LEGISLATIVE COUNCIL

Tuesday 22 February 2011

The PRESIDENT (Hon. R.K. Sneath) took the chair at 14:17 and read prayers.

CRIMINAL LAW (SENTENCING) (SENTENCING POWERS OF MAGISTRATES COURT) AMENDMENT BILL

CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) (EXEMPTIONS AND APPROVALS) AMENDMENT BILL

The Hon. B.V. FINNIGAN (Minister for Industrial Relations, Minister for State/Local Government Relations, Minister for Gambling) (14:18): I move:

That the sitting of the council be not suspended during the continuation of the conference on the bill.

Motion carried.

PAPERS

The following papers were laid on the table:

By the Minister for Industrial Relations (Hon. B.V. Finnigan)—

Regulations under the following Acts—
Spent Convictions Act 2009—General
Rules under Acts—
Legal Practitioners Act 1981—
Legal practitioners Education and Admission Council 2004—Amendment No. 5

By the Minister for State/Local Government Relations (Hon. B.V. Finnigan)—

Corporation of the City of Adelaide—By-Law No 6—Rundle Mall

By the Minister for Regional Development (Hon. G.E. Gago)—

Public and Environmental Health Council—Report, 2009-10
Report of actions taken by SA Health following the Coronial Inquest into the death of Mr James William Wallace on 23 February 2008

By the Minister for Consumer Affairs (Hon. G.E. Gago)—

Regulations under the following Act—
Liquor Licensing Act 1997—
Dry Areas—Short Term—Rymill Park and Rundle Park—Area 3

QUESTION TIME

PERSONAL DATA

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:23): I seek leave to make a brief explanation before asking the Minister for Consumer Affairs a question about secret and confidential information collected from people's iPhones and iPads.

Leave granted.

The Hon. D.W. RIDGWAY: Few devices know more about people's details than the smartphones we carry and the iPads many of us use; phone numbers, current location, often the owner's real name and even the unique ID number, which can never be changed or turned off. These phones and devices do not keep secrets.

A *Wall Street Journal* investigation found that this personal data is shared widely and regularly. Examination of 101 popular smartphone apps, games and other software applications for iPhones and Android phones showed that 56 transmitted the phone's unique device ID to other companies without the user's awareness or consent, 47 apps transmitted the phone's location in the same way, and five sent age, gender and other personal details on to outsiders. These findings

reveal the intrusive effort made by online tracking companies to gather personal data about people in order to flesh out detailed dossiers on them.

Smartphone users are all but powerless to limit the tracking. With few exceptions, app users cannot opt out of phone tracking. Many apps do not offer even a basic form of consumer protection, which is a written privacy policy. The South Australian Tourism Commission, the Tour Down Under, Adelaide Metro, WOMADelaide and the Fringe all have apps available. People have downloaded apps also for bus and tram timetables from private providers who use government-provided information. My questions are:

1. Can the minister guarantee that people who access Australian government services and agencies by the way of apps are not having their personal information passed on to, or collected by, third parties?

2. If their information is passed on to commercial advertisers, can the minister at least guarantee that people get a warning that their personal identifiers and browser history will be collected and sold, or collected and possibly sold?

3. As neither Apple nor Google requires app privacy policies, can the minister reassure the public that the South Australian government therefore has an even bigger duty to protect those details?

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises) (14:25): I thank the honourable member for his most important questions. Indeed, the development of information technology has confronted consumers and various regulating organisations with new, very challenging issues of concern. Many of the issues that the honourable member has referred to are, in fact, matters that really should be referred to the Telecommunications Industry Ombudsman. They are outside the purview of consumer affairs.

In terms of the areas that my department does look at, we have been particularly concerned about scams and suchlike where people are approached in an unsolicited way and personal information is attempted to be taken from consumers under all sorts of guises. One recent one was the tax office scam, where people were ringing, and these operators were believed to be ringing from overseas. They were claiming to be officers from the Australian Taxation Office. There were a number of variations to the scam, but one of them was asking people to give them their personal account details.

The Hon. D.W. Ridgway: Deal with the question.

The Hon. G.E. GAGO: Most of the questions that he asked me, Mr President, are outside the purview of my portfolio; they may belong to the Telecommunications Industry Ombudsman. They do not belong to me, so I am talking about those aspects to do with telecommunications and technology scams and privacy that do belong to me. The honourable member obviously does not give a toss about these sorts of issues. He is not interested; he does not care.

These people are trying to gain personal details and account details from consumers and are also asking them to send money so that they can get a tax rebate, and we know that that does not occur. That scam particularly showed us that these operators had a great deal of personal detail about these consumers that they approached. It was not just cold canvassing, and it does beg the question: where did they get this information from?

One of the issues of concern is the sort of information that people divulge about themselves on social networking. We certainly warn people to be very careful about the personal information they divulge. Another concern is people simply going through people's rubbish bins. People are often inclined to toss out bank statements and all sorts of things into their rubbish bin, where personal details can be quite easily gained.

In fact, I was speaking on talkback radio and a gentleman rang in and he said that, in fact, he had done something similar, but in reverse. Someone had been using and filling his rubbish bin regularly and he got sick of it, so he pulled out one of the bundles of rubbish and simply went through the rubbish. He said he could not believe it; he was overwhelmed by the level of personal detail from the person who was abusing his bin.

The Hon. D.W. Ridgway: He was a bin abuser.

The Hon. G.E. GAGO: He was a bin abuser! There is nothing worse than a bin abuser. We want to stamp out bin abusers. So, it does demonstrate how easy it is, and this gentleman was

easily able to identify the name, address and telephone number of the person using his bin. He was able to simply confront the person and say, 'Cut it out; use your own bin.'

In those areas that are covered by my responsibilities, we do work very hard to protect consumers. We put out all sorts of statements, information and media alerts reminding people about how important it is not to expose personal details to people. We are very vigilant with that, and we issue those notices quite regularly. As I have said, in relation to the other matters, they are outside my responsibilities. I believe they belong to the Telecommunications Industry Ombudsman, and I suggest that the honourable member contact that office.

The PRESIDENT: The Hon. Ms Lensink.

Members interjecting:

The PRESIDENT: Order!

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Ridgway and the minister have had their turn. The Hon. Ms Lensink.

ATTORNEY-GENERAL'S DEPARTMENT

The Hon. J.M.A. LENSINK (14:31): Thank you, Mr President. I seek leave to make a brief explanation before asking the Minister for Consumer Affairs a question about amalgamation of business units within the Attorney-General's Department.

Leave granted.

The Hon. J.M.A. LENSINK: In the most recent budget, the amalgamation of a number of business units was announced within the Attorney-General's Department, including OCBA and the Office of the Liquor and Gambling Commissioner, which we are told will amount to a saving for the department of $23.3 million over four years. I have been contacted by concerned people in industry, and they have voiced specific concerns that this move will result in loss of expertise in certain areas, leading to poorer licensing and policing outcomes. My questions are:

1. What consultation, if any, was conducted with industry prior to the announcement?

2. Given that the budget outlined that savings will occur in this current financial year, when will the process of amalgamation begin?

3. What commitments has the minister provided to industry to ease these concerns?

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises) (14:32): I thank the honourable member for her most important questions. The restructuring of the Attorney-General's Department was a budget savings initiative, which was put forward in light of our need to respond to the global economic crisis and to bring our budget back on line and to ensure that we had a long-term, sustainable approach to our budget, and that meant taking the hard decisions—and we made many of them—to bring our spending into check. The restructure of the AGD was one of those initiatives, and it went through those budgetary processes, along with other budget savings initiatives that were put forward and considered, and this one was finally adopted.

However, there is good news in this story—it is not all bad news—and I am very pleased to talk about this issue here today. As we know, the Attorney-General's Department is undergoing significant change and reform, and one of the main drivers has been the increase in the size of the department over recent years, through the machinery of government changes. To maximise organisational strengths and address current structural limitations, the majority of the department's existing business units are being harmonised within the areas of organisational performance, building communities, and business and consumer services.

Each division, to be headed by a deputy chief executive, will lead the formation of a new divisional operating model. I have been advised that this reform will realise economies of skill and scale and seek to improve the value to the community and also to stakeholders. So, core capabilities will be brought together in centres of expertise and made available across the department to improve services to the community, and we believe that the public will, in fact, benefit by some of these changes.

The Consumer and Business Services division will be formed by the merger of the Office of Consumer and Business Affairs and the Office of the Liquor and Gambling Commissioner. The position of Deputy Chief Executive for Consumer and Business Services has been filled by Mr Paul White, who has commenced in that role. He is an extremely competent and professional man. We have had feedback from industry with high praise for the way that this gentleman operates—high praise, indeed. I think he is very well regarded in this state by all major industry stakeholders.

A project change team has been established to manage the change program; staff consultation has commenced; and ongoing staff and stakeholder consultation will occur throughout 2011. The roles and functions of the Office of the Liquor and Gambling Commissioner and the Office of Consumer and Business Affairs will continue providing relevant, vital and also contemporary services in line with the community's needs and expectations during the change process and beyond. My understanding is that the harmonisation will result in the aggregation and streamlining of processes and functions common to both organisations.

ATTORNEY-GENERAL'S DEPARTMENT

The Hon. J.M.A. LENSINK (14:36): I have supplementary questions:

1. Has the minister had any representations from industry on this particular issue and, if so, what were they?

2. Does she accept that the amalgamations will ultimately lead to a diminution of licensing?

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises) (14:36): I thank the honourable member for her questions. In terms of responding to the latter, no is the simple answer—no! I have just outlined the benefits that will be gained from the streamlining of services and the very structured way that we are going about making changes.

In relation to the representations, to the best of my knowledge I do not believe that I have received any delegations or representations in relation to the issues. I may have received correspondence from the HIA, but I will need to double-check that; there may be some correspondence on file. However, I can certainly reassure the honourable member that my office has not been overwhelmed by issues of concern raised by the industry. We have not been overwhelmed and, as I said, to the best of my knowledge I have not received any delegations.

To the best of my knowledge, I believe that I have only seen or am aware of one piece of correspondence. I think the honourable member is scaremongering. It is early days yet. The changes have only just started to be put in place and consultation with staff commenced, so it is early days yet. As I said, my office has not been overwhelmed by concerns or problems raised by industry, certainly to this point. Obviously, that is something that I will continue to monitor, and I am happy to keep the chamber informed.

BURNSIDE COUNCIL

The Hon. S.G. WADE (14:39): I address my questions to the Minister for State/Local Government Relations:

1. Is the government currently paying Mr Ken MacPherson to undertake investigations or other tasks in relation to Burnside Council?

2. What is the investigation or task on which Mr MacPherson is engaged?

3. Is Mr MacPherson engaged in finalisation of the report currently the subject of proceedings in the courts or another task?

4. When is the investigation or task due to be completed?

5. What is the estimated cost of the investigation or task?

The Hon. B.V. FINNIGAN (Minister for Industrial Relations, Minister for State/Local Government Relations, Minister for Gambling) (14:39): I thank the honourable member for his question. I think most members would be aware of legal action concerning the investigation into the Burnside Council, lodged by a number of plaintiffs, regarding the draft report. I am advised that a directions hearing took place on 17 February and that at that hearing dates were allocated for a hearing before the Full Court on 10 and 11 March. As that matter is before the court, I do not

believe it is appropriate for me to speculate on it. The work of the investigator, Mr MacPherson, has been suspended as of 4 February this year pending the outcome of the legal proceedings currently before the court.

LOCUST PLAGUE

The Hon. CARMEL ZOLLO (14:40): My question is to the Minister for State/Local Government Relations. Will he explain to the house what support the government is providing to local councils to combat the locust plague in regional South Australia?

The Hon. B.V. FINNIGAN (Minister for Industrial Relations, Minister for State/Local Government Relations, Minister for Gambling) (14:40): The Labor government has taken very seriously its responsibility to work with local government and landholders in fighting the worst locust plague in 40 years. When the scale of the looming pestilence became known early last year, the Premier convened a special meeting of the Emergency Management Committee. Cabinet subsequently approved special expenditure of $12.8 million to spearhead control efforts across the state.

Of course, it is not possible to kill or eliminate every locust, but it was critical to control the problem as much as possible. At stake was potentially the biggest grain crop ever to be grown in South Australia, representing more than $2 billion in agricultural production. The intensive response effort in South Australia resulted in spraying more than 465,000 hectares or 70 per cent of the national total. Since the completion of the highly successful spring campaign, Biosecurity SA has continued to closely monitor locust activity.

I am advised that in December last year isolated patches of migrating adult locust swarms were observed and eggs were laid in the broader Barossa Valley region, as well as in isolated areas of the Riverland/Mallee and Murraylands. The eggs in these regions have now hatched, resulting in a second generation of locust hoppers in late January and early February. They are far smaller in scale than the spring locust hatchings but can still be high in density over small areas.

A limited summer ground-spraying program has been implemented in the Barossa and Riverland to assist local government with the control of second-generation locust hoppers on local government land, such as parks, reserves and roadsides. This involved Biosecurity SA providing chemicals from existing stock, technical support and financial support of up to $10,000 per local government area. This money was made available to councils in affected regions to hire spray contractors to control locust hoppers that are considered beyond local government's capacity to manage.

I am advised that the Barossa component commenced on Thursday 3 February and was completed on Thursday 17 February. The local government areas involved were Goyder, Clare and Gilbert valleys, Light Regional Council, Barossa Council and the Town of Gawler. I understand that the Riverland component commenced on Monday 7 February for Renmark Paringa, Berri Barmera, Loxton Waikerie and the Rural City of Murray Bridge. That was completed by Thursday 17 February.

I am advised that Coorong council commenced on 11 February and is expected to finish by 23 February. Offers of assistance were also made to Mid Murray and Karoonda East Murray councils, which I understand did not take them up. A one-off aerial assault during the week of 14 to 18 February using existing chemical stocks was conducted in a remote area north of Morgan and east of Burra to mop up some significant second-generation summer locust bands that posed a serious migration threat to the Barossa and Riverland/Mallee.

My colleague in the other place, the Minister for Agriculture, is monitoring the situation across the state and will consider a targeted autumn control program if that becomes necessary. The government's response to the locust threat has been appreciated across regional South Australia. The last time the state faced a major locust plague was in 2000, when the then Liberal government allocated $6 million. That was less than half the amount this government has committed and will spend on protecting South Australian agriculture.

INTERNATIONAL WOMEN'S DAY

The Hon. I.K. HUNTER (14:44): I seek leave to make a brief explanation before asking the Minister for the Status of Women a question about International Women's Day.

Leave granted.

The Hon. I.K. HUNTER: Each year on 8 March, women in Australia and around the world celebrate International Women's Day . International Women's Day is an occasion to reflect on how far women have come in their struggle for equality and to join with others in celebrating women's achievements. It is also an occasion to reflect on those places in the world where women do not yet enjoy the freedom and equality that women in Australia have fought for and won. Will the minister advise the chamber of upcoming International Women's Day events?

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises) (14:45): I thank the honourable member for his most important question. Not only is International Women's Day an important day to think about the achievements of women, it is also an opportunity to look to the future and to the work that still needs to be done to ensure that future generations of women have the opportunity to contribute fully to our community.

The year 2011 marks the centenary of this most important day, and a range of events have been planned in Adelaide and right throughout the state. The Adelaide UN Women breakfast, held annually on 8 March since 1992, has been a longstanding IWD tradition. Previously known as the UNIFEM breakfast, this year the event reflects the new entity, which is UN Women, the United Nations Entity for Gender Equity and the Empowerment of Women, created by the United Nations General Assembly in 2010 as part of the UN reform agenda. 'Snappy title' I hear you say, Mr President.

Members interjecting:

The Hon. G.E. GAGO: Where do they get this from? The breakfast is hosted by Senator Penny Wong, and this year's guest speaker is Professor Tanya Monro. Tanya is Director of the Institute for Photonics and Advanced Sensing at the University of Adelaide. She is South Australia's Australian of the Year for 2011 and was the South Australian finalist in the national Australian of the Year Awards. She was also South Australia's Scientist of the Year in 2010 and a category winner in the 2010 Telstra Business Women's Awards. I am pleased to advise members that funds raised from the breakfast will go toward UN Women's democratic governance programs, which focus on advancing women's leadership and political participation.

The next day, Wednesday 9 March, the IWD luncheon will be held at the Adelaide Convention Centre. This annual event is organised by the IWD Committee of South Australia, which was formed in 1938 so, a very proud history. A range of community awards will be presented at that lunch. I am very pleased to be associated with this event. It recognises the outstanding contribution of women to their local communities.

To further celebrate the centenary of International Women's Day, I was very pleased to be told that the newly formed National Aboriginal and Torres Strait Islander Women's Alliance will honour 100 Aboriginal and Torres Strait Islander women who have achieved change over the past 100 years. Nomination forms have been distributed nationally, and the photographs of the 100 women selected will be portrayed on a poster to be officially launched on Tuesday 8 March in Canberra. The Office for Women will collaborate with the alliance to launch the poster in Adelaide on Thursday 10 March by coordinating a public event in recognition of Aboriginal and Torres Strait Islander women.

Not everything happens in the city, of course. International Women's Day events are held throughout regional South Australia. These include a celebration—and I want to recognise the Gawler International Women's Day Committee for their work—on Sunday 27 February. I was very pleased to provide financial support for this event, which will include a debate and a keynote address from award winning cheese maker and owner of Udder Delights, Sheree Sullivan. The event will build on the success of last year's event by continuing to involve young women from the community.

A number of other regional events include the UN Australia dinner to be held in the Riverland, the IWD brunch to be held at Port Lincoln, an event to be held in Coober Pedy, and many others. Details of these events will be available on the Office for Women's website. I highly recommend that you mark Tuesday 8 March, International Women's Day, in your diary and get involved in the celebrations taking place in your communities.

MILK PRICING

The Hon. R.L. BROKENSHIRE (14:49): I seek leave to make a brief explanation before asking the Minister for Regional Development a question about regional development.

Leave granted.

The Hon. R.L. BROKENSHIRE: On Friday, Wesfarmers, the parent company that owns Coles amongst other subsidiary companies, put out a report about the significant increase in earnings over the first half of this financial year. In that report Wesfarmers said:

> Coles, the company's biggest source of revenue and earnings, grew its EBIT [earnings before income tax] contribution by 18.3 per cent to $575 million, as the supermarket chain continued to grow sales faster than archrival Woolworths.
>
> Mr Goyder [from Wesfarmers] credited the strong growth at Coles to its ongoing strategy for heavy discounting, a tactic he described as 'winning back trust' from customers lost to Woolworths in previous years.
>
> 'We have reduced the price of about 5,000 items in Coles over the past year, and that's all about giving customers a better deal at the supermarket,' Mr Goyder said.
>
> He said milk sales at Coles had risen by up to 20 per cent following its decision to cut the price by as much as 33 per cent to $1 a litre last month.
>
> Credit Suisse analyst Grant Saligari described the result as 'very solid' and said the strength of earnings from the Coles division suggested the 'price war' in the grocery market was no threat to profits.

My questions are:

1. Has the minister examined the South Australian government's state dairy plan with respect to any ramifications for this drastic reduction in milk prices in the supermarket?

2. Has the minister sought assurances from Coles as per their statement that this reduction in milk price in the supermarket will have no impact on processes and farm gate?

3. Is the minister asking her department to give a regional impact statement assessment on this decision with respect to ramifications potentially for the state government's dairy plan?

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises) (14:52): In fact, most of the questions asked by the honourable member do not belong to either of my portfolios. In fact, it is the Minister for Agriculture and Fisheries who has the lead running on the state dairy plan and those matters. In fact, pricing is probably a commonwealth issue to do with the ACCC and ASIC; so not only is it outside my jurisdiction but it is outside South Australia's jurisdiction. Nevertheless, the issues that the honourable member has raised are most important issues.

The price warfare that is going on does have the potential to affect certain parts and segments of our society, and that is certainly something that I am watching very carefully. As I said, the Minister for Agriculture and Fisheries has the lead on that, and most of those matters are in fact commonwealth driven.

PERSONAL INJURY SCHOLARSHIP PROGRAM

The Hon. P. HOLLOWAY (14:54): My question is to the Minister for Industrial Relations and concerns professional development. Can the minister say whether WorkCover offers any specific support for individuals serving those in the area of workers compensation to further develop their professional skills in personal injury management?

The Hon. B.V. FINNIGAN (Minister for Industrial Relations, Minister for State/Local Government Relations, Minister for Gambling) (14:54): I thank the Hon. Mr Holloway for his question and for his work in the portfolio that he held. I am pleased to advise that, in late 2010, WorkCover SA launched its industry scholarship program. The annual scholarship program is an important initiative for the workers compensation sector in South Australia. The scholarship program is designed to encourage and support people already working in the South Australian workers compensation field to undertake postgraduate study. Successful recipients receive up to $15,000 per year to undertake their study. The scholarship program will help build the critical mass of professional expertise within the South Australian workers compensation sector.

Scholarships are awarded to individuals to undertake one of a number of Personal Injury Education Foundation postgraduate programs. These courses have been designed to enrich and enhance the range and depth of personal injury management skills and aim to lead to better outcomes for all accident compensation schemes and the communities and workers they are designed to serve. The Personal Injury Education Foundation was established in 2006 by a

consortium of Australian and New Zealand accident compensation regulators, insurers and claims management providers and organisations.

They have a shared vision of creating leading educational programs, initiatives and events focused on the needs of those working in the accident compensation area to help them better do their job and meet the needs of injured workers. The WorkCover SA scholarship program is open to anyone working in a workers compensation-related role and employed by WorkCover SA, a South Australian claims agent, self-insurer, approved workplace rehabilitation provider and other entities created under the Workers Rehabilitation and Compensation Act 1986.

The scholarship selection committee comprises representatives from employer and employee groups and is chaired by the Chief Executive Officer of WorkCover. The committee awarded four scholarships for study commencing in 2011. I am advised that scholarship recipients in the 2011 round are: Anna Thomas, the manager of Provider Management Strategy and Projects with Employers' Mutual Limited; Charmaine Zwolak, Investigation and Administration Officer with the Office of the WorkCover Ombudsman; Helena Buchanan, a technical adviser, Self-Insured Return to Work Services with WorkCover SA; and Tracey Hayes, the manager of Injury Management Services with Southern Cross Care (South Australia and Northern Territory) Inc.

I believe the selection committee's task was particularly difficult as the quality of applicants was very high. I wish to extend my congratulations to the successful scholarship recipients and trust that their participation in this program will assist them in carrying out their important work in assisting those who have been injured at work and trying to ensure that workplace injuries are minimised.

APY LANDS, ELECTRICITY SUPPLY

The Hon. T.J. STEPHENS (14:58): I seek leave to make a brief explanation before asking the Minister for Regional Development, representing the Minister for Energy, a question about electricity problems on the APY lands.

Leave granted.

The Hon. T.J. STEPHENS: I have been contacted by a constituent from a homeland near Ernabella on the APY lands regarding ongoing power losses on her property and that of her neighbours nearby. This problem has been recurring for a number of years—in fact, since 2004—due to a faulty powerline. Power losses have been regular and ETSA, which is contracted to repair the lines, has only been able to do patch-up jobs without properly addressing the issue. The constituent must often wait up to 48 hours for ETSA to restore power.

I am also advised that there are two other homelands on the affected powerline. I am told that the Aboriginal affairs minister is aware of the issue as she has been contacted about these regular power outages on the lands. I am unsure whether the Minister for Energy has been briefed on the situation. As well as the inconvenience it brings, the property's bore also requires power to operate, and therefore it is critical to the constituent that this problem be addressed.

The constituent must run a generator at her own expense due to the regular loss of electricity. She is only seeking that the powerline in question be updated or maintained adequately—surely, not too much to ask. My question is: rather than once again ignoring the problems of rural South Australians, will the Minister for Energy and the minister for Aboriginal affairs work together to find a solution to this ongoing problem?

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises) (14:58): I thank the honourable member for his important questions, and I will refer them to the Minister for Energy in another place and bring back a response.

NURSES AND MIDWIVES ENTERPRISE AGREEMENT

The Hon. T.A. FRANKS (14:59): I seek leave to make a brief explanation before asking the Minister for Public Sector Management a question about the SA public sector nurses' and midwives' pay rise processing.

Leave granted.

The Hon. T.A. FRANKS: The minister, I imagine, and certainly members, would be aware that there has been some progress—but very slow progress—regarding the resolution of the dispute lodged by the ANMF (SA Branch) before the Industrial Relations Commission recently in

regard to the timely payment of the pay increases that had been negotiated under the enterprise award with the SA government last year. Of course, agreement was reached in late October and finally approved by the Industrial Relations Commission in December, with the first pay increase scheduled to be paid from 1 October 2010.

The minister may also be aware that delays have affected the federation's previous disputes. This dates back as far as 2001; that is some 10 years ago. In those issues, insufficient public sector staff resourcing was identified as being critical to the timely and efficient payment of the outstanding salary and wage increases that affected all employees under the state government Wages Parity Enterprise Agreement 1999 who were employed by the then DHS.

Subsequent to that, the PSA appeared in the IR commission and on 27 October 2003 the then deputy president Hampton agreed with the recommendation of the PSA that additional resources, including staff and overtime, be deployed to ensure that payments were made within the agreed timetable, with interest to be paid on any delayed payments and the PSA to be paid for lost payroll deduction subscriptions for delayed payments for the increases. This brings us to 10 years since the original 2001 case.

1. Would the minister agree with Justice Hanlon who noted, in 2001, that 'there is clearly an obligation on the employer to make repayments in accordance with approved enterprise agreements and to have in place all reasonable measures to ensure such is done'?

2. Can the minister guarantee that these delays which have occurred in the past and which appear to be being repeated will not affect our hardworking nurses and midwives in the public sector, that they will receive their pay rises urgently and that all sufficient public sector resources will be made available to ensure this can be done?

3. Given these unacceptable delays in paying both the previous wage increase and this current outstanding matter, will interest be paid? I note that at this stage the interest would range between $21.87 and $26.25 per nurse, or an amount between $350,000 and $420,000.

Members interjecting:

The PRESIDENT: Order!

The Hon. B.V. FINNIGAN (Minister for Industrial Relations, Minister for State/Local Government Relations, Minister for Gambling) (15:02): I thank the Hon. Ms Franks for her question. The matter does come more within my purview than that of my honourable colleague, although it is also a matter for the Minister for Health, so if there is information I need to obtain from him I will refer the question to him in another place.

As the honourable member correctly said, in December 2010 the Industrial Relations Commission of South Australia approved an enterprise agreement relating to the employment of nurses and midwives. That agreement provided for significant salary increases and other provisions. On 18 January this year the Nursing and Midwifery Federation filed a dispute in the South Australian Industrial Relations Commission alleging a delay in the payment of wage increases and allowances arising from the new agreement.

I understand conciliation conferences were held in the commission on 27 January and 2 February this year. Employer representatives confirmed that payment of salary increases would commence in the pay period of 2 February and that applicable back pay would be completed by 1 April 2011. That is my advice. The Department of Health also agreed to provide a written commitment to the Australian Nursing and Midwifery Federation that future salary increases would be applied in accordance with the terms of the agreement.

I understand that it can be frustrating for employees to wait for their back pay for wage increases to come through but, as we know, the enterprise bargaining process can be quite involved and reasonably lengthy. Sometimes it can be quite some time before agreement is reached and certified. However, the advice I have received is that those salary increases would commence in the pay period of 2 February and back pay be completed by 1 April, and that should be good news to those covered by this agreement.

NURSES AND MIDWIVES ENTERPRISE AGREEMENT

The Hon. T.A. FRANKS (15:04): I have a supplementary question. Will that payment include the interest they have lost, or will the government pocket up to $420,000 out of nurses' pockets?

The Hon. B.V. FINNIGAN (Minister for Industrial Relations, Minister for State/Local Government Relations, Minister for Gambling) (15:04): I am not sure how the government could be pocketing money from nurses. We are not proposing to take money out of anyone's pay packet. I can seek further advice on that, but I certainly do not understand it to be the usual practice.

REGIONAL FUNDING

The Hon. R.P. WORTLEY (15:04): I seek leave to make a brief explanation before asking the Minister for Regional Development a question about funding to regions.

Leave granted.

The Hon. R.P. WORTLEY: The South Australian government provides funding through its regional development infrastructure program to support critical regional infrastructure projects. As the President would be aware, since 2002 the Labor government has embarked upon probably one of the greatest infrastructure programs in the history of this state. That was a necessity after the nine years of neglect prior to our taking office. My question is: will the minister tell the house how an important project has recently been provided with assistance in the South-East of the state?

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises) (15:05): I thank the honourable member for his most important question. It certainly did give me great pleasure last week to be able to announce funding of up to $500,000 through the Regional Development Infrastructure Fund (RDIF) to go to the District Council of Grant towards the upgrade of the Mount Gambier airport.

Members may be aware that the council has for many years wished to upgrade the airport, and this money will help to achieve the council's 15-year airport redevelopment plan. The funding will specifically support runway lighting and assist with the strengthening of the main runway apron and also the taxiways. It is envisaged that the project will help boost local employment during the construction phase, potentially result in greater tourism to the area and also improve business access.

The total cost of the project is around $3.2 million. The runway upgrade may also help attract a second carrier to the region. The District Council of Grant has advised that work on the project will begin shortly and be finished by the end of this financial year. I understand that the runway, taxiways and aprons at the airport have not been upgraded to any extent since the 1950s, and this upgrade will ensure that the Mount Gambier airport meets its legal requirements, as set out by the Civil Aviation Safety Authority.

I met with the mayor of the Grant district council, Mr Richard Sage, on Friday, and he expressed his appreciation to the government for its assistance. The mayor told me that he expects this initial investment to be the catalyst for further development of the airport, which I know is also a matter of interest to my honourable colleague the Minister for State/Local Government Relations.

I would like to acknowledge the representations made by the member for Mount Gambier in another place. The member informed the ASET panel that the Mount Gambier airport is the second-largest regional airport in South Australia and a critical gateway for social and economic activity. The honourable member was very persuasive in advocating that an upgrade for the airport was critical to sustainable development in the region. This project is just one of the many RDIF projects that are given out to assist the state to reach South Australia's Strategic Plan targets in the areas of regional jobs, investment and also export earnings.

WILLASTON, REDBANKS AND MAIN NORTH ROADS

The Hon. J.S.L. DAWKINS (15:08): I seek leave to make a brief explanation before asking the Minister for Industrial Relations, representing the Minister for Transport and Infrastructure, a question about the intersection of Redbanks and Main North Roads at Willaston.

Leave granted.

The Hon. J.S.L. DAWKINS: The intersection of Redbanks and Main North Roads at Willaston is a Y-shaped intersection which has long been a concern and cause of frustration for local residents of Willaston and Gawler and beyond. In recent years, it has seen increasing delays and many accidents. Unfortunately, I can remember at least two fatal accidents there in recent times.

In 2008, the Department for Transport, Energy and Infrastructure, in its Main North Road/Adelaide Road—Gawler, Final Draft Road Management Plan, suggested that the increased traffic flow from the Northern Expressway would further exacerbate the delays, congestion and potential danger. It suggested the installation of a roundabout would provide the best solution.

The Town of Gawler has also indicated its support for a roundabout at this busy intersection, with its significant potential for accidents. I should also inform the council that $110,000 of funding for a roundabout, with improved lighting, at this site was promised by the Rann government in 2002, via a $3.5 million road safety program.

On 26 September 2003, the then transport minister, Michael Wright, issued a self-congratulatory press release, in which he promised this project would be delivered 'this financial year' (that was 2003) and rather ironically boasted, 'This program is just one of the ways we are putting words into action.'

Given that it is now nine years after the initial promise, eight years after the minister's self-congratulations, three years after the department endorsed the project and five months after NExy opened, I ask the following questions:

1. Will the Rann government commit to building this roundabout at Willaston this year?

2. If so, will the government ensure that the design work takes into account the increased congestion at the Y junction since the opening of NExy and the resultant individual traffic diversions through neighbouring streets that have resulted?

3. What happened to the initial $110,000 quarantined for this project?

4. How much will the project cost, in current terms?

The Hon. B.V. FINNIGAN (Minister for Industrial Relations, Minister for State/Local Government Relations, Minister for Gambling) (15:12): I will refer those questions to my colleague in another place, the Minister for Transport, and bring back a response. I would remind the honourable member that there is considerable funding by the state government and, indeed, federal and local government for roads and that there are the Black Spot programs, which apply at the federal and state level, to which local governments can apply for funding for particular projects they believe are of significant—

The Hon. J.S.L. Dawkins interjecting:

The Hon. B.V. FINNIGAN: Well, the Black Spot Program does fund state projects as well as local government projects. However, I am obviously not aware of the detail, and I will seek information about that.

LEGAL PRACTITIONERS

The Hon. D.G.E. HOOD (15:12): I seek leave to make a brief explanation before asking the minister representing the Attorney-General questions in relation to legal practitioners in South Australia.

Leave granted.

The Hon. D.G.E. HOOD: I understand that Western Australia and South Australia indicated recently a lack of support for national legal regulation at the COAG meeting on 13 February. I understand that South Australia will be implementing its own legal profession regulations. The Attorney-General has outlined a number of reasons why he is objecting to the proposed legislation and, whilst I will not proffer an opinion, all of that seems sound enough to us.

Family First has been working with victims of the Magarey Farlam Trust Account theft for several years now, and I indicate that some have expressed disappointment to me that the focus has been on the concerns of the legal profession in opposing the national regulations rather than insisting upon a better scheme to protect victims of trust account fraud.

Many of these victims were forced to endure a needless 21-month asset freeze and three needless Supreme Court cases, during which all interest earned on their assets was stripped before their assets and remaining assets were returned, even if they had nothing stolen from their accounts. My questions are:

1. Will the Attorney-General immediately reveal his intentions for independently reforming the legal regulatory system in South Australia, including measures that will at least:

(a) end the draconian fund of last resort system that operates under the Legal Practitioners Act since 1981; and

(b) ensure that, if a situation similar to Magarey Farlam occurred again, compensation would be more readily available and more attainable by clients?

2. Will the Attorney-General provide the following data:

(a) the amount of interest stripped annually and in total from clients' assets held in lawyers' trust accounts since the Legal Practitioners Act was established; and

(b) the amounts paid annually and in total during that period to each of the various services and organisations that are nominated as recipients of those funds, especially the Legal Services Commission, community legal services, the Legal Practitioners Education and Admissions Council, the Law Foundation, the Legal Practitioners Conduct Board, the Professional Standards Branch of the Law Society of South Australia, and the Legal Practitioners Guarantee Fund;

(c) the number of claims made since the act was proclaimed against the guarantee fund annually and in total, by type of claim and the amounts paid annually, and in total for each type of claim and for each particular case and claim;

(d) full details of all costs incurred by the Attorney-General and his agencies (that is, the government and its agencies), the Law Society of South Australia and its representatives, the Law Society appointed supervisor for the Magarey Farlam lawyers' trust accounts following their $4.5 million fraud case, and by the supervisor's agents and representatives; and

(e) the amount each of Magarey Farlam's victims claimed against and was paid from the guarantee fund for their costs of proceedings and the civil proceedings brought by the supervisor to determine the method of distributing the remaining assets in the firm's trust account?

3. Finally, will the Attorney-General confirm or deny that the total legal fees in this case have now surpassed the total amount stolen in the initial circumstance, representing some $4.5 million?

The Hon. B.V. FINNIGAN (Minister for Industrial Relations, Minister for State/Local Government Relations, Minister for Gambling) (15:15): I thank the honourable member for that wide-ranging question that covered many aspects of the Attorney-General's portfolio. I am certainly aware, in relation to national legal profession reform, that it is a matter that has been discussed at COAG and at the Standing Committee of Attorneys-General. There is another meeting of the Standing Committee of Attorneys-General in a fortnight or so, but I am not sure whether or not that matter will be discussed there.

South Australia certainly expressed some concern in relation to the proposed national legal profession model, in particular regarding the registration process for lawyers and monitoring the conduct and professional standards and so on within the legal profession. There is a concern, as I understand it, that that matter should be in the hands of a national body rather than at the local level, and that is a matter of concern to many people within the profession and, indeed, to those they serve. I am not sure what will happen at the next Standing Committee of Attorneys-General and whether that will be further discussed, but I can certainly find out when it happens.

In relation to what will happen if no national accommodation is reached, my understanding is that the government would then seek to introduce a legal profession bill in South Australia. However, that will be a matter for my colleague in the other place (the Attorney-General), and I would think that if the national model were not adopted it would be necessary to have some reform of our own legal profession oversight and governance. In relation to the issues that the honourable

member raises regarding Magarey Farlam, I am not aware of them but I will refer them to the Attorney-General in the other place.

CENTRE FOR ECONOMIC STUDIES

The Hon. J.S. LEE (15:17): I seek leave to make a brief explanation before asking the Minister for Regional Development a question about the issues paper released by the South Australian Centre for Economic Studies.

Leave granted.

The Hon. J.S. LEE: Reported on 14 January 2011 by the South Australian Centre for Economic Studies was an issues paper, 'Rethinking the approach to regional development in South Australia'. The authors of the issues paper (Mr Michael O'Neil and Mr Cliff Walsh) argue that 'regional development in South Australia is an agenda without a policy framework or strategy'. Furthermore, on ABC radio on Friday 18 February, Mr Ian McSporran, Executive Officer of the Provincial Cities' Association, commented:

> It is on the general issue of a policy or a structure of regional development in this state that I think we're very deficient.

He continued:

> We are no further advanced now in 2011 [than] what we were in 1999 when the Association had to advocate for an inquiry into regional development within the State.

My questions are:

1. How is the government going to address the disappointment and lack of policy framework for regional development described in the issues paper from the South Australian Centre for Economic Studies?

2. In her media release dated 18 February 2011, and in her speech to the Local Government Association, the minister stated that she 'can be a driver, a connector, and a champion for regional areas'. Can the minister outline her policy and strategy on how the government can facilitate and support regional South Australia and how the minister proposes to be a champion for regional areas?

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises) (15:20): I thank the honourable member for her most important question and the opportunity to speak on this most important issue. First, I will start with the very impressive record that this government has in terms of supporting regional SA, and then I will go on to more specific things.

I am very pleased to tell the council that this government is committed to country South Australia, and this is not a new commitment. The first regional development minister in South Australia was Mike Rann in 1992. Prior to that, the Liberal government did not see fit to hold such positions.

The importance of regional communities to this government is demonstrated in a number of ways. First, a cabinet task force has been established to specifically focus on regional issues, and I am the chair of that task force. It has been set up to advantage the renewed focus of the commonwealth, and new money that has been provided through its initiatives, on regional Australia.

We need to make sure that South Australia is ready and prepared and in position to maximise the full advantage of accessing those federal funds. Its prime purpose is to maximise the current federal funding opportunities for our regional areas. We want to be in the best position to take advantage and make sure that we are following a strategic approach.

Here in South Australia, the promised federal infrastructure funding offers some great opportunities for our regions, but it also presents considerable challenges as the funds will be heavily contested, not only by regions within the state—so we have our intrastate contestability—but also by other states as well.

We need to make sure, as I said, that we are well positioned to maximise full advantage. It will require RDAs to work creatively and in a coordinated way. Further to this, we as a government

are committed to the economic, social and environmental sustainability of regional communities, demonstrated through a number of initiatives.

The 2010-11 state budget—and I will only talk about that because I am mindful of the time, but I could go back much further—delivered significant targets in terms of investment in regional South Australia, and it certainly honours our election commitments in terms of making major investments in regional infrastructure and services. These initiatives include $29.9 million over two years to refurbish the Port Bonython jetty; $20 million over four years to establish the Riverland Sustainability Futures Fund; $12.8 million in 2010-11 to tackle plague locusts; $10.2 million over four years for the plan for accelerating exploration; $9.5 million for continued drought support for the River Murray; $8.1 million for the desalination plant in Hawker; $8 million over four years to expand the Rural Road Safety Program; $5.9 million to provide additional cancer services in country areas; $5 million towards a Port Augusta sports hub; and $2.5 million over two years for the Port Augusta regional roads plan.

There were other infrastructure improvements throughout the budget that related to hospitals, public housing, schools, rural roads, etc., but time does not permit me to go into that level of detail. Certainly, the Riverland Sustainable Futures Fund and the Upper Spencer Gulf Enterprise Zone will be complemented by the continuing $3 million of RDIF funding. Of course, RDIF, as we know, is aimed at redressing the cost disadvantage faced by regional communities in building new infrastructure and provides valuable seed money for rural projects. I have already announced two new funding projects from this fund and there are more to come.

This government is about action. We are about actions. We stand by our record and our continuing commitment to regional South Australia. I could go on about regional plans but time does not permit. In terms of planning, we do have plans. We have regional plans in relation to the planning that our RDAs have done and the road maps that they are putting forward. They are regional plans and relate to identifying priorities for those regions' investments.

We have the planning and development regional plans. Most of those regional plans have now been signed off. They are comprehensive regional plans for each region throughout South Australia. All of regional South Australia is covered by those NRM regions. Again, they do intensive and extensive planning, as do our local councils. Again, there is extensive regional planning going on at the local council level right throughout regional South Australia. Time does not permit me to truly elaborate on the amazing commitment that this government has to regional South Australia, so I will leave it there for now.

CHRISTCHURCH EARTHQUAKE

The Hon. B.V. FINNIGAN (Minister for Industrial Relations, Minister for State/Local Government Relations, Minister for Gambling) (15:27): I table a copy of a ministerial statement made by the Premier in the other place on South Australia's response to the Christchurch earthquake.

MINING DEVELOPMENT

The Hon. B.V. FINNIGAN (Minister for Industrial Relations, Minister for State/Local Government Relations, Minister for Gambling) (15:27): I table a copy of a ministerial statement made by the Premier in the other place on Olympic Dam and Arkaroola.

CONTROLLED SUBSTANCES (THERAPEUTIC GOODS AND OTHER MATTERS) AMENDMENT BILL

In committee.

(Continued from 17 February 2011.)

Clause 22 passed.

Clauses 23 to 26 passed.

The Hon. G.E. GAGO: I have been able to find responses to questions relating to earlier clauses asked by the Hon. Mr Brokenshire. In relation to pay scales for nurses, midwives and nurse practitioners, the honourable member expressed concern that as a result of the bill more responsibility is being placed on nurses, nurse practitioners and midwives as a cost saving measure in order to avoid doctors doing this work.

I am advised that payment for public sector nurses, nurse practitioners and midwives is aligned to their scope of practice. This will enable the health system to make better use of these

highly skilled clinicians by enabling them to practise to the full scope of their competency. There is no change to the current authorisations for nurses to administer or supply prescription drugs. As such, it is not expected that they will take on more responsibility as a result of the changes included in this bill.

In the case of nurse practitioners and midwives whose registration is endorsed with the scheduled medicines endorsement, if the nurse practitioner or midwife has prescribing rights, prescribing is within their scope of practice. Their scope of practice is aligned to a classification point which has been built around the competencies, accountabilities and responsibilities for that level. The nurse practitioner's or midwife's remuneration reflects these competencies, accountabilities and responsibilities.

In terms of the extension of prescribing rights out of necessity because of the failure to sufficiently train and attract doctors to regional South Australia, the honourable member asked whether the government needed to give these powers to nurses and nurse practitioners out of necessity caused by this failure.

Nurse practitioners and midwives are highly skilled health practitioners. The authorisations for midwives and nurse practitioners to prescribe Schedule 4 and Schedule 8 drugs would recognise their evolving scope of practice and the requirements they must meet to obtain endorsement of their registration as nurse practitioner or midwife with the scheduled medicines endorsement.

The extension of prescribing rights to midwives whose registration is endorsed with a scheduled medicines endorsement, permitting nurse practitioners to prescribe both Schedule 4 and Schedule 8 drugs, will enable those health practitioners to practise to the full extent that they are qualified.

The honourable member was also concerned about enforcement of provisions relating to prescribing rights and access to scheduled medicines. The honourable member asked how many prosecutions have occurred in the context of existing rights and drug access for existing licensed practitioners and how many of those prosecutions have been successful. The honourable member also asked what inspectorate exists or at what level the regulatory oversight occurs.

I am advised that there have been no prosecutions for breaches of section 18, section 18A and section 13 of the Controlled Substances Act. This is most likely attributable to the fact that there are very good control mechanisms in place, such as the Drugs of Dependence Unit, repercussions from registration authorities and strong education and support from professional bodies and peers. Many of these mechanisms are outside the scope of this legislation. Breaches by health practitioners are investigated by the Drugs of Dependence Unit at DASSA.

Under section 57 of the Controlled Substances Act the minister is able to issue an order to prohibit people from prescribing, administering or supplying drugs. Successful prosecution does not stop the medical practitioner prescribing drugs, whereas a section 57 order does.

If there is evidence of a breach of a provision under the Controlled Substances legislation, the Minister for Mental Health and Substance Abuse may issue a section 57 order prohibiting the health practitioner prescribing, supplying, administering or possessing any substance specified in the order. These orders serve to protect public health and safety. I am advised that 42 section 57 orders are in place, and details can be found on the DASSA website.

The relevant National Health Practitioner Regulation Board is notified when a section 57 order is gazetted. The National Health Practitioner Regulation Board may take additional action, and there may be an additional penalty under the Health Practitioners Regulation National Law if the breach of the Controlled Substances legislation constitutes unprofessional conduct.

The regulatory oversight by the Drugs of Dependence Unit includes the monitoring of all prescriptions for Schedule 8 drugs, prescriptions and records of supply of both Schedule 3 and 4 pseudoephedrine-containing products and orders for the supply of Schedule 8 drugs by pharmacists.

New clause 26A.

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

Page 17, after line 9—After clause 26 insert:

26A—Amendment of section 55—Licences, authorities and permits

(1) Section 55—After subsection (2a) insert:

(2b) The Minister may fix fees payable in respect of a licence, authority or permit (including application fees, fees for grant and renewal and periodic fees) and may waive or reduce a fee payable if the Minister considers it appropriate to do so.

(2) Section 55(3)—Delete 'prescribed' and substitute:

appropriate

This amendment provides the power for the minister to fix fees for licences and permits issued under the act. The regulations specify fees for licences issued under the act. It is proposed that the minister should have the power to fix fees for licences, authorities and permits issued under the act.

This is on the basis that the act provides that the minister has absolute discretion to grant or refuse a licence, permit or authority for the purposes of the act. This specification of fees for licences in the regulations fetters the minister's absolute discretion. This amendment will give the minister the power to fix fees for licences, authorities and permits issued under the act. This would provide flexibility and enable variation of fees if appropriate.

New clause inserted.

Remaining clauses (27 to 31), schedule and title passed.

Bill reported with amendment.

Bill recommitted.

Clause 6.

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

Page 5, lines 12 and 13 [clause 6, inserted section 11A(4)]—Delete subsection (4)

The committee has indicated in relation to a number of bills that it wants to be cautious in relation to national law, and the opposition and, I suspect, other members have been briefed that this bill would allow the South Australian parliament to retain its capacity to legislate for South Australia's particular circumstances, because of course at any time the parliament can come back and amend the act.

We were certainly briefed in those terms before the committee stage of the bill but, during the committee stage of the bill, particularly through the excellent questioning of the Hon. Robert Brokenshire, concerns were raised about the capacity for state-specific modifications to, if you like, resist the application of being overridden by commonwealth law by virtue of proposed section 11A(4)—what is effectively an inconsistency clause that is analogous to section 109 of the federal constitution which provides that a commonwealth act can override a state act.

The point is that, under 11A(1), the national law applies as the law of South Australia, and we discussed the merits of that in earlier stages. Under proposed 11A(3), in consort with 11A(1), modifications made under 11A(3) would be protected, if you like, from being overridden by commonwealth legislation. There is less clarity if that modification is made elsewhere in the act, in other words, from 11B following.

In that context, the opposition is concerned about 11A(4) and submits to the committee that it better preserves the sovereignty of the South Australian Parliament to be silent on the issue of inconsistency and allow the normal rules of statutory interpretation to be applied by the courts in the consideration of how an inconsistency between the state act and the national law be accommodated.

I think that parliamentary counsel—and I am certainly cautious not to misrepresent its position—believes that modifications would be preserved in spite of the preservation of this clause but, as I understand it, accepts that an alternative would be to allow the normal rules of statutory interpretation to apply. We are certainly not trying to undermine in any way the operation of national law but to ensure that, if this parliament does move to amend this act, that it is not made null and void by the operation of this clause.

The Hon. G.E. GAGO: The government supports this amendment. The commonwealth therapeutic goods laws and controlled substances act have been working together for a long time, since the commonwealth law applies to all corporations. The commonwealth therapeutic goods

laws are essentially about registration of medicines and medical devices and the licensing of manufacturers of these therapeutic goods, while the controlled substances act regulates the manufacture, production, sale and supply, possession, handling or use of controlled substances. There is some potential there for overlap.

This clause was included in the bill to make it clear that there would be the same approach to the application of the commonwealth therapeutic goods laws to natural persons, that the same laws apply to natural persons as to corporations; that is, to the extent that in any inconsistency between the controlled substances act and the commonwealth therapeutic goods laws the commonwealth law would prevail. The inclusion of this clause clearly appears to have caused more confusion than clarity and, as a result, the government supports its removal.

As per the Commonwealth Constitution, to the extent of any inconsistency between commonwealth and state law, the commonwealth law prevails. That is enshrined in the Commonwealth Constitution, and we believe it is well preserved within legislation, so we do not believe there is any loss of integrity to the bill by accepting the Hon. Stephen Wade's amendment. However, I have been advised that parliamentary counsel did prefer that the clause stay in; however, they are not opposed to its being removed but would prefer that the clause stay in.

The Hon. D.G.E. HOOD: I would like to acknowledge, which is perhaps the best word, what I think is an elegantly simple solution proposed by the Hon. Mr Wade in presenting this amendment. We also had difficulties with this particular issue and shared the concerns that he and others have expressed about the possibility of deferring to the federal arena too often—and, certainly, inappropriately in this case, as we see it. Family First supports the amendment and is pleased that the government is also doing so.

The Hon. S.G. WADE: Just to clarify the record, and make sure that I do not take more praise than I deserve from the Hon. Mr Hood, I acknowledge the work that the Hon. Ann Bressington and the Hon. Robert Brokenshire did in what was a collegiate approach to improve the bill before this committee.

Amendment carried; clause as amended passed.

Bill reported with amendment.

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises) (15:45): I move:

That this bill be now read a third time.

Bill read a third time and passed.

NATIONAL ENERGY RETAIL LAW (SOUTH AUSTRALIA) BILL

Adjourned debate on second reading.

(Continued from 8 February 2011.)

The Hon. D.W. RIDGWAY (Leader of the Opposition) (15:47): I sought leave to conclude my remarks last time we considered the bill. South Australia is the lead legislator for the national gas and electricity reform. The National Energy Retail Law (South Australia) Bill forms part of a suite of legislation aimed at providing a national framework for energy access and a national framework for distribution and retail services. These reforms stem from recommendations made by COAG in 2006 and amend the Australian Energy Market Agreement.

I will ask the minister a number of questions or put them on the record so that she is able to provide an answer before we proceed, but I would be interested to know, as this is part of a suite of legislation aimed at providing that national framework—and I know we have passed some already—what other bills we are likely to see as part of this suite of legislation that reforms the national energy market.

This bill seeks to achieve a national regulatory regime for both retailers and distributors selling and supplying energy to customers. The customer framework will be under the jurisdiction of the Australian Energy Regulator (AER) as regulator and enforcing body and the Australian Energy Marketing Commission as the rule maker. This bill is aimed at harmonising the regulatory requirements for retailers across jurisdictions. This will increase efficiency and competition by reducing red tape and lowering barriers to entry.

A comment has been made to the shadow minister in his briefings that it will increase efficiency and competition by reducing red tape and lowering barriers. I would like to know, when the minister returns, what red tape is being reduced and how the efficiencies will be achieved. It is also envisaged that the bill will encourage consumer participation in the market by providing better consumer protections.

The customer framework in this bill will work alongside existing national regulatory frameworks covering wholesale markets and network access regulation. The accompanying bill, the Statutes Amendment (National Energy Retail Law) Bill, makes limited consequential legislative amendments to ensure the national retail law can run effectively within a broader energy regulation environment.

Many examples of the customer framework rely on the jurisdictional legislation to take full effect, for example, the operation of the Energy Industry Ombudsman. The jurisdiction—the state—may, for transitional purposes, or for other reasons, make amendments to the provisions of the customer framework for the jurisdiction. Different regulatory regimes in each state have meant increased costs and duplication of process for retailers across the nation.

This bill seeks to streamline that regulatory framework across many jurisdictions, and it will do that by establishing a national retailer authorisation. This will allow a retailer to obtain one authorisation, which will operate across all jurisdictions. In relation to that point, once a retailer has authorisation to operate across all jurisdictions, will they be supplying energy at the same price across all jurisdictions to similar-size customers, or will they all be open to negotiation?

This streamlining of the regulatory framework will also be achieved by providing a package of energy-specific consumer protections. These protections will complement those already provided by the general consumer protection laws. South Australian consumers will still be able to direct their complaints to the South Australian Energy Ombudsman but with the ombudsman now working under an energy-specific national complaints framework. I would also be interested to know what the impact will be on our Energy Ombudsman.

On the one hand, we have seen that this legislation is to reduce red tape. I am interested to know under what framework our state ombudsman will operate and what impact this will have on the operation of the ombudsman. I can understand that working under a national framework might be easier; it may also be more restrictive and more cumbersome. I would be interested to hear what the minister has to say in relation to the ombudsman. The framework also provides a retailer of last resort for energy and gas retailers.

The Australian Energy Regulator will be the national regulator, taking a role similar to that under the already passed national electricity law and the national gas law. The bill brings the whole of the energy supply chain (that is, wholesale markets, transmission networks, distribution networks and retail markets) under national regulation, with the Australian Energy Regulator as the overseer.

The bill applies largely to small customers and aims to provide small energy users with better protections and fairness, recognising that currently small energy users are often at a disadvantage when dealing with big energy retailers. It is interesting to note that on ABC radio this morning concerns were raised by Mr Lyell Oldfield from the general store at Marree. He said:

> 'The energy department says it is forced to increase prices because of the growing costs of supplying electricity to remote areas and increased grid prices.' Lyell Oldfield from the Marree store said that the cost of living in remote areas is getting too much for some businesses. He says that it could force him to move to solar energy.

I think Mr Oldfield went on in the interview to say something like he is up to about $3,000 a month and that his small shop is paying about $30,000 a year for just running a general store and that it is an increase of some 20 per cent.

I am aware that in remote communities often electricity is supplied not off the grid but through a stand-alone system. I am wondering whether any of these rural communities, especially the outback communities, are going to be able to use the Energy Regulator for any purpose at all when it comes to grievances about price, etc. I would certainly like the minister to throw some light on that issue.

The bill seeks to achieve protection for small customers, first, by defining the retailer/small customer relationship through the customer framework, and also by placing a regulatory obligation for retailers to offer supply to a customer if they are the designated retailer in an area. This means that, if the retailer had a previous connection to a property, they are obliged to provide supply to a new occupant. Where there has been no previous connection, the local area retailer is the

designated retailer. There is a requirement for the designated retailer to have a standing offer of supply, incorporating a standard retail contract, and published standing offer tariffs. The designated retailer will have limited ability to change the standard retail contract and frequency of variations to the standing offer prices.

Small customers may also elect to sign up to a market retail contract. Energy retailers will be required to adhere to a set of minimum standards, which are outlined in the National Energy Retail Rules. In jurisdictions such as South Australia, where prepayment meters are allowed, the rules will also prescribe minimum terms and conditions.

Customers whose contract expires or who move into a property with an existing network connection but no contract will be supplied by the designated retailer under the deemed customer retail arrangement. Customers are required to set up a market contract as soon as possible. Retailers will also be required to develop and maintain a hardship policy, the aim being to identify and assist customers who are experiencing hardship and difficulty in paying and to assist customers to better managing their bills into the future.

The bill requires retailer hardship policies to meet minimum standards and that they be approved by the Australian Energy Regulator. The Australian Energy Regulator is to monitor and report on the compliance of the hardship program indicators. I would like the minister to provide some information to the chamber about the hardship program and the indicators, and also how often the regulator will report.

Retailers will be required to obtain explicit informed consent from small consumers when entering into market retail contracts and key transactions. A market retail contract will be void without this consent. I am interested to know how that explicit informed consent will be obtained and in what form, whether it is a written form or whether it is part of a contractual arrangement that a customer or a consumer has with a retailer. I would like some details on how that will be achieved.

Energy marketing will be required to be compliant with the national consumer law and in national telephone and e-marketing legislation. The Australian Energy Regulator will be enabled to establish, develop and operate a price comparator service. I would also like some information on that price comparator service and how it will be complied with, how it will be updated and what access the public will have to that information.

It is also interesting to note that rules will be created with respect to developing energy consumption benchmarking to be included on the customer's bill. I am interested to know what sort of criteria are used for that energy consumption benchmarking. Is it comparable size consumers in our state or comparable consumers across the nation? I am very interested in hearing how that information is to be collated.

Allowances will be made for the development of a distributor-customer relationship. I am not quite sure how one would develop a distributor-customer relationship and exactly what will be covered in that relationship, so perhaps the minister can also provide some information in relation to that. Also, this part of the bill obliges distributors of both electricity and gas to provide customers with services such as new connections, connection alterations and ongoing supply services under a direct contractual relationship.

I think most of us have been approached by people who want to change their activities, especially when it comes to consumption of electricity. It might be a developer in the CBD that has an old warehouse and wants to knock it down and build a multi-storey building, as we see with the new police building that is going up on the corner of Angas and Pulteney Streets. It was a car yard with, I suspect, relatively small electricity consumption, and now there is a large building.

There were some obligations, I think, under the sale or long-term lease of our electricity assets for the supply to be upgraded and maintained so that it met all the needs of customers. We have heard of augmentation fees and I know, from my own situation many years ago in a farming activity, that one was expected to pay significant amounts up-front for a new connection. I am wondering whether any of those costs will be regulated and scrutinised under this new national energy regulator.

My understanding is that three types of contracts will be provided: standard connection contracts for all customers; Australian Energy Regulator deemed contracts for large customers; and negotiated connection contracts for businesses with specific connection needs. Deemed

contacts which apply by force of law are either regulated as a model contract or are approved by the Australian Energy Regulator.

It is also my understanding that customers who register with either a retailer or a distributor as needing electricity for life support equipment will be kept on a list and their premises not disconnected. The bill stipulates that these premises are afforded every opportunity to guard against supply interruptions. The customer framework includes a national connection framework, which is outlined in the Statutes Amendment (National Energy Retail Law) Bill 2010.

My understanding is that the legislation allows for a small claims regime empowering customers to make small claims at low cost and to efficiently seek compensation for damage to their property. The small claims regime allows for small claims to be submitted, assessed, processed and, if appropriate, compensated by the distributor.

I am also interested to know from the minister some details of exactly what would be covered by 'seek compensation for damage to their property', whether it is the loss of a shop, or the loss of frozen or chilled produce because they have been unable to secure an energy supply, or whether it is a broader range of things that would be covered under that compensation.

My understanding is that this part of the legislation also includes a framework for dealing with complaints and disputes resolution between customers, retailers and distributors, which supports the energy ombudsman schemes. This includes requiring retailers and distributors to publish complaints procedures on their websites and ensure that when complaints are handled they are done so in accordance with these procedures. I am also interested to know the time frame for dealing with complaints. Is there any requirement exercised by the regulator that complaints are dealt with in a satisfactory time frame?

It is my understanding that the bill establishes a retailer authorisation scheme, but also establishes an exempt sellers regime for businesses that sell energy but do not require authorisation. Only the Australian Energy Regulator can grant this exemption. The exemption may apply in the case of a caravan park which onsells incidental amounts of electricity. That is information that has been given to the shadow minister in another place. I would like the minister to outline what is an exempt seller. The information given to the shadow minister is that it is sellers that sell small amounts of energy or electricity. I would certainly like some more information on what is an exempt seller.

The bill also defines the retailer/distributor relationship by establishing rules for retail support, including the sharing of information and the coordination of service delivery. It establishes credit support provisions for a retailer and distributor relationship, giving guarantees to the distributor to guard against the risk of a retailer defaulting on network charges.

I am interested to know how it gives that guarantee and provides that protection, and I will certainly address that in another question. In fact, I could jump to that question now. The shadow minister, Mitch Williams, met with the South Australia Council of Social Services (SACOSS). It would like to see the banning of late payment fees. It believes that this disproportionately penalises households experiencing payment difficulties.

I notice that the bill establishes credit support provisions for the retailer and distributor relationship, giving guarantees to the distributors to guard against the risk of a retailer defaulting on network charges. So, on the one hand, the bill guarantees no defaulting, but, as it currently stands, it also allows for late payment fees to be charged to disadvantaged people in our community.

I would like some data from the minister as to what information the industry is able to provide when it comes to: why do they need this protection against them defaulting on charges when clearly they have a very close relationship? Without each other, the distributor has nowhere to sell the energy and the retailer has no energy to sell, so clearly they have a much closer relationship. I am interested to know why that has been established in this piece of legislation.

In relation to the government, we have often seen reports in the newspaper that the state government runs accounts in excess of 30 days. I think some information was published in the last 12 months or so that a range of accounts payable were 30 to 60 days, 60 to 90 days, 90 to 120 days and 120 plus. I would like the minister to provide information as to how many energy bills the state government is responsible for that have been subject to a late fee being charged against them. As I said, maybe a little tongue-in-cheek, by banning late payment fees it may save the state government some money.

I think it is important that we have all the facts on the table when we are talking about the removal of late payment fees. I think the opposition accepts that to charge someone who is disadvantaged—lost their job or for whatever reason has a shortage of financial resources—a fee for late payment adds insult to injury. Rather than it being someone who is being a bit clever and trying to extend credit and use someone else's money, it may be for very genuine reasons.

This bill also provides for the enforcement regime which reflects the current enforcement regimes in the national electricity law and the national gas law to create harmonised enforcement. These laws establish, for the first time, the power for the Australian Energy Regulator to accept enforceable undertakings from energy market participants. I am interested to know what constitutes an enforceable undertaking from an energy market participant?

This bill also provides the Australian Energy Regulator with information gathering powers for the purpose of exercising its powers and functions. I would be interested to know what information gathering powers the Australian Energy Regulator has. After spending eight years with the Hon. Graham Gunn in my party room, it has been drummed into me that you should always be suspicious of legislation that gives bodies powers for gathering information.

The bill also contains a targeted compliance framework which requires retailers and distributors to self-monitor their compliance for their own policies and procedures and to establish a new performance reporting for the retail sector. I am also interested to know from the minister when the retail sector will report, what will be reported and how that will be published—that is, whether it will be put on some obscure website—and given it is for the retail sector, will the performance reporting be provided to the retail customers?

This bill also an enables the making of the initial national energy retail rules on recommendations. The national regulations may be made for the customer framework under this bill. The passing of this bill will not result in immediate transition to a national framework. My understanding is that consequential amendments will need to be made to other energy legislation. My understanding is that they will be presented to this parliament at a later time.

As I said earlier, I would like to know what other legislation is in the pipeline so that we can make sure that we are well briefed when it is introduced. I understand the minister (Hon. Patrick Conlon) is somewhat agitated that this bill has not passed yet, although I think he gave the shadow minister (Mr Mitch Williams) a particularly short space of time in which to debate the bill. While it has been on the *Notice Paper* over summer, it would be nice to know what else is in the pipeline so that we can be briefed and up to speed.

I indicated that I wanted some information about late payment of fees. Another one of the SACOSS amendments that I think the Hon. Mark Parnell has on file now—and it is what SACOSS asked for—relates to retailers or distributors paying compensation for wrongful disconnections. Can the minister also provide some information in relation to wrongful disconnections? How prevalent are they? What are the reasons for wrongful disconnections?

I know that the Energy Retailers Association has provided a little information and has said that wrongful disconnections sometimes occur as a result of someone having a holiday home and the bill is sent to their holiday home address, but they only go there once a year and it gets lost in the system. The other example they gave us was when a person is in prison. They did not think they should be paying compensation to someone if they disconnected their power because they were in prison.

I would have thought that if we were going to enshrine something in legislation, it would have to be more significant than people who have holiday homes or who are in prison, so I would like some information from the minister on those wrongful disconnections. With those comments, I indicate that the opposition is happy to support the bill, although I think my colleague the Hon. Rob Lucas may make some comments at a later stage.

Debate adjourned on motion of Hon. J.S.L. Dawkins.

SCHOOL VIOLENCE AND BULLYING

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises) (16:11): I table a ministerial statement made today by the Hon. Jay Weatherill on the issue of student harassment.

POLICE CALL CENTRE

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises) (16:11): I table a ministerial statement made today by the Hon. Kevin Foley on the SAPOL call centre service delivery report.

SOUTH AUSTRALIAN PUBLIC HEALTH BILL

In committee.

Clauses 1 to 4 passed.

New clause 4A.

The Hon. T.A. FRANKS: I move:

Page 10, after line—Insert:

4A—Right to a healthy environment

> A person has the right to a clean and healthy environment and the duty to take reasonable steps to protect it for the benefit of the community and future generations.

The amendment was partly covered in my second reading contribution to this bill. I referred to this amendment and outlined why the Greens believe that a right to a healthy environment should be inserted into this bill. I do not propose to repeat much of what I said in my second reading speech, but I would like to add some additional information. I referred in my second reading contribution to the fact that the right to a healthy environment and similar rights are referred to in a number of international treaties that Australia has both signed and ratified.

We also have the UN General Assembly Resolution 64/157 of 8 March 2010 which calls for the 'international realisation of the human right to a healthy environment'. In addition, there are many other international treaties that we are not party to that refer to this right. They include the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988), the African Charter on Human and People's Rights (1981) and the European Convention on Human Rights (1950).

In relation to this European Convention, there is now a growing movement demanding that the right to a healthy environment be given more formal legal status. This includes through codification in the convention. This has already been passed through the European parliament, but it is currently being blocked by the Committee of Ministers of the Council of Europe. One of the main groups advocating for this law reform is called Stand up For Your Rights, an Amsterdam-based NGO that focuses on human rights and environmental issues. If members are interested, they can follow that campaign at www.righttoenvironment.org.

Some of the groups supporting the campaign for the right to a healthy and clean environment to be codified in European Convention on Human Rights include the Dutch section of the International Commission of Jurists (NJCM), the IUCN The Netherlands, Greenpeace International, Friends of the Earth UK, the Club of Rome Erasmus Liga, the Northern Alliance for Sustainability (ANPED) and many others. I also referred in my second reading speech, as members would know, to the fact that even treaties that Australia has signed and ratified are actually of limited value here in South Australia.

The South Australian act that I referred to as undermining the status of these treaties is the Administrative Decisions (Effect of International Instruments) Act 1995. The Greens maintain that this should be repealed. In relation to this specific amendment before us, I can also advise the council that the words are based on the specific words contained in the Timor Leste constitution, a document that was drafted with input from prominent Australian lawyers and funded through AusAID. The clause is very simple, as members will see.

The question is: what does this all actually mean? In a nutshell, the Greens believe that this right will add gravitas and emphasis to a range of principles that are actually already enshrined in this and other state legislation. It gives context to our regime for public health protection, namely, that advancing public health is not just a good idea of itself but that it is also a right that we should have in a wealthy, developed and technologically advanced society such as we have here in South Australia—the right to live in a healthy environment.

The question is: does this right create extra obligations or an extra burden on our government? The answer is that actually it should not, and the reason that it should not is that we

are already committed to advancing a healthy environment as an outcome of this legislation before us and many other acts such as the Environment Protection Act. If you take local government as an example, council officers or elected members are making decisions about their local communities already, and they are taking public health considerations into account.

Public health is, in fact, as we know, core business of local government, and decision-makers here are already required to take into account the effect of their decisions on public health. The same applies at the state level where officers at the EPA or the health department are already required to have public health considerations at the forefront of their thinking and decision-making. This amendment puts those considerations into a context. A healthy environment for South Australians is not a state-imposed objective: it is actually the right of its citizens.

Inclusion of this right in legislation may actually have potential benefits for resolving intractable or legacy planning decisions of the past, whether they were made by a local or a state government. Often councils have their hands tied by the legacy of previous bad decisions. A local council decision-maker might be fully aware of a health problem that exists or is likely to arise from past or future development decisions, but they have no real choice in the matter because of the rules around complying development and existing use rights.

These kinds of issues are notoriously difficult to resolve, and often the only people not at the table are, in fact, the ones most directly affected: the local residents, either in their own right or as represented by councils. For example, citizens have no right to be consulted or to engage in pollution-licensing decisions made by the EPA, other than initial licensing, before an activity commences. Not even neighbours need to be consulted on EPA licence renewals. No-one, except a disgruntled applicant, has the right to appeal against these decisions.

The proposed Greens amendment does not change the legal situation, but it does add weight to the importance of public consultation, and should have a positive tendency towards encouraging decision-makers to better engage affected communities at an early stage, even if as a protective measure against future disputes.

The next question that arises is whether this right automatically establishes standing for any person to bring legal action to defend their rights if he or she believes they have been infringed. The answer is that it does not, but the Greens hope that it will allow more people to raise their concerns—including in courts if necessary—than is currently the case under our existing laws. In short, it adds to the reasons that can be presented to a court as to why a person should have a standing. It does not guarantee them a standing.

My colleague, the Hon. Mark Parnell, was heavily involved in the Whyalla Red Dust Action Group case against OneSteel over dust pollution in Whyalla. In that case the residents were reliant upon unwieldy and ultimately unworkable provisions of the EPA to try to resolve the pollution problems they were facing. The biggest legal argument was not whether the elevated dust levels were bad for health but whether or not the local residents had the right to even approach the courts for redress.

The creation of a broad right to a healthy environment in the public health act will provide an acknowledgement that the ultimate beneficiaries, or victims, of government and corporate decision-making are the very citizens on whose behalf we are enacting these laws today. A legislated right to a healthy environment increases the likelihood of citizens being given a standing in court proceedings, but it does not guarantee it.

The final point I will make is to explain the reason for including a simple right in the legislation without detailed supporting legislation showing how that right is to be exercised. The reason is that this amendment is a tentative first step towards recognising a basic human right, and it is not necessary to set out in legislation how that right would operate in practice in every single situation.

When parliament does try to be prescriptive it usually gets it wrong, which is why third-party or civil enforcement regimes that already exist in several acts are rarely, if ever, used. The courts are perfectly capable of balancing rights and responsibilities with practical considerations; they do this every day. I commend this amendment to the committee.

The Hon. G.E. GAGO: The government does not support this amendment. It is of the view that the amendment, although well-meaning, is in fact misplaced and has not been subject to the necessary consultation. The government believes it has addressed the issues of the general

public's right to a clean and healthy environment in much more concrete ways throughout the bill, and I will briefly go through some of those.

In the first instance, it is worth remembering that this public health legislation, which is concerned with the health of the public as a whole, is not a vehicle for the articulation of individual rights. Where a statement of a person's rights are referred to—for example, in clause 14—they are within the context of those persons who may be the subject of some form of public health order or direction for control or controlled notifiable conditions in parts 10 and 11 of the bill.

The bill is clear in 4(1)(b) that its aim is 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, particularly those who live within disadvantaged communities. We believe that the intention of this proposed amendment is already substantially met within the bill. Clause 56 of the bill also contains a general duty for public health. It provides:

(1) 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.

This general duty is, in many ways, mirrored by a similar general duty in the Environmental Protection Act 1991, amongst others. The difference between what is in the bill and what the Greens are proposing is that the general duty comes with enforceable compliance orders if breaches are identified. So, it is very clear cut and, if it is breached, there are clear consequences.

The general duty has real and practical effects and will be a robust tool in the hands of authorised officers to identify, assess and take action to ensure that public health is protected. A general duty is also a powerful educational tool and will be used to raise people's awareness of their and the community's responsibility to prevent damage to public health. The Local Government Association has expressed concerns about this amendment in terms of its potential to create confusion about how it may influence or interfere with the obligations placed on councils by this legislation. So, the LGA has raised some real concerns.

Whilst I am sure we would support the principle expressed by this amendment, the government is strongly of the view that the bill already caters for this through the general duty, and any insertion along the lines contemplated by this amendment would serve only to confuse matters and therefore we are obviously not going to support it. It should also be noted that we have been committed to broad consultation on this bill and on public health measures generally; it has been lengthy—over a number of years, I am advised.

This amendment has not been the subject of consultation and I have been advised that it did not come up in consultation. So, even though we have been out there over a number of years consulting broadly and extensively with a wide range of different stakeholders, this proposed amendment, I am advised, was not raised, and therefore it is not included in the bill. It has not been included following that consultation, so we believe it should not be supported, particularly given that its specific implications have not been tested or examined.

The Hon. J.M.A. LENSINK: The Liberal Party will not be supporting this amendment. On my layperson's reading, and not having legal qualifications, I did initially think that it added to the objects of the act, but I am informed by the Greens that it is a greater measure than that and provides for an additional statutory inclusion of a right to a healthy environment. I am grateful for the clarification, particularly the briefing note that was provided to us on this matter.

I stand to be corrected, but I think that similar arguments arise around bills of rights and those sorts of issues, which we on this side of the house are generally not inclined to support. I indicate that I have some sympathy for the intent of it because I see that we have had some difficulty with EPA powers, particularly where there are poor planning decisions, when the EPA should have had a greater input into reducing the potential conflict between industry and local residents.

I think we still have some examples of that in our community, with Adelaide, Brighton and Bradken, and so forth, but I indicate that I think that the inclusion of these additional statutes can lead to a confusing layer of various remedies for people in that situation, and I think that the statutes ought to be clear. If there is a problem with the EP Act, or there is a problem with the planning system, that is the appropriate place for us to be amending the legislation; therefore, we cannot support this particular amendment.

The Hon. M. PARNELL: I am disappointed to hear that neither the government nor the opposition will be supporting the amendment, but I want to respond to a couple of things that have

been said. The first thing I would say in relation to the minister's comments about consultation is that I accept that, whilst here in this little corner of the world there may have been some consultation undertaken, the concepts I am talking about have occupied international lawyers and jurists and human rights activists for four decades around the planet.

This concept—the right to a clean and healthy environment—is in constitutional provisions in many countries. In India it has probably been the single most important provision that has allowed for civil society to engage with government to ensure that places like the Taj Mahal were protected, the Ganges was cleaned up and noxious industries were removed from residential areas.

Whilst it is always easy to say, in relation to legislation, that it does not cross every 't' and dot every 'i', that is no reason not to acknowledge that part of the collection of human rights we have as citizens is the right to a healthy environment. It will be difficult for people who do not support this clause when the next Bradken Foundry and the next OneSteel come along to say to residents, 'Well, we aren't really prepared to put anything on the statute books that even suggests that you have rights to engage in the process and, in particular, the right to go and seek redress before the courts.'

One of the things the minister said which, rather than supporting her case for why the amendment should be opposed, in fact, strengthens the Greens' case for why it should be supported, is her reliance on the general environmental duty in clause 56 of the legislation. My question of the minister—and she can choose whether or not to answer it—would be: what if that section is breached, and what if an agency or a company or whatever breaches its general duty; where is the redress mechanism in this bill for affected communities?

We do not have a civil enforcement provision, such as the one that does not work properly in the Environment Protection Act, and there is not a civil enforcement provision such as the one in the Natural Resources Management Act. We do not have a provision in the bill which acknowledges that these laws are on behalf of the community to protect the community and the community have rights to enforce them in a court of competent jurisdiction. I will leave that question hanging; the minister can answer if she chooses.

However, I would say that I do not accept the criticism that, because the right is simply worded, it is somehow an absolute right, which means that anything that is not clean or is not healthy guarantees standing in court and guarantees that the objectors will win a court case. It is not like that. The right is similar to the right of free speech. The right of free speech is not an absolute right. We do not have the right to defame; we do not have the right to vilify on the basis of race. It is a constrained and not an absolute right.

I think that what the government should be doing is thinking about how we as a state are going to give effect to these international treaties we have signed. As a nation, we thump our chest, we pat ourselves on the back and we are often in an unseemly rush to be the first to sign these treaties and, when we do and when parties such as the Greens come into this place and try to put some of these provisions which we have nationally agreed to in legislation, we are told that we cannot do so because we do not really believe in it, and I find that to be most disappointing.

New clause negatived.

Clause 5.

The CHAIR: Hon. Ms Franks, is the amendment to clause 5 consequential?

The Hon. T.A. FRANKS: Yes, that is consequential.

Clause passed.

Progress reported; committee to sit again.

HEALTH AND COMMUNITY SERVICES COMPLAINTS (MISCELLANEOUS) AMENDMENT BILL

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises) (16:41): I move:

That this bill be now read a second time.

This bill seeks to amend the Health and Community Services Complaints Act 2004. Some of the amendments arise from the review of the act, which was conducted in line with the requirements of section 88 of the act. Others arise from the Social Development Committee's Inquiry into Bogus, Unregistered and Deregistered Health Practitioners.

In late 2008, I appointed Ms Uschi Schreiber, Lead Partner and Chair, Oceania Health and Human Services Practice from Ernst and Young (New South Wales) to independently review the act. Her report was subsequently tabled in parliament on 3 March 2009. Ms Schreiber stated that the act has substantively achieved its intended purpose and that no significant legislative changes are required. However, some finetuning was recommended. This bill will finetune the act as recommended by the review.

Section 22 has been amended to include an additional principle, which must be included in the Charter of Health and Community Services Rights. This additional principle states that a person should be entitled to be assisted by a person of his or her choice when making a complaint about the provision of health or community services. The need for this amendment has arisen from the increasing number of complaints that are made and resolved on behalf of a service user with the involvement of a person authorised by the service user to act on their behalf.

Section 55 has been amended to enable the Health and Community Services Complaints Commissioner to require a health or community services provider to provide information to the commissioner about what action they have taken, or plan to take, with regard to matters that the commissioner has raised with them. The purpose of this amendment is to foster greater accountability by the providers of health and community services.

The arrangements which exist within the act with regard to the sharing of information between a registration board and the commissioner have been extended to section 29(3). This section has been amended to enable the commissioner to work cooperatively with complaints resolution bodies established under the commonwealth government Aged Care Act 1997.

The grounds on which the identity of a service user or complainant may be protected have been extended by amendment of section 74. The additional grounds are where the complaint raises a significant issue of public safety, public interest or public importance, or where the complaint raises a significant question as to the practice of a health or community service provider, and non-disclosure is in the public interest. The commissioner will have the power to publish returns by prescribed providers and the manner of reporting has been amended to require providers to report complaints relating to rights under the charter established in part 3 of the act.

The amendments expand the membership of the Health and Community Services Advisory Council, with an additional member to represent the interests of carers and another additional member to have knowledge and experience in the quality and safety of health services. The need to regulate unregistered health professionals was highlighted by the Social Development Committee's Inquiry into Bogus, Unregistered and Deregistered Health Practitioners.

Unregistered health practitioners include a range of complementary/alternative practitioners, such as naturopaths and homeopaths, as well as mainstream health practitioners, such as social workers or speech therapists and any other health practitioner who does not need to be statutorily registered in order to practice their occupation.

The vast majority of these practitioners are entirely conscientious in the way they do their jobs. Some, however, and particularly those who come to the attention of the Social Development Committee, have used their positions to exploit people. Some claim to be able to cure cancer while others resort to treatment that is essentially nothing more than sexual voyeurism. Some do not offer receipts and request that all payments be made in cash, and others will not give refunds to families where a course of treatment is paid for but the patient dies part way through the treatment.

In the case of registered health professionals such as medical practitioners, optometrists, dentists, etc., their registration board may impose a variety of sanctions on them as a result of investigating a complaint. Conditions may be imposed and a practitioner can be prohibited from practising for various periods of time, including permanently. The primary task of the registration board is to protect the health and safety of the public.

In contrast, the commissioner may only publish a report following the investigation of a complaint against an unregistered practitioner. If the publication of the report does not result in the practitioner improving their practice in ways requested by the commissioner, no further action can

be taken. The commissioner does not have powers to impose sanctions or enforce these sanctions if necessary.

This bill will rectify the situation by giving the commissioner the power to issues orders, including interim orders, to place conditions on an unregistered practitioner's practice or prohibit them from practising for a specified period of time or permanently. A code of practice similar to the one operating in New South Wales will be established in the Health and Community Services Complaints Regulations 2005 under the act. The code will establish some minimum standards with which unregistered health practitioners must comply. Breach of the code will potentially lead to an order being issued by the commissioner. Non-compliance with an order may result in the unregistered health practitioner being fined or even gaoled. A person who is subject to an order is entitled to appeal this decision.

The effect of this bill is to finetune and strengthen the Health and Community Services Complaints Act 2004. It will enable the independent commissioner to be more demanding of the health and community services providers while strengthening the role of the service user within the act. Health practitioners, who seek to exploit people who are often very vulnerable because of terminal illness, can potentially be gaoled. The bill will provide increased protection for South Australians from quacks and bogus health practitioners and I commend it to all members. I seek leave to have the explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Health and Community Services Complaints Act 2004*

4—Amendment of section 4—Interpretation

This clause inserts a new definition of *carer* being a person who is a carer for the purposes of the *Carers Recognition Act 2005*.

5—Amendment of section 9—Functions

This clause updates the reference to the Australian Human Rights Commission.

6—Amendment of section 22—Content of Charter

This clause adds an additional principle to which the Commissioner must have regard when developing or reviewing the Charter under section 22 of the Act. That principle is that a person should be entitled to be supported by a person of his or her choice when making a complaint about the provision of health or community services.

7—Amendment of section 29—Assessment

Currently section 29(3) of the Act provides that, if a complaint involves an approved provider under the *Aged Care Act 1997* of the Commonwealth, the Commissioner must consult with a relevant complaint resolution body operating under that Act and may also refer the complaint to another authority operating under that Act for resolution. This clause provides for the Commissioner, where a complaint is referred to another authority operating under the Commonwealth Act, to be able to provide information and assistance to that authority.

8—Amendment of section 55—Notice of action to providers

Currently section 55 of the Act provides for the Commissioner to publish a report in relation to a complaint that the Commissioner considers is incapable of resolution. The section provides for a process of notification of recommended action to the relevant service provider and any relevant registration authority who are afforded time in which to make representations to the Commissioner prior to the publishing of any report. This clause proposes to replace the existing subsections (4) and (5) with new provisions that, while allowing for the same period for representations to be made, allow the Commissioner to require a service provider to respond to the notice outlining what action (if any) the service provider has taken, or intends to take, in response to the matters raised in the notice.

9—Insertion of Part 6 Division 5

This clause proposes to insert a new Division in relation to unregistered health practitioners as follows:

Division 5—Action against unregistered health practitioners

56A—Codes of conduct

This proposed section enables the Governor to make a code, or codes, of conduct in relation to the provision of health services that is not otherwise covered by the operation of a registration authority.

56B—Interim action

This proposed section provides for the Commissioner to be able to take interim action preventing or restricting the practice of a health service provider pending an investigation. An interim order may be made where an investigation has been commenced, where the Commissioner has a reasonable belief that the provider has breached a code of conduct or committed a prescribed offence and where the Commissioner is of the opinion that interim action is necessary to protect the health and safety of member of the public. The Commissioner may make orders restricting, placing conditions on, or removing the provider's right to provide health services, for a period of 12 weeks or shorter period as may be specified in the order. A breach of an order under this proposed section carries a maximum penalty of $10,000 or imprisonment for two years or both.

56C—Commissioner may take action

This proposed section provides for the action that the Commissioner may take upon a breach of a code of conduct or upon a provider being found guilty of a prescribed offence if, in the Commissioner's opinion, the relevant health service provider also poses an unacceptable risk to the health or safety of members of the public. The Commissioner may make orders restricting, placing conditions on, or removing the provider's right to provide health services, and may also publish public warnings in relation to the health service provider. A breach of an order under this proposed section carries a maximum penalty of $10,000 or imprisonment for two years or both.

56D—Commissioner to provide details

This proposed section requires the Commissioner, if taking action under proposed section 56B, to provide information in relation to the orders to the health service provider the subject of the orders, the complainant (if any) and to any relevant professional body. The Commissioner may also publish all or part of such information.

56E—Appeal

This proposed section provides for an appeal to the Administrative and Disciplinary Division of the District Court in relation to the making of an order or the publishing of a statement.

56F—Related matters

This proposed section provides that the Governor may, by regulation, exclude a specified person, or persons of a specified class, from the application of this Division.

To avoid doubt, this proposed section also provides that action may not be taken under this proposed Division in relation to conduct that falls within the authority of a registration authority under Part 7 of the Act.

10—Amendment of section 67—Establishment of Council

This amendment adds two members to the Health and Community Services Council. Firstly, one person who, in the opinion of the Minister, is qualified, by reason of his or her experience and expertise, to represent the interests of carers, and secondly, one person who, in the opinion of the Minister, has appropriate experience and expertise in relation to the quality and safety standards of health services.

11—Amendment of section 69—Functions of Council

Currently section 69(1) provides for the functions of the Health and Community Services Council. This clause proposes to delete section 69(1) and replace it with a substantially similar provision. It is proposed that the functions of the Council are to advise both the Minister and the Commissioner in relation to those matters listed in the section. An additional function is proposed to be providing advice on key strategic issues that arise in relation to the resolution of complaints made in relation to the provision of health or community services. It is proposed to delete the current function of the Council to refer to the Commissioner any matter that, in the view of the Council, may properly be dealt with or considered by the Commissioner under this Act.

12—Substitution of section 74

This clause proposes to substitute a new section 74 into the Act. The proposed section adds an additional power of the Commissioner to withhold information that would enable a health or community service user or a complainant to be identified. This would be where, in the Commissioner's opinion, the matter under consideration raises a significant issue of public safety, public interest or public importance, or raises a significant question as to the practice of a health or community service provider, and non-disclosure is in the public interest.

13—Amendment of section 76—Returns by prescribed providers

Currently section 76 of the Act requires a designated health or community service provider to lodge with the Commissioner a return containing information of certain types of complaints received by the health or community service provider and any action taken during the relevant period in response to, or as a result of, those complaints. Currently the section applies only to prescribed classes of complaints relating to matters of public safety, interest or importance. This amendment proposes to expand the types of complaints to which this section applies to include prescribed classes of complaints received that relate to matters arising under the Charter.

14—Insertion of section 86A

This proposed section enables the Commissioner to assist and share information with a person concerned in the administration or enforcement of a law of the State, the Commonwealth, another State or a Territory of the Commonwealth, for purposes related to the administration or operation of that other law.

Debate adjourned on motion of Hon. Mr S.G. Wade.

At 16:49 the council adjourned until Wednesday 23 February 2011 at 14:15.