an open mind to evaluate whether voluntary euthanasia is the right thing to have. I acknowledge the representations and contributions made by the public to my office which have assisted me in my deliberations. I also acknowledge the honourable member for showing compassion to those who are suffering and have no chance of recovery and commend him on his strong campaign attempting to give people the choice to die, by passing a bill to alleviate suffering.

As a Liberal, I strongly support the principle that people should be given the freedom and choice to do what they want with their lives. I do not doubt that this bill is introduced by the honourable member with good intentions. I have heard his passionate debate and his sincere plea on this matter. I would also like to commend the supporters of those who have campaigned long and hard, for example, the South Australian Voluntary Euthanasia Society, Christians Supporting Choice for Voluntary Euthanasia, and others.

I have taken the time to study the proposed legislation closely and listen carefully to all sides of the argument and tonight I have heard many contributions made by honourable members in this house. No-one enjoys seeing people suffering on their deathbeds, so I tried to look for ways to consider supporting the bill. I want to be assured there are enough safeguards in place, because this is a serious matter calling for a deliberate act of ending somebody's life. As legislators, we are asked by our constituents to use our judgement and to take into consideration all the views people present.

From the high volume of correspondence I received—some 658 in total—people are either in favour or strongly against. There is not much of a middle path. I asked my office to meticulously organise the correspondence into two folders. The calculation provides us with the anecdotal evidence that more than 70 per cent of those people who feel strongly about the matter want the elected members to oppose the bill. The more research I did and the more submissions I read, the more concerned I became that there will be unintended consequences if this bill is passed.

Out of the piles of letters I received, I was moved by many compelling arguments both for and against voluntary euthanasia. I would like to refer to a particular letter from someone who is suffering from terminal illness. I believe he will allow me to mention his name. He is Associate Professor Nicholas Tonti-Filippini. When I read the opening of his letter, I thought he was asking me to support the bill so that he would not need to suffer any more pain and because he would like the option of dying with dignity. However, this was not the case. To allow honourable members to understand his submission, it is important that I read some paragraphs from Associate Professor Tonti-Filippini. He said:

> I write this letter to you in my own name only, and not in the name of my institute, of any government committees in which I am involved, or any other organisation. I write because what happens in South Australia on this matter will affect all Australians, particularly those who, like me, meet the requirements of the bill.
>
> I cannot speak for all people who suffer from illness or disability, but I think I can speak more credibly about suffering, illness and disability than those people who advocate for euthanasia presenting an ideological view of suffering and disability. Facing illness and disability takes courage and we do not need those euthanasia advocates to tell us that we are so lacking dignity and have such a poor quality of life that our lives are not worth living.

The Associate Professor informed me in his letter that he is dealing with a terminal illness and is dependent on haemodialysis and palliative care. He has undergone 15 angioplasty procedures and the placement of eight stents to attempt to recover some blood flow after the failure of coronary bypass surgery. The last such procedure was unsuccessful as the blocked artery could not be accessed.

He mentioned these matters to establish that he is no stranger to suffering and disability, and he is well aware of the limitations of palliative care. He understands clearly that it is particularly difficult to control chronic pain because the effectiveness of most forms of pain relief is of limited duration, given the development of therapeutic tolerance. He mentioned that he has reached the limit of what palliative care can offer; however, he strongly opposes voluntary euthanasia.

Other members in this council may also have received the same letter and would then be aware of the associate professor's professional background. I think it is important that I mention some of his career experience. He has been involved with issues to do with the care of the terminally ill for many years. He was Australia's first hospital ethicist 28 years ago at St Vincent's Hospital, Melbourne, where he was also the Director of Bioethics for a period of eight years. His current position is based at the John Paul II Institute.

Associate Professor Tonti-Filippini recently had the experience of chairing a national Health and Medical Research Council working committee, preparing guidelines for the care of people in an unresponsive or a minimally responsive state, receiving a large number of public submissions on the topic. I encourage all members to read the public submissions on the national Health and Medical Research Council's website. I will continue to quote the associate professor. He said:

> As a chronically ill person, I know well what it is to feel that one is a burden to others, to both family and community, how isolating illness and disability can be, and how difficult it is to maintain hope in the circumstances of illness, disability and severe pain, especially chronic pain.
>
> For several years, I received from my health insurer a letter that tells me how much it costs the fund to maintain my health care. I dreaded receiving that letter and the psychological reasoning that would seem to have motivated it. Each year I was reminded how much of a burden I am to my community. The fear of being a burden is a major risk to the survival of those who are chronically ill. If euthanasia were lawful, that sense of burden would be greatly increased for there would be even greater moral pressure to relinquish one's hold on a burdensome life.

He continues:

> Seriously ill people do not need euthanasia. We need better provision of palliative care services aimed at managing symptoms and maximising function, especially as we approach death. Rather than help to die, the cause of dignity will be more greatly helped if more was done to help people live more fully with the dying process.

The proposal to make provision for a terminally ill person who is suffering to request assistance to die from a doctor makes it less likely that adequate efforts will be made to make better provision for palliative care services.

Medical research in this area indicates that the desire for euthanasia is not confined to physical or psychosocial concerns relating to advanced disease, but incorporates hidden yearnings for connectedness and care and respect, understood within the context of the patient's lived experience. Essentially, the bill involves setting up a category for people whose lives may be deliberately ended.

If euthanasia is lawful, then the question about whether our lives are overly burdensome will not only be in our minds, but in the minds of those health professionals and those family members on whose support and encouragement we depend. The mere existence of the option will affect attitudes to our care and, hence, our own willingness to continue.

There are many problems with this bill. The bill has a very wide scope and affects not only those who are imminently dying, but the definition of 'terminal illness' includes people who may be months or years away from their illness causing death. People who are ill and disabled need support and encouragement and the knowledge that those around them value them.

The bill has not been generated by a broad-based inquiry—which has already been recognised by other honourable members in this council—that took into account the interests of all South Australians and especially those with a chronic or terminal illness and those who are marginalised. It is a narrow approach that excludes the provision of adequate care and support for those in need.

The bill would expect the doctors involved to prescribe a drug not for legitimate purposes that define the medical vocation, such as the care of the patient or the treatment of illness, but to intentionally and actively intervene to end the life of the patient. In that respect, the bill is not supported by the Australian Medical Association, or any of the medical colleges. The AMA policy on euthanasia is to strongly oppose any bill to legalise physician-assisted suicide or euthanasia, as these practices are fundamentally inconsistent with the physician's role as a healer.

The bill has not been supported by organisations and institutions directly involved in aged care, the care of the dying or the care of those with chronic illness. Those involved in day-to-day care are generally not in favour of being given the capacity to end the lives of those they care for. The bill will not benefit South Australians who suffer from chronic illness. Instead it will make protection of their lives dependent on the strength of the will to continue. The fear of being a burden is a major risk to the survival of those who are chronically ill.

The option of euthanasia provides a way out for families and carers and the fact that the options exist will be likely to make someone who had a burdensome illness feel even less valued and increase the likelihood that they would choose death over dying alone or being a burden to others.

Pain and suffering are complex, involving physical, psychological, emotional and spiritual elements as recognised by other honourable members in the council. I believe that palliative care seeks to address the needs of those who are suffering in a multidisciplinary way that reflects the many elements involved. There are many minority and sub-populations within our society who are already vulnerable in the existing health system, such as the Aboriginals, migrants and refugees. There are also vulnerable people who are suffering from depression and mental illness who may be at risk if this bill is passed.

I work with so many people in the multicultural community and the knowledge of euthanasia among many of the non-English speaking migrants and refugees is very low. A huge amount of economic and human resources will be required to formally survey their understanding of euthanasia laws and then to educate them about their rights under those laws. This would require the services of qualified interpreters. Not only should these interpreters be competent with the specific language skills but also be armed with a good level of understanding of euthanasia and its legal implications. Unfortunately, these interpreters are not always available.

A letter I received from a doctor from the Northern Territory confirmed my views that euthanasia law will bring harm to vulnerable people who are socially marginalised and who have low health literacy in the community. I would like to read some of the paragraphs from this doctor. The letter states:

> I am writing in my personal capacity as a doctor who has significant links to South Australia. I was trained at Flinders University in Adelaide. I am an adjunct associate lecturer at Flinders University. As a doctor in Alice Springs, I have referred many of my seriously ill patients for investigation and treatment in Adelaide. I also have many Pitjantjatjara patients and friends from South Australia.
>
> My main purpose for writing is to make you and your colleagues aware of the way that this bill may adversely affect Aboriginal residents of South Australia. I acknowledge a small proportion of people with terminal illnesses cannot respond to good palliative care and are thus motivated to end their lives. However, amending the law for their sake will put the wellbeing and even the lives of many vulnerable people in danger.
>
> As you are aware, Aboriginals in this country experience significant social disadvantage and consistently have worse health outcomes. They are overrepresented in mortality statistics and they die significantly younger than the rest of the Australian population, often of very preventable diseases.

Recently, he said he spoke to some Aboriginal friends from South Australia about this proposed bill. They had never heard of the term euthanasia before. They were horrified that, if this bill were passed, a doctor could kill them. These Aboriginal friends of his are quite typical of the northern South Australian Aboriginal community. He encountered these people regularly in his profession and he said that they do not speak, read or write much English, they have few economic assets and are reliant on Centrelink payments. They experience much social breakdown and discrimination.

With those people in mind, in summary, I would reiterate that legalising euthanasia or physician-assisted suicide is likely to create fear and mistrust in Aboriginals and other marginalised subpopulations in Australia who are sicker but who have less ability to navigate the health care system. I respect the views of others who might have a different view to mine or those I represent. What I am afraid of, and many have expressed the same view, is that voluntary euthanasia will inevitably mean in some cases involuntary euthanasia, especially those who are marginalised in our community, who may become the first victims.

I oppose the bill for the reasons I outlined. If this bill is passed, it will put many vulnerable and uneducated people at risk. It will jeopardise the trusting relationship between doctors and patients. It will allow a situation where people (especially those in vulnerable circumstances and from non-English-speaking backgrounds) are afraid to see their doctors or fill in some paperwork approved by a board which would lead to a situation that allows a doctor to legally administer a lethal injection to end a person's life. I do not believe this bill provides protection to the most vulnerable in our community, and therefore I will not be supporting this bill.

The Hon. J.A. DARLEY (21:11): I would like to speak very briefly on this bill. In 2009, I supported the Hon. Mark Parnell's bill after he made additional changes to provide safeguards. I am still satisfied with the safeguards in this piece of legislation and therefore I will be supporting the bill.

The Hon. K.L. VINCENT (21:12): I rise briefly to make my contribution to this debate. To begin, I would like to thank the Hon. Mark Parnell and Steph Key MP, member for Ashford in the other place, for hosting an information session on the topic of voluntary euthanasia some weeks ago. I would also like to thank the Hon. Dennis Hood and Tom Kenyon MP, member for Newland in the other place, for hosting a similar session here at Parliament House.

I thank the Hon. Mark Parnell for acknowledging my presence at his information session in his closing remarks. If I recall correctly, he referred to me as a new member of the Legislative Council who takes their job very seriously, and if I may flatter myself for a moment, I would say that the Hon. Mr Parnell is indeed correct. I do take this job very seriously and consequently I have not entered into my consideration of this bill lightly, particularly since it is a conscience vote.

I recognise that voluntary euthanasia is a very controversial and emotive topic and one that is often heavily interwoven with religious and spiritual beliefs. I myself am indeed a woman with religious and, moreover, spiritual conviction. In fact, I believe that I have one of the closest possible relationships to God and, if I may, I would like to take the opportunity to thank him for his guidance. He knows that I love him dearly and I believe that no matter what the outcome of this debate, our relationship will not be made weaker.

If the truth be told, I have spent more than one sleepless night—literally—debating this bill in my mind. I know that no matter which way I speak or vote, I will disappoint many people and I would not be surprised if delivering this speech should prove to be remembered as one of the most difficult things I do during my term in this chamber. However, at the very least, I have worked very hard to come to what I believe is the right decision for the citizens of this great state in which we live, and I ask members of the chamber and members of the public, regardless of their own views, to try to respect that.

I speak in support of the Mark Parnell/Steph Key bill for a variety of reasons, which I will now do my best to outline clearly, although it might not be so easy given my emotive state. Although I am not following the party line, so to speak, on voting on this bill as d4d do not have a specific policy regarding voluntary euthanasia, it is known to all in this chamber that our motto is 'Dignity through choice'. So, to put it simply, I believe that those wanting to end their life for the right reasons should have that choice.

However, I cannot possibly emphasise strongly enough that it must be an informed choice that is ultimately made by the person who is the subject of the VE request. This is fundamental to the concept of voluntary euthanasia. Of course, I am not saying that a person should come to this conclusion in complete isolation. It is only natural that one should consult one's friends and family regarding issues as intimate and interpersonal as this. But, at the end of the day, it must be the person requesting euthanasia who drives the process.

It is important to note also that a person making a request for voluntary euthanasia must be assessed by at least two doctors: one, the GP they visit when making the original request; and, secondly, a medical practitioner who specialises in the condition which the subject of the request claims is making their life intolerable for them. Both doctors must inform the requesting person of the palliative care options available that may be used as an alternative to ending life. These doctors must also make reasonable inquiries to ensure that the requesting person is not acting under duress, inducement or undue influence, for instance, the belief that they are a burden on their family. These points in the bill give me some comfort as I am acutely aware of some concern in the disability community that people with disabilities may choose to end their life so as to no longer be a burden on their families in terms of their need for personal support.

I note with some relief that, if the doctors involved in the VE request suspect that the person is in fact acting under these external pressures, the person must then be referred to a psychiatrist, who will assess their mental and emotional state to help ensure that they are making the request for the right reasons. I must say, however, that I desperately hope that anyone considering ending their life would be consulting a mental health professional in any case, and encourage them vehemently to do so.

It is important to keep in mind that under this legislation a person must be an adult, that is, over the age of 18 years, and certified as being of sound mind in order to be eligible to make a request for voluntary euthanasia. The request practitioner must also certify that the person who is subject of a request is able to understand the nature and the full implications of that request. This will protect people with intellectual disabilities, for example, those whose disabilities affect them in such a way that they cannot fully understand the nature of voluntary euthanasia. If somebody has

the capacity to understand, then in my opinion they should be empowered to make that choice. Again, this bill seeks only to offer voluntary euthanasia as a last resort, available only to those who are able to make a truly informed and self-driven choice, people who are dying or people who believe their lives to be intolerable.

I now move to what is for me the most contentious part of this bill. The Hon. Mr Parnell and Ms Steph Key have made a decision I can only call courageous and gutsy to extend the eligibility for voluntary euthanasia beyond those in the terminal stage of a terminal illness. If this bill should pass, which I admit I do not expect will happen now, it would also make VE available to people with a medical condition which they consider to be mentally, emotionally or physically intolerable. It has been pointed out to me on more than one occasion—although I am already very aware—that under this section of the bill I myself technically could choose to end my life using voluntary euthanasia due to my cerebral palsy. Although I recognise that it may be somewhat emotive and even inappropriate to use my own personal circumstances as an example, I can see that this is in fact true.

Under this bill a person may choose to end their life due do a disability, and I will admit, of course, that this has been somewhat alarming and, to a certain extent, offensive to me. When I first realised that a person may request VE due to a disability under this bill, I found myself thinking: is my life worth less than average purely because of my disability? Is my life really that difficult and am I really a source of pity? But I had become far too subjective in my thinking.

I have already spoken in this chamber on several occasions about my belief that my disability is a blessing in my life. If I did not have it, I would not be here today. I feel that I have lived many lives, particularly for someone of 22 years of age, and have achieved many dreams, both in spite of and because of my disability, and I am sure that I will go on to achieve many more. Therefore, it goes without saying that I believe that the answer to the question is my life worth less than average due to my disability is a definite no, but I say this speaking only from my own perspective.

I can only ever know what it is like to live with my exact, unique case of my disability and in my body and in my mind. Yes, there are fleeting times in my life when my disability causes me some frustration and even sadness, but I cannot see a future in which this would ever cause me to want to end my life, but that is only my story. Pain and suffering are very subjective things, and though I would do all in my power to help someone with a disability who was considering ending their life because of it to see that there may be other options, at the end of the day I can never live in their skin and it is not up to me to say that their life is either tolerable or intolerable.

Although I have been a supporter of the concept of a well-informed, well-monitored voluntary euthanasia scheme for some years now, I will admit that this section of the bill has made it a lot more difficult for me to come to the decision to support it. I find myself wondering: if I oppose this bill on the grounds that I am fearful that people may choose to end their life due to a disability, am I protecting them or am I, in fact, discriminating against them? Again, I must do all I can to remain objective in my deliberation.

I have been contacted by numerous people who either have disabilities themselves or care for or love someone with a disability and who speak to me of that same fear that some people with disabilities may choose to end their lives using VE due to the negative effects of not having adequate disability supports. For example, living in an inaccessible house. I, of course, appreciate these concerns and put on the record in the strongest possible terms that I believe that this is yet another reason for the government to stop sitting on its hands in terms of efficient and adequate disability service provision.

While some may see this as a reason to oppose the bill, I believe that this bill will not lead to a greater number of people with disabilities banging down the doors of doctors for I believe that the will to live is strong in all of us, as many members have already touched on. We have not seen thousands of people taking up VE in the Netherlands or Oregon. Of course, there may be some individuals who consider their life to be intolerable because they do not have access to services, and I would encourage those people to put the government to notice, to let them know that I am here to stand for them, but, ultimately, it is not up to me to deem their life tolerable or intolerable.

Mr President, I am sure that I do not need to explain to you or anyone in this chamber that it would be a shame, an unspeakable shame on the government and the entire history of this country if people with disabilities were to start expressing an intention to end their lives in order to get the government to sit up and listen. This would yet again perpetuate the idea that this

government seems to find it acceptable that people with disabilities have to beg, fight and scrounge for so-called services which the majority of people take for granted as simple human rights.

One has to wonder how many reasons for change the disability community has to present before the government will respond with more than a few crumbs. I put it to the government yet again that immediate action must be taken to improve the lives of people living with disabilities. However, I cannot rightly express how insulting it would be if the government stepped up to the plate simply because it feared people may die and not because it is and always has been a basic human right to access these services.

I do believe in the sanctity of life but, over the past few years, I personally have come to understand that there is perhaps some difference sometimes between a true life and a mere existence. This is again a very subjective and complex belief so I will not go into every detail. Yes, I believe that life is a great gift, as long as it is full of growth and joy and all of the energies that make it so. However, I do not wish to condemn any person to an existence in which all of this energy, so to speak, is gone, unless they wish to hold onto it for their own personal reasons.

I think it is important to mention also that I believe this bill does more than to allow the peace and dignity of the people who want to end their lives using voluntary euthanasia, but also their families. Just the other day I was speaking about voluntary euthanasia with a very dear friend of mine whose mother died of cancer some years ago. He said to me, and I paraphrase, 'Watching her pass away naturally was awful, but thank God she didn't ask me to do it because I would have had to.'

Although I have been fortunate enough never to have found myself in this situation, it does resonate with me enormously. If someone I loved dearly were dying or were adamant that they wished to die, for the right reasons, I would not want to let them go under any circumstances. This is only natural. However, physically, emotionally, and perhaps even morally, at some point in time I would have to let them go.

So I personally would rather it be under the circumstances and at the time which they deem appropriate and in accordance with their own wishes. No person should ever have to live with the unimaginable pain and guilt that must come from being asked to end a loved one's life and, worse still, feeling obligated to act on that request.

As I have already said, it has been a great struggle for me to come to this decision and I feel as though I have outlined my point of view as clearly as I can without becoming emotive—although, clearly, I wrote that part of the speech before I did, in fact, become emotive. To be honest, I feel that I am doing something that is against my beliefs either way I vote today, but I will conclude by saying that if I believe in the human right to a dignified and peaceful life that is driven by autonomy and choice, then I must vote for the rights of South Australians to a peaceful and self-driven dignified death.

There being a disturbance in the President's gallery:

The PRESIDENT: Order! The Hon. Mr Finnigan.

The Hon. B.V. FINNIGAN (21:28): I think the contribution from the Hon. Ms Vincent tonight has highlighted the quality of the contributions that honourable members have made, and the thought and very careful consideration that they have put into their deliberations on this bill. I commend all honourable members for that. I join with the other honourable members who have thanked the very many correspondents who have communicated with me about their views on euthanasia and on this bill.

I made a reasonably lengthy contribution on the very similar bill that the Hon. Mr Parnell moved about a year ago, and I draw honourable members' attention, or anyone who is interested in my views, to that contribution. I will not go through all of that material again, given that we have quite a bit to get through tonight, but I will just run through a few of the arguments that we have heard in relation to why this bill should be supported and then deal with some of the particular provisions of the bill.

To look at the general case for active voluntary euthanasia, I think the most common argument we hear is that it is simply a matter of choice and that individuals should have the right to choose the time of their own death. However, a number of honourable members have highlighted that it is very difficult to guarantee that they are always making that choice freely and independently however many safeguards we might put in place. I am particularly concerned that some may feel

an obligation that they ought to end their lives to cease being a burden to their family—or even to the state.

In particular, I would fear that, whilst it might seem fanciful, now we all know that the pressures on the health budget will continue, I certainly would not want it to become considered desirable for people to choose euthanasia simply as an economic measure. I note one correspondent in favour of the bill said:

> Our society is not at good at valuing, nurturing and caring for the elderly and infirm. It is a low public funding priority and care personnel are poorly paid. Alarmingly, some are unsuited to the role and typically receive minimal training and supervision.

I think already there are concerns in the community, clearly, about the level of care that has been provided to the elderly and infirm—and to those who might be suffering from a terminal illness, certainly, I would not want euthanasia to be seen as some sort of solution to concerns that people might have about the quality of care.

Another argument which is often raised and which has been in correspondence with me is that we put animals down, so why don't we do the same to humans because that would be the compassionate thing? I do not think that any honourable members have brought that argument up but it is certainly one of the most common I hear in the community. Perhaps it is a country thing, Mr President, that people are more accustomed to animals being euthanased. Again, I reiterate that it is not really a comparable situation because the whole point of animals being put down is that they have no choice about that at all.

The other point to make about that is simply that the reason we regularly euthanise animals is because, however much we might love and value them, we do not value their lives as highly as that of human beings. I made this point in my previous contribution a year ago that it is a reality that, however much we might value our animals, pets especially, we do not consider them to be on the same level as humans. We do not offer them the level of palliative care, organ transplants, quadruple bypasses, and so on, that we do for human beings.

Some animals do receive those sorts of treatments but, as a rule, and certainly as a public policy matter in terms of government funding, we do not provide that sort of level of care to animals. So I do not really think that we can make a comparison and say, 'Well, we put animals down therefore we should do the same to humans.' It is precisely because we do not consider animal life to be as valuable as human life that we have a very different approach to the way in which we deal with them.

One of the most common arguments, again, that gets brought up in favour of euthanasia is the level of public support, and we have heard that many times in this debate in this house; that over 80 per cent, 85 per cent—whatever figure gets thrown around—of the population support active voluntary euthanasia. Again, I would make the points as I did in my previous contribution, first, is this figure right? That is a very difficult thing, I think, to assess. I am not doubting the results of the Newspolls, and so on, but I do doubt how valuable that guide is to people's genuine views on the matter when they consider the totality of what it means to legalise euthanasia.

Certainly, I am aware of qualitative research where people are much less receptive to the notion of active voluntary euthanasia when the full context is put in place and they have a more thoughtful discussion about it rather than a 30 second phone call with a pollster. In particular, I think there is some misunderstanding about what is meant by 'voluntary euthanasia'. A considerable number of people, I think, still think it is about withdrawing treatment or not receiving treatment.

I have noticed quite a number of the correspondents in favour of euthanasia saying, 'I don't want to be stuck on a machine for years in a hospital,' and that really is not something that this debate is about. There is already means for them to ensure that that does not happen.

I highlight again that, in the United States, where there have been plebiscites of states where they have introduced doctor-assisted suicide, it has been a narrow majority who have supported it. Again, that is for doctor-assisted suicide: the provision, by doctors, of a lethal dose to patients, who take it themselves. Nowhere that I am aware of has a majority of people in a plebiscite supported active voluntary euthanasia, that is, the ability of doctors to give people a lethal injection or otherwise to directly end their life.

A number of honourable members have said that we really need more indepth study and consideration of this issue or that we should indeed have a plebiscite referendum, as the

Hon. Ms Bressington said. Certainly, I would not fear any of those options, although I do not believe that a referendum is the right approach. However, where there has been indepth study of the question, such as in the United Kingdom and in the Tasmanian and Western Australian parliaments recently, when people drill down and have a look at what it would mean to have voluntary euthanasia in practice, they pretty much always come back and say that it is not good public policy.

Again, I have had a lot of people (and correspondents writing to me) saying that this is about peace of mind. Well, we do not legislate to ensure that people have peace of mind. I understand why it is that people are seeking that, but that may well be because of a fear of what might be or what might happen to them or how they might cope with something in the future rather than the reality before them. I think there are also those misunderstandings about the rights that currently exist for patients to refuse treatment or to ensure that they are not placed in a position where they are receiving treatment they would not have wanted.

We have heard that palliative care is insufficient in all cases. I think that for a lot of us there is a lack of information about the quality of palliative. It is not something that we are all expert in, and we do tend to base a lot of our understanding on our own experience with loved ones, which may or may not be particularly relevant in terms of how it affects a lot of people. My mother died of cancer in 1991, and my father died of cancer 10 years later. Even in those 10 years, there were enormous advances in palliative care to the point where one slow release pill daily was enough to provide my late father with adequate pain relief.

I am certainly grateful that my parents both died at home with their loved ones to hand. I accept that is not everyone's experience, and I do not suggest that should be the determinant of how I or anyone else vote. However, in my own circumstances, I can certainly say that the way my parents died, very much at peace with themselves and with their family, reinforced my own opposition to euthanasia.

We have also heard that, while the hierarchy of churches and some doctor organisations are against euthanasia, I am not convinced that is the case amongst the rank and file or the ordinary person in the pew or in the medical profession. While there are certainly regular churchgoers and people in the medical profession who support active voluntary euthanasia, I do not think there would be anywhere near a majority.

When it comes to Christians, I would say that, particularly among churchgoers, there would not be, in my view, a majority of people in favour of active voluntary euthanasia. Certainly, in my own experience in the holy Roman Catholic Church, I have not noticed any walkouts or anything when a priest or anyone else talks about euthanasia. Indeed, many parishes have been active, as we have seen, in responding to calls from Anglican and Catholic archbishops in recent times to make their views known on this issue.

It is not especially relevant whether or not the church hierarchies reflect the views of churchgoers because we have to decide this matter as legislators and as a matter of public policy, but it does seem to be often said by proponents of active voluntary euthanasia, in particular, that it is really just a few religious zealots who are blocking this, and that everyone else is in favour of it. I certainly do not think that is the case.

Another argument that has been advanced again in this debate is that we should regulate active voluntary euthanasia because it is happening already; therefore, we ought to regulate it and have a system for governing it. This seems to me one of the most incongruous arguments of all to suggest that doctors are currently engaging in a practice which can result in them being struck off the medical register and charged with murder and that therefore implementing a system where they sign some forms and have a couple of medical opinions about a patient's condition would be a preferable system.

It seems to me very illogical to suggest that, where people are taking inordinate risks to carry out an action against the law, where the consequences are potentially very grave for them as individuals, somehow those people will be much more respectful and abiding of a legal system that allows active voluntary euthanasia. If people are prepared to engage in that sort of conduct at the moment, with the potential consequences that it brings, I would suggest that I would be far more fearful of what conduct they might consider acceptable in a more lax or liberal regime than currently exists.

I will turn now to the particulars of the bill. As I have indicated and as I think a number of other honourable members have highlighted who are more inclined or sympathetic to active

voluntary euthanasia than perhaps I am, I do think this is a particularly flawed bill in any event. A number of honourable members have raised the definition in particular about a person wanting to bring about the end of his or her life should life become intolerable for the person. That is indeed, I believe, very unfortunate standard to set.

There are other bills that people have moved, including the Hon. Mr Such in the other place, which at least specify that people have to be in the last throes of a terminal illness. The definition in this bill that life simply needs to be intolerable for that person I think throws the door far too wide open. I am not suggesting that that means people would be getting euthanased willy-nilly, but I do think it means that there is a broader range of people to whom the act could apply. I think that has been highlighted by a number of honourable members.

I have particular concern about the insurance provisions in section 55 of the bill. I am not sure that I would go so far as the Hon. Mr Hood in saying how they could be abused. Nonetheless, I do confess that I am a bit of the cable or pay TV news watcher, and the predominant form of advertising on some of the news channels seems to be for life insurance or prepaid funerals. I am not sure why, whether it is to do with the cheap costs or whatever, but that seems to be the dominant form of advertising that you find on those particular channels.

Certainly, the life insurance ads all highlight no blood tests, no medicals, ring up, instant cover and often the amounts are, from my recollection, up to about half a million dollars. Under the provisions of this bill, I cannot see any reason why people who were suffering from a terminal illness would not have an incentive, driven by a well-meaning desire to provide for their loved ones who will be left behind, and nothing to preclude those who were suffering from a terminal illness and expecting to avail themselves of active voluntary euthanasia, to take out policies and avail themselves of active voluntary euthanasia so that the insurance provisions of this bill would apply.

That is, essentially the insurance company has to pay up and cannot not pay on the grounds that someone was voluntarily euthanased. I do not overstate the case in relation to these insurance concerns, but I certainly do note what the Hon. Mr Hood said in relation to the Insurance Council. I think that is something that would need a lot more thought were this bill to go ahead.

The final thing I would say about the bill is that, as a number of honourable members have commented, it is very much an evolving bill. We have seen amendments being brought as we go along. It is clear that euthanasia advocates are not agreed on the model that they want or which provisions and safeguards are appropriate, and I think this bill and the process of it has very much highlighted that. I would certainly be concerned that, if such a bill becomes law, it then becomes very tempting for amendments to broaden the scope of it, as we have seen with other legislation.

The Hon. Mr Wade highlighted that mental illness is not grounds for seeking euthanasia under this bill and that he believes that is discriminatory, and undoubtedly there would be some who think that because those who suffer from lifelong chronic depression and other mental illness, indeed, suffer a great deal. So it would certainly concern me that, regarding those who are disabled, those who have a debilitating illness or chronic mental illness, even though they may not be dying in the immediate sense, nonetheless this bill would either allow them to access euthanasia now or would in the future be likely to be expanded to provide for that.

For those reasons, I oppose the second reading of this bill. I believe it is bad public policy. There are a great many people in our community who are vulnerable and who need protection and support. It is our most fundamental duty to ensure that those people get world-class health care, support and protection, that those honourable people get compassion and love, and not a lethal injection. I urge honourable members to oppose the bill.

The Hon. R.I. LUCAS (21:47): I rise for I do not know how many occasions now to speak to this legislation. It is one of the privileges of having served in the parliament for such a long time that I have had the opportunity to participate in similar debates on very many occasions. I am sure that I am the only person who can say that in the 1980s I debated the original natural death law (in 1983); in the 1990s, I can recall debating similar pieces of legislation moved by the Hons Anne Levy and Sandra Kanck; in the noughties, I think I can remember debating similar legislation by the Hons Sandra Kanck and Mark Parnell; and now whatever you call this decade of the 2010s, we have the first of the bills from the Hon. Mark Parnell.

The Hon. B.V. Finnigan: Let's hope you'll see the decade out.

The Hon. R.I. LUCAS: Well, thank you for that. I am sure that will be the only time the Hon. Mr Finnigan ever says that. It will only be on this particular issue. I guess, therefore, from that

rare perspective that I have—and perhaps it is one of the reasons why I have significantly more grey hairs, as I debate the bill in the 2010s, than when I debated the original legislation (the natural death law) in the 1980s—there are two options the advocates of this law could adopt. One is to adopt the situation that I have observed, which is that the legislation we see in the noughties and the 2010s is much wider in its scope than the original attempts at the legislation back in the early years.

There does not appear to have been an intention from those who support voluntary euthanasia in one form or at all to move in the other direction, which is to restrict, define and confine the potential uses and the other perspective of uses of the law that will pass the land. Given the quality of the debate we have seen on this occasion, and this has been referred to by the Hon. Mr Finnigan and others, people over a period of time change their mind; they look at the legislation and on occasions make different judgements in relation to it. As I look at this piece of legislation, I share the view of some other members that it, again, as the last piece of legislation from the Hon. Mr Parnell, widened the scope, from my viewpoint, in terms of those who might be able to access the provisions in the legislation.

As a result of having spoken on similar pieces of legislation on many previous occasions, I do not propose to repeat all of the views that I have expressed. I nearly caused great grief to the young trainee in my office when I asked him to trace back the contributions I have made over the years on the legislation and to put it all together into one file; in the time available he was not able to track back all of the contributions, but managed to put together a number of them. I referred to those in my contribution last year, and the approximate dates of those, and they are well known and available on the *Hansard*. My views, by and large, have not changed; I therefore do not propose to repeat them.

What I will say, as I have said previously, is that I have respected the views of all who come to this particular debate. I know that many have a strongly different view to the view I express tonight and on previous occasions; I respect the views of those. Some have been close friends and colleagues, others perhaps would not describe themselves as close friends and colleagues but perhaps acquaintances, but nevertheless I respect the views of all who have put their view, either to me or to other members, in relation to this particular debate.

I will comment on a couple of issues before concluding my contribution. The first is one which always irritates me in relation to this debate and some other debates. I too have received hundreds, possibly one to two thousand, emails and letters. I am not sure why people continue to put their strongly held views to me, given the views that I have expressed over the years, but nevertheless I am grateful for that and I endeavour to respond to those emails and letters.

The often put view to me is that it is my job as a legislator to reflect the majority view of the community. I have said this once or twice before, and I will say it again tonight: I strenuously object, or reject, that particular notion. It is not my job as a legislator to reflect the majority view in the electorate. It is my job as a legislator, having been elected to this parliament for a term of office, to listen to the views of my electorate, to respect those views of the electorate and then to make a considered judgement on every issue, and then to be judged accordingly by the electorate at the end of my term in parliament.

Let me say at the outset that, in these interminable arguments we have about what is the view of the electorate on voluntary euthanasia, my view is that probably the majority of people would support some form of voluntary euthanasia. I accept the argument from some members that it depends on how you draft the question. Having a background in stats and pure mathematics and market research, I know full well the way you can colour a particular survey result, if you one so choose.

My view is that it is probably the majority of the electorate. I do not think it is 70 or 80 per cent, as the Newspolls and others claim. I suspect that if it was more definitive and more detail was provided to people that in the end it is probably a slight majority of people in the community who would support voluntary euthanasia, but that to me is not the job that I have been put in this place to do: to be a mindless robot.

Those who have seen the movie *The Rise and Rise of Michael Rimmer* will recall that, instead of making judgements as members of parliament, an instant poll was done in the community to indicate what the majority view was and that was what occurred in terms of the passage of laws in that particular satire or movie. I believe that is not the way we should be approaching our job as legislators and as members of parliament.

I have had many an argument with those who support voluntary euthanasia and who use the argument that it is my responsibility to reflect the view of 70 to 80 per cent of the electorate. I say to them, 'Similar polls show that 70 per cent of people support capital punishment. Do you say to me that I have to support the majority view of the 70 per cent of the community who support varying options of capital punishment in certain circumstances?' By and large, most of those who support voluntary euthanasia, for some reason, when I have had this debate or argument, are not supporters of capital punishment. They say, 'No, that is a different issue.'

I suspect that, if a member of this chamber came in with a bill supporting capital punishment for terrorists, mass murderers, child rapists or whatever and said that 70 per cent of people in the electorate supported him, some of those who use the market research argument in the voluntary euthanasia debate in this chamber would not accept the market research debate or the majority view of the electorate in relation to capital punishment because they, as members, have different views on that particular issue and it does not suit the argument to use the majority view of the community to demand support for limited forms of capital punishment. I have had vigorous arguments with some proponents of voluntary euthanasia when I have engaged in that particular debate with them.

However, it is my strongly-held view—and nothing will change it—that we are abrogating our responsibilities as members of parliament if we mindlessly subscribe to the view that because the majority bay for a particular law or piece of legislative change then it is our responsibility, as members on a conscience vote, to respond to that majority view. Yes, we must listen to it; yes, we must respect it but, no, in my humble view, we do not have to mindlessly follow that particular view on the issue. That is what has governed my views, because I do not support capital punishment. If a bill came into this chamber I would not support it. If someone said to me that 70 per cent of people want capital punishment for terrorists or whatever, I would not support it, and I do not accept the argument that, because 70 per cent say they support it, I am obligated to vote in that way.

The final point on the issue of market research is that I have a vague recollection that the issue of a referendum has been tested in this chamber albeit in the late nineties—I think by the Hon. Sandra Kanck—and some members and petitioners have raised the issue of a referendum. I do not accept that argument, either. It is our responsibility to make these judgements, as difficult as it might be. There has been emotion in this particular debate from a number of members and, frankly, I know there would be emotion from all members, even though it might not appear on the surface, in terms of their contribution. However, I still argue the view that it is our responsibility as legislators to make the decision and we should not cop out, in my humble view, by saying that this is a decision for the people to make by way of a referendum.

Having had this particular debate, as we have had on every previous occasion, I think it is important that we see a vote on this issue. A suggestion has been put to me that it may well be that the Hon. Mr Parnell and those who support the legislation, if they lose the vote on the voices, will not call for a vote or a division of the house. I hope that that is not true. I hope that I have been misled, and only the Hon. Mr Parnell can indicate in his closing contribution whether or not I have been misled. As I said, I hope I have been misled in relation to that issue, because I do not think that is an honourable way to conclude this debate.

At the moment, I think there are two or three members who have not spoken, but on my rough calculation, if there is to be a vote of say, 12 against the bill or nine for it, or even 13 against the bill and eight for it, then so be it. Let there be a division and a vote as there always has been and let the people see what the views of all the members are.

I do not know whether all members will speak in this particular debate. On the last occasion, I think, 20 out of the 21 members spoke. The Hon. Mr Wortley, as is his right, did not contribute to the second reading. Now, if the Hon. Mr Wortley, for example, is not going to speak in this particular debate again—again, that is his right, if he does not want to—and there was to be no division, we would not know what the Hon. Mr Wortley's view was on this particular vote.

I think it is important to the hundreds of people who have petitioned the Hon. Mr Wortley, on a conscience issue, to know whether he is for or against the legislation. There are other one or two members perhaps who are still to speak on this particular issue.

I think it is important that, having had this debate, and on every previous occasion for there to have been a vote, that the honourable way, and the convention in this house on these issues, is to have the vote and reflect it. If it does show that it is 12-9 against, or 13-8 against, and that the

numbers have moved against the proponents of voluntary euthanasia in the space of the last 12 months, so be it. Let the people see, let the media see, let's be transparent, let's be accountable in relation to these issues.

I know transparency and accountability are issues that are near and dear to the Hon. Mr Parnell and the Greens. As I said, I hope I have been misled in relation to this particular issue and that, as is the convention, if the call is on the voices against the bill, it is the responsibility of the proponents then to call for a division to make sure that all the views are recorded in the *Hansard*, so that all those thousands of people who are interested in this bill will be in a position to know how each of their members have voted on what is an important piece of legislation.

I conclude my contribution by leaving that invitation to the Hon. Mr Parnell. I would hope, in the interests of transparency and accountability, he will address that issue, at least, in his concluding remarks, so that we can all be aware of what he intends to do in relation to this particular issue.

The Hon. J.S.L. DAWKINS (22:02): I rise to speak on this bill and I promise you, Mr President, and the chamber and the gallery that I will be brief at this hour. As many will know, I have supported previous bills on voluntary euthanasia. *Hansard* shows that I last spoke on this issue on 28 October 2009 at five minutes past midnight, so it was actually 29 October.

In dealing with these matters, issues relating to both my father-in-law and my father, when they passed away within 14 months of each other, have always strongly influenced me to consider supporting voluntary euthanasia. I do not need to go into the details of that, but there were certain things that happened on both those occasions that have always made me consider this as something that I strongly believe should be part of our law.

However, I have always considered the issues raised very thoughtfully. There are many people who have raised a range of issues with me that I have considered, particularly over the last few weeks. I have made a decision and that is to again support this bill.

Before concluding, however, I would like to make a few points. I think that many of the people who are not in favour of what the Hon. Mr Parnell has put forward in his bill generally do not refer to the full title. They generally leave the word 'voluntary' out of it, and I want to emphasise the fact that it is voluntary euthanasia.

I say to the Hon. Mr Parnell and to everybody else who supports the bill, and even to those who do not, in the lead-up to further debates and if we ever get the legislation passed, that it is vital that the communication and information about this matter are improved upon. That is no reflection at all on the number of volunteers who have worked so hard on this cause for so long (they do not have the resources), but I think there is a need. There are some who have alluded tonight to the fact that there ought to be some independent work commissioned; that the government should perhaps take a role in facilitating that, but I certainly believe there are many people who misunderstand the meaning of this legislation, and I think that is on both sides of the argument.

I will also make a couple of points. There has been some criticism of the Hon. Mr Parnell in the way that the bill has been drafted and, perhaps even more so, for the amendments that have been brought in in relatively recent days. I have personal knowledge of what it is like to introduce legislation without the backing of a government department, and the bills that I have brought to this chamber on previous occasions on the surrogacy issues were nowhere near as complicated as the voluntary euthanasia bills have been. Those who make those criticisms have little concept of what it is like to bring in legislation and not have advisers at your beck and call, not only to draft the bill but to sit next to you when you in the committee stage. I do make that point.

In conclusion, many hundreds of people have taken the time to make their points on this matter to me and, I know, to so many other people. Very few have come up to me at the events that I go to or in the course of everyday life, but email and other forms of correspondence have been used in large degrees. I thank them for taking the time. It is important for democracy that people do exercise their right to let their members of parliament know how they feel. I know many people well who do not necessarily share my view, but I am grateful for the respect that I think I have from them and that I have equally for them on their position. Finally, I will repeat what I said at the conclusion of my speech in October last year. I said:

> By passing this bill, we would not be imposing voluntary euthanasia on those who are opposed to it, but we would be giving everyone the choice.

I support the bill.

The PRESIDENT (22:09): Whilst I do not get a vote unless there is a tie on the floor, I think it is only fair that I indicate to the house and to those people outside the house who have written to me—and I did write back to those that requested a letter back; I have phoned those who requested I get in touch with them and told them my views on this bill. It is only fair that I put my views on the record, because my colleagues have put their thoughts on the record, and I want to give the opportunity to those who do not agree with how I vote on this bill, if I have the opportunity, to vote against me in any election. That is only fair.

I have always supported these bills, because I have had personal experience with this. I had a very good friend, Janet Mills, who chose to euthanase herself. I know that Janet wanted to see her children grow old, and I know that she wanted to see if she had any grandchildren and watch them grow old. I know that Janet wanted to grow old with her husband, but the illness she had was a terribly painful terminal illness and she chose to be euthanased in the Northern Territory. I made a commitment to Janet—and I was not a member of parliament at the time—that if I ever did have the opportunity to support legalising this I would. I gave her that commitment and I will honour that commitment if I get an opportunity. So, if there is a tie in the chamber, rest assured I will be voting in favour of this bill.

I picked up a couple of interesting issues. I know that everybody has the right to vote on this the way they think because it is a conscience issue. I do not begrudge anybody for not supporting it: that is their prerogative, and I respect their decision. However, I am dead against a referendum, because I do not see why the well should decide something for the terminally ill; and that is what would happen if a referendum were conducted. Those people who are not sick would make a decision for those who are, and that is totally wrong.

I agree with the Hon. Mr Lucas that we are elected here, and sometimes we do get a conscience vote, and we should make it known and we should make those decisions. We make decisions every day in this chamber that do not satisfy everybody out there in the public. They argue with us and that is their right; they go crook at some of the decisions we make, and that is their right; they lobby us, and that is their right. I respect them and the way they lobby us. Only this morning, I phoned a friend in Mount Gambier who has an opposite view to me on this bill, and had a debate with him. I told him that I was sorry, I could not do what he wanted me to do, and I would be supporting it if I got the opportunity.

I was also very disappointed in the mention of somebody deciding that they would terminate a pregnancy if the child was diagnosed with Down syndrome. Being the patron for Down syndrome in South Australia, I have met many children with Down syndrome. They are wonderful human beings who are active, and I know their parents respect them and value them very highly, just as they would any other child in the family. So, I was disappointed by that. Those with handicaps and those with disabilities, who are not as fortunate as those of us who have good health, are not the people ringing radio stations whinging about everyday things that are happening; it is actually we people who are well. So, when they want to make a decision to end their lives because they have a terrible terminal illness, I support their making a decision for themselves.

The Hon. M. PARNELL (22:13): I rise to close the second reading of this debate. I would like to most sincerely thank all members who have spoken on this bill. I thank members who have spoken in favour and I thank those who have spoken against. All the contributions have been thoughtful and it has me thinking that we should have many more conscience votes in this place.

Tonight we have been discussing a matter of the utmost importance, a very serious matter. At other times in this place we spend hours and hours discussing things of little consequence at all. We can spend hours discussing the merits of registration labels in the bottom left-hand corner of a car. We do need to make sure that we have time to discuss the important issues facing perhaps not the whole of society but a proportion of society who are looking to us as legislators for assistance.

I have spoken to most people in this chamber over the last month or so on this issue. Some of you I have spoken to many times, and I thank you for making yourselves available to me and for sharing your views with me. As a result of some of those views, some changes have been made to this bill, and I will come to those shortly. I will not go through the whole list of people who have spoken, but I will go through some comments that some people have made that I feel need a response.

When saying that I thank those who have indicated support, as well as those who have indicated that they will not be supporting this bill, I note that, in their contribution, a number of members of this place have left the door open. We can go back and look at the *Hansard*. A large number of members have said that they understand the problem, they understand what it is this bill is trying to achieve, they understand the suffering that we need to do something about in the community but, for whatever reason, they are not particularly ready or do not think this is quite the right model.

For those people who have left the door open, I thank you. Some people have left the door ajar, others have left it with the safety latch on, and some members have welded the door shut, and I will not name those members. For some members, it would not matter what bill was before us, it would not matter what safeguards there were, whether it was a minimalist model or a maximalist model (if there is such a word), they would vote against voluntary euthanasia. However, I am still encouraged by the things that people have said today, even those who have indicated that they will not support this bill tonight but that the door is open for their later support.

In terms of commenting on what individual members have said, there are lots of opinions and there are lots of facts. The opinions cannot be wrong. I cannot do anything about the opinions people have. If you hold an opinion, it is a valid opinion, and that is your right, but many of the facts are wrong. A number of members have said that we should have more information. There is a wealth of information out there, and it may be that I need to take my share of responsibility for not sufficiently sharing with members the data from those states that have voluntary euthanasia. There is a mountain of material that shows that things like the slippery slope that haunts the fears of legislators do not, in fact, haunt the corridors of our hospitals and our hospices. They do not exist in reality in those jurisdictions that have voluntary euthanasia.

I will go through a couple of things because a number of members had some common material. First, a number of members—the Hon. Carmel Zollo, the Hon. Jing Lee and the Hon. Robert Brokenshire—mentioned the letter from the Catholic academic, Mr Tonti-Filippini. I am aware that Mr Tonti-Filippini has held the views that he has expressed to us most recently for many decades, including in the period before he contracted what sounds like a terrible condition.

I strongly respect his right to have an opinion on this matter. We all have that right. In his letter, he demonstrates some important issues for us. What is unfortunate is that, while stating that he does not have the right to speak for everyone who is in that position of suffering, he then proceeds to speak for those people who are suffering. He says that he 'cannot speak for all people who suffer from illness and disability', and that is a direct quote. He then goes on to use the words 'we' and 'us' continually, and he makes assertions about what is right for people in that circumstance.

He says, 'Seriously ill people do not need euthanasia,' and, 'You would gain nothing worthwhile for us by supporting this legislation.' You cannot have it both ways. He is entitled to his views. He does not want it for himself, but he cannot purport to speak for all those who suffer because there are other people who are suffering who might not have the qualifications or letters after their name but whose views are equally valid.

Mr Tonti-Filippini points out that he is well aware of the limitations of palliative care, and I think that is valuable to this debate. He states that he has reached the limits of what palliative care can offer, and that is important because a number of the contributions here have said that the answer to voluntary euthanasia is more palliative care. Here is someone who is saying, 'It has limits, and I have reached those limits.' As I will come to briefly, it is not a question of voluntary euthanasia or palliative care: it is a question, I think, of both in a truly humane society.

The other point that Mr Tonti-Filippini makes, which I think is well made, is that the greatest protection against the abuse of voluntary euthanasia laws is the fact that, no matter how great they are suffering, most people do not want to die, and most people will continue to endure great suffering and they will keep seeking medical treatment, as is their right. We must do what we can to make sure that all of those treatments and facilities are available, but with voluntary euthanasia, we are talking about that small group of people who cannot be properly helped with existing palliative care.

A number of members have pointed out that it is too hard for us as legislators to make decisions around this. I do not accept that it is too hard. The concept of a referendum has come up several times. Maybe that is how an issue like this will be resolved, as it has been resolved in other jurisdictions, with popular votes of the community in favour of voluntary euthanasia. My view is that,

as legislators, we can deal with these issues, we can listen to and hear what the community is saying to us and we can come up with the right legal solutions.

The Hon. David Ridgway pointed out that the way he is approaching this is that he needs to be 100 per cent sure that we have everything right. My response is to say that I think that bar is too high. In fact, if we applied that 100 per cent test, as other members have said, society would grind to a halt. It is not about just suck it and see, put in place any old bit of legislation and hope that it works. We can, as legislators, as a community, come up with decent safeguards.

When voluntary euthanasia becomes law, as I believe will inevitably happen—whether it is in South Australia first or somewhere else—it will be the most scrutinised piece of legislation on the statute books. The opportunity for abuse of these laws is incredibly slight, but to suggest that we have to have the absolute perfect model up front with every i dotted and t crossed is just unrealistic in terms of legislation. That is not an excuse for slapdash drafting and it is not an excuse for poor legislation, but I think we need to be a little bit realistic about legislating for a problem that is infinitely variable in its application. People are suffering a range of conditions in a range of circumstances. They have a range of cultural backgrounds. We need to put in place the best legislation we can.

The Hon. David Ridgway, in his contribution referring to some discussions that he and I had had, may have—and I know it was not his intention—given the impression that my view was that any old bill will do, that we just need to get something passed. That is not my position at all. What I have said to a number of members is that I do think that there is a core of issues that we need to deal with in legislation but that there are peripheral issues around it that are negotiable and variable, and I will come to the amendments later on. But I am not going to support just any old euthanasia law. I want a law that is safe but is also effective and that gives to people the right, that I think they have, to decide about the final stages of their lives, under this legislation.

The Hon. Robert Brokenshire made the point that the more we talk about voluntary euthanasia, the better becomes palliative care. I think, if I have understood what he is saying, that the discussion of voluntary euthanasia has been an impetus for improved palliative care, and I agree with him entirely. That is exactly what has happened in other jurisdictions. You look at the places with voluntary euthanasia—they have the best palliative care. It is not a question of either/or.

In terms of some of the comments that other members made, the Hon. Ann Bressington, as she did last time, has sympathy and support for some of the concepts in voluntary euthanasia and, in particular, the people in the terminal phase of a terminal illness. That might be something that we need to revisit: whether the eligibility criteria is simply too broad for members of parliament to accept, but that will be a decision for another day.

The honourable member is worried about what further changes might happen in the future. My view is that we do the best we can now, and we don't not pass compassionate legislation now simply because we are fearful of what the next generation or the next parliament might do. I do not think that that particular aspect of the slippery slope argument is borne out in practice anywhere else.

In terms of some of the arguments that have been raised, my colleague, the Hon. Tammy Franks, went through a lot of those in detail and I do not propose to revisit that because this is the summing up, but I do want to refer to a couple of the newer issues that have arisen. One was in relation to the impact of voluntary euthanasia laws on Aboriginal people. The point was made that when you have vulnerable groups with below average levels of education and literary skills, I think it is a problem that they are prone to scare campaigns, and I think we need to do a lot more to engage Aboriginal people with available health care services.

However, I do not think it is sufficient to say that because traditional Aboriginal law or customary law might be against voluntary euthanasia that that is a reason for us not to pass legislation that is for the benefit of all people in this state. We need to be sympathetic to Aboriginal culture, Aboriginal heritage and Aboriginal customary law. We need to incorporate those laws as we can into relevant statutes, but you just have to bear in mind that there is a range of other issues that are against customary law: autopsies, cremation and organ donation. We have not outlawed those things.

What we need to do is focus on education and on services most importantly and resourcing for people in vulnerable communities, whether they be Aboriginal or otherwise. I would also point out that, when the Northern Territory eventually passed voluntary euthanasia laws, it was the

Aboriginal member of parliament who represented Arnhem Land who voted in favour of those laws, so it is not as simple as some members might think.

In terms of the counterarguments to voluntary euthanasia, I just want to put a couple of things on the record as to what voluntary euthanasia is not. I have said before that it is not about palliative care versus voluntary euthanasia. It is in fact palliative care with a fallback of voluntary euthanasia in the hardest cases. As I say, look to the Netherlands, look to Oregon, places which have some of the best palliative care which goes hand-in-hand with voluntary euthanasia.

It is also not a debate about involuntary euthanasia because that is what we have at present. That is what is going on. That is the killing of people in hospitals at the hand of doctors and at the hand of relatives, not at the request of patients. That is involuntary euthanasia. That has always existed and the absence of a legal framework means that involuntary euthanasia will continue. A big part of this legislation is bringing into the light something which is currently occurring in the dark.

It is also not about being old; it is not about being tired of life; it is not about disability; and it is not about people who think they are a burden on society. The way the bill is drafted, those people are not eligible to apply for voluntary euthanasia, and there are checks and balances to make sure that they do not in fact get to the stage of a request being implemented.

It is also not about people being forced into accepting voluntary euthanasia, participating in voluntary euthanasia or not participating. The bill has protection for patients and there is protection for doctors, but there is also protection for those who want nothing to do with VE. One of the amendments I will talk to in fact increased that level of protection.

In relation to the amendments that I have tabled, a number of members have said, 'Well, you have only just tabled them today.' Let us be fair here: I have tabled two amendments and I have notified all members in advance of my intention to do it and I have told members why I have done it. It is part of the consultative process of legislating.

The first of those two amendments removes the advance requests because that was clearly something that members were concerned about, that people in good health could make a decision about what they wanted to happen when they came into ill-health and that there could be some period of years between the request and it being triggered, and that was a step too far for some people.

So, even though we reduced the scope for those voluntary requests to just that tiny proportion of people who basically are in a coma or permanent deprivation of consciousness, even limiting it to that was a bridge too far for some people, so I removed it from the bill. Largely those provisions are covered by the existing Consent to Medical Treatment and Palliative Care Act, so possibly not a great deal more people have been disadvantaged by removing it, but I removed it, because that is the nature of negotiating legislation through this place.

The second amendment related to something that was brought to my attention by the people who oppose voluntary euthanasia. They wanted to make sure they would have nothing to do with it, that there was no way they could be forced to be involved in any way against their will. We already had that protection for doctors and nurses—no-one would obliged to be part of this if they did not want it—but there was a loophole that would have imposed an obligation on nursing homes.

If they were going to deny voluntary euthanasia they would have had to tell their patients that and they would have had to tell them to go somewhere else. I do not think they should have to tell them anything, so I have removed that from the bill. There is no obligation on any nursing home, hospice or hospital to tell people in advance its policy on voluntary euthanasia and, if somebody asks, and they say 'No, we don't do it', they are not obliged to tell them where they can get it.

Similarly with doctors. If this becomes law, the doctor is not allowed to lie to patients. The doctor cannot say, 'I'm not going to participate in VE and no-one else will either, because it's against the law.' I am not going to allow lying, but there is no requirement for those doctors to say, 'You'd better go and see Dr Smith down the road—he'll help you.' There is no obligation to do that; their only obligation is to say, 'I won't help you; someone else might; see you later.' It is very simple for people who want nothing to do with voluntary euthanasia to bow right out of the system.

That is fair because, as the Hon. John Dawkins said, the word most commonly left out of the debate is 'voluntary'. If it is voluntary for people to ask, it is also voluntary for people to have

nothing to do with it at all. So, there are only two amendments. Yes, they translate into 46 or so amendments, because you have to remove every occurrence of certain words through the bill, but let us not kid ourselves. This is not 46 amendments: it is only two.

In terms of further amendments, I will come to that at the conclusion, because it is clear we need some changes to this before it goes any further. One of the most obvious changes the Hon. Kelly Vincent referred to, as have other members, is whether or not we need to restrict the legislation to just those in a terminal phase of a terminal illness. There are some members for whom a change like that would come close to bringing them from the anti camp into the pro camp. They might need a bit more, but that would certainly be a start. That is possibly something to be looked at in the lower house.

The common criticism made of amendments is that people say, 'Well, the very fact that you've introduced a bill you said was good, and the fact that you've now moved amendments is some sort of tacit acknowledgment that what you gave us at first was no good.' That is not the case at all. There are a core of values in this legislation, and that is the right of people in limited circumstances to request help to die with dignity. That is the core: all the other business—the number of doctors, the number of psychiatrists, the colour of the paper on which the forms are printed, the composition of voluntary euthanasia boards—and other material we can negotiate and come up with the best model.

It is not at all fair for people to say that an amendment is the equivalent of a failure of process. The fact that I have said to members that I am open to amendments shows that I am willing to try to get some parliamentary consensus on this. I will mention briefly what is often lost. Whilst members have talked tonight about this bill, which is the debate, very few people have talked about the status quo: what currently happens out there and whether what is happening out there is good. What is happening out there is involuntary euthanasia at the hands of doctors and nurses and family members. Many of us, including members in this room, have talked about their experiences where they are given control of the morphine pump. The nurse says, 'I will be stepping out and I may be some time, this is how the morphine pump works.' Many, many people have had that experience. That is happening behind closed doors.

Suicide is happening, sadly, all too frequently. That is the alternative for some people when you do not have a legal framework for voluntary euthanasia. If they are capable of taking their own life and there is no authorised medical method of requesting it, they will continue to commit suicide. Many will unsuccessfully attempt suicide and perhaps end up in a far worse state. Many people who deserve our compassion will suffer unrelievedly from their conditions and from their illnesses. Many people will die dreadful and undignified deaths. There will be unnecessary suffering and a denial of the rights of people who cry out to us for our help.

It has been mentioned that, when we talk about this sort of covert euthanasia, this sort of involuntary euthanasia that is happening everywhere, that somehow we are insulting the medical profession. Well, no, listen to the medical profession, they acknowledge that this is happening. Nurses acknowledge it; palliative care practices acknowledge: it is happening.

I want to now go to the contribution of the health minister. John Hill has weighed into this debate yesterday, and whilst I welcome his interest, I am disappointed that the approach that he suggested would in fact be counterproductive and would take us back many, many years. What is disappointing I think is that, whilst all members were provided with a copy of his brief ministerial statement and a copy of a very short memo from the health department (which, we have been told, is a list of criticisms of the bill), what the health minister did not do was tell us what he had in mind instead

The health minister has had parliamentary counsel draft up a two-page bill, which, effectively, does one thing. All it does is provide a level of legal protection for doctors in the event that they are charged with murder because they have killed someone because they were asked to. That is really all the bill does. It proposes a new section 13B of the Criminal Law Consolidation Act which says:

> It is a defence to a charge of an offence against this Division arising out of the death or intended death of a prescribed person if the death resulted, or was intended to result, from the administration of drugs to the prescribed person by the defendant (the relevant conduct) and the defendant proves, on the balance of probabilities, that—
>
> (a) the defendant was, at the time of the relevant conduct, a treating practitioner of the prescribed person; and
>
> (b) the relevant conduct occurred at the express request of the prescribed person; and

(c) the relevant conduct was, in all the circumstances, a reasonable response to the suffering of the prescribed person.

A criminal defence provision to a problem area in current medicine that is actually calling for light to be shone onto the subject. What this does is it keeps it behind closed doors and any doctor who is unfortunate enough to be prosecuted at least has a defence.

I do not think that is the best response and, in fact, as I said, it would take us back 20 years. It would take us back to where the Netherlands was before they had voluntary euthanasia laws, and they found out that it did not work and the level of involuntary euthanasia was high. Members have quoted the statistics from 1990 in the Netherlands—high levels of involuntary euthanasia.

All those figures predate voluntary euthanasia. When voluntary euthanasia came in, the level of involuntary euthanasia dropped considerably in the Netherlands. What the Netherlands and Belgium found was that regulation through legislation was necessary to provide for better protection for both patients and doctors, not just for the doctors alone. The experience was that the legislation was needed to provide a transparent and a rigorous process. It provided the checks and balances, and it had proper monitoring and review.

I do not accept the Hon. John Hill's proposed law. It does nothing to achieve what was found in those other jurisdictions to be necessary. It simply protects a few doctors, if they happen to be prosecuted.

The health department in its advice set out, effectively, six issues which it called a summary of issues. I have circulated my response around the medical profession and other circles. Effectively, the author of this health department report has not properly understood the meaning of the legislation—they just have not understood the simple drafting. They were not aware of the amendments that I had been discussing with members of the Legislative Council; and issues which they found confusing or uncertain were, in fact, no such thing. I will not go through every single point in this advice but I will go through some.

First, the health department advice points out that people appointed as medical powers of attorney or enduring guardians will not be able to ask for voluntary euthanasia on behalf of the people they represent. Well, yes—that is exactly what I intended. I do not want medical powers of attorney making decisions about euthanasia. I want the person who is suffering to do that, and that is why we wrote the bill. So, it is not a criticism of the bill to say that we are limiting it to the people to whom it applies and we are not allowing others to vicariously make that decision for them. That is part of the problem with the current status quo.

There is a range of criticisms around definitions of mental illness and I do not find those very convincing at all, because the drafter of this note has confused the issue of mental illness in relation to the competency of a person to ask for voluntary euthanasia and the issue of mental illness as being the defining illness on which their request is based, and these are two entirely different things. Clearly, the drafter of this health department advice does not understand it. As I have said, one of the sections of this advice refers to advance directives. They are no longer in the bill.

There is another comment in here which tries to find an inconsistency in the way the voluntary euthanasia board exercises its powers, because the health department advice says that the proposed new section 41 contradicts section 27. It does not contradict it at all. What the drafting note says (and members have it in the bill) is that it is not a function of the board to approve or otherwise authorise each request for voluntary euthanasia. But that is not the same as saying that the board does not have the power to look into those requests that it wants to look into. It is just saying that it does not have to look into every single one. So, there is no inconsistency between those provisions.

I think the health department advice is unhelpful, at best. Certainly no-one from the health department discussed it with me. As the Hon. John Dawkins pointed out previously, we do not have access to their resources. None was offered, and I think the result is in this fairly weak opinion that has been given which is both factually incorrect and also incorrect in its understanding of the meaning of the legislation.

What I want to do finally is acknowledge some of the people who have been involved in this debate and then to canvass where to next for this legislation. In terms of acknowledgements, I particularly acknowledge the Hon. Steph Key, the member for Ashford. A lot of people thought it

was odd that we had two members of parliament from opposing parties working together on a common bill. This is not about party politics: it is about trying to get the best possible model for voluntary euthanasia and to make sure that, as a parliament, we were all talking about the same thing.

The advantage of that is that the Hon. Steph Key will no doubt pay close attention to the debate in this place and to the things people have said and, when her version of this bill is considered next year in the House of Assembly, I think that members there will need to be guided a little by things that are said here if they want that bill to pass when it comes back here, as it may do next year. So, it has been a great pleasure to work with Steph Key and, in fact, the experience has been so good that I would love to work with other members on common issues such as this. This is not about party politics or a particular party claiming the credit for any legislation.

I would also like to thank the large number of non-government organisations that have been helpful in this campaign. Certainly, Neil Frances, the Chair and CEO of yourlastright.com, has come over from Melbourne today to hear this debate; and members are all very familiar with Mary Gallnor and Frances Coombe of the South Australian Voluntary Euthanasia Society who have worked on this issue for many years. In addition, other groups are springing up all over. We have now Christians, doctors, nurses and lawyers all supporting voluntary euthanasia, and a multitude of others who have worked with me on this bill.

So, where to next? A number of members, as I have said, have expressed their support for the concept but, for a variety of reasons, they are not able to support this bill tonight; and I am disappointed in that, there is no doubt about that. However, I have heard what honourable members have said and I accept that this bill will not be going any further tonight. That will come as a disappointment to those who have campaigned long and hard for decades for law reform, and it will also disappoint the large proportion (as I believe) of South Australians who want law reform.

Now, lest we relaunch into the debate about opinion polls and the obligation of members of parliament to follow those opinion polls, I am not going down that path. What I would want honourable members to do is to pay attention to what constituents are saying and to be guided, in particular, when the question they are being asked is about choice. I think that it is different, as the Hon. Rob Lucas talked about, when the question might be capital punishment—not a lot of choice in capital punishment, but, when it comes to something like voluntary euthanasia, members need to look and decide, even if they do not want it for themselves, whether they are prepared to deny this right to others.

I take great comfort from the contributions of those who are not in a position to support the bill tonight, but they do want to do the right thing by South Australians, and they do want, I think, some change, even though we have not convinced them that this is the bill now. In relation to the Hon. Steph Key's bill, as I have said, I am sure that she will take careful note of what has been said in this place.

I will continue to work with her to see whether we can make some changes to the lower house bill and, if that bill passes successfully, it will by virtue of the legislative process come back here. I am hoping that, if it does come back here, there will have been enough changes that those members who are not in a position to support it tonight will be able to support the bill next year.

I can see that we do not have the numbers and so we will not be going into a clause-by clause-debate. I think that members have made their views very clear already, and I am satisfied with the views that have been expressed. I commend the bill to the house. I look forward to the debate in the House of Assembly. I look forward to working with the 47 members there to bring back a bill that does have the support of a majority of members of this parliament. For now, I commend this bill to the house, and I look forward to the debate continuing next year.

Second reading negatived.

DEVELOPMENT (ADVISORY COMMITTEE ADVICE) AMENDMENT BILL

In committee.

(Continued from 10 November 2010.)

Clause 3.

The Hon. D.W. RIDGWAY: At the time we last debated this bill, we adjourned the debate in order to give instruction to the Development Policy Advisory Committee and its chair to give, where possible, people with the most direct personal interest in the matter being discussed an

opportunity to speak first. At the time, the Labor Party had not had a chance to take it to their caucus, so I agreed to report progress. We have a late night ahead of us, so I will not speak any longer. I hope the Labor Party has had a chance to take it to their caucus and that they have had favourable deliberations and can see their way to support my amendment.

The Hon. P. HOLLOWAY: Sadly, the government does not support the amendments, nor do we support the bill. As I indicated last week, we think it would be unwise to put such a prescriptive requirement on the President of DPAC. As a matter of fact, I had a conversation with the President of DPAC at one of my regular meetings since then and discussed the issue of chairing meetings. As the chairman has pointed out to me, sometimes people have to leave early and sometimes there are all sorts of arrangements that need to be made, and he does his best to fit in.

One really has to give the President of DPAC some flexibility in how he runs the meetings. I am sure the chair of DPAC would be quite happy to take on board the views of parliament. He runs these public meetings to the best of his ability, but one has to allow for the fact that there will be times when he has to act with some flexibility. If you start putting in prescriptive measures and for some reason they are not observed, someone could challenged the whole process of DPAC just on the basis that somebody did not speak in the right order, and I do not think that is the sort of outcome one would want. As I said, the government is opposed to the Leader of the Opposition's amendment and, of course, we remain opposed to the bill as a whole.

The Hon. M. PARNELL: As I have indicated previously, I do not support the amendment. I agree with the minister that it is overly prescriptive. It is not something that was in my original bill, and I am not keen to see it added.

Amendment negatived.

The Hon. D.W. RIDGWAY: I move:

Page 2, line 10—Delete 'after subsection (15)' and substitute 'after subsection (18)

This amendment is to direct the minister to release the DPAC advice to the minister after the minister has made public his or her decision on the issue. I also had a discussion with the chair of the Development Policy Advisory Committee, and he indicated that he thought that was a more appropriate way to do it rather than prior to that time. I thought that was a sensible way forward and, of course, we delayed the progress of the bill about a month ago so that I could have that discussion with the chair.

I did visit Mount Barker last Friday for a bit of a site visit. I have been up there a number of times, but I caught up with a couple of locals there. I was a little disturbed because I was informed that there is an email list circulating of some 1,300 people, who communicate regularly and oppose the rezoning in some way, shape or form, I assume, saying that I had blocked the legislation and that I was some sort of two-headed ogre for standing in the way of the legislation.

I was very disappointed. I asked the people who told me about it to provide me with a copy. They were somewhat reluctant. They said that they did not want to give me the 1,300 names. I told them that I did not want the 1,300 names but that I would like a copy of what has been said. As I pointed out to them, whoever had given them that information was not telling them the full story. This is an amendment bill, proposed by the Hon. Mark Parnell in the Legislative Council, which, if supported by the Legislative Council, would then have to travel to the House of Assembly and go through the whole process there.

The story being spread was that I had delayed it so that the minister would make his decision prior to being forced to release the information because we would pass it through this council. I am disturbed at that because it is clearly inaccurate and someone has been spreading the inaccuracies within that group of some 1,300 people. Clearly, someone who thought they knew enough about the process told those 1,300 people only a little bit of the process.

I hope that I will be provided with a copy of what has been said because clearly it is not accurate. We had some other amendments, and as we all know they had to pass both houses of parliament for DPAC to be compelled to provide advice to the minister, which would then, of course, be released prior to the decision. So, I am a bit disappointed that those stories are circulating because they are inaccurate.

Having said that, I note that the minister has agreed to release the DPAC advice after he makes the decision, so I am not sure whether that means that the government is prepared to

support this amendment to make it a regular occurrence and to make the way that DPAC operates part of the whole procedure. I certainly urge members to support this amendment.

The Hon. P. HOLLOWAY: Obviously the amendment moved by the Hon. Mr Ridgway is preferable to the Hon. Mr Parnell's provision in the bill. So, to that extent I guess we can support it, even though I will be opposing the bill as a whole, because, as I said, we do not believe this is necessary. As I indicated publicly last week, the government is always aware of the need for decision-making which is in the best interests of South Australia but also the need for transparency. After weighing up the need for the public interest to be served by good policy-making against the desire for greater transparency, I have decided to make DPAC advice available online at www.dpac.sa.gov.au once a final decision has been made on a DPA.

Following consultation with the DPAC chairman I instructed the Department of Planning and Local Government to make available the advice that is provided for DPAs completed since 2007. By completed, I think one or two are still in there, probably partly due to the Hon. Mr Parnell's urging of particular councils to challenge them in the courts. Certainly, for those that have completed the process, that is, have been considered by the ERD Committee and accepted, I have made them available on the website and it would be my intention to do that in the future. That information has been on the DPAC website since Monday 15 November.

Good policy making would be unnecessarily encumbered if advice from bodies such as DPAC were made public before the state government had made a final decision. It is one thing to have transparency of the decision and to have people to look back at a decision to see whether that has been appropriately made by the government; it is another to use advice from bodies to try to shift the debate in relation to a decision that has not yet been made.

Certainly I would think most reasonable South Australians would conclude that it was sensible policy that advice from advisory committees such as DPAC would be made available but not before the decision was actually made. That is consistent with our freedom of information laws that appropriately provide an exemption for internal working documents but make the final reports available. I think it is entirely consistent with what we do under freedom of information policy.

Importantly, this process that the government has adopted will allow the Environment, Resources and Development Committee of parliament the opportunity to properly scrutinise these planning decisions. Making DPAC advice available to the public after the ERD Committee has the opportunity to scrutinise each development plan amendment achieves both the desired objectives of prudent policy making and appropriate transparency.

In other words, the government has already made a decision in relation to placing the policy on the website after a decision is made. As I said, it was under the FOI laws. There is no doubt it would have been made available for anyone searching it, so the government thinks we might as well put that up anyway. We are not frightened of the decisions that the government makes.

DPAC is just one source of advice that the government takes. As minister I do take it very seriously, but we do not believe it is necessary to pass this bill. In relation to this particular amendment, it does reflect the government's intention and, therefore, we will not be opposing it; however, I will oppose the bill at its third reading.

The Hon. M. PARNELL: What we have here are three options that have been put forward. My bill says that the community should have a right to see this advice once it has been given to the minister. In other words, within two days of the minister receiving it, the minister should publish the advice. The Hon. David Ridgway's amendment says that the publication of that advice would take place two days after the minister has made a decision.

The minister's press release proposes that the advice would be made public about a month after the minister has made a decision. I might just take the opportunity to ask the minister if he can clarify what he said in his press release which is 'in future, all DPAC advice is to be published once the ERD Committee of parliament concludes its scrutiny of minister and council-initiated development plan amendments'.

Can I get the minister to clarify whether the situation is as set in this news release, or is the minister now proposing that the publication would occur after gazettal? Bear in mind that the ERD Committee has two months after gazettal. The minister, having gazetted a rezoning, then has a month to send it to the ERD Committee; the ERD Committee then has a month to consider it.

Potentially, under the minister's arrangement, it could be two months after the decision before the public get to see this advice. So can the minister clarify whether that is the case?

The Hon. P. HOLLOWAY: It was my intention that I would table DPAC advice once the process was completed and the decision was made. I suppose technically there are two ways of looking at it. One is when the decision is gazetted but, given that the ERD Committee process is part of the technical decision making and there have been instances—and I am sure the honourable member knows because he is on the ERD Committee—where there have been alterations made to a development plan amendment following consideration by the ERD Committee, it would seem to be sensible, as was mentioned in my statement, that we do it after the ERD Committee has completed its consideration of the matter. One can have a debate about the technicality of that but, after all, the ERD committee itself, I assume, has—

The Hon. M. Parnell: That was going to be my next question: does the ERD Committee get DPAC advice?

The ACTING CHAIR (Hon. J.S.L. Dawkins): The honourable minister should resume his seat before the honourable member speaks.

The Hon. P. HOLLOWAY: The Hon. Mr Parnell, having been on the committee for a number of years, probably knows that better than me. I know that the officers of my department regularly go in and ask for it. The consideration I gave to the matter was that we should make it after the ERD Committee has completed it, but what advice the ERD Committee gets, as I said, is up to the committee. I am not quite sure what the situation is in relation to that, but I think the sensible position is that DPAC advice be put up on the web and be made publicly available once the ERD Committee has completed its consideration, because that is when the process is completed.

The Hon. M. PARNELL: I thank the minister for his answer. I am not entirely satisfied, and I will not pretend to speak for the Hon. Michelle Lensink, but my view would be that, if we were to have, on the ERD Committee, that DPAC advice, it would make our consideration of these development plan amendments a far more useful process for us. At present, the ERD Committee simply has to wait for members of the public who are aggrieved by a rezoning decision to come to us and see if we can recommend further changes. I would urge the minister to take on notice the suggestion that the ERD Committee be provided with a copy of the DPAC advice to assist in its deliberations.

The dilemma we have is that the three models are: the legislated Parnell model, which is where you get to see the advice before the final decision is made; the legislated Liberal solution, which is where you get to see the advice after the decision is made; and the announced position of the minister, which is that you get to see the advice a little later after the decision is made. So, at one level you could say that the Liberal model has a chance of getting up so let us support that, but I come back to the basic principle which is that this is not the bill that I introduced.

The bill that I introduced was for members of the public, the people of Mount Barker, Gawler, Port Adelaide and from all the other DPAC meetings I have been to, who have wanted to see the advice when it was concluded. I do not accept the minister's assurance that somehow this is consistent with freedom of information laws in relation to internal working documents, because the DPAC advice is not an internal working document.

The minister might think that it is a helpful document for him in making his decision, but in fact it is a final report of a statutory committee. It is not a working report or a working document; it is not a half finished document. The final report of the Development Policy Advisory Committee goes to the minister and DPAC then washes its hands of it. So, it is not an internal working document at all.

My position is that I do not support the Liberal amendment, and if that amendment fails I would urge the Liberals to support my original bill, which does provide for disclosure at the appropriate time.

Amendment carried.

The Hon. D.W. RIDGWAY: I move:

Page 2—

Line 11—Delete '(15a)' and substitute:

(18a)

Lines 11 and 12—Delete 'of receiving advice of the Advisory Committee under subsection (15)' and substitute:

after the publication of a notice under subsection (17)

Line 13—Delete 'the advice' and substitute:

any advice of the Advisory Committee received under subsection (15).

Amendments carried; clause as amended passed.

Clause 4.

The Hon. D.W. RIDGWAY: I move:

Page 2—

Line 22—Delete 'after subsection (5c)' and substitute:

after subsection (10)

Line 23—Delete '(5ca)' and substitute:

(10a)

Lines 23 and 24—Delete 'of receiving advice of the Advisory Committee under subsection (5c)(c)' and substitute:

after the publication of a notice under subsection (9)

Line 25—Delete 'the advice' and substitute:

any advice of the Advisory Committee received under subsection (5c)(c)

Amendments carried; clause as amended passed.

Title passed.

Bill reported with amendment.

The Hon. M. PARNELL (23:12): I move:

That this bill be now read a third time.

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) (23:12): As I indicated, the government will oppose the bill at the third reading, certainly with the amendments that the Hon. Mr Ridgway has made. It is closer to the practice of the government, but we really believe that it is unnecessary to put in legislation with such restrictive requirements. The DPAC reports are, arguably, available under FOI legislation. We have given a commitment to put it on the website. It is unnecessary to pass a bill to require that and that is why we are opposed to it. However, I will not seek to waste the time of the council at this late stage by dividing. I just wanted to put on the record that we do not support it.

The Hon. D.W. RIDGWAY (Leader of the Opposition) (23:13): Given that I did not have the support to give the locals a voice first ahead of those who do not live in the community, I indicate that perhaps in the new year I will move a motion that the council requests the chair of DPAC, where possible, to provide an opportunity for local community members to speak first and have priority so that the chair of DPAC is aware, if the council supports that motion, of what we are thinking in this chamber.

Bill read a third time and passed.

WASTE AND LANDFILL POLICIES

Adjourned debate on motion of Hon. J.M.A. Lensink:

That the Environment, Resources and Development Committee inquire into and report on the Environment Protection Authority's Environment Protection (Waste to Resources) policy and the standard for the production of use of waste derived fill.

(Continued from 27 October 2010.)

The Hon. CARMEL ZOLLO (23:15): In response to the motion raised by the Hon. Ms Lensink, I indicate that the government opposes the motion.

The Hon. J.M.A. Lensink: Crikey, you oppose everything!

The Hon. CARMEL ZOLLO: Well, there you are. The advice provided to me is that the EPA's Waste to Resources Policy was provided to the Environment, Resources and Development Committee, along with a regulatory impact statement, earlier this year and tabled in parliament.

The regulatory impact statement specifically addressed landfill bans and illegal dumping. The government believes resending this matter to the committee, in this form, would amount to unnecessary duplication of a process that the committee has already had an opportunity to undertake, or can undertake.

As a member of the committee I am, however, aware that there is some confusion as to whether the reference for this particular policy was received and, as such, the committee has not yet commenced any analysis of the Waste to Resources Policy, in order to make its comments. I do hasten to add that the policy can simply be resent.

All that aside, I would like to respond to specific concerns raised by the Hon. Ms Lensink with the Waste to Resources Policy, relating to the timing and implementation of the landfill bans, particularly e-waste, and the ability of the EPA and local government to deal with illegal dumping. The Waste to Resources Policy and the landfill bans aim to support the South Australian waste strategy, including the targets for diversion of waste from landfill.

The staged timing of the landfill bans was deliberately structured to operate in a complementary manner with existing, or anticipated, alternative treatment pathways. There are existing alternatives to landfill disposal for the materials banned from landfill on 1 September 2010.

In preparation for the future landfill bans, in its business plan, Zero Waste SA has identified specific tasks relating to developing strategies to support and underpin the landfill bans listed in the Waste to Resources Policy. These strategies may include investigating funding options to assist with waste management. Zero Waste SA will work with the EPA, local government, the recycling industry and other key stakeholders in formulating these strategies.

The commencement of the bans can be suspended by the EPA where such alternatives have not been developed in time. While illegal dumping has been a significant and ongoing issue for the EPA and local government, the Waste to Resources Policy contains a provision which prohibits the unlawful disposal or stockpiling of waste. This provision contains high penalties for illegal dumping and seeks to address certain evidentiary issues associated with the disposal of inappropriately managed inert wastes. The EPA is currently investigating methods for maximising the benefits from this provision of the Waste to Resources Policy.

In relation to the regional grant program to progress waste management initiatives, this program is delivered by Zero Waste South Australia and is known as the Regional Implementation Program. I am advised that this program was not cancelled in 2009, but rather the program was reviewed to seek feedback from stakeholders on any barriers experienced in implementing projects, to identify opportunities for improvement and to gauge future demand. This review was undertaken in late 2009 and was vital in identifying areas for improvement which included:

- continued funding of the program to encourage and enhance the recovery of materials from country areas;
- to provide a more flexible approach to funding in order to cater for the different needs in regions, including support through provision of planning expertise, provision of regional waste coordinators where co-funded on a regional basis, and more funds for demonstrated collaborative regional projects; and
- streamlining the process for evaluating and selecting funding recipients.

Key recommendations of the review have been incorporated into the next funding round of the Regional Implementation Program, and in July 2010 the Minister for Environment and Conservation announced that $1.6 million will be made available over three years for projects in regional areas.

In relation to the Zero Waste SA Environment Users System, which has also been referred to, I am advised that implementation of the system (known as ZEUS) began in the 2007-08 financial year and was implemented in June 2009. ZEUS allows the electronic capture, storage and reporting of waste and recycling data across metropolitan and non-metropolitan areas and at a state level for South Australia.

Following implementation, Zero Waste SA has been collecting illegal dumping and municipal solid waste data volunteered from metropolitan and non-metropolitan councils across the state, with an aim to assist councils to identify hot spots for illegal dumping. Zero Waste SA has worked closely with local government to train council staff in the use of ZEUS, particularly in entering illegal dumping incidences. Fifty persons from 25 councils have so far been trained in the use of ZEUS. Zero Waste SA is eager for more councils, external agencies and industry to start using ZEUS and will continue working to increase its uptake.

The standard for the protection and use of waste-derived fill currently contains both the regulatory expectations and guidance on resource recovery principles. The EPA is in the process of reviewing the standard to ensure the regulatory expectations are differentiated from the guidance. This review will assist with the readability of the document and reduce incidence of confusion. An examination by the committee at this time would be premature.

The standard was developed in response to calls from industry for greater certainty as to what does and what does not constitute a waste, and to move away from using costly court action to resolve disputes. Under the Environment Protection Act 1993, any soil excavated and removed from a site is considered a waste and the receipt of this soil requires an EPA licence or limited purposes declaration. The standard provides for soil to be re-used as fill rather than disposed to landfill, but does not prevent waste soil from going to landfill.

Prescribed bodies, industry associations and all EPA licensees were advised on the intent to develop a standard for waste-derived fill and invited to participate. Those 100 parties who indicated interest, including the Civil Contractors Federation, were advised on the draft document on 9 April 2009. In addition, the standard was released publicly on the EPA website.

The EPA reviewed the responses and considered them in amending the standard; however, no submission was received from the Civil Contractors Federation. The revised standard was released on 12 January 2010, accompanied by a Response to Submissions, which outlined the changes made or the reason changes were not made.

The standard is consistent with and clarifies the approach previously taken by the EPA for the use of waste soil as fill. Under specified circumstances, the standard expands on the types of waste soil that may be re-used as fill rather than disposed to landfill, thus providing more options for re-using waste, which supports the waste hierarchy and reduces the burden on virgin materials.

For all the reasons I have outlined, the government does not support the motion of the Hon. Ms Lensink and urges the chamber to vote against the motion.

The Hon. M. PARNELL (23:24): This motion should effectively be in the category described as a 'no brainer'. The reason I say that is that, under the Environment Protection Act, all of these environment protection policies must be referred to the ERD Committee, and they are referred to the ERD Committee for inquiry and, if the committee desires, report.

So it is part of the statutory regime that this committee looks at these policies. The question then arises, why have we not looked at it already? The answer is that it came in that period before the election when parliamentary committees were not sitting, and the period for comment expired before the ERD committee was re-established. That is my understanding of the time frame.

What I think that says to those of us on the committee is that we need the same sort of law reform in the Environment Protection Act that we have in the Development Act, because in the Development Act it says that if one of these documents that the ERD committee has the right to comment on comes along during the Christmas/New Year period, then the clock stops; you wait until parliament starts again and then the committee gets a look at it. So, we should have the same provision. If we had had that provision here, we would have looked at this policy already.

So I am not proposing to go into the merits or otherwise of what might be found when inquiring into it, as the Hon. Carmel Zollo did. I do not need to do that. I have an open mind about the pros and cons of this policy, but at its most basic level this motion just says that it be referred to the committee. One of the reasons that it is appropriate to refer it to a house of parliament, rather than the committee just agreeing to look at it itself, is that this guarantees that it will get on the agenda if it goes through. I think that is why the Hon. Michelle Lensink has done it that way.

Really, this motion does nothing more than remedy an error in legislation which makes it possible for an environment protection policy to slip through the net by virtue of it having been promulgated and referred to the ERD committee in a period when we are not sitting. It is as simple as that, so I can see no reason not to support this motion. The Greens certainly do support it, but

not with any particular outcome in mind. We just think it should be referred, because it slipped through the net back in February and March this year, and there is no reason for it not to come back to the committee for an inquiry now.

The Hon. D.G.E. HOOD (23:27): I think the Hon. Mr Parnell said it very well. Unlike in the previous bill, I agree with him on this occasion, and so Family First will also support the motion.

The Hon. J.M.A. LENSINK (23:27): I will be brief, given the hour, but I could not let some of these comments from the government go past without responding. I too, like the Hon. Mark Parnell, have an open mind on this issue. I think broadly there is a lot of support for the work of the EPA in developing these policies and so forth, but there is no harm in having a look at them, particularly when statutory responsibility to look at these policies has not gone through the process that it ought to have.

It beggars belief that the government keeps opposing things like this. It is not going to change the world; the sky is not going to fall in; we are not going to disallow the policy; and things are not going to stop operating the way they are. It is almost as if they have an attitude of, 'We're from the government and we have got it all covered; don't worry; parliament doesn't need any oversight of these things.'

In particular, the first policy in this motion has a huge impact on the local government sector. They do the lion's share of implementing our waste policies and, from what they have said, in certain instances, certain councils, particularly in the country, are having difficulty; they would like some help and they think that some of this is unreasonable. So what is the harm in getting everybody in to tell us what they think? We may well be able to make recommendations to the government that improve the policy.

In relation to the second one, which is the standard for production and use of waste-derived fill, I am bemused that the government says that this policy is already being reviewed, when the draft came out only in 2009. So, I think it is another case of the government has decided that it will announce a review to use that as an argument to block the parliament from reviewing something. The government really ought to appreciate the role of the standing committees. We can do some really useful work that it does not need to be scared of.

It is not going to get a bad headline; in fact, it is more likely to get bad headlines by blocking our reviews, which is what has happened in the instance of this committee. I will continue to push for this committee to do its work, because we are well remunerated. With those words, I thank honourable members for their contributions and would like the government to review its resistance to looking at any policy which is not one of its own making, because it does not really have as much to be afraid of as it thinks it does.

Motion carried.

FAMILY RELATIONSHIPS (PARENTAGE) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 30 June 2010.)

The Hon. S.G. WADE (23:30): I rise to speak on this bill. As a member of the Liberal Party, every vote is a conscience vote for me. We are free to vote against the advice of our party on each vote, but this bill particularly is a conscience vote for Liberal Party members. In that regard, there is no party recommendation, so I make it clear that I speak for no member but myself.

This bill, which was introduced by the Hon. Tammy Franks on 23 June 2010, extends legal recognition of parentage to female same sex domestic partners. I note that South Australia is the only jurisdiction in Australia that does not recognise the same-sex partner of a birth mother who has used artificial reproductive technology to conceive as a parent of a child born.

Consistent with my approach to other similar bills, I will give primacy in my consideration to the best interests of the child. Without legal recognition, a child in the care of a parent in a same-sex relationship suffers a range of detriments. I pose these questions:

- Is it in the best interests of a child that a parent lacks the legal authority to make decisions about medical treatment for a child whom they parent?
- Is it in the best interests of a child to have their guardian present if the child is being questioned by the police?

- Is it in the best interests of a child that a guardian is not able to make decisions or meet legal obligations concerning schooling or employment for children under 17 years of age?
- Is it in the best interests of a child that their parent or guardian may be unable to travel with them beyond Australia?
- Is it in the best interests of a child that they may not be able to lay claim to a co-parent's estate if a will has not been created?

These and other issues highlight for me that it is important in the interests of children that recognition be given to same-sex domestic partners. I see no reason why children who are in the care of same-sex couples should suffer because of that fact.

A repeated complaint that has been raised with me against this bill is that it compels falsehoods in birth certificates. The reality is that birth certificates are not statutory declarations of truth: they are a public record. We already allow the name of a parent who has become a parent through assisted reproductive technology to appear on a birth certificate, even when that birth may have been as a result of donated genetic material. So, I do not see this as a compelling objection, and certainly not one to overwhelm the best interests of a child. I support the bill.

The Hon. D.G.E. HOOD (23:33): I will be brief as well, given the hour. This bill makes significant changes to the longstanding definitions of parenthood and family, and I indicate that Family First will not support it. The bill introduces a new concept of co-parents throughout the South Australian legislation, so that families will now be made up of children and parents and also the new term 'co-parents'. This is certainly a far-reaching proposal, and I will list my primary concerns; there are only five.

In clause 4, the bill seeks to change the definition of mother, father or parent throughout all acts of parliament so as to indicate a reference to the new term 'co-parent'. The ramifications of such a dramatic change to so many acts are unknown but, of course, they will be vast, and this is obviously a significant change.

Secondly, as the bill does not seem to clearly demonstrate or appreciate, many domestic partnerships are, in fact, nonsexual. However, this bill would extend parenting rights, even in those nonsexual scenarios that have no anticipation of parenthood—for instance, two friends living together, who may be heterosexual or homosexual.

Thirdly, this bill does not anticipate scenarios in which a person can be both married and in a domestic partnership at the same time. That is quite possible under current laws; for example, where a woman leaves her husband without divorcing him and becomes involved in a lesbian relationship. Those scenarios seem inconsistent with this bill and might even result in three people being on the child's birth certificate.

Fourthly, this bill will compel even homosexual couples to take on the obligations of parenthood, even when they do not want those obligations. Parenthood obviously implies lifelong financial obligations with respect to issues such as child support and the like and, in short, this bill will compel some people—even people it purports to help—to be so-called co-parents, even if they do not want to be. I have actually spoken to one homosexual person who is concerned about that impact on their particular situation.

Finally, and this is very much my view, I believe that children do best when they have a mother and a father. Obviously, this is something that is not always possible and I certainly acknowledge that. There are no guarantees in life: children are never guaranteed to have a mum and dad to bring them up. However, in redefining families, this bill will ensure from the beginning that some children will never have a mum or dad, and for that reason I oppose the bill.

The Hon. A. BRESSINGTON (23:36): I rise to indicate that I will be supporting this bill for many of the reasons that the Hon. Stephen Wade gave in his contribution. Also, I cannot comprehend the attitude that children are better off with a mum and a dad than they are with two same-sex parents. We heterosexuals, and I have said this before, do not have a great track record as far as getting married, staying together and raising children in a functional way.

We have a high rate of divorce. Our children get in the same sorts of predicaments that same-sex couples' children get into because they are just children, they are kids, and that is what happens. I think that the point the Hon. Stephen Wade made about this bill needing to be in the best interests of the child is paramount. In saying that, I lend my support to the bill.

The Hon. T.J. STEPHENS (23:37): Normally, by my voting patterns, I would seem to be a very conservative member of parliament, but I am attracted to the bill. I have had briefings and I have had people come and see me who are going to be certainly affected by this bill, and they, of course, were quite persuasive. It is my understanding we are the last people in Australia not to provide this particular right. Given that the world has not fallen in on the rest of Australia, as eloquently described by my colleague, the Hon. Stephen Wade, I intend to support the bill.

The Hon. J.M. GAZZOLA (23:38): I believe that the issue is presently before the Social Development Committee. Children, no matter what their family status, deserve consistent and universal protection of their rights in line with other state and federal legislation. I also thank all those who have contacted my office to express their views and, as I said, I support the bill.

The Hon. R.P. WORTLEY (23:38): I think this bill is long overdue. I have had a number of representations myself and, I must say, they have given me a very good—

The Hon. S.G. Wade: Any on euthanasia?

The Hon. R.P. WORTLEY: Pardon?

The Hon. S.G. Wade interjecting:

The PRESIDENT: Order!

The Hon. R.P. WORTLEY: Anyway, I support the bill. As I said, it is long overdue and I think the people who have come to see me have put a very good case. I agree with the Hon. Ms Bressington that I cannot fathom how a couple can be seen not to be loving parents and provide a very steady and good home for the child. I fully support the bill and look forward to its passage through.

The Hon. CARMEL ZOLLO (23:39): I will not be long. As this is a conscience vote for Labor Party members, I indicate that I will not be supporting the view. I think I will just say that the Hon. Dennis Hood gave the same sentiments I would have expressed. I simply want to place on record that I will not be supporting the bill.

The Hon. J.M.A. LENSINK (23:39): It should not come as much of a surprise that I will be supporting this bill. It has been already expressed that we are the last jurisdiction to implement such an amendment and I do not see any purpose in making life difficult for same-sex couples by continuing to deny them this right which would be provided for by this measure.

Really, in a practical sense, it is all those issues to do with plane travel, picking their child up from school, health matters and all those things. I actually think it is quite mean-spirited for people to take the attitude that, by somehow making life more inconvenient for same-sex couples, it is actually going to diminish the prevalence of same-sex relationships in the community. I think it is quite childish and quite un-Christian, and I encourage members to support this bill.

The Hon. B.V. FINNIGAN (23:40): I think it is important for people, particularly people in the community, to understand what this bill does not do. I have received a lot of correspondence and emails in recent days in particular regarding this bill which seems to suggest that it would very much open the door to a lot more same-sex couples to have children. I think it is important to understand that, as I read it, this bill does not create rights for any same-sex couples who are currently unable to have children to have them.

The bill does create different legal rights for same-sex couples who have children, but it is not a bill that would provide for same-sex couples to adopt or avail themselves of surrogacy procedures or the like. As I understand it, any same-sex couple that is today able to have a child would be just as able to have the child tomorrow regardless of what happens with this bill. While this bill is about same-sex couples parenting rights, I don't think it is a bill that provides for a particularly vast expansion of same-sex couples to have children if that is what people are concerned about.

However, I think there are two questions that have to be asked here. The first question is how great or how significant is the deficiency or the mischief that this bill seeks to remedy. The second question is, if it is significant enough to warrant legislative change, is this the right way to go about it. On the first question I would have to say that I do not think any strong evidence at all has been presented that this is a major problem that people are facing.

The Hon. Ms Lensink has just talked about the mean-spiritedness of opposing this measure. I am yet to see any concrete, substantive evidence that this is a major or widespread

problem that same-sex parents are having this difficulty in accessing government services or catching planes or whatever.

I do not have children but I am one of 12 children and my parents did not carry around a folder of a dozen birth certificates to verify that they were my parents. I have 40-odd nieces, nephews, grand-nieces and grand-nephews and I am not aware of a single example amongst them or of any other parents that I have spoken to where they have ever been asked for a birth certificate when catching a plane or taking their kid to hospital or any other occasion.

I really do have to ask, is the problem that this bill seeks to remedy so vast, so great? I do not think any examples have been given, apart from a survey, and I do not believe there is much evidence that this is an enormous problem out there. I really have to question how warranted it is that this problem needs a legislative solution.

Secondly, the question is: is this bill the right way to go about it? I do think it is a fairly flawed bill. I think already in the debate this evening we have seen that members seem to have quite different understandings of what the bill does. I think if this bill were to go onto the statute books there would have to be considerable further debate and amendments to clarify the provisions of the bill.

It seems to me that the proponents propose that this bill would apply to male same-sex couples. That is not my reading of it, because it seeks to amend the Family Relationships Act 1975 and, looking at that bill, it refers very much to mothers and to women having children. I do not believe that this bill as amended would encompass same-sex male couples, which is clearly what the move is intended to do.

The Hon. T.A. Franks interjecting:

The PRESIDENT: Order! The Hon. Mr Finnigan.

The Hon. B.V. FINNIGAN: There is an anomaly in the way it talks about domestic partner and it picks up the definition of domestic partner as a person who lives together with another in a couple relationship and has done so for at least three years. A female same-sex couple might be having a child before the three years is up, in which case it would appear to me that no rights accrue to a female partner who has lived with a mother for less than three years. Again, I assume they are people who would wish to—

The Hon. S.G. Wade interjecting:

The Hon. B.V. FINNIGAN: Sorry?

The Hon. S.G. Wade: I am talking to Michelle.

The Hon. B.V. FINNIGAN: Well, take it outside then. I am not sure that same-sex female couples who have not been together for three years would be encompassed by this bill, even though they may well be having a child before the three years is up.

The other issue raised by the bill is that it seems that the only pregnancies that fall within the definition are those from medical procedures. If a woman undergoes self-insemination at home or outside a medical context, I do not believe she would be covered by the bill or attract the rights of a co-parent for which this bill provides. Again there are significant flaws in the drafting of the bill, which I believe the proponents ought to examine carefully if we want this proposal to go ahead.

The bill is retrospective, applying to a child whenever they are born, but it is not clear whether it would apply to people who are currently adults or people who are under 18 when the law commences. That is another anomaly where there needs to be some clarity. The other problem I see (and I think the Hon. Mr Hood alluded to this) is that there could be a problem where a child has been born in a relationship that meets the criteria of the bill, but subsequently the child is adopted by a male partner of the mother. That would require quite a change in circumstances for that person, but these things happen, as we know, and there could then be some discrepancy or lack of clarity about the parents of the child in terms of who has rights.

For those reasons I oppose the bill. I am not at all satisfied and I do not believe any evidence has been advanced that this is a widespread problem that requires legislation to fix it. Secondly, I cannot see how this is a good bill in terms of being well drafted legislation that achieves what it sets out to achieve.

The Hon. I.K. HUNTER (23:49): I rise very briefly to indicate my support for the legislation. It has been pointed out that this issue—not the bill itself—is before the Social

Development Committee, which I chair. We have not concluded our investigation of this issue. Notwithstanding that, it will not surprise anyone here to know that, generally, when I am talking about extending rights to people who do not have those rights, I naturally come down in favour of broadening access to rights.

People who have spoken in opposition to this bill tonight it seems are clutching at straws in trying to find faults with the bill or hypothetical problems in certain scenarios. The Hon. Mr Hood said that the decision makes wide-ranging changes to a draft of our legislative programs: it does not.

The ramifications, he said, are unknown. No, they are not. This bill has been put in place in one form or another in every state of Australia. The world has not come to the end in New South Wales, Queensland, Victoria or Tasmania, as far as I am aware. I have not heard that Western Australia has fallen apart recently. They have all had this legislation in place for a long time; there are no problems with it.

The Hon. Mr Hood also said that the bill forces people to be co-parents if they do not want to be in some situations. No, it does not do that either. These are all straw man arguments put up to try to confuse people with what the bill might or might not be about. It has nothing to do with those things whatsoever. What the bill does—and let's be very clear about it—is allow a woman who is not the birth mother but in a relationship at the time of the birth of a child to be put on the birth certificate as a co-parent. Other states use language such as 'mother/father/other'. Others have a facility for donors to be recorded on the birth certificate as well.

What this bill will do is put more information on the birth certificate than is currently done in South Australia and it will help the child know more details about its genetic heritage as it grows older. It is an entirely valuable addition to the system. What I say to people who have a problem with it is: why then did every government around Australia introduce these changes over the past 10 or 15 years—and there have been no complaints about it? Why then did every government in Australia find it useful for the citizens of that state who were affected by these provisions to introduce this legislation without complaint?

The Hon. J.M. Gazzola interjecting:

The Hon. I.K. HUNTER: It hasn't. There have not been any complaints because it addresses an anomaly in the system and gives a right to people who currently do not have this right. In South Australia, for some odd reason, some people oppose extending the right to people as every other jurisdiction in Australia has done. It is unfathomable to me how we can stand here today and deny people in relationships—families—access to a birth certificate that records the factual basis of their relationship. How can we do that? It is mean-spirited and, at base, it is all about residual homophobia. I will be supporting this legislation.

The Hon. J.S.L. DAWKINS (23:51): I will be brief. I acknowledge the sincerity with which the Hon. Tammy Franks has brought this legislation to the council. As I said in an earlier debate, I well understand the work involved in preparing a bill without the help of a government department. I did attend a briefing earlier in the year which I think was convened by Let's Get Equal—I am not sure about that, but some months ago—but, other than that, I have had little other contact on the matter. I have received a couple of pieces of correspondence in the last few days, but mostly against it. I am not convinced, at this stage, that this legislation is necessary in this state and I will not be supporting it.

The Hon. K.L. VINCENT (23:53): I wish to briefly speak in support of the Hon. Ms Franks' bill. I will note first that I am not necessarily expressing the views of Dignity for Disability as a party in delivering this speech, as DFD currently has no specific policy in relation to this issue, so I am speaking purely from my own mind and heart. I have long been a believer in the ideals of peace and equality and, as such, I am a supporter of the rights of gay, lesbian, bisexual, pansexual, transgender individuals (hereafter referred to as 'non-heterosexual' for convenience sake) and their families.

I will note also that I identify myself as bisexual, and so, on top of my fundamental beliefs in peace and equality and human rights, I also speak in support of this bill due to fact that, if one day I am blessed enough to have a child of my own, I hope that I will have the right to raise and love that child as any other good parent would, regardless of the gender of the person with whom I co-parent that child. However, I would put it to honourable members that this bill is not centred on the rights of non-heterosexual individuals, rather this bill is centred on the rights of the child in South Australia.

As members would be aware, Australia ratified the United Nations Convention on the Rights of the Child some 20 years ago. This convention is a document that seeks to protect children (anyone under the age of 18 years) and helps state parties to act in the best interests of children. The convention applies to every child residing in a country that has ratified it, regardless of their race, religion, abilities, whatever they think or say and, most relevantly, whatever type of family they come from. But I will return to discussing the convention and that particular article which I consider relevant to this debate after I have put this bill into a little more context.

As we all know, this bill seeks to enable the non-biological parent, whether male or female, of children who are born to same-sex couples to be registered on the child's birth certificate, thereby being recognised as an equal parent to the child as the biological one in a much fuller sense than is currently allowed for under current legislation. This will help to address the emotional pain that is no doubt associated with not being seen as the so-called real parent of one's own child. Article 7 of the UN Convention on the Rights of the Child clearly states in part 1:

> The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

To that end, I basically believe that it is the right of every person, if and when they choose, to be able to look at their own birth certificate, read the names of their parents and, at the very least, think, 'These are the people who contributed to my making and my upbringing. These are the people who chose to bring me into the world. This is my history, and I matter to these people.'

In my role as a member of the Social Development Committee, I recently had the pleasure of hearing evidence from a spokesperson for Let's Get Equal, who spoke with much eloquence and conviction about the struggle that she and her female partner face in having only her, and not her partner, registered as the parent of their beautiful young daughter on her birth certificate. This means that she, as the non-biological mother, cannot, among other things (as the Hon. Lensink has already touched on), consent to medical treatment for her daughter or travel with her on aeroplanes, for example.

This would mean that, if the biological mother were to absent herself from the family and the daughter were in need of emergency surgery, for instance, the non-biological mother would not be able to consent to this and, in the absence of the biological parent, doctors would be unable to go ahead with the surgery that may save the child's life—not through any fault of her own, nor because her mother is not willing to consent, but simply because state legislation does not currently recognise the non-biological parent as real.

However, the question still remains: what is, in fact, a real parent? Certainly, a parent is a person who contributes biologically to creating a child in both the traditional sense (that being through sexual intercourse) as well as other methods such as IVF. But is this really the only criteria that one must fulfil in order to be a real parent? I repeat that Article 7 of the UN convention states that every child has the right, to the furthest possible extent, to know and be cared for by his or her parents.

Although I note that this article has also been used as an argument against this bill in correspondence that I have received, allow me to indicate how I think it can actually be used as an argument to support the bill. Under this article it could be interpreted that a parent is not only a person who is biologically linked to a child but also physically, emotionally and spiritually—someone who is known to the child through an ongoing, preferably unwavering, presence in the child's life in which they make a positive contribution to the child's life circumstances and growth through the provision of physical, emotional, financial and social support and guidance.

A parent is someone who kisses a child goodnight and puts bandaids on their wounds, who helps them deal with the school bully and who treats the child with unconditional love; and, most importantly, I believe that a real parent is a person who has worked to build a relationship with the child such that they are the person that the child expects to come running whenever they call out 'Mummy' or 'Daddy'.

As I am sure many, if not all, of the members in this chamber who have children will agree and, as I hope to come to know myself one day when my time comes (perhaps in 7½ years' time when I have a bit more time on my hands), parenthood is something far beyond the donation of biological material. So it is plain to see that non-heterosexual couples are, by and large, more than capable of being real parents.

It is the same with real families. Nowadays we have children whose biological parents may have separated and remarried to other people, giving the children a second set of parents, that is, step-parents. We have children who are adopted into their families without ever having known their biological parents. We have mixed-race families and families made up of half-brothers and half-sisters. But are the relationships between these people any less real due to the circumstances under which they come into them? I do not believe so, no. So, why should this be the case for children born to non-heterosexual couples? Again, the convention applies to every child in all but two countries in the world (which have not ratified it), whichever type of family they come from.

I will now point out, as I am sure we are all aware, that South Australia is the only Australian state left not to grant non-biological parents recognition on birth certificates. All I can say to this is: better late than never. If this bill should pass it would admittedly be a drop in the ocean of GLBTI issues, but it is certainly a step in this long journey. It is becoming clear that the days of the average family, so to speak, are numbered and, regardless of personal views, I believe that we must not punish our children for this. However, it is vital to note also that, despite my focus so far on children born to same-sex couples, under this bill a qualifying relationship in which a non-biological parent may be recognised on a child's birth certificate is defined as 'a marriage-like relationship between two people who are domestic partners (whether they are of the same or opposite sex)'.

Therefore, this bill does not seek to promote the rights of non-biological parents in same-sex relationships to be named on the child's birth certificate, and there is nothing to say in this bill that a child cannot also have a relationship with their biological parents if they wish for it and if their family deems it appropriate. So, I reiterate: this bill is not about taking a stand against homophobia, and it does not seek, as some members of the public seem to believe, to legalise access to IVF for non-heterosexual couples.

This bill is not about promoting queer culture. This bill is not about pushing the envelope with regard to family structure. This bill simply seeks to meet the rights of our children to a loving and supportive family and thereby a secure and sustainable life, contributing to the secure and sustainable future of this state. I commend the bill to the house.

The Hon. R.I. LUCAS (00:02): I indicate that I will support the second reading of the bill. I look forward to any forensic cross-examination of the mover by the Hon. Mr Finnigan, the Hon. Mr Hood and others who seek to persuade some of us to oppose the legislation in the committee stage, and I reserve my right at the third reading.

The Hon. D.W. RIDGWAY (Leader of the Opposition) (00:02): I indicate also that I will be supporting the bill at the second reading. I have always been a great supporter of children and, certainly, I think that every indication is that this is a step in the right direction in certain circumstances.

I have a couple of experiences where children are being parented by same-sex couples, and the welfare of the children, in my view, is the important issue. Certainly, at this stage, I will be supporting the second reading of the bill and, like my colleague the Hon. Rob Lucas, I look forward to the committee stage of the bill.

The PRESIDENT (00:03): As it is a conscience vote, I would like to indicate so that those people who have written to me (both for and against) know, and to be fair to my colleagues, how I would vote in the case of a tie. I would certainly be supporting the bill if that was the case.

The Hon. T.A. FRANKS (00:04): I commence by thanking all the members who have made a contribution: the Hon. Stephen Wade, the Hon. Rob Lucas, the Hon. David Ridgway, the Hon. John Dawkins, the Hon. Ian Hunter, the Hon. Bernard Finnigan, the Hon. Dennis Hood, the Hon. Ann Bressington, the Hon. Terry Stephens, the Hon. Michelle Lensink, the Hon. Kelly Vincent, the Hon. John Gazzola, the Hon. Russell Wortley and the Hon. Carmel Zollo; and, of course, I thank you, Mr President, for making your views known on this issue.

I would like to start off by saying that this is not a very radical bill, and it is a very small number of people we are talking about. As has been said during the debate, we are actually behind, in terms of reform in this area, every other state and territory in this country. Perhaps the reason that the number of families in South Australia this affects is even smaller is that many of these families choose to move interstate or, as we heard in the briefing during the winter recess, families choose to fly to Canberra, for example, to give birth and then return to South Australia.

Of course, this is an enormous upheaval at a time when people should be with their loved ones—their families and their extended families and friends—creating a haven for their child in their home state, and not have to travel interstate simply to give birth so that they can have the protection and security for that child that having two parents will bring.

In some cases in South Australia, women have found themselves physically unable to travel to give birth interstate, so they have been left in a situation where they have been forced to have the co-parent not recognised on the birth certificate, and that is one of the cases we are looking at specifically. Many members would be aware of one particular family that has probably knocked on most of your doors.

I do thank those of you have taken briefings personally and lobbying meetings or attended the briefings or read the briefing paper that was circulated. For those who know, there is a delightful three-year-old, who had her birthday when we started this debate and who is now three years and one day old. I am sure she would dearly love to grow up with the name of both parents on her birth certificate. She is a delightful little girl, and I am keeping her in mind as we debate this bill tonight.

These families exist, and we should support them. I am not in the business of creating orphans. Should children in this situation have a birth mother who dies, although it is unlikely and unthinkable, potentially we could be creating orphans if we do not legally recognise their co-parent who has been there since their birth, who was part of wanting them to come into the world, who has been caring, loving and nurturing for their whole life but who could be wiped out of that child's life in the horrific case of the death of the birth mother.

I also point out that, if anyone has tried to travel with a young child, they would know that it is quite difficult. You have to have a Medicare card or some sort of documentation that shows that you are the parent, and if you are not—

The Hon. A. Bressington interjecting:

The Hon. T.A. FRANKS: Court orders—many people would be familiar with having to produce court orders in order to travel. It is not a rare occurrence in this day and age for airlines to demand that of parents. We have heard the debates, of course, about schooling, education and health decisions, all of which are day-to-day things. Parenting is difficult enough as it is without putting more blocks in the way of people who are very good parents and just want to do the right thing by their children.

I would like to address some of the points that have been raised. The Hon. Ian Hunter did a very good job of addressing most of them in clarifying some of the misconceptions. This bill does not create any new avenues to procreate, but it does allow the children who already exist to be better cared for by two parents. Those who attended the briefing and read the papers know that this bill does not cater for same-sex male couples. This bill is deliberately narrow. It does not—

An honourable member interjecting:

The Hon. T.A. FRANKS: Yes, indeed, it is quite conservative. For those who think that this is not an issue that is in the here and now in South Australia, perhaps they do not move in the circles I do. I know at least four lesbian couples who are raising happy and healthy kids, and they do not need these barriers in their way. They are not going away, and they are not going to stop procreating. What we are doing is making their life a little more difficult, and it is the children who will suffer in the end.

This bill does not provide for a situation where one member of a lesbian couple marries a male and that person becomes the father, and that is not what is encouraged by this bill. In fact, this bill will give the child who has had a co-parent from birth who is the lesbian partner of her or his birth mother the security that that ongoing parental relationship will continue even if the birth mother perhaps then chooses to then marry a male or female in the future. That link that has been there from birth, and before, from conception in fact, will not be severed, and that is what we are doing: we are giving ongoing security and continuity to that child.

There has also been a bit of confusion raised about what happens if the child is an adult and whether we then retrospectively recognise the co-parent on the birth certificate. I am not sure in what situation that would occur in this day and age, but if that path were to be pursued by the adult child I imagine that it is because the adult child is demanding that such options exist for them. I am not sure there are that many cases of adult children over 18 wanting the recognition of their

lesbian co-parents retrospectively once they are an adult but, if they do want that, then good on them, and wouldn't it be great for them to have that option.

In South Australia the majority of children have two parents; they are legally recognised. I would like to point out that the reason that this bill refers to the presumption of parentage is that, if a woman gives birth to a child and she is married to a male, regardless of whether that male is the biological father of that child, there is a presumption that he is the parent. That is what happens at the moment. We are not talking about, as Stephen Wade said, a document that reflects biological imperatives; in fact, it is simply documentation, and at the moment we need to recognise that there is presumption of parentage that does not actually reflect that biological link.

With that, I look forward to the committee stage. I look forward to clarifying some of the misconceptions that may be out there. I certainly welcome the support of those members who have indicated an open mind or support of this bill. For those who are opposed to it, I do respect your views, but what we are talking about here is, indeed, as I have said, a very small number of people. To you perhaps this is a really small issue, but to them this is the world.

Bill read a second time.

In committee.

Clause 1.

The Hon. B.V. FINNIGAN: I would just like to respond to a couple of the remarks made. People who are opposing this bill have been described as 'mean-spirited, unchristian and homophobic', and I think they are outrageous comments from honourable members. I am sure that if I got up and said that people who are supporting euthanasia were murderers, I would be rightly condemned. I cannot understand why the proponents of the bill seek to denigrate those who hold an alternative point of view.

The Hon. D.G.E. HOOD: I will make just a brief contribution. With respect to air travel, I think it is a very serious issue. I think that if you cannot take your children on a plane it is a problem. For that reason I contacted both Virgin and Qantas last week and put that situation to them, as has been suggested by the Hon. Ms Franks and some others. I asked them the direct question that if that was the situation what would be their response, and both airlines replied to me that there would be no problem whatsoever. That is my experience. It seems that others may have had different experiences. All I can do is recount what happened when I made those telephone calls, and that is what they said to me.

I think it is worth putting that on the record: both airlines have said that to me quite categorically. I painted a whole lot of different scenarios. For example, what if it was a friend's child? I painted a number of other scenarios and all of them seemed to be no problem whatsoever.

The Hon. A. Bressington: It's not true.

The Hon. D.G.E. HOOD: Well, that is my experience.

The Hon. A. Bressington: It's not true.

The PRESIDENT: Order!

The Hon. D.G.E. HOOD: Well, that is what happened when I rang them. The Hon. Ms Bressington obviously had a different experience. I can tell you that is what happened when I rang those airlines.

The PRESIDENT: Perhaps you got a different person on the end of the phone.

The Hon. A. BRESSINGTON: I would like to confirm that it is illegal to leave the country with a child if you are not the parent. You have to get permission. This is about our other child protection laws and parents absconding with a child. It is in place to prevent that from happening. With my son, who is nine years old, I have a passport, my partner has a passport, and we need court orders to show that we are his legal guardians to be able to leave the country with him.

I do not imagine it would be that much different for same-sex couples if they cannot prove that they are not the parents of the child. They would need court orders. I do not know that many of them have actually gone through the family court system. God hope they have not. Some may and, if they have those court orders, then they need to produce those with the passports to leave the country.

The Hon. CARMEL ZOLLO: I want to add to the comments made by the Hon. Dennis Hood. I have never been requested as a parent to provide a birth certificate for any travel. The other point I wanted to make to pick up on the mean-spirited and unchristian comments is that, as a parent, I am not convinced that this bill is for the betterment of the child. I am totally unconvinced. I do not see how it would help a child to say, 'I do not have a mum and dad. I have a mum and I have a co-parent.' I think we really set children up to be ridiculed, in particular during their education years. I am not convinced that this is for the betterment of the child. It may well be for the betterment of the co-parent, but I do not believe it is in the best interests of the child.

I am trying to think of other examples that might occur but I just do not see why we would say that. I think that it would be in the best interests of the child for the co-parent to be a guardian, and then there would be no questions asked. I just think for the child itself that is going to be more difficult than the other way round.

The Hon. S.G. WADE: I will briefly respond to the comments of the Hon. Carmel Zollo in that, as the Hon. Bernard Finnigan indicated, this bill is not about family formation. No woman will be able to form a family tomorrow who was not able to form one today.

The Hon. Carmel Zollo: I didn't say that.

The Hon. S.G. WADE: No, but the point is that this is about recognition of families that already exist. I believe it is in the interests of children that their parental guardian relationships are recognised so that for all the factors that have been raised these families can exist without detriment to the interests of the child.

Clause passed.

Clause 2.

The Hon. R.I. LUCAS: I am not sure whether the mover of this motion or the government can answer this question, but I can only direct it to the mover: what is the mover's intention, I assume in collaboration with those within government who might be supporting the legislation, as to when the mover believes the legislation will come into operation should it pass the parliament, in both houses obviously?

The Hon. T.A. FRANKS: Should it pass the parliament in the lower house I am sure they will set a date for proclamation.

The Hon. R.I. LUCAS: The answer may well be that the member has no answer and that is fine because I do not want to make a great point of it. The lower house cannot set the date for proclamation. Ultimately it will be an issue if it passes the parliament for Executive Council or cabinet to do it. My question was really whether there had been any discussions with the government and its representatives, should it pass the parliament, in terms of when it might be proclaimed. The answer might be that there have been no discussions, and so be it.

The CHAIR: The bill has a commencement clause in there.

The Hon. R.I. LUCAS: It has two clauses, Mr Chairman: one which has 12 months and one that states that the date is to be fixed by proclamation.

The Hon. T.A. FRANKS: There has been no discussion with the government.

Clause passed.

Remaining clauses (3 to 12), schedule and title passed.

Bill reported without amendment.

The Hon. T.A. FRANKS (00:21): I move:

That this bill be now read a third time.

The council divided on the third reading:

AYES (14)

Bressington, A.	Darley, J.A.	Franks, T.A. (teller)
Gazzola, J.M.	Hunter, I.K.	Lee, J.S.
Lensink, J.M.A.	Lucas, R.I.	Parnell, M.
Ridgway, D.W.	Stephens, T.J.	Vincent, K.L.

AYES (14)

Wade, S.G.	Wortley, R.P.	

NOES (5)

Brokenshire, R.L.	Dawkins, J.S.L.	Finnigan, B.V.
Hood, D.G.E. (teller)	Zollo, C.	

PAIRS (2)

Gago, G.E.	Holloway, P.

Majority of 9 for the ayes.

Third reading thus carried.

Bill passed.

ELECTORAL ACT

Order of the Day, Private Business, No. 57: Hon. R.L. Brokenshire to move:

That he have leave to introduce a bill for an act to amend the Electoral Act 1985.

The Hon. R.L. BROKENSHIRE (00:27): I move:

That this order of the day be discharged.

Motion carried; order of the day discharged.

DESALINATION PLANT PROJECT

Adjourned debate on motion of Hon. T.A. Franks (resumed on motion).

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) (00:29): As Minister for Industrial Relations, I am fully aware of the critical importance of workplace safety and the consequences of unsafe work practices and worksites. With regard to safety at the Adelaide Desalination Plant it is important that I provide the chamber with a full and accurate account of safety management practices in what is clearly a major infrastructure project for this state. I also contend that a parliamentary inquiry, as proposed by the Hon. Tammy Franks, is unnecessary, certainly in the areas she has outlined pertaining to workplace safety.

I will explain to the house the extent to which SafeWork SA is both investigating incidents and working with management of the plant to ensure that safety is fully factored into all work practices at the site. It is unfortunate that some of the media coverage to date appears to be more concerned with generating good headlines than good outcomes. A proper appraisal of the true situation should convince the council that this proposed parliamentary inquiry is unnecessary.

I will turn firstly to the issue of safety management and the question of safety at the Adelaide desalination plant. The principal contractor on the project site is Adelaide Aqua, which is a consortium of McConnell Dowell, Acciona Agua and the Abigroup. The plant site itself is an intensive construction zone involving multiple contractors who employ a substantial number of workers on what is a large parcel of land.

As the government's regulator, SafeWork SA has had inspectors present on site since construction work began there in 2008. During that time, agency inspectors have discussed the on-site management of health and safety at the plant with senior project management and have reviewed safety management systems themselves. The inspectors also speak to contractors, workers and supervisors on site about safety.

The desalination plant has a project management structure including a project director and a manager of health and safety. There are safety superintendents managing safety coordinators on site who report to the health and safety manager. The site also has an occupational health and

safety committee which has subcontractor representation. Subcontractor coordination meetings are held each afternoon, which plan the coordination of subcontractor work in each allocated zone for the next day. These meetings are also attended by the safety coordinators.

The client, which is SA Water, also has two of its own site safety auditors allocated to the site and occasionally engages a private occupational health and safety consultant. These personnel also check safety at the site and give feedback to SA Water on the project. As the regulator, SafeWork SA regularly discusses safety management with the Adelaide Aqua project director, the national safety manager for Abigroup, the Adelaide Aqua safety manager and on-site SA Water executives.

As part of this engagement, in September 2010, SafeWork SA inspectors conducted a review of the safety management system on site. This confirmed the extensive occupational health and safety management structure at the site. Given the extensive site management of occupational health and safety by the project staff, SafeWork SA has developed a strategic compliance plan for the project.

In addition to responding to any complaints or notifiable incidents received, targeted inspections are also carried out by SafeWork SA on a regular basis. These specifically target high-risk construction activities on the site and require inspectors to cover all sections of the site in a strategic manner, engaging the safety officers and senior project staff during their inspections. So, what we have here are not only multiple layers of safety management provided by the project consortium, but also extra layers provided by the government regulator.

In response to the allegations about the storage of explosives, SA Water advised that a licence had been sought from SafeWork SA to store the required explosives on site. SafeWork SA came to the site and selected the optimum location for the explosives storage area. Based on this location, SafeWork SA then placed the required restrictions on the amount of explosives that were stored on site.

On 14 July 2009, the licence for magazine, and hence the storage of explosives, was issued by SafeWork SA. Within this licence, the regulations around the access to the compound, and the safe storage of the explosives, were articulated. The storage of explosives complied with Australian Standard 2187.1—Storage of Explosives and the South Australian Explosives Regulations of 1996.

I am advised that all site storage has been undertaken strictly in accordance with Australian standards and complies with approved SafeWork SA licence conditions. SA Water audited and found 100 per cent compliance with all of the licence conditions. I understand that, as the works requiring explosives is completed, the explosives have now been removed from site, with no incidents.

Dealing with incidents, I will return to the second issue relevant to my portfolio that the honourable member's proposed inquiry wishes to address, namely, the related matter of worker deaths and injuries. Any workplace death is unacceptable. Our objective is to ensure that all workers are safe. I reiterate that, on top of the strategic efforts mentioned before, SafeWork SA occupational health and safety inspectors regularly visit and inspect the desalination plant site to ensure compliance.

Further, these inspectors undertake regular unannounced site inspections and attend to identify workplace issues. Interactions at the site also include after-hours inspections that are undertaken to assess overnight activities. To date, more than 200 inspector visits have been recorded for the desalination plant site.

That said, the reality is that there has been one fatality at the desalination plant that was notifiable under the Occupational Health, Safety and Welfare Act 1986. On Friday 16 July 2010 an incident occurred in one of the two reverse osmosis buildings which resulted in the death of 35 year-old Mr Brett Fritsch. Mr Fritsch was struck and fatally injured by a steel beam that came free as it was being lowered through the open roof space of the building.

SafeWork SA is in the process of conducting a formal and thorough investigation into this fatality, ensuring that all avenues of inquiry have been comprehensively investigated. Numerous statements have been taken and specialist advice has been sought where necessary. When all the necessary information has been gathered, it will be reviewed to determine the full circumstances of the incident and where any culpability might lie under workplace safety laws. If it is found there is a

case to be answered then SafeWork SA will launch a prosecution in the Industrial Court. Accordingly, it is appropriate that I leave this matter to the investigators until that decision is made.

There has also been significant media interest surrounding another death that occurred at the Adelaide desalination plant site involving Mr Allen O'Neil. Mr O'Neil was an employee of Australian Reinforcing Specialists Pty Ltd, where he was employed as a leading hand steel fixer working on the desalination plant pipeline project. Mr O'Neil died in hospital on 15 February this year as a result of complications from ingesting fuel.

In accordance with its standard procedure for all reported deaths, SafeWork SA conducted a preliminary investigation to establish whether this incident fell within the scope of a notifiable death under the occupational health, safety and welfare legislation. The investigation identified that the company responsible for filling the generators with diesel fuel did have appropriate procedures in place at the time of the incident and had taken reasonable steps to avoid such an incident occurring. Accordingly, the investigation identified that there were no work-related issues that may have caused or contributed to Mr O'Neil's death.

While this is now a matter for the Coroner, I have asked SafeWork SA to review its investigation with a view to supporting the Coroner's inquest to the fullest extent. However, Mr O'Neil's death cannot and should not be connected in any way to work activity at the Adelaide desalination plant.

In both these matters, some critics in the media have hinted at cover-ups or soft treatment of these matters—'Caesar judging Caesar' as some have put it. Nothing could be further from the truth. SafeWork SA is fully empowered under its legislation to investigate and prosecute other government entities and their contractors. The records show that it has not shied away from pursuing government departments in the past.

In both of the tragic cases related to the desalination plant, SafeWork SA has exercised its functions appropriately. As I have indicated thus far, extensive and comprehensive systems are in place at the desalination plant to ensure that work-related harm is minimised to the broadest extent that is reasonably practicable.

In summary, the government is of the opinion that this inquiry is unnecessary for the following reasons:

- The regulator, SafeWork SA, is actively involved at the site and maintains extensive engagement through formal dialogue and unannounced site visits.
- The safety systems, procedures and resources in place are appropriate for the extent of work being undertaken.
- While there has been a notifiable fatality, this is being fully investigated to determine the circumstances of the incident and where any culpability may lie. This is an important project for South Australia and the government is fully aware of the human cost to date. However, this is not a time for ill-informed hearsay and accusations to take hold. Accordingly, the government should keep faith with the safety management systems and regulatory processes in place and oppose this inquiry.

In these comments I have addressed issues relevant to my portfolio, but of course there are other issues which I understand my colleague the Hon. Carmel Zollo will address in relation to the motion by the Hon. Ms Franks.

The Hon. CARMEL ZOLLO (00:40): I would like to add some further comments to those already made by the Minister for Industrial Relations, the Hon. Paul Holloway. As he said, he has placed on the record issues relevant to his portfolio. My comments will address in particular the rigorous independent verification processes.

The government opposes this motion because a select committee based on hearsay, promoted by the media, would be a waste of public money and would be the product of nothing more than a mischievous political exercise. We oppose this motion because a dossier circulated by the Hon. Ms Franks, which is offered as substantiation of the need for a select committee, is by an author unnamed. Do a dossier that is unattributed and allegations in the media that are not credible warrant a select committee and the great cost and investment of time that it implies? The answer is clearly no.

The design and construction of the Adelaide desalination plant is being undertaken by three companies making up the AdelaideAqua D&C consortium, all being parties to the contract with SA Water. The companies in the consortium are Abigroup Contractors Pty Ltd and McConnell Dowell Constructors Australia Pty Ltd, which are joined in a fully integrated, unincorporated joint venture, and ACCIONA Agua Adelaide Pty Ltd.

SA Water advises that there are in place rigorous independent verification processes to ensure that the desalination project is conducted in a proper, effective and safe manner and in accordance with all contractual arrangements. This, of course, you would expect. I am advised that these processes include the appointment of an independent verifier, jointly by SA Water and AdelaideAqua. The independent verifier's core function on the desalination project is to verify that the design and construction works are carried out in accordance with the design and construct D&C contract requirements.

The independent verifier undertakes the above functions through observing, through monitoring, through reviewing, and through auditing and verifying the quality assurance and project management systems. The independent verifier acts independently of SA Water and AdelaideAqua and as such is not influenced by the individual parties in undertaking its role. The verifier attends audits, safety briefings, and various meetings and design reviews to verify that contract requirements are being met.

Some of the critical aspects that the independent verifier has been involved in include verifying the D&C contractors' compliance to the code of practice for risk management of tunnel works. They include attending, monitoring, reviewing, verifying and commissioning tests, the performance tests and the reliability tests run, and the corresponding programs for such activities. They include undertaking audits of the site to ensure contractors' compliance with safety and management plans and environmental management and monitoring plans, and with supporting plans and standard work procedures.

There is also a rigorous insurance review process, as part of the insurance cover. Independent verification is carried out at various stages of project activities by the lead insurers. Insurers also conduct a continuous risk engineering program involving regular visits by experienced risk engineers from different disciplines to review the progress of construction, installation and testing works. The areas of interest cover safety and underground tunnelling. I am also advised that over the last few months the insurers have carried out regular surveys of the site as well as reviews of critical documentation. I understand that these scheduled visits are to assure the lead insurance group that risks are being managed at acceptable levels and that all documentation relating to AdelaideAqua's critical works meet codes of practice and underwriting requirements.

I am also advised that a dispute resolution board (DRB) has been established to act independently in relation to any disputes that may arise at the desalination plant and that it is available at short notice should a dispute arise between parties and resolution cannot be reached.

The board is comprised of one senior member of the South Australian bar or legal profession, one senior member from Engineers Australia and one project programming expert. The group meets on a quarterly basis, inspects the site activities, reviews all AdelaideAqua monthly reports and meets with SA Water and the contractors and matters of interest following their review.

We are further advised that key independent experts carry out verification of AdelaideAqua's marine and environmental activities. Their engagement assures SA Water that an independent verification is carried out on AdelaideAqua activities to ensure compliance generally with the Environmental Impact Statement and the Environment Protection Authority requirements. The points I have made so far make absolutely clear that the attention to checking and verifying procedures and processes at the desalination plant are detailed and rigorous.

SA Water also advises that it monitors contractor compliance with approved safety and environmental management plans and specifications. It also engages in site verification processes that include routine audits against all of the contractors' management. SA Water advises that these processes also include the development of defects lists and site inspections to close out defects. They include regular site inspections by the project managers to verify compliance and the completeness of works.

They include joint inspections with the contractors before any completion or commissioning work packs are closed out. They also include workshops for risk assessments and hazard assessments and they assist with managing and monitoring risk mitigation. SA Water also advises that it undertakes daily physical inspections of the site. SA Water has provided the government with

advice on the claims and allegations that constitute most of the explanation provided by the Hon. Tammy Franks in support of her motion, which I now wish to elaborate on.

In response to the honourable member's comment about simultaneous construction practices, SA Water points out that it is common industry practice that construction works are scheduled to occur concurrently. All works are subject to pre-planning via job safety and environmental analysis to identify risks associated with any works and to ensure that appropriate safety controls are in place before work proceeds.

With regard to vehicles without escorts, SA Water comments that the only oversized vehicles on site were the fleet of scrapers and water carts during the bulk earthworks. This fleet is operated by a team of fully ticketed and qualified operators. All other oversized road deliveries have been undertaken with appropriate escorts. With reference to the comments about security, SA Water says that, before workers and subcontractors are inducted onto the site, the safety department verifies the ticket of each individual and they list the high risk work licences on their induction record.

AdelaideAqua and D&C Consortium have also engaged a respected South Australian security firm to provide security services to the site. The service provides for a team of security guards on site 24 hours per day, seven days a week. The laydown areas and secured compounds have monitored alarm systems and, in the event of an unauthorised entry, this alerts the security guards on site. CCTV is present and operational on site, and a live feed is viewed at the site security hut at the main project entrance.

SA Water has also affirmed that no employee who experiences a lost time injury (LTI) faces any discrimination or dismissal. We are advised that AdelaideAqua has a dedicated return-to-work officer for AdelaideAqua employees to assist individuals who have an LTI to safely return to work, as their health permits. The Hon. Ms Franks also raised concerns about the tunnelling procedures at the desalination plant. SA Water advises that the tunnelling crew at peak numbered 96 workers and 25 staff, the latter being mostly qualified civil and mining engineers.

The tunnelling program was led by highly experienced managers who averaged more than 20 years' international experience in the specialist construction area of tunnelling. I am advised that an AdelaideAqua D&C Consortium partner is one of Australasia's most skilled tunnelling contractors, renowned for its micro tunnelling expertise and the capacity to provide fully integrated engineering and construction solutions.

Furthermore, SA Water advises that there was no downgrading of any specifications on the tunnel-boring machines. They point out that these were designed and manufactured by Herrenknecht, the world leaders in manufacturing these types of tunnelling machines.

Tunnel-boring machines manufactured by the same manufacturer have been used all over Australia; for example, at the Sydney desalination project, CLEM 7/NSBT in Brisbane, Melbourne sewer projects and are being used to construct the tunnels for Wonthaggi Desal in Victoria and the Airport Link in Brisbane.

SA Water also advises that the maintenance of tunnel-boring machine cutterhead tools at higher than atmospheric pressure is common practice in tunnelling in Australia and internationally. Specialist hyperbaric consultants were engaged to assist AdelaideAqua D&C Consortium to plan, manage and supervise these works. All workers required to work under pressure successfully completed a medical examination. The airlocks on the tunnel-boring machine that were used for this hyperbaric work had a registration of design for pressure equipment issued by SafeWork SA. Given SA Water's advice, it is clear that Ms Franks' allegations relating to tunnelling, like the rest of her allegations, are spurious.

With regard to remuneration of workers, SA Water advises that all workers are paid as per the EBA in place and paid for hours worked. Workers are also paid overtime, if this is earned, again, as per the EBA in place. AdelaideAqua D&C Consortium is audited by the Master Builders Association to ensure full compliance with all responsibilities to the EBA and existing legislation.

Ms Franks has also made reference to a Favco tower crane. SA Water advises that a Favco tower train was mobilised to the AdelaideAqua site for a period of five months to allow for the erection of formwork and reinforcement steel. The honourable member also makes references to delays at the desalination plant. SA Water says that, in all monthly reports issued to SA Water and consortia parent companies, AdelaideAqua D&C Consortium confirms that there has been no delay to the completion milestones that would see final handover by the end of December 2012.

Finally, SA Water says that in regard to the delivery of the project the AdelaideAqua D&C Consortium has a limited, fixed price lump sum contract to design and build the Adelaide desalination plant. Any cost overruns are at the risk of the contractor and are not borne by SA Water, the state government or the taxpayer.

There are no commercial disputes or claims by the AdelaideAqua D&C Consortium or any of its constituent companies against SA Water. McConnell Dowell, Abigroup Contractors and Acciona Agua have in place parent company guarantees for this project. Parent company guarantees are part of standard industry practice for the delivery of major projects, giving assurance to clients in regard to removing financial risk.

SA Water also advises that the Auditor-General has undertaken several audits of the Adelaide desalination plant project over the last three years and these include:

- financial and compliance audits including delegations of authority and compliance with Treasurer's instructions;
- governance and probity audits in the award of contracts;
- expenditure commitments and commitments within government approvals;
- transaction testing audits in the administration and management of contracts;
- progress certification, payments and costs; and
- comprehensive assessment of whole-of-life costs.

SA Water advises that all of the matters raised by the Auditor-General have been properly met and there are no outstanding issues or concerns.

I conclude by restating my opening remarks. The government opposes the motion calling for a select committee. The material circulated by the honourable member is unsubstantiated and based on hearsay. The advice from SA Water, some of which I have detailed, makes it absolutely clear that there are in place rigorous inspection, verification and checking processes, as any sensible person would expect. I would urge members not to support this motion.

The Hon. T.A. FRANKS (00:54): I will be brief in summing up. Given that the government has assured us that everything is fine and that all the claims that have been made with regard to the desal plant in the media, in the dossier that was circulated and in the Public Works Committee, where there have been many concerns raised that are still ongoing, are all unsubstantiated hearsay, according to the government, I imagine it will be a very quick inquiry.

However, we have heard a lot from the government and we have heard a lot from SA Water on the desal plant. It is time to hear from the South Australian people; it is time to hear from contractors who have not been paid; it is time to hear from workers who have concerns about safety; it is time to hear about what is really going on there.

Of course, the government says that it is opposing this motion for a select committee. The government should be welcoming it. It should be a chance for the government to put the record straight, to prove what government members have just claimed here in the chamber tonight. I imagine that, although they will be opposing it at the moment, it will be something welcomed by them as the sunlight of a select committee shines disinfectant on the festering boil of the desalination plant.

Amendments carried; motion as amended carried.

The council appointed a select committee consisting of the Hons R.I. Lucas, J.S.L. Dawkins, J.A. Darley, J.M. Gazzola, Carmel Zollo and T.A. Franks; the committee to have power to send for persons, papers and records, and to adjourn from place to place; the committee to report on 9 February 2011.

CONTROLLED SUBSTANCES (THERAPEUTIC GOODS AND OTHER MATTERS) AMENDMENT BILL

Second reading.

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) (1:00): I move:

That this bill be now read a second time.

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

Leave granted.

This Bill amends the *Controlled Substances Act 1984* (the Controlled Substances Act) to:

- take account of national registration of health practitioners and enable registered health practitioners to practise to the full scope of their competence
- authorise eligible midwives and nurse practitioners to prescribe Schedule 4 and Schedule 8 prescription drugs and thereby access prescribing arrangements under the Pharmaceutical Benefits Scheme (PBS) under collaborative arrangements with medical practitioners
- apply the Commonwealth *Therapeutic Goods Act 1989* (the Therapeutic Goods Act) as a law of South Australia to help ensure that there are no gaps in the regulation of medicines and medical devices in South Australia
- ensure that there are adequate controls over the sale of those poisons, medicines and medical devices that would be permitted to be sold via automatic vending machines.

The Bill also includes some miscellaneous amendments, which primarily enhance administration of the Act and take account of current drafting style and terminology.

National registration of health practitioners

Background

National registration of health practitioners came into operation in South Australia on 1 July 2010. The *Health Practitioner Regulation National Law Act 2009* (Qld) (HPRNL Act) is adopted in South Australia by the *Health Practitioner Regulation National Law (South Australia) Act 2010*. Section 94 of the HPRNL Act enables a national health practitioner registration board, in accordance with a Ministerial Council approval, to endorse the registration of a health practitioner who holds an approved qualification and who complies with any approved registration standard relevant to the endorsement, as qualified to administer, obtain, possess, prescribe, sell, supply or use scheduled medicines (a scheduled medicines endorsement). The national boards may issue supporting guidelines for these scheduled medicines endorsements.

The controls over who is authorised to prescribe, sell, administer and supply scheduled medicines remain under the State and Territory drug and poisons legislation - the Controlled Substances Act in South Australia.

The Controlled Substances Act consists of an authorisation regime, which pre-dates the introduction of national registration. It effectively presents a barrier in that, even if endorsed by a national board, the Controlled Substances Act currently does not provide the necessary flexibility for the endorsed health practitioner to be able seamlessly to prescribe, supply, sell or administer the scheduled medicines covered by the endorsement.

Under the Controlled Substances Act scheduled medicines are Schedule 2, 3, 4 and 8 poisons. Schedule 4 and Schedule 8 poisons are prescription drugs. Examples of Schedule 4 prescription drugs include antibiotics, antihypertensive drugs and oral contraceptives. Examples of Schedule 8 prescription drugs include strong analgesics, such as morphine and fentanyl.

The Controlled Substances Act needs to be amended to provide the authorisation for a registered health practitioner whose registration is endorsed by a national board with a scheduled medicines endorsement to prescribe, sell, supply or administer Schedule 4 and Schedule 8 prescription drugs. The registered health practitioner could only prescribe the prescription drugs or classes of prescription drugs specified in the endorsement. This would allow a registered health practitioner whose registration is endorsed with a scheduled medicines endorsement to practise within the full scope of the endorsement and provide consistency if they move from one jurisdiction to another. Patients of registered health practitioners who are practising within the parameters of the scheduled medicines endorsement would not need to consult a medical practitioner to obtain a prescription.

Proposed amendments

Amendments to sections 18 and 18A of the Controlled Substances Act are proposed to specify the persons who can prescribe Schedule 4 and Schedule 8 prescription drugs.

In the case of Schedule 4 and Schedule 8 prescription drugs this would be a registered health practitioner who is acting in the ordinary course of their profession and is:

(a) a dentist, medical practitioner or nurse practitioner; or

(b) a practitioner whose registration is endorsed under section 94 of the HPRNL Act as being qualified to prescribe a scheduled medicine or class of scheduled medicines and the drug is a scheduled medicine or of a class of scheduled medicines specified in the endorsement; or

(c) a practitioner who is authorised to prescribe the drug by the Regulations.

A person licensed to do so by the Minister would be authorised to prescribe a Schedule 4 prescription drug.

A veterinary surgeon acting in the ordinary course of their profession would be permitted to prescribe a Schedule 4 or Schedule 8 prescription drug for an animal.

There would no longer be reference to a member of a prescribed profession acting in the ordinary course of their profession. The registered health practitioners who are currently members of a prescribed profession that is authorised to prescribe prescription drugs, for example optometrists and podiatric surgeons, would have their registration endorsed with a scheduled medicines endorsement. These practitioners would be authorised to prescribe the prescription drugs specified in the scheduled medicines endorsement.

Regulations under the Controlled Substances Act would enable limits to be placed on the range of drugs that a registered health practitioner or veterinary surgeon, acting in the ordinary course of their profession, can prescribe, manufacture, pack, sell, supply, administer or possess.

If the scheduled medicines that the registered health practitioners are qualified to prescribe, sell, supply or administer are specified in the national board's registration standard or guidelines for the scheduled medicines endorsement, it is intended that a health practitioner whose registration is endorsed would be authorised to prescribe, sell, supply or administer this range of drugs. This approach would promote national consistency and help ensure that registered health practitioners can practise to the full extent that they are qualified.

A pharmacist would be able to sell or supply a prescription drug when dispensing a prescription written by a person who is authorised to prescribe the drug. This would take account of the range of persons who are authorised to prescribe prescription drugs.

The Bill includes a new offence of prescribing a Schedule 8 prescription drug without authority. The maximum penalty for this offence is imprisonment for 2 years or $10 000. This is consistent with the penalty for the existing offence of prescribing a Schedule 4 prescription drug without authority.

All registered health practitioners would be subject to the same exemptions and controls when they manufacture, prescribe, supply or administer poisons. Amendments to sections 13 and 15 of the Controlled Substances Act will help achieve this outcome.

Prescribing by midwives and nurse practitioners

Under a Commonwealth Budget measure, eligible midwives and nurse practitioners are able to access prescribing arrangements under the Pharmaceutical Benefits Scheme (PBS) from 1 November 2010. Midwives and nurse practitioners who prescribe medicines under the PBS need to be in a collaborative arrangement with a medical practitioner. Patients of these eligible midwives and nurse practitioners will be able to obtain subsidised medicines. This is part of the National Improving Maternity Services Budget Package. It will give women more choice in maternity care.

The Controlled Substances Act as it currently stands presents a barrier to prescribing of Schedule 8 prescription drugs by nurse practitioners and Schedule 4 and Schedule 8 prescription drugs by midwives.

Currently, nurses acting in the ordinary course of their profession are permitted to prescribe Schedule 4, but not Schedule 8 prescription drugs. It is considered to be in the ordinary course for a nurse who is a nurse practitioner to prescribe Schedule 4 prescription drugs. Midwives cannot prescribe either Schedule 4 or Schedule 8 prescription drugs.

A nurse whose registration is endorsed as a nurse practitioner must have experience in advanced nursing practice and complete a master's degree approved by the Nursing and Midwifery Board of Australia. The amendments to sections 18 and 18A of the Act would authorise a nurse whose registration is endorsed as a nurse practitioner to prescribe Schedule 4 and Schedule 8 prescription drugs.

The Nursing and Midwifery Board of Australia has published a registration standard for a scheduled medicines endorsement for midwives. The amendments to sections 18 and 18A of the Controlled Substances Act that take account of national registration would authorise a midwife whose registration is endorsed with a scheduled medicines endorsement to prescribe Schedule 4 and Schedule 8 prescription drugs.

The Nursing and Midwifery Board of Australia has not as yet, published a list of scheduled medicines applicable to the registration standard for endorsement for scheduled medicines for midwives. A midwife whose registration is endorsed with a scheduled medicines endorsement would be restricted to prescribing a limited list of Schedule 4 and Schedule 8 prescription drugs, which would be specified in the Regulations under the Controlled Substances Act. These are the drugs that the Pharmaceutical Benefits Advisory Committee has determined are appropriate for an eligible midwife to prescribe, for example antibiotics and analgesics. Most other jurisdictions are taking a similar approach in limiting the range of drugs that midwives would be authorised to prescribe.

Applying the Commonwealth Therapeutic Goods Act as a law of South Australia

Background

The objective of the Therapeutic Goods Act is to provide a national framework for the regulation of therapeutic goods in Australia to:

- ensure the quality, safety and efficacy of medicines
- ensure the quality, safety and performance of medical devices.

Therapeutic goods must be entered on the Australian Register of Therapeutic Goods before they can be supplied in Australia, unless exempt. The Therapeutic Goods Act, Regulations and Orders set out the requirements for inclusion of therapeutic goods in the Australian Register of Therapeutic Goods. Australian manufacturers of medicines must

be licensed under Part 3-3 of the Therapeutic Goods Act, unless exempt and their manufacturing processes must comply with the principles of Good Manufacturing Practice.

The Commonwealth Therapeutic Goods Administration is responsible for administering the legislation, and also carries out a range of assessment and monitoring activities to ensure the therapeutic goods available in Australia are of an acceptable standard.

The Therapeutic Goods Act applies to foreign and trading corporations and persons who are engaged in interstate or overseas trade. It does not apply to an individual or an unincorporated body that trades only within South Australia. Applying the Therapeutic Goods Act as a law of South Australia would cover this gap in regulation.

Adoption of legislation complementary to the Therapeutic Goods Act by all States and Territories would enable a more unified system of controls to ensure medicines and medical devices that have the potential to affect public health are of appropriate quality, safety and efficacy. In June 2005, the Council of Australian Governments endorsed the Australian Health Ministers Advisory Council (AHMAC) Working Party response to the Review of Drugs, Poisons and Controlled Substances Legislation (the Galbally Review). The AHMAC Working Party accepted recommendation 23 of the Galbally Review. The recommendation was 'that all Commonwealth, State and Territory jurisdictions agree that all States and Territories adopt the Therapeutic Goods Act by reference into the relevant legislation'.

New South Wales, Tasmania and the Australian Capital Territory have adopted the Therapeutic Goods Act by an 'application of laws' approach. Other States and Territories are in the process of making the appropriate amendments to their drug and poisons legislation. Victoria attempted a corresponding law approach to applying the Therapeutic Goods Act. However, it was impractical to keep the Victorian Act consistent with the Commonwealth Act. This caused difficulties for the Commonwealth in enforcement. The *Therapeutic Goods (Victoria) Act 2010*, which adopts the Commonwealth Act by an 'application of laws' approach will come into operation on 1 February 2011. The States and Territories that have completed the appropriate amendments have copied the provisions under Part 4A of the New South Wales *Poisons and Therapeutic Goods Act 1966* into the relevant drug and poisons legislation, in the case of the Australian Capital Territory, or into a separate Act in the case of Tasmania and Victoria.

Proposed amendments

A new Part 2A, based on the provisions under Part 4A of the New South Wales *Poisons and Therapeutic Goods Act 1966*, is proposed to be included in the Controlled Substances Act to apply the Therapeutic Goods Act as a law of South Australia.

The effect of the new provisions are that:

- The Commonwealth therapeutic goods laws, as in force for the time being, apply as a law of South Australia, subject to any modification by the South Australian Regulations.
- The South Australian Act is to be interpreted in accordance with the Commonwealth *Acts Interpretation Act 1901* to the exclusion of the South Australian *Acts Interpretation Act 1915*.
- The Commonwealth Minister, the head of the Commonwealth Department and authorised persons, authorised officers or official analysts appointed under the Commonwealth Act have the same powers and functions under the South Australian Act as they have under the Commonwealth therapeutic goods laws.
- Delegations by the Commonwealth Minister or the head of the Commonwealth Department (the Commonwealth Secretary) extend to the South Australian Act.
- An appointment under the Commonwealth therapeutic goods laws is taken to extend to the South Australian law.
- An offence against the South Australian Act is to be treated as if it were an offence against the Commonwealth laws.
- Administrative appeal rights have been conferred upon the District Court of South Australia rather than the Commonwealth Administrative Appeals Tribunal.
- A person who is guilty of an offence against both the Commonwealth therapeutic goods laws and the South Australian law cannot be punished twice for the same conduct.

If any specific State issues arise in relation to applying the Commonwealth therapeutic goods legislation, as a law of South Australia, there is provision for the South Australian law to be modified by the Regulation.

Applying the Commonwealth Therapeutic Goods Act as a law of South Australia would address the current gap in regulation of therapeutic goods. This would help ensure that the therapeutic goods available to South Australians are safe, effective and of appropriate quality.

Controls over the sale or supply of the poisons, medicines and medical devices that would be permitted to be sold via automatic vending machine

Background

Currently, section 26A of the *Drugs Act 1908* is relied on to prohibit the sale or supply of drugs and medicines via automatic vending machine. The definition of a drug in the *Drugs Act 1908* is out-of-date and includes items such as soap, deodorants and cosmetics.

The Galbally Review recommended that:

- there should be a prohibition on the sale of scheduled medicines from vending machines
- there should be provisions that permit the supply of packs containing no more than two adult doses of unscheduled medicines from vending machines provided the machines are presented and located in a way that makes unsupervised access by children unlikely.

Section 20 of the Controlled Substances Act prohibits the sale or supply of poisons, therapeutic substances and therapeutic devices via an automatic vending machine. There is provision for some poisons, therapeutic substances and therapeutic devices, to be permitted to be sold via automatic vending machine if specified in the Regulations. Section 20 has not been brought into operation as there is no power to put conditions on the installation and operation of vending machines. Accordingly, the Controlled Substances Act needs to be amended to provide the power to put conditions on the operation and installation of automatic vending machines.

The terms 'therapeutic substances' and 'therapeutic devices' are currently used in the Controlled Substances Act. These terms and their definitions do not reflect the contemporary definitions and terminology. The terms 'medicines' and 'medical devices' are used in the Therapeutic Goods Act and so it is proposed to adopt these terms and repeal references to 'therapeutic substances' and 'therapeutic devices'.

Proposed amendments

Section 20(2) of the Controlled Substances Act would be amended to include the power to specify in the Regulations the circumstances in which the sale or supply of poisons, medicines and medical devices via automatic vending machine would be permitted. Section 63 of the Controlled Substances Act would be amended to provide the power to regulate the installation or operation of an automatic vending machine and the sale or supply of the poisons, medicines and medical devices which would be permitted to be sold via automatic vending machine to protect public health or safety.

Section 20 of the Controlled Substances Act would be brought into operation and the *Drugs Act 1908* would be repealed. The poisons, medicines and medical devices that would be permitted to be sold via automatic vending machine and the conditions applying to such sale would be specified in the Regulations. The products that are currently sold via automatic vending machine would still be able to be sold. Some additional products, including soaps and cosmetics, would be permitted to be sold via automatic vending machine.

The poisons, medicines and medical devices that would be permitted to be sold via automatic vending machine are:

(a) Condoms with or without spermicide or viricide

(b) Lubricant with or without spermicide or viricide

(c) Injecting equipment with the condition that the site and location of the vending machine must be approved by the Minister

(d) Unscheduled medicines with the conditions that they are:

- supplied in the original unopened pack as supplied by the manufacturer
- in packs that contain not more than two adult doses of the medicine
- the vending machine must be presented and located in a way that makes unsupervised access by children unlikely.

(e) Car wash operators would be permitted to sell Schedule 5 poisons with the condition that appropriate first aid instructions, safety directions and warning statements are displayed at the car wash facility.

Tampons and sanitary pads do not meet the definition of a medical device. These items could be sold via automatic vending machines.

Unscheduled medicines are medicines which can be sold by general retail outlets, for example, paracetamol tablets. The sale of packs of paracetamol tablets via automatic vending machine would be limited to packs of 4 tablets (two adult doses). The medicines would be required to be appropriately packaged and labelled.

Sale of condoms and lubricant via automatic vending machine enables access to these items when other retail outlets are not open or easily accessible. This has benefits in reducing unwanted pregnancies and the spread of sexually transmitted infections.

Pharmacists, medical practitioners or persons acting in the course of a declared health risk minimisation program are permitted to sell needles and syringes to injecting drugs users. A trial of sale of injecting equipment from an automatic vending machine at four Clean Needle Program sites has shown promising results. Supply via automatic vending machine would help address significant gaps in current Clean Needle Program service delivery; to increase access to sterile injecting equipment across the State (particularly after-hours and on weekends); and to augment existing staffed Clean Needle Program sites. The site and location of the automatic vending machine would have to be approved by the Minister. This would ensure that the machines are appropriately sited, for example, within an existing Clean Needle Program. Locating a vending machine at such a site would enable injecting drugs users who were previously unwilling to engage with a Clean Needle Program to access injecting equipment. Making access to needles and syringes easier for injecting drug users has public health benefits in helping reduce the spread of blood borne diseases.

Some car wash facilities currently sell alkaline cleaning solutions which are Schedule 5 poisons via vending machine. Schedule 5 poisons are also available for sale in a wide range of retail outlets. The car wash facilities

would be required to display the first aid information, safety directions and warning statements that are on the packs of these products when they are sold at retail outlets. This would reduce the risk associated with supply of the solutions at these facilities.

Other Miscellaneous Proposed Amendments

The Bill includes some miscellaneous amendments to the Controlled Substances Act. These amendments generally enhance administration of the Controlled Substances Act and take account of current terminology and drafting style.

References to therapeutic substances and therapeutic devices

There are references throughout the Controlled Substances Act to 'therapeutic substances' and 'therapeutic devices'. This is not the current terminology and is not consistent with the Therapeutic Goods Act and would be amended to use the words 'medicines' and 'medical devices' for consistency.

Manufacture and packing of Schedule 4 prescription drugs (section 13)

The offence in relation to manufacture and packing of Schedule 4 prescription drugs would be under section 18. The penalty for the offence would be consistent with that applying to the other offences in relation to Schedule 4 prescription drugs.

Sale by wholesale of Schedule 4 prescription drugs (section 14)

The offence in relation to sale by wholesale of Schedule 4 prescription drugs would be under section 18. The penalty for the offence would be consistent with that applying to the other offences in relation to Schedule 4 prescription drugs.

Sale of certain precursors (section 17B, section 17C)

Sections 17B and 17C would be amended to take account of the range of registered health practitioners who are authorised to sell, supply and administer poisons for therapeutic use. There would be reference to sale to a registered health practitioner or veterinary surgeon acting in the ordinary course of their profession.

Additional requirements for supply or administration of prescribed prescription drugs (section 18(2))

Section 18(2) specifies that a member of a profession must not supply or administer a prescribed prescription drug unless they hold prescribed qualifications. Regulation 29 of the Controlled Substances (Poisons) Regulations 1996 details the additional requirements for the prescribed prescription drugs listed in Schedule K of the Regulations. Section 18(2) would be amended to better reflect Regulation 29. There would be reference to prescribing, as well as supply or administration, and to meeting the qualifications or requirements specified in the Regulations.

Issuing a temporary authority for supply of a drug of dependence (section 18A)

In the case of an emergency, the Minister may issue a temporary authority to a person to prescribe or supply a drug of dependence (Schedule 8 prescription drug) for a person. It would be clarified that a temporary authority can only be issued to a registered health practitioner who is authorised under the Controlled Substances Act to prescribe a drug of dependence.

Prohibiting the advertising of controlled drugs (s28)

Section 28 provides the ability to prohibit the advertising of those poisons, therapeutic devices and therapeutic substances specified in the Regulations.

The National Standard for the Uniform Scheduling of Medicines and Poisons recommends that the States and Territories prohibit the advertising of Schedule 9 poisons. Schedule 9 poisons include heroin, ecstasy and cannabis.

Schedule 9 poisons are not declared as poisons under the Controlled Substances legislation. Schedule 9 poisons are listed in Part 1 of Schedule 1 of the *Controlled Substances (General) Regulations 2000* as controlled drugs other than drugs of dependence.

Section 28 would be amended to provide the ability to prohibit the advertising of controlled drugs.

Exception from the Part 5 offences relating to controlled drugs, precursors and plants (section 31)

Part 5 of the Controlled Substances Act includes the serious drug offences provisions relating to controlled drugs, plants and precursors. Section 31 provides an exception from these Part 5 offences for specified health professionals or veterinary surgeons who sell, manufacture, supply, administer or possess any substance when acting in the ordinary course of their profession. This would include substances that are not poisons, for example heroin or ecstasy. The exception should only apply to the substances and activities that registered health practitioners or veterinary surgeons are authorised to undertake under the Controlled Substances Act. Section 31 would be amended to clarify that the scope of the exception for a registered health practitioner or veterinary surgeon is limited to the sale, manufacture, supply, administration or possession of a poison.

Authorised officers (section 50)

The Minister may appoint authorised officers for the purposes of the Controlled Substances Act. The Minister must provide an authorised officer who is not a police officer, a certificate of identification in the prescribed

form. The form of the certificate of identification is a matter for the Minister. Section 50 would be amended to remove the reference to 'in the prescribed form'.

Entry under warrant (section 52)

Section 52 would be amended to refer to a warrant issued by a senior police officer, magistrate or a justice. This is more specific and takes account of current terminology. The exception where a warrant is not required would be broadened to cover entry to premises that are used by a registered health practitioner or veterinary surgeon in the course of their profession. This would take account of the range of registered health practitioners who might be authorised to prescribe, supply, possess or administer poisons.

Ministerial power to issue warnings (section 57A)

Section 57A would be amended to refer to the Minister only being able to take action in relation to a device, if the device is a medical device or is a device that the Minister is satisfied is or may be used, or designed to be used, as a medical device. This would reflect the current terminology and definition of a medical device.

Ministerial power to publish information (section 58)

Section 58 would be amended to permit the Minister to publish information to registered health practitioners. This would take account of the range of registered health practitioners who might be authorised to prescribe, supply or administer poisons.

Ministerial power to certain information to be given (section 60)

Section 60 would be amended to refer to the Minister requiring information from a registered health practitioner. This would take account of the range of health practitioners who might be authorised to prescribe, supply or administer prescription drugs.

I commend the Bill to members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Controlled Substances Act 1984*

4—Amendment of long title

The long title is adjusted to refer to the application of the Commonwealth therapeutic goods laws as a law of South Australia and to new terminology to reflect those applied provisions.

5—Amendment of section 4—Interpretation

New definitions are added to support the applied provisions and other amendments relating to the *Health Practitioner Regulation National Law*. Therapeutic substances is replaced with medicines and therapeutic devices with medical devices, in line with the Commonwealth therapeutic goods laws. New definitions of midwife, nurse practitioner and registered health practitioner are added.

6—Insertion of Part 2A

New Part 2A applies the Commonwealth therapeutic goods laws as a law of South Australia. It is based on similar provisions in New South Wales, Victoria and Tasmania. However, in South Australia, a reference to the Administrative Appeals Tribunal is converted to a reference to the Administrative and Disciplinary Division of the District Court and a reference to the Federal Court is converted to a reference to the District Court. New section 11L provides that the District Court may sit with assessors. New section 11A(4) provides that to the extent of any inconsistency between the applied provisions and the Act, the applied provisions prevail.

7—Amendment of section 12—Declaration of poisons, prescription drugs, drugs of dependence, controlled drugs etc

These amendments are consequential on relying on the meaning of medicine and medical device in the applied provisions rather than on a declaration by the Governor of therapeutic substances and devices. The amendments to the following provisions of the Act are consequential on this approach: sections 13(1) and (2), 14(1) and (2), 15(1) and (3), 20, 23, 24, 26, 27, 28, 29, 52(4), 53(2), 56, 57A, 58(1) and 63.

8—Amendment of section 13—Manufacture and packing

Prescription drugs are now to be dealt with exhaustively in section 18 and so the application of sections 13, 14 and 15 to prescription drugs is excluded. This approach will apply the same more significant penalty to all actions involving prescription drugs.

The reference to medical practitioner, pharmacist or dentist is replaced with a reference to a registered health practitioner to recognise that if a practitioner manufactures or packs a poison etc. in the ordinary course of his or her profession the practitioner will not be committing an offence.

9—Amendment of section 14—Sale by wholesale

See clause 7.

10—Amendment of section 15—Sale or supply to end user

The reference to medical practitioner, pharmacist or dentist is replaced with a reference to a registered health practitioner to recognise that if a practitioner sells by retail or supplies to a person a poison etc. in the ordinary course of his or her profession the practitioner will not be committing an offence.

11—Amendment of section 17B—Storage and sale of certain precursors

The reference to medical practitioner, pharmacist, dentist or nurse is replaced with a reference to a registered health practitioner to recognise that if a practitioner sells or is sold a prepackaged section 17B precursor in the ordinary course of his or her profession the practitioner will not be committing an offence.

12—Amendment of section 17C—Regulation of sale of certain precursors

The reference to medical practitioner, pharmacist, dentist or nurse is replaced with a reference to a registered health practitioner to recognise that if a practitioner sells or is sold a prepackaged section 17C precursor in the ordinary course of his or her profession the practitioner will not be committing an offence.

13—Amendment of section 18—Regulation of prescription drugs

This section is reworked to cover all aspects of dealing with prescription drugs in the one provision and to spell out more precisely what each category of professional may do in relation to prescription drugs. It reflects the new endorsement scheme for health practitioner registration in the *Health Practitioner Regulation National Law*. It enables the regulations to manage how certain categories of health practitioners deal with prescription drugs as is contemplated at the national level. The authorisations for veterinary surgeons and pharmacists are continued. The Minister continues to be able to authorise activities through licences.

The definition of manufacture for the purposes of section 13 is applied for the purposes of section 18.

14—Amendment of section 18A—Restriction of prescription or supply of drug of dependence in certain circumstances

The section is modified to include an express prohibition on prescribing drugs of dependence except as set out in the provision by registered health practitioners and veterinary surgeons. Registered health practitioners may only prescribe if they are dentists, medical practitioners or nurse practitioners, hold a relevant national law endorsement or are authorised to do so by the regulations.

The amendment to subsection (6) clarifies that temporary authorities will only be given to registered health practitioners otherwise able to prescribe drugs of dependence.

15—Amendment of section 20—Prohibition of automatic vending machines

The amendment to section 20(2) provides a greater level of flexibility in framing the regulations.

16—Amendment of section 23—Quality

17—Amendment of section 24—Packaging and labelling

18—Amendment of section 25—Storage

19—Amendment of section 26—Transport

20—Amendment of section 27—Use

See clause 7.

21—Amendment of section 28—Prohibition of advertisement

This amendment enables the prohibition of advertisements to be extended to controlled drugs.

22—Amendment of section 29—Regulation of advertisement

See clause 7.

23—Amendment of section 31—Application of Part

The exemptions to the Part for registered health practitioners, veterinary surgeons and persons granted a licence or permit are reworked to reflect the new approach in section 18. National scheme endorsements of registered health practitioners are recognised.

24—Amendment of section 50—Authorised officers

This amendment removes the requirement for the regulations to set out the form of a certificate of identification for an authorised officer. This is a matter left to the Minister in a modern drafting approach.

25—Amendment of section 52—Power to search, seize, etc

The references to officers of police and special magistrates are updated to senior police officer and magistrate. The reference to medical practitioner, pharmacist and dentist is broadened to cover all registered health practitioners as a consequence of other amendments.

26—Amendment of section 53—Analysis

27—Amendment of section 56—Permits for research etc

28—Amendment of section 57A—Warnings

See clause 7.

29—Amendment of section 58—Publication of information

The reference to medical practitioner, pharmacist and dentist is broadened to cover all registered health practitioners to reflect the other amendments.

30—Amendment of section 60—Minister may require certain information to be given

The reference to medical practitioner, pharmacist, dentist and nurse is broadened to cover all registered health practitioners to reflect the other amendments.

31—Amendment of section 63—Regulations

The regulation making power is modified to make it clear that the regulations can deal with questions of the classes and term of licences and permits, provide exemptions that relate to the applied provisions and leave matters to the discretion of the Minister. A special regulation making power is included to make sure that where automatic vending machines for poisons, medicines or medical devices are allowed, the regulations can deal with questions of installation, sale, supply and operation of the machines.

Schedule 1—Statute law revision amendments of *Controlled Substances Act 1984*

The Schedule contains amendments of a statute law revision nature.

Debate adjourned on motion of the Hon. T.J. Stephens.

SOUTH AUSTRALIAN PUBLIC HEALTH BILL

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

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) (1:00): I move:

That this bill be now read a second time.

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

Leave granted.

This Bill is about public health, the health of all of us. As a piece of legislation it is the latest in a long line of public health law stretching back to colonial times in South Australia.

The South Australian Public Health Bill 2010 is designed to replace the Public and Environmental Health Act 1987 and provide for modernised and sustainable legislation to protect the public's health both now and well into the future.

South Australian public health law has historically drawn on the work of British public health campaigners from the Victorian era. Because of their efforts in the 19th Century, our world has changed for the better. These early public health campaigners successfully fought for laws for public health which, in turn, started a new urban planning revolution that brought in cleaner water, safe waste disposal, higher standards of housing, cleaner air, safer and higher quality foods, improved maternal health, healthier babies and children, improved living conditions and safer work places. They provided the basis for modern town planning and local government as we know it.

Well before the advent of modern medical breakthroughs in treatment and the revolutions in antibiotics, modern vaccines and pharmaceuticals, public health interventions dramatically changed the way most people lived in the western world. Living conditions were improved for the population as a whole. Infant mortality plummeted, people were living longer, healthier lives, and our societies were transformed into healthier ones; ones that actually protected and promoted peoples' health. Healthier societies became stronger economies which helped produce a virtuous circle whereby improving economies led to better living conditions and better health.

This is the legacy and the foundation on which South Australia's public health system has been built. Public health law and public health practitioners can rightly lay claim to changing the world for the better. But the world keeps changing and not always for the better. And because this is so, we must be ever vigilant and must keep making sure that our public health laws and our public health powers not only keep pace with our changing world but can anticipate those changes and influence them for the better. This is the core of this new legislation; the ability to keep pace with a rapidly changing world, anticipate the unexpected and have sufficient powers to take action to protect and promote health.

A few short years ago no one had heard about Severe Acute Respiratory Syndrome or SARS. The prospect of a global pandemic of unknown proportions sounded more like something out of a science fiction novel, but it was real and it was dangerous. The threat of SARS provided the world with a wake up call. As a result of SARS, many nations, states and provinces reviewed their public health laws to strengthen their capacities to deal

with public health emergencies. The health impacts of terrorism and other mass casualty events as well as the direct possibility of pandemic influenza also spurred governments around the world to strengthen public health laws and public health capacity. Members will recall that this House dealt with emergency public health provisions when amending the Public and Environmental Health Act 1987 in 2009. These new emergency provisions have been preserved and incorporated into this Bill.

These global reviews of public health laws identified that it was not just the clear and present danger of a pandemic or other public health emergencies which confronted societies like ours. The most profound public health challenges facing us at the start of this century have changed in character from those facing 19th Century public health campaigners and those that we subsequently faced in the mid twentieth Century. This is not to say that problems with infectious diseases, sanitation, clean water and other traditional public health concerns have disappeared, far from it. They remain continuing concerns, always requiring vigilance but in many instances these classic challenges to our health are well controlled or effectively prevented by existing public health strategies and regulations.

There are now more far reaching and insidious public health challenges facing us this century. These threats are not produced by any external agent, bacteria or virus. These threats emerge from the way we live our lives. There has been an explosion in chronic, non-communicable diseases, so much so, that some public health experts predict that in societies like ours, children being born today may be the first generation in over 200 years to face the prospect of reduced life expectancy.

Chronic, non-communicable diseases do not occur by accident. Not so long ago many people attributed this explosion of disease to the lifestyle choices that individuals made. Whatever the correctness of this view, it was not and is not the entire picture. We now understand that people's choices are heavily influenced and constrained by the circumstances they find themselves in. This is commonly referred to as the social determinants of health.

The World Health Organization commissioned a major global inquiry into the social determinants of health in 2003. This commission was chaired by Sir Michael Marmot an acclaimed public health epidemiologist who is also the current President of the British Medical Association. One of the Commissioners assisting Sir Michael was South Australia's own Fran Baum, Professor of Public Health at Flinders University. The World Health Organization's Commission into the Social Determinants of Health reported in late 2008. It called for sustained government and community action at all levels—local, state, national, regional and global—to attack the 'causes of the causes of illness', that is, to attack the social determinants of health. This Bill in part provides for South Australia's response to this challenge.

But the work of the WHO Commission was not the only impetus for modernising South Australian public health legislation, and nor were the changes in international public health threats. The current Act, the Public and Environmental Health Act 1987 has been under review for a number of years.

The Government made a commitment to review the Public and Environmental Health Act 1987 in the 2005 election platform. This review commenced in 2006 and noted the previous review that was commenced under the leadership of the then Minister for Human Services, the Hon. Dean Brown in 2000. This previous review was widely supported and its results pointed towards the need for further work to modernise the legislation. The results of that review have been incorporated into the development of this Bill.

Also examined as part of the 2006 review were similar reviews and legislative reforms that had been undertaken in Australian and overseas jurisdictions. For example, we are indebted to our colleagues in Quebec whose public health legislation is regarded as an international exemplar. South Australia signed a Public Health Partnership Agreement with Quebec in 2008 and we have benefited from their expertise and advice when framing certain aspects of this Bill particularly in relation to the role of the Minister as the advisor to the Government on any public health issue.

On this basis and following extensive consultation with the key stakeholders, it was determined that rather than recommence a complete review of the Public and Environmental Health Act, the Government would develop an exposure draft of the legislation. In September 2009, the South Australian Public Health Bill 2009 was released for public comment. Fifty-nine submissions were received and the Bill has since been revised following a review of the comments received. There has also been further, close discussion with key parties on critical issues of concern. I am pleased to say that the Government believes that all principal concerns and questions have been addressed and the Bill before you is strengthened and improved because of these discussions.

I would like to take this opportunity to thank publicly all of the individuals and organisations who participated in this process and who took the time to formally submit responses to the review and participate in further consultation meetings on areas requiring further improvement. I would especially like to mention that by far the greatest contribution to this review came from a source much closer to home. I am referring to the contribution of public health practitioners and in particular the local government sector.

This Bill has been developed through a process that relied heavily on the strong engagement with the Local Government Association of South Australia and its members, and Environmental Health Australia—South Australian Branch, the professional body representing environmental health officers. Local government and authorised officers within local government form the front line of the State's public health system. Their experience in administering the current Act allowed them to provide concrete feedback on what was needed to improve and strengthen this legislation and to develop public health legislation fit for the purpose of anticipating and responding to 21st century public health challenges. I acknowledge their role and the support they provided in developing this Bill.

Also streamlined and strengthened in the Bill are powers for the prevention, control and management of infectious disease that pose a serious risk to public health. The Bill continues and builds upon the proven regulatory regime which has been successful in dealing with infectious conditions. Where the Bill takes this regime further is

that it allows properly authorised public health officials to take early and decisive action to prevent and control disease outbreaks. The Bill also works in the real world, and in the real world infectious diseases do not recognise state borders. The Bill allows for the recognition of other jurisdictions' public health orders and allows for the exchange of vital public health intelligence needed to manage outbreaks.

The Bill incorporates provisions that are congruent with the World Health Organization's Revised International Health Regulations (2005). It includes, for the first time, a codified statement of principles and rights for individuals who may be the subject of public health orders, orders which by necessity may impose directions or restrictions on their behaviour. Although such powers have always been a part of the toolbox that public health authorities have used to protect health, for the first time the exercise of these powers will be applied in a staged and proportionate way commensurate with the level of risk, and they will be governed by a set of principles that guarantee respect, privacy and involvement in decision-making. If a person's liberty is to be restricted, it is to be done only as a measure of last resort and with the minimum restrictions necessary to ensure public safety.

Although the primary objective of the Bill is the protection of the public, an objective that will never be compromised, the Bill recognises that people are generally more willing to cooperate with authorities when their rights are clearly recognised and respected. The Bill therefore strikes a balance of protection of the community, the proportionate exercise of strong powers where necessary, the prevention of stigmatisation and the recognition and protection of individual rights needing protection.

I now wish to discuss and highlight the key features of the Bill.

The South Australian Public Health Bill 2010 contains a number of explicit objectives. The inclusion of objectives reflects a modern approach to legislation. Objectives help clarify the purpose of the Act and define the core values, functions and outcomes that are required to achieve that purpose. These objectives in the Bill are based on the essential functions outlined in the international public health law literature and in similar new legislation enacted in other States and Territories. They provide clarity about the functions and activities that should be undertaken to improve and protect public health.

The Bill sets out several principles similar to those incorporated in recent public health legislation in other jurisdictions. The principles aim to provide a clear framework for the process of public health decision-making under the legislation. The principles also aim to ensure the Act will be flexible and enabling. For example, the Precautionary Principle in clause 6 will permit proportionate action to be taken if circumstances warrant taking reasonable steps to protect public health from identified risks even though there may not be complete scientific certainty available at the time.

Guidelines on the application of the statutory principles contained within the legislation will be required and will be developed by the Minister in consultation with key interest groups such as the Local Government Association of South Australia and Environmental Health Australia (South Australian Branch). These guidelines will explain how the principles should be interpreted and applied such as in situations where there has been an apparent breach of the general duty to protect public health.

The Bill defines 'public health' to mean 'the health of individuals in the context of the wider health of the community'. This definition will guide the assessment of risk to public health, a key concept in the Bill. This definition of public health is consistent with the definition contained in similar contemporary public health Acts in other Australian jurisdictions.

Under the Bill, the Minister will be charged with the overall responsibility for administering the legislation and for protecting and promoting public health. Furthermore, the Bill establishes an explicit framework for the Minister to provide advice to and consult with other State Government agencies when proposals that may have significant implications for public health are being considered. This approach is congruent with the Health in All Policies approach that is being developed in South Australia and builds on European and Canadian precedents. The South Australian Health in All Policies approach is being implemented across the South Australian public sector. The Department of Health together with the Department of Premier and Cabinet have been working with a number of Government agencies on initiatives demonstrating this approach. South Australia's Health in All Policies initiatives were showcased at a recent International Meeting held in Adelaide in April this year that was co-sponsored by the State Government and the World Health Organization. This international meeting produced the Adelaide Statement on Health in All Policies which has been distributed globally and is already gaining widespread recognition as a definitive statement of this type of groundbreaking work.

The Bill requires the Minister to work collaboratively with local government in a joint effort to protect and promote public health in this State. The Minister will however retain final responsibility, as is currently the case, and as such, can intervene where a council may be failing in its duty to protect the public's health.

This Bill establishes the statutory position of Chief Public Health Officer. This position is consistent with provisions in comparable legislation interstate and overseas. The Chief Public Health Officer will provide a single point of reference and source of advice and expertise in public health matters for the Minister, the Department of Health, other Government agencies, Parliament and the public of South Australia. This statutorily recognised position ensures the continuance of vital public health activities within the South Australian community even if there is a serious pandemic that disrupts normal functions of Government. The Bill provides the Chief Public Health Officer with the power to give directions and make orders, including detention orders to persons who have a controlled notifiable disease and who present a risk to others. The exercise of these powers will be guided by the principles in the Bill that make clear that detention is a measure of absolute last resort. The District Court has jurisdiction to review any direction or order of the Chief Public Health Officer. Extension of a detention order beyond 30 days must be authorised by the Supreme Court. There is also a mandated review by the Supreme Court for an order extending

beyond six months. This scheme of judicial review of detention orders protects the rights of affected individuals while preserving the primacy of the public's right to protection.

The system of public health in South Australia, and in all jurisdictions in Australia, is based on a partnership of interlocked responsibilities between local, State and Commonwealth governments. At an international level, this partnership also includes the World Health Organization (WHO).

In this context, the Bill continues to recognise the important and very significant role local government traditionally has in public health, a role which goes back to the earliest laws on public health. The Bill acknowledges this traditional role and partnership by continuing to recognise councils as local public health authorities as is currently the case under the current Act.

Local government provides an extensive range of public and environmental health services, including food safety, school and community immunisation programs, human waste and waste water control, business inspections and health risk assessments. Councils also provide a significant but often unrecognised contribution to public health by providing a range of recreational facilities and services such as playgrounds, sporting facilities, parks, good street paving and lighting. These are important public health measures ensuring an opportunity for good health for all.

The Bill provides councils with more explicit guidance regarding their public health functions and responsibilities whilst continuing the majority of functions that councils currently undertake.

This Bill continues to recognise the role of local government in supporting access to immunisation services. The original provision regarding immunisation in the consultation draft of the Bill was of concern to councils and the LGA and, as a consequence, the Bill was amended. The new provision, which is supported by the LGA, makes it clear that the Department of Health will provide ongoing support to councils in the provision of immunisation services. The Bill provides for a partnership between state and local government for immunisation services that will be the subject of a memorandum of understanding between the Minister and the LGA.

The current Act established the Public and Environmental Health Council. This body is to be replaced by the South Australian Public Health Council which will comprise members appointed by the Governor, as is currently the case.

The South Australian Public Health Council membership will be drawn from the same membership as the Public and Environmental Health Council (local government, Environmental Health Officers at the local government level and persons with qualifications and experience in public and environmental health including communicable disease control and prevention). Further members will be drawn from the fields of environmental protection, health promotion and the non-government sector with experience in activities relevant to public health. This membership more accurately reflects the scope of key stakeholders in modern public health practice.

The provisions relating to the South Australian Public Health Council provide it with clearer and more explicit terms of reference than those of the Public and Environmental Health Council. It will have responsibility to provide strategic advice and monitor the state of the public's health in South Australia. Its role aligns with that of the new position of Chief Public Health Officer since the South Australian Public Health Council will provide advice to the Chief Public Health Officer.

Under the current Act, the Public and Environmental Health Council has a power to constitute a special review committee to hear appeals relating to a notice under the Act. The local government sector supports the continuation of an alternative appeal mechanism rather than a direct recourse to the Administrative and Disciplinary Division of the District Court.

Accordingly, the Bill establishes the Public Health Review Panel (the Review Panel) to hear appeals on certain matters relating to Part 6. The Review Panel will be established as a separate entity from the South Australian Public Health Council although it will draw its membership from the Council. The Review Panel will comprise the Chief Public Health Officer, two members or deputies of the South Australian Public Health Council and any other persons considered by the Chief Public Health Officer to have relevant expertise on a matter. This change provides a more manageable mechanism for the review of decisions and for timelier and speedier reviews.

A decision of the Review Panel may be appealed to the District Court. The Review Panel may also bring any proceedings to an end that appear to be more appropriately considered in proceedings before the District Court thereby ensuring matters are referred to the appropriate jurisdiction. A person can also appeal directly to the District Court against a notice issued by the relevant authority.

Another important change in this Bill is that the operation of a notice that is being reviewed is not suspended pending the outcome of the proceedings, unless determined otherwise by the Review Panel. This will prevent the current practice of seeking a review as a means of delaying action on a notice.

The current Act provides for the Public and Environmental Health Council, after a process of consultation, to take action it considers appropriate including the removal of a local council's powers and transferring them to the Minister, where the Public and Environmental Health Council is of the opinion that a local council has failed to discharge its duty under the Act.

Whilst these provisions have never been invoked, it was considered important for this power to continue in the new legislation, although in a modified manner. Subject to certain staged, procedural requirements which aim to ensure a council is given fair opportunity by law to act on a significant matter affecting public health in its area, the Bill gives the Minister a power to take over a function of a council, should a council fail to perform a function under the Act, until the matter is resolved. The Chief Public Health Officer will undertake corrective action on the Minister's behalf. A council may also make a request to the Minister to transfer a function to the Chief Public Health Officer for a defined period.

In Part 6, the Bill establishes a general duty to protect public health. This mirrors similar general statutory duties for example, those in the Environment Protection Act 1993 for the protection of the environment, and those in the Occupational Health, Safety and Welfare Act 1986 for the protection of occupational health and safety. In a manner similar to the statutory duties in these Acts, the general duty to protect public health does not entail an offence nor does it establish a civil liability. It provides an educative message for the community on the importance of public health and the need for mutual responsibility in order to sustain public health. The Bill includes provisions that allow for the development of policies that may define the scope of the general duty and establish standards that are to apply to prevent or manage a public health risk.

Enforcement will occur through the mechanism of remediation notices. An offence will occur if there is a failure to comply with an order (allowing for a defence of reasonable excuse).

Part 3 of the current Act (Protection of public health) has proved to be complex and confusing in its application. This Part includes outdated approaches and certain aspects of this Part have been superseded by provisions in later legislation (for example the Environment Protection Act 1993 and section 18 of the Public and Environmental Health Act 1987—Discharge of wastes in a public place and sections 21-22 Protection of water supplies in the Act). Part 3 has been found to be deficient in providing comprehensive guidance (beyond narrow areas of insanitary conditions) for the assessment of risks to health, even to the extent of still containing outmoded, pre-germ theory models of disease transmission. This deficiency is remedied by the new Part 7, 'General public health offences' which sets out the scheme for assessing a risk to public health. This assessment will determine if the matter constitutes a material or serious risk to public health. This part of the Bill will provide guidance to authorised officers on how risk assessments should be conducted. The Bill provides for a graded approach to action and remediation depending on the immediacy and severity of the risk. This modern framework for the assessment of public health risks can be flexibly applied to any situation, thereby future-proofing the proposed legislation against unforeseen or unanticipated public health problems. This approach is consistent with that adopted in the Australian Capital Territory, Queensland, Tasmanian and Victorian Acts and in the Western Australian draft Public Health Bill. This approach has been based on the scheme that was recommended in the National Public Health Partnership paper: The Application of Risk Assessment Principles to Public Health Legislation.

Penalties for causing a risk to health have been increased to reflect proper concerns for public health and provision has also been made for continuing offences and for expiations. This addresses problems with the current legislation which allows those who are willing to pay expiation fees to do so whilst continuing harmful practices with no resolution.

To assist the prosecution of offences under the Act, the Bill provides that where a court is satisfied that a local council or the Chief Public Health Officer has, in accordance with the Act, assessed a risk to public health that is the subject of proceedings before the court, the court must, in the absence of proof to the contrary, accept that assessment as evidence of the fact that a risk to public health existed or has occurred and, insofar as may be reasonably demonstrated by the assessment, the extent or significance of the risk.

The Bill provides for a scheme of public health planning at the local, regional and state-wide level under the general direction of the Minister. At the local level, planning will be undertaken by councils in collaboration with a range of identified partners. This will provide the means by which responsibilities conferred on the Minister and councils can, in part, be discharged. These provisions are consistent with schemes in the current and previous Victorian public health legislation and in the Western Australian draft Bill. The Bill also links State and regional planning since the Minister is required to determine high level state-wide public health goals and priorities which need to be taken into account in local and regional public health planning. The proposed State Public Health Plan will also incorporate planning requirements for unincorporated areas of the state, including Aboriginal lands.

The scheme in the Bill aligns public health planning with existing obligations on local councils to engage in strategic management planning under section 122 of the Local Government Act 1999. The Bill provides for a scheme under which councils can incorporate public health elements into their existing strategic planning frameworks and this means that councils do not have to undertake a separate, additional planning process.

The Bill includes a voluntary scheme for inter-sectoral planning by enabling the identification and participation of public health partners in planning processes established by councils. This provision reflects existing practice where several Government and non-government agencies are involved in aspects of public health planning at the local government level.

The public health planning requirements will be the subject of a phased implementation process to enable all parties, and especially councils, to become familiar with these provisions. The Department of Health will work with the LGA to host a workforce capacity and resource development project aimed primarily at councils to help prepare councils and other relevant agencies to undertake the public health planning roles and processes intended in the Bill.

The Bill will provide improved opportunities to better address non-communicable diseases and chronic conditions that have taken over from infectious diseases as the primary causes of morbidity and mortality and now constitute the major public health challenge for the entire population. The emergence of these conditions is related in part to lifestyle opportunities and choices and to a more significant degree, the social, physical and economic environments which characterise modern societies.

The Bill will permit the declaration of certain diseases and conditions including injuries of public health concern to be identified and will permit the development of codes of practice that address ways in which the incidence of disease can be prevented, monitored, reduced, managed and controlled. The codes of practice will specifically address the policy context and causal factors which underpin many of these conditions. It should be noted, however, that the provisions set out in Part 8 of the Bill are not to be applied for the regulation of an individual's behaviour, nor do they govern the clinical decisions of medical practitioners. Rather these provisions

target the causes and underlying social and environmental factors which can lead to public health risks that result in illness or injury.

As mentioned earlier, the Bill adopts a more contemporary framework for the prevention, early detection, containment, control and management of infectious disease. Infectious disease has been greatly reduced as a major threat to health during the last century due to the success of public health interventions, better living conditions and advances in health care. However, infectious diseases continue to pose new and unanticipated risks and dangers due to the emergence of new or previously unknown diseases, the migration of diseases due to ecological degradation and climate change, increased world travel, mutation and the development of drug resistant strains, among other causes.

The Bill retains two categories of disease, notifiable disease and controlled notifiable disease which can be declared by regulation. In emergency situations, the Minister can declare a condition or disease to be a notifiable condition or a controlled notifiable condition for a defined period without requiring a regulation to be made. This provision allows for urgent action including rapid notification and appropriate public health interventions when dealing with a serious and potentially unknown infectious threat.

The Bill introduces a new category of notifiable contaminant which will require the reporting of prescribed contaminants as well as further testing by laboratories or prescribed persons if required by the Chief Public Health Officer. The reason for including this provision is to establish a capacity to identify and monitor contaminants in food, other products, or the environment that pose a risk to public health in order to act early to prevent adverse public health outcomes by preventing the distribution of a product or initiating a product recall, or carrying out other relevant measures. This provision mirrors provisions in Victorian public health law but, like the Queensland legislation, is more advanced in that it covers a range of contaminants as well as micro-organisms. These contaminants can include prescribed chemical agents, heavy metals or other substances known to be a risk to health.

In addition to reducing the risks to public health, these provisions will also reduce the risks to industry. While the public's health will remain the primary concern, we must also make sure that our important food processing and manufacturing businesses are appropriately protected. A public health food scare is the quickest and most certain way to damage or even destroy a good food business. This new regime of notification of contaminants provides the state public health officers with capacity to monitor these reports and intervene earlier to prevent a potential outbreak. Prevention and the earliest possible intervention are the hallmarks of this provision.

Some sectors of the food processing and manufacturing industry expressed concern about this provision in the draft Bill. The Department of Health has worked closely with the Department of Primary Industries and Resources of South Australia (PIRSA) and with industry representatives to ensure that there were no unintended consequences or unnecessary requirements imposed on relevant businesses. The Bill before you has improved this section with the assistance of industry. A range of safeguards which respond to industry concerns are included. Also explicit within the Bill is a firm commitment to consult affected industries before regulations are developed under this section of the legislation. I would like to record my thanks to my fellow Minister and his department—PIRSA for their assistance and I would most particularly acknowledge the contribution of and thank the Australian Chicken Meat Federation and Australian Pork Limited for their willingness to engage in a process which has improved the Bill for all concerned.

To be clear, the intent of clauses 67 and 68 is to improve the prevention and management of risks to public health from contaminants. Where contaminants may be found in food or other products, the Bill requires the Chief Public Health Officer to design regulations in consultation with all relevant affected industries. These provisions also incorporate environmental contaminants that pose a risk to public health outside of the food chain. For example they will provide the State with a mechanism to track the prevalence of prescribed antibiotic resistant microbes, where detected, in specific locations in the community.

This Bill provides a clearer scheme for the management and control of persons with controlled notifiable disease whose behaviour may be placing others at risk. Where necessary, it provides for a compulsory scheme of clinical examination, counselling, direction, treatment orders and isolation or detention orders. These elements of the scheme can be applied in a graded way depending on the severity of the public health risk and the degree of personal cooperation or voluntary compliance. This scheme incorporates and is consistent with:

- the provisions of the World Health Organization's International Health Regulations (IHR) including requirements to participate in national reporting and incorporating a set of principles that provides for the protection of individual rights, in so far as they do not conflict with the overriding imperative of protecting the population from identified public health risks
- national and state based reviews of this area including the national report commissioned by the Australian Health Ministers' Conference that sought to establish nationally consistent guidelines for the management of people who place others at risk.

The Bill ensures better management of public health issues and infectious disease by recognising orders made under related Acts in other jurisdictions as if they were made under the equivalent area of South Australian law. In relation to confidentiality provisions, the Bill will also permit the exchange and flow of public health information for the identification and control of the spread of disease by enabling disclosure of certain information in the course of official duties for those involved in administering a related Act or any other purpose, such as the compilation of national surveillance data on disease.

Because public health issues can be complex and broad in scope, not all subsidiary legislative matters can be dealt with effectively within the constraints of a regulation making power. The Bill provides a policy making power similar to that in the Environment Protection Act 1993. It permits the Minister to prepare and maintain a policy (to be

called a State Public Health Policy) that relates to any area of public health such as matters constituting risks to public health, the scope of the general duty under Part 6, or setting out standards and other measures to promote or protect public health.

The development of these policies is to be undertaken in accordance with the procedures set out in the Bill. They must be referred to the Parliament which may disallow the policy.

The Bill contains a simplified, but comprehensive regulation-making power than is currently the case. All regulations under the current Act will be transitioned into new regulations to be developed under the Bill, and any new regulations and policies will be subject to the normal processes.

In conclusion, the Government acknowledges the key role that local government has in public health and has worked very closely with the local government Association of South Australia, Environmental Health Australia (SA Branch) and members of councils, among others, to ensure that any issues arising from this Bill received full and proper consideration and that appropriate solutions have been developed to address any concerns. I acknowledge again the support, assistance and commitment given by the Local Government Association of South Australia and the Environmental Health Australia (SA Branch) in the development of this Bill.

Local government always has been the co-regulator and partner of the state government for public health. Local government has always been responsible for local public health issues in its area. This Bill acknowledges and continues this well established and robust tradition. The Bill also recognises that public health is more than a local concern. As a state we must all work together to preserve, protect and promote public health. That is what this Bill provides for—cooperative and effective action for public health throughout South Australia, and collaboration with the Commonwealth and other States and Territories beyond, including allowing South Australia to contribute to international public health effort.

Preserving, protecting and promoting health is not just a responsibility of the health care system. In fact the role of the health care system, whilst vital, is not sufficient to do this alone. The preservation, protection and promotion of health require concerted and coordinated action across government, between governments and across businesses and communities. This requires all of us to act to protect the health of the whole community.

I think C. Everett Koop, the famous Surgeon General in the United States who served between 1981 and 1989 best summed up the significance of a strong public health system. He said; 'Health care is vital to all of us some of the time, but public health is vital to all of us all of the time.'

I commend the Bill to the House.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

The measure will be brought into operation by proclamation.

3—Interpretation

This clause sets out the terms that are to be defined for the purposes of the measure.

Part 2—Objects, principles and interaction with other Acts

4—Objects of Act

This clause provides that the objects of the Act are—

(a) to promote health and well being of individuals and communities and to prevent disease, medical conditions, injury and disability through a public health approach; and

(b) to protect individuals and communities from risks to public health and to ensure, so far as is reasonably practicable, a healthy environment for all South Australians and particularly those who live within disadvantaged communities; and

(c) to provide for the development of effective measures for the early detection, management and amelioration of risks to public health; and

(d) to promote the provision of information to individuals and communities about risks to public health; and

(e) to encourage individuals and communities to plan for, create and maintain a healthy environment; and

(f) to provide for or support policies, strategies, programs and campaigns designed to improve the public health of communities and special or vulnerable groups (especially Aboriginal people and Torres Strait Islanders) within communities; and

(g) to provide for the prevention, or early detection, management and control, of diseases, medical conditions and injuries of public health significance; and

(h) to provide for the monitoring of any disease or medical condition of public health significance in order to provide for the prevention or early detection of any such disease or medical condition and for the protection of individuals and the community from the threat of any such disease or medical condition and from public health threats more generally; and

(i) to provide for the collection of information about incidence and prevalence of diseases and other risks to health in South Australia for research or public health purposes; and

(j) to establish a scheme for the performance of functions relating to public health by the State and local governments.

The Minister and other persons or bodies involved in the administration of the Act will be required to have regard to, and to seek to further, the objects of the Act.

5—Principles to be recognised under Act

It is intended to enact various principles that are to be applied in the administration of the Act, as set out in clauses 6 to 14.

6—Precautionary principle

The 'precautionary principle' is that if there is a perceived material risk to public health, lack of full scientific certainty should not be used as a reason for postponing measures to prevent, control or abate that risk. In applying the principle, decision-making and action should be proportionate to the degree of public health risk and should be guided by—

(a) a careful evaluation of what steps need to be taken to avoid, where practicable, serious harm to public health; and

(b) an assessment of the risk-weighted consequences of options; and

(c) an aim to ensure minimum disruption to an individual's activities, a community's functioning and commercial activity consistent with providing any necessary protection from identified public health risks.

7—Proportionate regulation principle

The 'proportionate regulation principle' is that regulatory measures should take into account, and to the extent that is appropriate, minimise, adverse impacts on business and members of the community while ensuring consistency with requirements to protect the community and to promote public health.

8—Sustainability principle

The 'sustainability principle' is that public health, social, economic and environmental factors should be considered in decision-making with the objective of maintaining and improving well-being and taking into account the interests of future generations.

9—Principle of prevention

The 'principle of prevention' is that administrative decisions and actions should be taken after considering (insofar as is relevant) the means by which public health risks can be prevented and avoided.

10—Population focus principle

The 'population focus principle' is that administrative decisions and actions should focus on the health of populations and what is necessary to protect and improve the health of the community, while considering the protection and promotion of the health of individuals.

11—Participation principle

The 'participation principle' is that individuals and communities should be encouraged to take responsibility for their own health and, to that end, to participate in decisions about their own health and the health of their communities.

12—Partnership principle

The 'partnership principle' recognises that the protection and promotion of public health requires collaboration and, in many cases, joint action across various sectors and levels of government and the community. The focus should be to develop and strengthen partnerships aimed at achieving identified public health goals consistent with the objects of the Act.

13—Equity principle

The 'equity principle' is the decisions and actions should not, as far as is reasonably practicable, unduly or unfairly disadvantage individuals or communities and consideration should be given to health disparities between population groups and to strategies to minimise or alleviate such strategies.

14—Specific principles—Parts 10 and 11

This clause sets out some additional principles that will only be relevant for the purposes of Parts 10 and 11. The overriding principle will be that people have a right to be protected from any person whose infectious state or behaviour may present a risk, or an increased risk, of the transmission of a controlled notifiable

condition. A person who has a controlled notifiable condition that is capable of being transmitted must take reasonable steps to avoid placing others at risk. A person must also act to avoid contracting a controlled notifiable condition that is capable of being transmitted.

15—Guidelines

The Minister will be able to prepare or adopt guidelines that relate to the application of these principles. The Minister will take steps to consult with SAPHC and the LGA in relation to the preparation or adoption of any guidelines. SAPHC will also be able to request the Minister to develop guidelines with respect to particular matters.

16—Interaction with other Acts

Except as otherwise provided, the provisions of this Act will be in addition to, and will not limit, the provisions of any other law of the State.

Part 3—Administration

Division 1—Minister

17—Minister

This clause sets out various functions that may be performed by the Minister in connection with the administration of the Act. A key function will be to promote proper standards of public and environmental health within the State by ensuring that adequate measures are taken to give effect to the provisions of the Act and to ensure compliance with the Act. The Minister is also to be a primary source of advice to the Government about health preservation, protection and promotion.

18—Power to require reports

The Minister will be able to require specified authorities to provide a report on any matter relevant to the administration or operation of the Act.

19—Delegation by Minister

The Minister will be able to delegate functions and powers.

Division 2—Chief Public Health Officer

20—Office of Chief Public Health Officer

The position of Chief Public Health Officer is to be established.

21—Functions of Chief Public Health Officer

The functions of the Chief Public Health Officer will be as follows:

(a) to develop and implement strategies to protect or promote public health;

(b) to ensure that this Act, and any designated health legislation, are complied with;

(c) to advise the Minister and the Chief Executive of the Department about proposed legislative or administrative changes related to public health, and about other matters relevant to public health;

(d) to establish and maintain a network of health practitioners and agencies designed to foster collaboration and coordination to promote public health and the furtherance of the objects of this Act;

(e) at the request of Minister or on the Chief Public Health Officer's own initiative, to investigate and report on matters of public health significance;

(f) after advising the Minister and the Chief Executive of the Department, to make public statements on matters relevant to public health;

(g) any other functions assigned to the Chief Public Health Officer by this Act or any other Act or by the Minister.

22—Risk of avoidable mortality or morbidity

If the Chief Public Health Officer becomes aware of the existence of, or potential for the occurrence of, a situation putting a section of the community or a group of individuals at an increased risk of avoidable mortality or morbidity, the Chief Public Health Officer will be able to request a public authority to assist in identifying or producing a response to the circumstances being faced.

23—Biennial reporting by Chief Public Health Officer

The Chief Public Health Officer will, on a two-yearly basis, prepare a report on public health trends, activities and indicators in South Australia, the implementation of the State Public Health Plan, and the administration of the Act. The report will be provided to the Minister and tabled in Parliament.

24—Delegation

The Chief Public Health Officer will be able to delegate functions and powers.

25—Appointment of Acting Chief Public Health Officer

The Chief Executive will be able to appoint an Acting Chief Public Health Officer.

Division 3—South Australian Public Health Council

26—Establishment of SAPHC

The South Australian Public Health Council (SAPHC) is established.

27—Composition of SAPHC

SAPHC is to consist of the Chief Public Health Officer (who will be the presiding member) and 9 other members appointed by the Governor on the nomination of the Minister. Included in this membership will be 2 persons nominated by the LGA, 1 person nominated by Environmental Health Australia (South Australia) Incorporated, and 1 person nominated by the Presiding Member of the Board of the Environment Protection Authority.

28—Conditions of appointment

An appointed member of SAPHC will be appointed for a term not exceeding 3 years and will be eligible for reappointment from time to time.

29—Allowances and expenses

An appointed member of SAPHC will be entitled to fees, allowances and expenses approved by the Governor.

30—Validity of acts

An act or proceeding of SAPHC will not be invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

31—Functions of SAPHC

The functions of SAPHC will include to provide advice to the Chief Public Health Officer in relation to the protection and promotion of public health, the development of strategies to ensure that a sufficiently trained and skilled workforce is in place for the purposes of this act, and programs to promote public health research in South Australia.

32—Conduct of business

Six members will constitute a quorum of SAPHC.

33—Committees and subcommittees

SAPHC will be able to establish committees and subcommittees to advise it on any aspect of its functions or to assist in the performance of its functions.

34—Delegation by SAPHC

SAPHC will be able to delegate functions and powers.

35—Annual report

SAPHC will prepare an annual report and furnish it to the Minister. The Minister will ensure that the annual report is tabled in Parliament.

36—Use of facilities

SAPHC will be able to arrange to make use of the staff, equipment or facilities of a public authority.

Division 4—Councils

37—Functions of councils

This clause provides that a council is the local public health authority for its area. The following specific functions will be conferred on councils:

(a) to take action to preserve, protect and promote public health within their areas;

(b) to cooperate with other authorities in the administration of the Act;

(c) to ensure that adequate sanitation measures are in place in their area;

(d) to ensure that activities do not adversely affect public health;

(e) to identify risks to public health;

(f) to ensure that appropriate remedial action is taken to reduce or eliminate adverse impacts or risks to public health;

(g) to respond to public health issues;

(h) to provide educational information about public health.

38—Immunisation services

A council will be required to provide, or support the provision of, immunisation programs for the protection of public health within its area. Services associated with the provision of these programs will be provided with the support of the Department.

39—Cooperation between councils

A council will be able to act in conjunction or partnership with one or more other councils. The Chief Public Health Officer will also be able to request that a council cooperate with one or more other councils in an area of common concern.

40—Power of Chief Public Health Officer to act

If the Chief Public Health Officer considers that a public health risk exists in relation to the areas of two or more councils, or if the Chief Public Health Officer considers that action should be taken under this provision in connection with the promotion of public health within the State, the Chief Public Health Officer will be able to exercise a power that is conferred on a council under the Act as if the Chief Public Health Officer were a council. Steps will be taken to consult with the council or councils for the area or areas where the action is to be taken, and with SAPHC.

41—Council failing to perform a function under Act

This clause sets out a scheme for any case where the Minister considers that a council has failed to perform a function conferred on the council under the Act. The Minister will consult with the council about the matter. If necessary, and after consultation with SAPHC, the Minister will be able to direct the council to perform a function. If the council fails to comply with a direction, the Minister will be able to withdraw relevant powers of the council and transfer them to the Chief Public Health Officer. Costs and expenses reasonably incurred by the Chief Public Health Officer in exercising any such power will be recoverable from the council as a debt due to the Minister.

42—Transfer of function of council at request of council

It will be possible for a council to request that a function of the council under the Act be performed by the Chief Public Health Officer. This may lead to the transfer of specified functions of the council to the Chief Public Health Officer.

Division 5—Authorised officers

43—State authorised officers

The Minister may appoint a suitably qualified person to be a State authorised officer under the Act. A State authorised officer will be subject to direction by the Chief Public Health Officer.

44—Local authorised officers

A council may appoint a suitably qualified person to be a local authorised officer. A local authorised officer is subject to direction by the council.

45—Qualifications

A person will not be eligible for appointment as an authorised officer unless he or she holds qualifications that have been approved by the Minister for the purposes of the Act.

46—Identity cards

Each authorised officer will be issued with an identity card in a form approved by the Chief Public Health Officer. An authorised officer will be required to produce his or her identity card on request.

47—Powers of authorised officers

This clause sets out the powers of authorised officers in connection with the administration or operation of the Act.

Division 6—Emergency officers

48—Emergency officers

The Chief Executive will be able to appoint, individually or by class, such persons to be emergency officers for the purposes of the Act as the Chief Executive thinks fit.

Division 7—Specific power to require information

49—Specific power to require information

The Minister, the Chief Public Health Officer, a council or an authorised officer will be able to require a person to furnish any information relating to public health as may be reasonably required for the purposes of the Act.

Part 4—Public health plans

Division 1—State public health plan

50—State public health plan

The Minister will be required to prepare and maintain the State Public Health Plan. This plan is to set out principles and policies for achieving the objects of the Act and implementing the principles established under this

Act. The plan will also comprehensively assess the state of public health in South Australia, identify public health risks and strategies to address those risks, identify opportunities to promote public health, and include information about related plans and policies.

Division 2—Regional public health plans

51—Regional public health plans

A council or, if the Minister determines or approves, a group of councils, must prepare and maintain a regional public health plan. The plan must be consistent with the State Public Health Plan. A regional public health plan will comprehensively assess the state of public health in the region, identify public health risks and provide for strategies for addressing and eliminating or reducing those risks, identify opportunities and outline strategies for promoting public health in the region, and include other relevant information. A council will be able to develop a regional public health plan in conjunction with the preparation of its strategic management plans under section 122 of the Local Government Act 1999.

52—Reporting on regional public health plans

A council will be required to prepare a report on the extent to which it has been able to implement its regional public health plan on a 2 yearly basis.

Part 5—Public health policies

53—Public health policies

The Minister will be able to prepare State Public Health Policies that relate to any area of public health in the State. A policy may specify matters that are to be taken to constitute risks to public health for the purposes of the Act, specify the scope of the general duty under Part 6 (including so as to specify that a breach of the policy will be taken to be a breach of the duty), set out standards associated with public health, or provide for other measures relevant to achieving an improvement to public health in the State.

54—Procedure for making policies

This clause sets out the procedures to be followed in relation to creating or amending a State Public Health Policy. The procedures will include a public consultation policy.

55—Reference of policies to Parliament

The Minister will cause a copy of each State Public Health Policy to be laid before both Houses of Parliament and the policy will be subject to disallowance by either House of Parliament.

Part 6—General duty

56—General duty

This clause creates a statutory duty that will require that a person must take all reasonable steps to prevent or minimise any harm to public health caused by, or likely to be caused by, anything done or omitted to be done by the person. In determining what is to be regarded as being reasonable for the purposes of this clause, regard must be had to the objects of the Act and to—

(a) the potential impact of a failure to comply with the duty; and

(b) any environmental, social, economic or practicable implications; and

(c) any degrees of risk that may be involved; and

(d) the nature, extent and duration of any harm; and

(e) any relevant policy under Part 5; and

(f) any relevant code of practice under Part 8; and

(g) any matter prescribed by the regulations.

However, a person will be taken not to be in breach of this duty if the person is acting—

(a) in a manner or in circumstances that accord with generally accepted practices taking into account community expectations and prevailing environmental, social and economic practices and standards; or

(b) in accordance with a policy or code of practice published by the Minister in connection with the operation of this Part; or

(c) in circumstances prescribed by the regulations.

A person who breaches the duty will not be liable to any civil or criminal action but may be liable to civil enforcement proceedings under Part 12.

Part 7—General public health offences

57—Material risk to public health

This clause creates a series of offences associated with the creation of a material risk to public health.

58—Serious risk to public health

This clause creates a series of offences relating to the creation of a serious risk to public health.

59—Defence of due diligence

It will be a defence to a prosecution under these provisions to prove that the defendant took all reasonable precautions and exercised all due diligence to prevent the commission of the relevant offence.

60—Alternative finding

A court will be able to find a person guilty of the commission of a lesser offence to the offence that has been charged.

Part 8—Prevention of non-communicable conditions

61—Declaration of non-communicable conditions

It will be possible for the Minister to declare a disease or medical condition to be a 'non-communicable disease' for the purposes of the Act if the Minister considers that the disease or medical condition is of significance to public health.

62—Minister may issue code of practice

The Minister will be able to issue a code of practice in relation to preventing or reducing the incidence of a non-communicable condition. Without limiting any other provision, a code of practice may relate to the manner in which—

(a) specified goods, substances or services are advertised, sponsored, promoted or marketed (including through the provision of certain information to consumers of certain goods, substances, or services);

(b) specified goods or substances are manufactured, distributed, supplied or sold (including the composition, contents, additives and design of specified goods or substances);

(c) buildings, infrastructure or other works are designed, constructed or maintained;

(d) the public, or certain sections of the public, are able to access specified goods, substances or services.

A code of practice may be particularly relevant to the operation of the general duty under Part 6.

Part 9—Notifiable conditions and contaminants

Division 1—Notifiable conditions

63—Declaration of notifiable conditions

The regulations will be able to declare a disease or medical condition to be a notifiable condition under the Act. The Minister will also be able to make emergency declarations.

64—Notification

This clause sets out a scheme for the notification of occurrences of notifiable conditions. A notification is to be made to the Chief Public Health Officer.

65—Report to councils

The Department—

(a) must, on a monthly basis, provide each council with a report on the occurrence or incidence of notifiable conditions in its area and any problems or issues caused by or arising on account of such diseases or medical conditions that may exist in its area; and

(b) must inform a council of the occurrence or incidence of any notifiable condition in its area that constitutes, or may constitute, a threat to public health.

66—Action to prevent spread of infection

The Chief Public Health Officer, or an authorised officer, will be able to issue directions or impose other requirements to prevent the possible spread of a disease constituting a notifiable condition.

Division 2—Notifiable contaminants

67—Declaration of notifiable contaminants

The regulations will be able to declare a contaminant to be a notifiable contaminant. The Minister will be able to make emergency declarations.

68—Notification of contaminant

This clause sets out a scheme for the notification of occurrences of notifiable contaminants.

Part 10—Controlled notifiable conditions

Division 1—Preliminary

69—Principles

Certain principles set out in Part 2 are relevant to these provisions.

70—Declaration of controlled notifiable conditions

The regulations will be able to declare a disease or medical condition to be a controlled notifiable condition. The Minister will be able to make emergency declarations.

71—Chief Public Health Officer to be able to act in other serious cases

This clause will allow the Chief Public Health Officer to take action against a particular person who is suspected of suffering from a serious disease, or of having been exposed to a serious disease, that has not been declared to be a controlled notifiable disease, and who is presenting a serious risk to public health. In a case where this clause applies, the serious disease will be taken to be a controlled notifiable condition and the Chief Public Health Officer will be able to take action in relation to the person as if he or she had such a condition. This special scheme would apply to the person for no more than 28 days (but the person may then become subject to other provisions of this Part).

72—Children

This clause clarifies the operation of this Part in relation to children. In particular, if a requirement is imposed in relation to a child, a parent or guardian of the child must take such steps as are reasonably necessary and available to achieve the requirement. It will also be possible to make modifications to the operation of this Part, insofar as it applies to children, by regulation. For the purposes of this clause, 'child' means a person under the age of 16 years.

Division 2—Controls

73—Power to require a person to undergo an examination or test

This clause applies in 2 sets of circumstances.

The first circumstance is where the Chief Public Health Officer has reasonable grounds to believe—

(a) that a person has a controlled notifiable condition and the person presents, has presented, or is likely to present, a risk to health through the transmission of a disease constituting that condition; or

(b) that an incident has occurred or a circumstance has arisen in which a person could have been exposed to, or could have contracted, a controlled notifiable condition.

The second circumstance is where—

(a) an incident has occurred or a circumstance has arisen, while a caregiver or custodian is acting in that capacity, in which, if any of those involved were infected by a disease constituting a controlled notifiable condition, the disease could be transmitted to the caregiver or custodian; and

(b) the Chief Public Health Officer has reasonable grounds to believe that the imposition of a requirement under this clause is necessary in the interests of a rapid diagnosis and, if appropriate, treatment of any person involved in the incident or connected with the circumstance (whether or not as a caregiver or custodian).

Essentially, the Chief Public Heath Officer will be able to require a person—

(a) to present himself or herself at such place and time as may be specified in order to undergo a clinical examination or to undertake (or be the subject of) tests, or both; and

(b) to comply with any requirement imposed by a person who may conduct the examination or carry out the tests.

The Chief Public Health Officer will be entitled to a copy of any report prepared on account of an examination or test carried out under this provision.

74—Power to require counselling

This clause will apply if the Chief Public Health Officer has reasonable grounds to believe that a person has, or has been exposed to, a controlled notifiable condition. In such a case, the Chief Public Health Officer will be able to require that the person participate in counselling, education, or other activities relevant to understanding the controlled notifiable condition or relevant impacts or implications.

75—Power to give directions

This clause will apply if the Chief Public Health Officer has reasonable grounds to believe that a person has, or has been exposed to, a controlled notifiable condition and the Chief Public Health Officer considers that an order under this clause is reasonably necessary in the interests of public health. In such a case, the Chief Public Health Officer may give directions to the person, including—

(a) a direction that the person reside at a specified place and, if considered to be appropriate by the Chief Public Health Officer, that the person remain isolated;

(b) a direction that the person refrain from carrying out specified activities (for example, without limitation, employment, use of public transport or participation in certain events), either absolutely or unless specified conditions are satisfied;

(c) a direction that the person refrain from visiting a specified place, or a place within a specified class, either absolutely or unless specified conditions are satisfied;

(d) a direction that the person refrain from associating with specified persons or specified classes of person;

(e) a direction that the person take specified action to prevent or minimise any health risk that may be posed by the person;

(f) a direction that the person attend meetings and provide such information as may be reasonably required in the circumstances;

(g) a direction that the person place himself or herself under the supervision of a member of the staff of the Department or a medical practitioner or other health professional nominated by the Chief Public Health Officer and obey the reasonable directions of that person;

(h) a direction that the person submit himself or herself to examination by a medical practitioner nominated by the Chief Public Health Officer at such intervals as the Chief Public Health Officer may require;

(i) a direction that the person undergo specified medical treatment, including at a specified place and time (or times);

(j) such other direction as to the person's conduct or supervision that the Chief Public Health Officer considers to be appropriate in the circumstances.

76—Review by District Court

A person who is the subject of a requirement under a preceding clause of this Division may apply to the District Court for a review of the requirement. The District Court is to hear and determine the application as soon as is reasonably practicable.

77—Power to require detention

This clause will apply if—

(a) the Chief Public Health Officer has reasonable grounds to believe that a person has, or has been exposed to, a controlled notifiable condition; and

(b) the person is or has been the subject of 1 or more directions under clause 75 and has contravened or failed to comply with a direction, or the Chief Public Health Officer considers that there is a material risk the person would not comply with 1 or more directions under that clause if they were to be imposed; and

(c) the Chief Public Health Officer considers—

(i) that the person presents, or is likely to present, a risk to public health; and

(ii) that action under this clause is justified.

An order under this clause will be that the person submit to being detained at a specified place while the order is in force.

An initial order will be for a period not exceeding 30 days. The Chief Public Health Officer will then be able to extend an order for additional periods not exceeding 60 days. However, a person will not be able to be detained for a period exceeding 30 days unless the Chief Public Health Officer has applied to the Supreme Court (constituted of a single Judge) for a review of the order. (The order will be able to continue pending the outcome of the review.) It will also be necessary to obtain a further authorisation by a Supreme Court Judge if the order is to operate for a period extending beyond 6 months. In addition, a person who is being detained must be examined by a medical practitioner at intervals not exceeding 30 days, or within such shorter periods as may be determined by a Supreme Court judge.

78—Review of detention orders by Supreme Court

A person who is the subject of a requirement under clause 77 may apply to the Supreme Court for a review of the relevant order.

79—Warrants

The Chief Public Health Officer will be able to apply to a magistrate for the issue of a warrant for the apprehension by an authorised officer of a person who has failed to comply with an order, requirement or direction under this Division, or that a person be the subject of any examination or test or other action required under this Division, or that a person be brought before a magistrate.

If a person is brought before a magistrate, the magistrate may order the detention of the person until the person is willing to comply with an order, requirement or direction under this Division.

A warrant may include a requirement that the person may be held in a place of quarantine or isolation.

A right of appeal will lie to a judge of the Supreme Court.

80—General provisions relating to orders, requirements and directions

This clause provides for various matters associated with the operation of this Division. In particular, it is confirmed that an order, requirement or direction may be given to a person on more than one occasion, that a person may be subject to a combination of orders, requirements or directions, and that the Chief Public Health Officer may vary or rescind any order, requirement or direction.

Furthermore, if the Chief Public Health Officer serves a notice or order on a person, the notice or order must be accompanied by a notice that—

(a) sets out the grounds on which the order or notice is made; and

(b) contains a statement of the person's rights under the Act (including a person's right to apply for a review under this Division); and

(c) contains any other information determined by the Chief Public Health Officer to be relevant or appropriate.

81—Duty to comply

It will be an offence, without reasonable excuse, to contravene or fail to comply with an order, requirement or direction under this Division.

Division 3—Related matters

82—Advisory Panels

The Chief Public Health Officer will be able to establish an advisory panel to assist him or her with respect to the management of a person who is, or a group of persons who are, the subject of an order, requirement or direction under this Part.

83—Interstate orders

This clause will allow an order under a corresponding law that provides for a matter that may be the subject of an order under this Part to have effect if the relevant person enters this State.

84—Protection of information

A document held or produced by the Chief Public Health Officer, or any other person acting in the course of official duties, for the purposes of this Part that relates to a particular person is not subject to access under the Freedom of Information Act 1991.

Part 11—Management of significant emergencies

85—Principles

86—Public health incidents

87—Public health emergencies

88—Making and revocation of declarations

89—Powers and functions of Chief Executive

90—Application of Emergency Management Act

These provisions relates to the management of public health emergencies and are based on those inserted into the Public and Environmental Health Act 1987 by the Statutes Amendment (Public Health Incidents and Emergencies) Act 2009.

Part 12—Notices and emergency situations

Division 1—Interpretation

91—Interpretation

A relevant authority under this Part will be the Chief Public Health Officer or a council.

Division 2—Notices and emergencies

92—Notices

A relevant authority will be able to issue a notice for the purpose of—

(a) securing compliance with the Act (including the general duty under Part 6 or a requirement imposed by regulation or a code of practice under the Act); or

(b) averting, eliminating minimising a risk, or a perceived risk, to public health.

A notice—

(a) must state the purpose for which it is issued; and

(b) may impose one or more of the following requirements:

(i) a requirement that the person discontinue, or not commence, a specified activity indefinitely or for a specified period or until further notice from a relevant authority;

(ii) a requirement that the person not carry on a specified activity except at specified times or subject to specified conditions;

(iii) a requirement that the person take specified action in a specified way, and within a specified period or at specified times or in specified circumstances;

(iv) a requirement that the person take action to prevent, eliminate, minimise or control any specified risk to public health, or to control any specified activity.

93—Action on non-compliance with notice

If the requirements of a notice are not complied with, a relevant authority will be able to take any action required by the notice and recover its reasonable costs and expenses in doing so.

94—Action in emergency situations

This clause will allow an authorised officer to take emergency action to avert, control or eliminate a risk to public health.

An authorised officer will have specific power to—

(a) enter and take possession of any premises or vehicle (taking such action as is reasonably necessary for the purpose); and

(b) seize, retain, move or destroy or otherwise dispose of any substance or thing.

Division 3—Reviews and appeals

95—Reviews—notices relating to general duty

A person who has been issued with a notice to secure compliance with the general duty may apply for a review of the notice.

The notice of review will be to the Public Health Review Panel. This panel, in relation to a particular review, will be constituted by—

(a) the Chief Public Health Officer (who will be the presiding member); and

(b) 2 members of SAPHC selected by the Chief Public Health Officer for the purposes of the particular review; and

(c) any other person or persons selected by the Chief Public Health Officer in order to provide additional expertise on the panel.

96—Appeals

A person who has been issued with a notice under this Part will be able to initiate an appeal to the District Court. This right of appeal will include an appeal against the outcome of review proceedings.

Part 13—Miscellaneous

97—Tests on deceased persons

The Chief Public Health Officer will be able to authorise a test to be carried out on a deceased person if he or she has reasonable grounds to believe that the deceased person has had a condition of public health concern. A test or other procedure must be carried out by a medical practitioner or a person who has a qualification prescribed by the regulations. Nothing in this clause will allow the exhumation of a body.

98—Delegation by Chief Executive

The Chief Executive will be able to delegate a function or power under the Act.

99—Confidentiality

A person who obtains personal information in the course of official duties will be required to keep that information confidential unless the disclosure of the information is authorised under this clause.

100—Confidentiality and provision of certain information

This clause will allow the Minister to authorise a person employed or engaged by the State for the purposes associated with public health to have access to personal information about a particular person. However, the further disclosure of this information will be restricted under the terms of this provision.

101—Service of notices or other documents

This clause provides for the service of documents under the Act.

102—Immunity

This clause makes provision with respect to the liability of persons engaged in the administration of the Act. Personal liability will not arise for an honest act or omission but liability will instead lie against the Crown or, in the case of an officer, employee, agent or contractor of a council, against the council.

Furthermore, no action will lie against a person who in good faith and with reasonable care takes a sample of blood, urine or other material, conducts a test, or provides a report, for the purposes of the Act.

103—Protection from liability

This clause makes express provision to exclude civil liability for any failure of a designated authority to perform a function under the Act. (This provision is based on section 12A(13) of the Public and Environmental Health Act 1987.)

104—False or misleading information

It will be an offence to provide false or misleading information in connection with complying with a requirement or direction under the Act.

105—Offences

Proceedings for an offence against the Act will only be able to be brought by designated persons (including a person acting with the written authority of the Minister).

106—Offences by bodies corporate

A direction of a body corporate will be guilty of an offence if the body corporate is guilty of an offence unless the direction can prove that he or she could not be the exercise of reasonable diligence have prevented the commission of the offence by the body corporate.

107—Continuing offences

This clause provides for a continuing offence if an offence is constituted by a continuing act or omission.

108—Evidentiary provision

This clause will assist with providing evidence to a court about the existence and extent of a risk to public health by allowing an assessment of such a risk by a designated entity involved in the administration of the Act to be accepted as evidence about the risk in the absence of proof to the contrary.

109—Regulations

This clause provides for the making of regulations for the purposes of the Act.

Schedule 1—Related amendments, repeal and transitional provisions

Various Acts must be consequentially amended. It may be necessary to repeal the Public and Environmental Health Act 1987 in stages and accordingly provisions have been included to allow this to occur.

Debate adjourned on motion of Hon. T.J. Stephens.

At 1:02 the council adjourned until Thursday 25 November 2010 at 11:00.