LEGISLATIVE COUNCIL

Tuesday 8 March 2011

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

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

His Excellency the Governor assented to the bill.

CONTROLLED SUBSTANCES (THERAPEUTIC GOODS AND OTHER MATTERS) AMENDMENT BILL

His Excellency the Governor assented to the bill.

OCCUPATIONAL LICENSING NATIONAL LAW (SOUTH AUSTRALIA) BILL

His Excellency the Governor assented to the bill.

ANSWERS TO QUESTIONS

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

MINISTERIAL TRAVEL

8 The Hon. R.I. LUCAS (12 May 2010).

1. What was the total cost of any overseas trips undertaken by the minister and staff since 2 December 2008 up to 1 December 2009?

2. What are the names of the officers who accompanied the minister on each trip?

3. Was any officer given permission to take private leave as part of the overseas trip?

4. Was the cost of each trip met by the minister's office budget, or by the minister's department or agency?

5. (a) What cities and locations were visited on each trip; and

(b) What was the purpose of each visit?

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): I can advise that:

No overseas travel was undertaken by me or my staff during the period of 2 December 2008 to 1 December 2009.

MINISTERIAL TRAVEL

10 The Hon. R.I. LUCAS (12 May 2010). Can the Minister for Education state:

1. What was the total cost of any overseas trips undertaken by the minister and staff since 2 December 2008 up to 1 December 2009?

2. What are the names of the officers who accompanied the minister on each trip?

3. Was any officer given permission to take private leave as part of the overseas trip?

4. Was the cost of each trip met by the minister's office budget, or by the minister's department or agency?

5. (a) What cities and locations were visited on each trip; and

(b) What was the purpose of each visit?

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): The Minister for Education has provided the following information for the period 2 December 2008 and up to 1 December 2009:

No overseas travel was undertaken for the Education portfolio by the Minister for Education for the period in question.

MINISTERIAL TRAVEL

12 The Hon. R.I. LUCAS (12 May 2010). Can the Minister for Families and Communities state:

1. What was the total cost of any overseas trips undertaken by the minister and staff since 2 December 2008 up to 1 December 2009?

2. What are the names of the officers who accompanied the minister on each trip?

3. Was any officer given permission to take private leave as part of the overseas trip?

4. Was the cost of each trip met by the minister's office budget, or by the minister's department or agency?

5. (a) What cities and locations were visited on each trip; and

(b) What was the purpose of each visit?

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): The Minister for Families and Communities has provided the following information for the period 2 December 2008 to 1 December 2009:

1. $63,266.24

2. Hon. Jennifer Rankine MP, Angela Duigan, Matthew Clemow and Joslene Mazel.

3. Nil.

4. Minister's Office Budget paid for Hon. Jennifer Rankine MP, Angela Duigan and Matthew Clemow. Department paid for Joslene Mazel.

5. (a) Belfast City, Dublin, Cardiff, London, New York and Boston.

(b) Belfast City—

Meetings regarding child protection and youth homelessness.

Dublin—

Meetings regarding vulnerable infants, child protection and youth homelessness.

Cardiff—

Meeting regarding domestic violence.

London—

Meetings regarding self-managed funding for people with disabilities, youth homelessness and the conservative borough of Hammersmith and Fulham.

New York—

Meetings regarding homelessness, mental health and urban renewal.

Boston—

Meetings regarding child protection, homelessness, urban renewal and crime control.

PAPERS

The following papers were laid on the table:

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

Report on the Inquest into the Death of James Wallace
Report to Parliament on the Administration of the Development Act 1993, dated February 2011

Regulations under the following Act—
Harbors and Navigation Act 1993—Control of Caulerpa Taxifolia—Revocation
Rules of Court—
District Court—District Court Act 1991—
Civil—Amendment No. 15
Authorisations for the period 1 October 2010 to 31 December 2010 under Section 74B(9) of the Summary Offences Act 1953
Authorisations for the period 1 October 2010 to 31 December 2010 under Section 83B(9) of the Summary Offences Act 1953

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

Reports, 2009-10—
Murray-Darling Basin Authority
SA Ambulance Service
South Eastern Water Conservation and Drainage Board
Regulations under the following Act—
Tobacco Products Regulation Act 1997—Prescribed Actions
Health and Community Services Rights Charter

QUESTION TIME

ROYAL ADELAIDE HOSPITAL

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:26): I seek leave to make a brief explanation before asking the minister who I assume is the Leader of the Government here representing the Premier about the energy targets for the Royal Adelaide Hospital.

Leave granted.

The Hon. D.W. RIDGWAY: The State Strategic Plan was launched with much trumpeting by the Premier in March 2004. One of its targets was to improve the energy efficiency of government buildings, specifically to cut energy use in government buildings by 25 per cent within 10 years. The audit committee's assessment in June 2006 was that this target was 'unlikely to be achieved'. Last year's progress report on the State's Strategic Plan contains a little gem. It says:

> Given that Health is by far the largest energy consuming portfolio across government, achieving the 25 per cent target will depend to a large extent on major developments and, in particular, the new Royal Adelaide Hospital.

We know a little bit about the new hospital but not much at this stage, unfortunately, because the government is trying to keep as much of it secret as possible. However, buried deep within the new Royal Adelaide Hospital planning statement is the proposed development's key energy objectives. My questions to the Premier are:

1. Why, when South Australia is failing to meet its energy efficiency targets for government buildings, will the hospital be built with just a four-star rating, with a score as low as 45, when a six-star rating, with a score above 75, signifies world leadership?

2. Where is the Premier's leadership?

The Hon. B.V. FINNIGAN (Minister for Industrial Relations, Minister for State/Local Government Relations, Minister for Gambling) (14:28): I thank the honourable Leader of the Opposition for his question. He raises in his question the leadership of the Premier. We all know that the leadership the Premier has shown is to commit to building a brand-new, state-of-the-art hospital in this state, something that honourable members opposite could not bring themselves to do; instead they campaigned in a negative, carping way all through the last state election to rebuild the hospital on its current site.

As we all know, the people of South Australia returned this government on a very clear pledge to build a new hospital and that hospital, the new Royal Adelaide Hospital, will begin construction, as we all know, and it will be a state-of-the-art, fantastic facility for this state. It will be one of the best public hospitals in this country and this government will be setting the agenda for providing quality health care into the future.

That is the leadership that the Premier has shown, unlike honourable members opposite. All they can do is carp and complain and try to run down the state of South Australia and try to tell

the people of this state that they do not deserve a brand new hospital. This government will remain committed to the promises it made at the last election to build a brand-new, state-of-the-art hospital which will service South Australians for generations to come. In relation to the questions that the honourable Leader of the Opposition raises in relation to energy, I will refer those to the appropriate minister in the other place and bring back a response.

FOOD WASTE

The Hon. J.M.A. LENSINK (14:30): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations a question on the topic of food waste.

Leave granted.

The Hon. J.M.A. LENSINK: The state and local governments in collaboration began a food waste pilot in 2008, with a 12-month trial taking place over 2009-10, and Port Adelaide Enfield council is one of the areas that has extended past this time to make the service available to all its residents. The local government sector is very supportive of this experience and has stated that there has been 'a 170-tonne drop in waste going to landfill since the council commenced this program'. My questions are:

1. Does the minister support this program and its extension?

2. Has he had any discussions with the LGA or Zero Waste SA to increase the delivery of this service?

The Hon. B.V. FINNIGAN (Minister for Industrial Relations, Minister for State/Local Government Relations, Minister for Gambling) (14:31): I am not able to recall any instance of the issue being raised with me by the LGA or Zero Waste, but I will check whether or not any correspondence in relation to it has been received. I cannot recall offhand, but obviously I will check the records in relation to that. Certainly, it is a good thing when food is not put to waste and instead can be used and not sent to landfill. I know that the government has been supportive in the past of measures to ensure that donated food, for example, is able to go to people in need rather than become waste. In relation to the program, I will check whether any correspondence has been received.

BURNSIDE COUNCIL

The Hon. S.G. WADE (14:32): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations a question relating to the sale of the Chelsea Cinema.

Leave granted.

The Hon. S.G. WADE: The investigation into Burnside council is now entering its 21st month and we are yet to receive an indication of when the investigation will conclude and when the government will take action on the report. Whilst the MacPherson investigation proceeded, a second investigation relating to the sale of the Chelsea Cinema by the Burnside council was undertaken by the Ombudsman, Mr Bingham.

The *Eastern Courier* recently reported that the Ombudsman reportedly found 'possible breaches of the local government act' during his preliminary investigation. However, this investigation has since been suspended, also due to the Supreme Court decision on the MacPherson investigation. The Ombudsman has stated that the reason for the suspension of the investigation is that his investigation relies on evidence obtained by Mr MacPherson. My questions are:

1. What is the minister doing to prevent current and future possible breaches of the Local Government Act in the context of two independent investigations identifying areas of concern?

2. In particular, has the minister or the government sought clarification from the Ombudsman or the investigator, Mr MacPherson, as to whether the possible breaches of the Local Government Act that they have identified were one-off past events or systematic or endemic issues going forward?

The Hon. B.V. FINNIGAN (Minister for Industrial Relations, Minister for State/Local Government Relations, Minister for Gambling) (14:33): I thank the honourable member for his question. I know he is very keen to ask questions about the Burnside council investigation, and I am happy to continue taking those questions. As I have advised the house previously, the

Full Court of the Supreme Court will be hearing the case that some plaintiffs have lodged in relation to the preliminary draft report of the investigator. That hearing will take place on 10 and 11 March.

Until the court determines what it is that the court determines in relation to the relief sought by the plaintiffs, it is simply not appropriate for me to speculate about what lessons are going to be learned from the investigation or any actions that might follow. That is not something on which I should speculate in advance of the court decision. Is the shadow attorney-general seriously suggesting that I should get up here and say in advance of a court hearing what action I think should be taken in response to the draft report that the investigator has produced?

In relation to the Ombudsman's inquiry, the Ombudsman, of course, is a statutory independent officer. I am happy to make inquiries through the Attorney-General's office as to any information he wants to put in relation to it. I have obviously seen the press reports about what the Ombudsman has had to say, so that is a matter I can seek further information on.

In relation to what the government is doing about local government, we have amended the act. We are looking at draft codes of conduct for elected officers and for staff. We have had the public integrity review, which has a number of recommendations in it regarding local government accountability and practice, and submissions for that review of public integrity close on 25 March. Of course, the Attorney-General will be looking at what people have had to say in regard to that, and there are certainly some detailed propositions in that review relating to the Ombudsman and his work in the local government area, as well as local government auditing and other matters.

The government certainly takes seriously the need to have accountable and responsible local government. We have put in place the legislative framework to do that. We are also examining whether there needs to be some strengthening of that across a range of areas through the review of public integrity and through looking at regulations and codes of conduct to follow on from the changes that were made to the legislation by this parliament.

WORKPLACE SAFETY

The Hon. R.P. WORTLEY (14:36): My question is to the Minister for Industrial Relations. Will the minister inform the chamber how South Australia compares against other jurisdictions when it comes to reducing workplace injury?

The Hon. B.V. FINNIGAN (Minister for Industrial Relations, Minister for State/Local Government Relations, Minister for Gambling) (14:37): As members would be aware, all states and territories are working towards a 40 per cent reduction in injury claims by 2012, as agreed under the National Occupational Health and Safety Strategy 2002-12. I am pleased to inform the chamber today that South Australia is well on its way to achieving the nationally-agreed target on reducing workplace harm.

According to the latest edition of the Workplace Relations Ministers' Council's Comparative Performance Monitoring Report, South Australia and New South Wales were the only two jurisdictions that met the required rates of improvement at the end of 2008-09. The comparative performance monitoring reports provide trend analysis on workplace health and safety outcomes and workers compensation schemes operating in Australia and New Zealand.

I am pleased to say that, based on those statistics, South Australia had a 36.5 per cent improvement in injury reduction, exceeding the required benchmark at that point of 28 per cent. South Australia now leads other jurisdictions in injury reduction rates as we progress towards this nationally agreed target. While more still needs to be done, this result is a heartening indication that the government's commitment to occupational health and safety is showing results.

As part of its key role as the occupational health and safety regulator, SafeWork SA delivers a number of proactive injury prevention initiatives targeting high-risk industries and businesses that require further support to address their OH&S needs. Since 2007, SafeWork SA's centrepiece initiative, the Industry Improvement Program, has engaged these employers in small, medium and large enterprises using a range of intervention strategies to build their capabilities to prevent work-related injuries and illness.

Proactive programs such as these operate in conjunction with other core business assistance, education and compliance activities undertaken by SafeWork SA inspectors to improve safety outcomes in workplaces across all industry sectors within South Australia. The government remains committed to working in partnership with employers, workers and their representatives to ensure that we all work towards the goal of further reduction in injuries and accidents across all workplaces.

OAKLANDS-NOARLUNGA SUBSTITUTE BUS SERVICE

The Hon. K.L. VINCENT (14:39): I seek leave to make a brief explanation before asking the minister representing the Minister for Transport a question regarding the Oaklands-Noarlunga substitute bus service.

Leave granted.

The Hon. K.L. VINCENT: As many members would be aware, the Noarlunga train line between the Oaklands interchange and the Noarlunga Centre interchange is currently closed, and will be closed for quite some time. I am told by the Department for Transport, Energy and Infrastructure that substitute buses will be operating during the line closure and that these buses will replace the train services as closely as possible in terms of service frequency and stopping locations. However, it seems to me, from what my constituents have been saying, that these bus substitutes are not exactly cutting it when it comes to accessibility for people with mobility issues. My questions to the minister are:

1. Since the commencement of the bus substitute, how many bus services have run between the Noarlunga and Oaklands interchange?

2. Of these, how many have been accessible?

3. In the event that TransAdelaide is unable to provide an accessible bus, what alternatives have been put in place to service people with limited mobility?

The Hon. B.V. FINNIGAN (Minister for Industrial Relations, Minister for State/Local Government Relations, Minister for Gambling) (14:40): I thank the Hon. Ms Vincent for her question. Obviously, we strive to provide accessible transport for people with mobility problems. The government is committed to a large-scale expansion, or improvements, to our public transport network, including the electrification of major rail routes. In the period in which some of that work is carried out, as the honourable member points out, there will be some alternative services offered and that is something that will sometimes cause inconvenience for people in relation to the service that they would normally get from rail. I will refer those questions to my honourable colleague in the other place and bring back a response in relation to the specifics that the honourable member has raised regarding the Noarlunga line.

INTERNATIONAL WOMEN'S DAY

The Hon. CARMEL ZOLLO (14:41): 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. CARMEL ZOLLO: During the last sitting week, the minister outlined some of the upcoming International Women's Day events. This is a day on which we can celebrate the achievements of women. Will the minister provide more information about the recognition of South Australian women on this important day?

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) (14:42): I thank the honourable member for her most important question. Indeed, today is the 100th anniversary of International Women's Day and this momentous occasion is being celebrated across South Australia throughout the week. Members will recall that I recently provided information about some of the events taking place. This morning, I was very pleased to once again attend the annual International Women's Day breakfast, hosted by the wonderful Penny Wong. The Hon. Michelle Lensink was also present.

The Hon. T.A. Franks interjecting:

The Hon. G.E. GAGO: What an absolutely churlish interjection that was by the Hon. Tammy Franks. What a churlish interjection. On a day like this, one would think that you would have more to celebrate. I said 'hosted'; it was hosted by the wonderful Penny Wong. I did not say it was a Penny Wong breakfast. I said it was hosted by Penny Wong. What a churlish, childish, petty interjection. I thought more highly of the honourable member. On a day like today, which is supposed to unite women, it is a very disappointing interjection.

The guest speaker was Professor Tanya Monro from the University of Adelaide. Along with affiliate Professor Angel Lopez, also from that particular university, Professor Monro was awarded the 2010 South Australian Scientist of the Year. Professor Monro is the Director of the Institute for

Photonics and Advanced Sensing and Director of the Centre of Expertise in Photonics within the School of Chemistry and Physics at the university.

Professor Monro is also a member of the South Australian Premier's Science and Research Council and she regularly serves on a range of committees for the Australian Research Council and other key national bodies in the area of science policy and the evaluation of science. She gave a marvellous address this morning, really very interesting and truly inspirational. It is such a difficult topic, too, but she did a great job with it. It is very pleasing to see that a woman is being recognised in a male-dominated field such as this and, as you know, Mr President, the South Australian government is working towards ensuring more women are given the opportunity to pursue careers in non-traditional industries through its Women at Work initiative.

Later this week, I have other important events to attend. Tomorrow, I will be attending the International Women's Day luncheon and on Thursday afternoon there will also be a women's rally. Tomorrow's luncheon will be held from 12pm at the Adelaide Convention Centre and is run by the International Women's Day Committee, which was formed in 1938. Each year, a number of awards are presented at the lunch. These awards celebrate the achievements that women make to our community and they include:

- Irene Bell Centenary Award and the 2011 community awards;
- Gladys Elphick Award for Aboriginal and Torres Strait Islander women;
- Irene Krastev Centenary Award and the 2011 Award for Migrant Women; and
- Barbara Polkinghorne Award to a woman writer.

I will be speaking at the lunch and it gives me great pleasure to announce that I will be opening the call for nominations to the 2011 South Australian Women's Honour Roll at the IWD luncheon tomorrow.

As members no doubt recall, the Women's Honour Roll is an important way of recognising the work that women do in our communities. This year, I am delighted to announce that the roll will focus on recognising women who have not previously been acknowledged and who have made an impact at a local, national or international level. Nominations for the roll will close on 3 June.

I am also pleased that outstanding nominees for this year's honour roll will be nominated for national honours. I believe the diversity of the women who have been nominated for the South Australian Women's Honour Roll in previous years provides an amazing snapshot of women in our community and that more women obviously need to be acknowledged nationally. From promoting the rights of workers to discovering the voices of Aboriginal and Torres Strait Islander women, the common thread between all of these nominees is that they have made amazing contributions but have also been instrumental in supporting others to be successful.

On Thursday, to coincide with International Women's Day, the newly formed National Aboriginal and Torres Strait Islander Women's Alliance will also honour 100 Aboriginal and Torres Strait Islander women who have achieved change over the past 100 years. I am very proud that eight extraordinary Aboriginal and Torres Strait Islander women have been selected to represent South Australia on that poster that will be launched at Thursday's rally, and they include Isabel Norvil, Josephine Coulthard, Lowitja O'Donohue, Nelly Patterson, Neva Wilson, Ruby Hammond, Shirley Peisley and Winnie Branson. Of course, Ruby and Winnie are both deceased.

Many of these eight women were involved in the 1967 referendum campaign that resulted in Aboriginal people finally obtaining the right to vote in Australia. It is wonderful to see them formally acknowledged in that particular way and I am sure members will agree with me that this 100th anniversary is a very significant milestone in continuing the quest for female equality and advancement, and it is very timely that we focus on the achievements of South Australian women.

SALARY SACRIFICING

The Hon. J.A. DARLEY (14:49): I seek leave to make a brief explanation before asking the minister representing the Treasurer questions regarding salary sacrificing.

Leave granted.

The Hon. J.A. DARLEY: I understand there are a number of salary packaging service providers in South Australia that have been chosen by the government to provide salary sacrificing services to South Australian public servants. Further, I understand that the items that may be

salary sacrificed by public servants are dependent upon which government department an individual is employed by.

For instance, a public servant employed by the Department of Health may be able to salary sacrifice more items, including mortgage or rent payments, household utility bills and credit card payments, than a public servant employed by the Department of Treasury and Finance, who is limited to salary sacrificing items such as superannuation payments, lease vehicles and computers. My question to the minister is: what are the reasons for the difference in what can be salary sacrificed by public servants depending on which department they are employed with?

The Hon. B.V. FINNIGAN (Minister for Industrial Relations, Minister for State/Local Government Relations, Minister for Gambling) (14:50): I thank the Hon. Mr Darley for his questions, and I will refer them to the Treasurer in the other place to bring back a detailed response. I would point out to the honourable member that a lot of laws relating to superannuation and tax and so on are federal matters but, in relation to state public servants and their salary sacrificing arrangements, I recall that the Public Sector Workforce Relations Unit does some work in that regard in facilitating public servants being able to access those arrangements. I will certainly find out more information and bring back some details.

REGIONAL TOURISM

The Hon. J.S. LEE (14:51): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations, representing the Minister for Tourism, questions about regional tourism.

Leave granted.

The Hon. J.S. LEE: Three weeks ago, the *Northern Argus* highlighted the possibility of the withdrawal of regional marketing managers employed by the SA Tourism Commission in the release of a draft regional growth plan for tourism. Reported in the *Northern Argus* on 16 February, the CEO of Clare and Gilbert Valleys Council said that the stakeholders were also concerned that there was no evidence of a transition plan for the regional tourism marketing staff. On Tuesday 22 February, the tourism council's Roy Tilbrook said on ABC radio:

> Nobody knows what is better for the development of tourism in the region than the people on the ground in the region.

On 2 March 2011, the *Northern Argus* reported that the state tourism Chief Executive mentioned that the SATC will not reduce funding in regional tourism. However, there was no comment about future positions of regional marketing managers. My questions are:

1. With the increased concern from the state Tourism Industry Council, can the minister confirm whether the government's new regional marketing plan will remove local expertise from country areas and how many regional jobs will be lost in this plan?

2. The *Northern Argus* stated that 'the draft plan also flagged the abolition of regional tourism marketing boards and regions would be left to their own devices to establish incorporated associations or other means for formalising their activities'. Can the minister explain what that means for the tourism industry in that region, and when does the government propose to communicate the actual structural changes to tourism stakeholders?

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) (14:53): As minister for regional affairs, I have some information in relation to the questions asked and, obviously, I will refer those other matters to the Minister for Tourism in another place. However, in relation to work that is currently being done in relation to the regional growth plan, I understand that the South Australian Tourism Commission has been consulting parties in various stages in setting the regional growth plan, and that includes things like the local government in regions, regional tourism committees and also industry bodies such as the LGA, Regional Development Australia and SA Tourism Industry Council.

I understand that the consultations to date have included things like a two-day regional growth plan workshop with funding stakeholders and an online survey, and I am advised that 75 per cent of participants submitted their survey. I have also been advised that a background paper was developed and distributed which covered the current state of our regional tourism structure and funding, and an overview of findings from previous regional reviews' progress

towards our $3.6 billion SASP target, which is about increasing visitor expenditure in South Australian tourism from $3.7 billion in 2002 to $6.3 billion in 2014. It works to address that target.

I have also been advised that other consultations included an overview of other Australian states' regional tourism structures, in-region meetings and discussions and a two-day workshop with regional tourism managers and regional chairpersons, as well as the SA Tourism Industry Council, for parts of those two days. I am also advised that, following the regional workshops and meetings, a draft framework was developed and distributed to key parties for comment.

A draft regional tourism growth plan has now been circulated, and the SATC is awaiting further comments by the end of February 2011. Obviously, interested stakeholders are encouraged to contribute to that final plan. I understand that the next step is to have in-region presentations to funding partners, and this will include developing a customised approach for each region. As I have said, that is the information I have been advised of. In relation to the other elements of the question, I will refer to those to the Minister for Tourism in another place and bring back a reply.

GAMBLING SECTOR REFORM

The Hon. I.K. HUNTER (15:56): I seek leave to make a brief explanation before directing a question to the Minister for Gambling.

Leave granted.

The Hon. I.K. HUNTER: On Thursday 24 February of this year, I had occasion to ask the minister a question about gambling reform and specifically the forthcoming state negotiations about reform to the gambling sector, including the subject of a precommitment trial. I understand that a meeting of the COAG Select Council on Gambling Reform was recently convened in Canberra. I also understand that several key reforms were on the table for discussion, including precommitment, as the minister has previously foreshadowed. Will the minister update the chamber on commonwealth/state discussions on the subject of reform to the gambling sector?

The Hon. B.V. FINNIGAN (Minister for Industrial Relations, Minister for State/Local Government Relations, Minister for Gambling) (14:57): As the honourable member indicated, late last month I attended the COAG Select Council on Gambling Reform meeting in Canberra. As I have previously advised the house, arising from the agreement between the Gillard government and Mr Andrew Wilkie MP, the federal member for Denison, discussions are currently taking place between jurisdictions on reforms to the gambling sector. The terms of reference for the select council require it to consider the recommendations of the Productivity Commission and to advise on implementing a national approach to these recommendations.

To date, the select council has considered issues such as precommitment, dynamic warnings and ATM restrictions. Work is being progressed in areas such as regulation of online gambling, problem gambling among Indigenous people and commonwealth involvement in a funding model for racing and wagering. The select council has determined to forward the work program, focusing on priorities such as precommitment, and aims to develop a national response to the Productivity Commission report on gambling.

On behalf of the government, at the recent meeting in Canberra, I presented part 1 of a two-part paper on precommitment. I briefed the select council on the lessons learned from the two voluntary precommitment trials that have been conducted in South Australia. I should point out that the commonwealth government provided funding for those precommitment trials. The second part of the paper on precommitment will be presented at the select council meeting that is currently scheduled for May.

I have previously advised the chamber on the findings of the technology-based and non-technology based precommitment trials. The results of the trials have demonstrated that precommitment can be an effective tool in reducing the harmful effects of problem gambling. On the evidence available, we have learnt that precommitment works when people want to use it and are prepared to set limits suitable to their budget. South Australia, along with Queensland, has been leading the nation in this important policy area.

It is my intention and that of the government to work with the commonwealth and other states to develop a consensus approach as much as possible in implementing reforms in the area of gaming regulation. As I have indicated before to the house, under the agreement between the Prime Minister and Mr Wilkie, the commonwealth government has committed to legislate to achieve gambling reforms if agreement with states and territories cannot be reached by 31 May this year.

This most recent select council meeting has served to identify priority areas of policy reform. The commonwealth and the states now have the opportunity to research and consider policy positions before returning in May to decide upon a national approach to gambling reform. I look forward to considering each of the issues that were presented at the most recent select council meeting. I am confident that, working together with colleagues in other states, we can achieve meaningful reform.

BOOKSTORE CLOSURES

The Hon. T.A. FRANKS (15:00): I seek leave to make a brief explanation before asking the Minister for Consumer Affairs a question on Angus & Robertson and Borders gift vouchers.

Leave granted.

The Hon. T.A. FRANKS: On 17 February this year REDgroup, the company that operates Borders and Angus & Robertson bookstore chains, went into voluntary administration. Their websites and stores are continuing to trade as normal, and their customers have been encouraged to continue patronising these local outlets. As the minister is aware, currently gift vouchers are being honoured if a customer matches the face value of a gift certificate at a dollar for dollar rate; in other words, a $20 card will be redeemed if the customer outlays an additional $20 in store on top of the $20 already spent purchasing the gift voucher.

In response to this, on 22 and 23 February the minister advised the SA public in *The Advertiser* and on radio that consumers should not redeem their gift vouchers that they may hold and advised SA consumers that they should instead keep the vouchers in case the situation changes. Yet, if they retain the vouchers and the company goes into liquidation, and then they make a claim as an unsecured creditor, the minister has acknowledged that they may not receive the full value of their gift cards and it may take some time before payment is made. A creditors meeting is scheduled for 24 March, at which stage various options will be considered, including whether or not to liquidate the company.

A call to the OCBA inquiry line by my office this morning—a line which I understand has had hundreds of calls on this very issue—quite rightly elicits the warning that the vouchers may in fact be relatively worthless within the month (as little as 1¢ in the dollar), rendering, say, a $100 book voucher to be worth $1 to a consumer. Accordingly, my questions are:

1. On what advice did the minister announce that SA consumers should hold onto their Borders and Angus & Robertson gift vouchers?

2. Does she still stand by her advice given to South Australian consumers not to redeem their vouchers at a dollar for dollar rate offered by the administrators?

3. How will the minister ensure that all SA consumers are appropriately warned following her previous advice to hold onto their potentially almost relatively worthless vouchers?

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) (15:02): I thank the honourable member for her question, although misinformed, but it provides me with an opportunity to correct the honourable member's mistakes. Indeed, Borders and Angus & Robertson, under liquidation law, recently went into voluntary administration and appointed Ferrier Hodgson as administrators, which meant that the gift certificate or voucher holders virtually became unsecured creditors. I was advised by the ACCC and ASIC that in fact they were by law considered to be unsecured creditors, so we confirmed that that was so.

I am advised that the administrator has the right to give priority to other creditors before those holding gift cards, as per federal law. The advice I gave to the public (we put out a number of different releases and I spoke on a number of different radio programs) was quite clear, and I think the Hon. Tammy Franks is being quite misleading and deceptive in the way she has presented those facts. I was very clear in what I said to people, namely, that people should weigh up their options and should think very carefully to choose what was best for them. I then outlined the options.

One of the options was in fact to hold onto their card, as the business might change, it might start trading again and they might be able to redeem their card. The other scenario was that they could claim as an unsecured creditor at the end of the process and seek to have their voucher redeemed through that process. I made it very clear that there was no guarantee that trying to

claim as an unsecured creditor would necessarily result in them receiving back any amount, let alone the full amount, so I raised that.

I also reminded people that, in fact, Borders and Angus and Robertson were not required to offer consumers anything in terms of their vouchers. I went on air and said that they were not required by law to offer anything as unsecured creditors. I said that a number of different businesses or outlets were offering different arrangements: some were offering two-for-one, some were offering a bit more than that, some were offering less than that. What I advised people was to shop around; that in fact they might be able to get a better deal somewhere else. I also reminded consumers, 'Think about this. They are not required to offer you any redemption. This might be the best offer you get,' so consumers need to think about that.

We did warn consumers; the information we tried to give them was accurate and clear information about what the situation was. Initially, we had calls that what Borders and Angus and Robertson were doing was illegal; that they were somehow required to redeem these gift vouchers. So, we got that information out clearly: no, under federal legislation, they were not required to do that. We then put the options together and outlined what people might want to do and what options were available to them. I stipulated time and time again, and I have it here in my media release: 'People should weigh up their options and choose what is best for them.'

That was the advice we were giving, as well as outlining the sorts of options that might be available to them, so I believe that we have provided information in a timely way. We confirmed, as quickly as we could, the state of affairs and we then put out information over a number of days, seeking to clarify the concerns that were being raised at the time.

APY LANDS SCHOOL ATTENDANCE

The Hon. T.J. STEPHENS (15:07): I seek leave to make a brief explanation before asking the Minister for Regional Development, representing the Minister for Education, a question about school attendance rates on the APY lands.

Leave granted.

The Hon. T.J. STEPHENS: I refer the minister to an article in *The Australian* on 24 February entitled 'Growing Crisis in Indigenous Education'. It highlights the poor state of education on the APY lands and, more specifically, how attendance rates have dropped 7 per cent since 2007. Attendance rates are currently reported at 67 per cent. The Minister for Education was quoted as saying, 'Clearly there is more to be done,' which is a massive understatement. The Mullighan inquiry report recommended that all school-aged children should be enrolled and attending school regularly and that the utmost effort should be put in so that this can be achieved.

What is also concerning is that fewer Aboriginal children are completing their high school education. This can be contrasted with the Queensland government's establishment of the Family Responsibilities Commission in Far North Queensland. The FRC has been given power to strip welfare from families if children are mistreated or fail to attend school and if public housing is abused. The implementation of this commission has had an almost immediate impact, with school attendance rates improving immediately.

The minister's response to this commission is simply to pass the buck. He is quoted as saying that 'considerable support from the commonwealth would be needed'. My question is to the minister. Given that the Queensland Family Responsibilities Act was passed almost three years ago, has any genuine attempt been made to implement the same policy in this 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) (15:09): I thank the honourable member for his questions. Again, I am gobsmacked that members of the opposition have the audacity; that they have no shame; that they can get to their feet and ask questions on the APY lands and attempt to portray this government as not being committed to providing good quality services to the APY lands. With their track record—the former Liberal government did nothing on the APY lands—they should die with shame at their absolute lack of any action in relation to any policy area.

I would stack up our school retention rates against theirs on the APY lands any day. I would stack up our police numbers against the opposition's police numbers on the APY lands any day. In terms of the incidence of petrol sniffing, I would stack up our numbers against theirs any day. They are a disgrace; they are an absolute disgrace.

Members interjecting:

The PRESIDENT: Order!

REGIONAL DEVELOPMENT INFRASTRUCTURE FUND

The Hon. P. HOLLOWAY (15:11): I seek leave to make a brief explanation before asking the Minister for Regional Development a question about the Regional Development Infrastructure Fund.

Leave granted.

The Hon. P. HOLLOWAY: In June last year, the government announced a grant of almost $120,000 to a Riverland fruit juice company, Charlie's Group (Australia). I understand that grant was from the Regional Development Infrastructure Fund—so it does have money in it—to allow the company to expand its electricity supply. Will the minister provide an update to the chamber on how this grant has benefited the company?

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) (15:11): I know how much it annoys the honourable members opposite to hear about the Labor government's excellent track record in promoting regional economic development. I know how it sticks in their craw, but it is for their own education that they should sit and listen to this answer.

Members interjecting:

The PRESIDENT: Order! The honourable minister should have stuck to exciting the opposition twice but not for the third time.

The Hon. G.E. GAGO: Thank you, Mr President, for your guidance. Charlie's was facing increased demand for its product as it had entered into a long-term fruit supply agreement with the local Riverland orchard, Gaillard Holdings. However, the company was stifled by a limitation with its electricity supply, and I am sorry to have to do this, but it was in fact the previous Liberal government that privatised ETSA, adding substantially to the cost of new connections in regional Australia; but I will not go into that, Mr President, given your guidance. I will move on quickly.

If the expansion went ahead, Charlie's indicated it would employ at least eight more people and expand its production capacity. Through the RDIF—

Members interjecting:

The PRESIDENT: The honourable members of the opposition should not allow their consciences to be so pricked.

The Hon. G.E. GAGO: Through the RDIF, the Labor government provided half the amount necessary to complete the power upgrade required for Charlie's, and I am pleased to inform the chamber that Charlie's has gone from strength to strength since the Labor government helped kickstart its expansion in the Riverland.

In October last year, Charlie's announced a new agreement with Coles to supply 750 stores across Australia. Spearheading the range was Charlie's old-fashioned lemonade—you are quite partial to that, Mr President, if I recall—which required the company to squeeze an extra four million lemons. This was a terrific vote of confidence in the Riverland, holding South Australia up as a place to do business. Extra jobs were created and new opportunities emerged for South Australian citrus producers to grow lemons and supply a high value market. There is currently a shortfall in domestic lemon production which, hopefully, other South Australian growers can potentially capitalise on, so there is a real opportunity there. This government is committed to regional development, and we are a government of action.

Charlie's is listed on the New Zealand stock exchange. While its shareholders are in New Zealand—and our thoughts are obviously with them at the moment, particularly those in Christchurch who have been affected by the recent crisis—the company buys fruit from the Riverland and also employs Riverland people at its factory in the Riverland. On 23 February, Charlie's announced a 56 per cent increase in its net profit for the half year to 31 December.

The company said its move to Coles Supermarkets had enabled it to create an extra nine jobs in the Riverland, and staff are now working regular double shifts to keep up with that demand. Charlie's Old Fashioned Lemonade made it into the top 10 products sold in this category within

Coles for January, and now the company has been invited to supply an additional six products. The additional distribution into Coles' 750 stores nationwide enabled Charlie's to more fully utilise its production facility. The number of cartons through the plant has increased threefold, and Australian lemon growers will obviously be pleased.

When the Coles deal was announced, Charlie's anticipated needing four million extra lemons to meet orders. In fact, due to the success of the Quencher lemonade and the Quencher range, it is going to need 6.3 million lemons. This demonstrates the success of the Regional Development Infrastructure Fund in helping kickstart growth in a significant regional business. Although these funds were made available some years ago, you can see how that has value-added over time and that the benefits have amplified with time. This government is obviously getting on with the job, and we support growth in employment across South Australia.

REGIONAL DEVELOPMENT INFRASTRUCTURE FUND

The Hon. R.L. BROKENSHIRE (15:17): I have a supplementary question. Will the minister advise the house what the total annual amount allocated by government to the Regional Development Infrastructure Fund is, and how are people able to make application?

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) (15:17): I thank the honourable member for his most important question. The RDIF is $3 million per annum. I am advised it consists of three rounds each year: March, July and November. Proponents provide financial information to support an extensive assessment, and obviously the due diligence process is a very rigorous one.

Applications are assessed by an assessment panel, which makes recommendations to the Minister for Regional Development, and contracts are executed by the Treasurer and monitored by the South Australian Financing Authority (SAFA). The RDIF is obviously a very important instrument for implementing the Strategic Infrastructure Plan for South Australia and for achieving South Australia's Strategic Plan targets in regions, particularly lowering regional employment, which is one of the areas we focus on, and raising regional population numbers, encouraging regional investment and increasing the state's export earnings are other areas we focus on.

The RDIF has operated successfully since 1999. Since its inception, approximately $29.7 million of RDIF assistance has supported projects that have generated an estimated 5,500 new jobs—over $1.39 billion in total project investment. The RDIF is managed by DTED through the Industry Liaison and Regional Development business unit. The RDIF committed around $2 million to support 11 projects in 2009-10, which will generate an estimated 178 new jobs, with a total project investment of approximately $6 million.

I have been advised that in 2010-11, the RDIF has thus far committed $48,882 in the July 2010 funding round to support one project that will generate 10 new jobs, with a project investment of $750,000. The applications from the November round are currently being assessed and DTED has made enhancements to the program—you will be very pleased to hear this, Mr President—after conducting a review of the RDIF, which included consultations with internal and external stakeholders, that highlighted opportunities to improve policy and operational aspects of the program. DTED will also implement revised guidelines and assessment criteria, application processes and application forms prior to the March 2011 RDIF funding round. So, we are always reviewing what we do and attempt to ensure that we streamline the process as best we can.

REGIONAL DEVELOPMENT INFRASTRUCTURE FUND

The Hon. J.S.L. DAWKINS (15:21): I have a supplementary question. Given that state funding to the Regional Development Australia bodies will cease next year, how does the minister expect the RDAs to continue the valuable role that they have played over many years in facilitating local RDIF applications?

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) (15:21): I thank the honourable member for his most important question. Regional Development Australia is an Australian government initiative which brings together all levels of government to work at enhancing the growth and sustainability of regional Australia. A network of committees has been established throughout Australia to provide a strategic framework for economic growth in each region.

The key functions that underpin the role of the national framework of the RDA committees include things like: supporting informed regional planning to consult and engage with the community on economic, social and environmental issues, solutions and priorities; to liaise with governments and local communities about government programs, services, grants and initiatives for regional development; and contribute to business growth plans and investment strategies, environmental solutions and social inclusion strategies in their regions.

The funding agreements for the RDAs expire at 30 June 2013 and, as we know, funding for the RDAs is not included in the budget forward estimates from 2013. DTED is working with the RDAs and the commonwealth government, and I have put this on the record before, to explore alternative funding arrangements for their operations and for those particular projects. So, we are continuing to look at alternate funding arrangements.

In the meantime, the guidelines for the RDAs have nearly been released by the federal government, and the first round of funding will be available fairly soon. This will give the RDAs an ideal opportunity to use the road maps they have been developing to identify priorities for their regions and to demonstrate how valuable and worthwhile these RDAs are to demonstrate publicly the worth of these structures. They are currently placed in an ideal situation to show us their real value.

SAVE THE RIVER MURRAY LEVY

The Hon. R.L. BROKENSHIRE (15:24): I seek leave to make a brief explanation before asking the Minister for Consumer Affairs, representing the Minister for Environment, a question regarding the Save the River Murray Levy.

Leave granted.

The Hon. R.L. BROKENSHIRE: Honourable members are witnessing wet weather today in Adelaide, including through the ceiling here in front of me and into the bucket—

The Hon. Carmel Zollo: It's leaking right in front of you.

The Hon. R.L. BROKENSHIRE: —leaking right in front of me—and that is arguably due in part to a La Nina weather system in the Pacific Ocean that has brought floods and cyclones across not only the Murray-Darling Basin but also the catchments, taking Lake Eyre to record levels. Consequently, nature, not any tax or levy, seems to have resolved, at least in the short term, the environmental challenge of the drought in the Murray-Darling Basin.

In the 2003-04 financial year, this state government imposed the Save the River Murray Levy for the stated purpose of restoring health to the River Murray. Since then, the levy has raised somewhere in the order of $140 million and at present sees householders and charities levied $36 per annum and commercial customers $162 per annum, whilst farmers pay between those amounts, depending on the size of their property.

I note that, in the 2009-10 report on the Save the River Murray Fund tabled 9 November last year, the fund's receipts were $25 million and $22 million in the immediate past and current reporting years, from which about $4 million per annum has been paid to the Murray-Darling Basin Commission, now called the Murray-Darling Basin Authority. In the 2009-10 years, $1 million was paid for Murray-Darling Basin reform and intergovernmental relations. Some of the money has gone to water allocation planning for the Peake Roby Sherlock—

The PRESIDENT: The Hon. Mr Brokenshire might want to wind that explanation up as well.

The Hon. R.L. BROKENSHIRE: I am nearly there, sir, but I am just trying to help the minister. Some of the money has gone to water allocation planning for the Peake Roby Sherlock groundwater resource that has no interaction with the Murray and has no Murray pipeline to it.

I note, in the context of those 2009-10 expenditures, former treasurer Foley said, in announcing the 2003-04 budget, that the levy 'will go into a special Save the Murray Fund and by law can only be spent on measures to improve the health of the river'. Finally, as at 30 June last year, $6 million is sitting in the fund unspent and the government has admitted it has no plans to spend the money at present. Therefore, my questions are:

1. To what extent has the levy been used as a cost shift to pay for consultancies provided by government instrumentalities?

2. Has the government broken the law in making payments from the fund that will not improve the health of the river?

3. What were the government's triggers for discontinuing or holidaying the levy when it introduced it?

4. Will the government axe the levy?

5. Will the government rule out cutting the levy between now and the next state election if it is not going to axe it now and, if not, what will be different then from the situation now, with floodwaters coming down the river?

The PRESIDENT: I remind the honourable member that, rather than cut the levy, perhaps the Hon. Mr Brokenshire should ask his staff to cut down his explanations, because they won't be—

The Hon. D.W. Ridgway: How about less longwinded drivel from the minister?

The PRESIDENT: Order, the President is talking! The Leader of The Opposition will come to order. They are too long, and he won't be allowed to get away with it again.

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) (15:28): I thank the honourable member for his questions and will refer them to the relevant minister in another place and bring back a response.

SEAMAN, MR G.F.

The Hon. B.V. FINNIGAN (Minister for Industrial Relations, Minister for State/Local Government Relations, Minister for Gambling) (15:29): I table a ministerial statement made by the honourable Treasurer in another place regarding the late Gilbert Frederick Seaman, Companion of the Order of St Michael and St George, Officer of the Order of Australia.

STATUTES AMENDMENT (CRIMINAL INTELLIGENCE) BILL

In committee.

(Continued from 25 November 2010.)

Clause 6.

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

Page 3, lines 21 to 27—Delete clause 6 and substitute:

6—Amendment of section 5—Interpretation

(1) Section 5(1), definition of *criminal intelligence*—delete the definition and substitute:

criminal intelligence means information relating to actual or suspected serious and organised criminal activity (whether in this State or elsewhere) the disclosure of which could reasonably be expected to prejudice criminal investigations, to enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement or to endanger a person's life or physical safety;

(2) Section 5(1)—after the definition of *to sell* insert:

serious and organised criminal activity means criminal activity involving 2 or more persons who are reasonably suspected of associating for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity (within the meaning of the *Serious and Organised Crime (Control) Act 2008*);

Mr President, this clause, as you just reminded the committee, seeks to amend section 5(1) of the Firearms Act 1977 to provide a new definition of criminal intelligence. As the government indicated in the minister's second reading explanation, the Firearms Act is one of a number of acts with a range of models of criminal intelligence which had developed over the years as part of the government's effort to deal with serious and organised crime.

When one such model was deemed to be valid in the K-Generation case, the government decided to standardise all the acts around the K-Generation definition. So, clause 6 amends the definition of criminal intelligence in the Firearms Act to make it, shall I say, K-Generation friendly. Even though the K-Generation case was brought down in February 2009, this bill was not introduced until late 2010. We were told that it was routine but urgent and had to be passed by 4 December 2010.

Clause 6 proposes to amend the definition of criminal intelligence by inserting the words 'to enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement or to endanger a person's life or physical safety'.

The opposition is concerned about the vagueness of the provisions. There is no focus. Given the risks to the justice system and to policing from the use of criminal intelligence, the opposition suggests that we need to enhance the accountability and review provisions and to focus the use of criminal intelligence. We believe that the government's expressed focus on serious and organised crime should be reflected in the statutes.

This is not the first amendment to clause 6 I have had on file. The first amendment that I had drafted to amend this clause drew on the government's own Serious and Organised Crime (Control) Act with definitions of members, criminal activity and organisations. We sought to engage the government. On 9 and 10 November, the member for Bragg in the other place foreshadowed these amendments, and the Attorney-General in response said:

> As far as the concerns that the honourable member raised about the obvious impact of this sort of criminal intelligence on civil liberties and the rule of law and so on, I obviously agree with her. It is clearly exceptional use of material that we are talking about here, not the general rule, and for all of the reasons that she said it is very dangerous for this sort of material to be used in a casual or not carefully thought out way. There is no argument between us about that matter.

On 19 February, I met with the Attorney-General and provided our proposed amendments, including amendments to clause 6. The Attorney-General kindly arranged for the member for Bragg and myself to be briefed by senior police and their legal advisers and we did so twice.

The police expressed their concern about the original form of the amendments. They suggested that they would be unworkable. We differed in our interpretation of how the clause would operate but we indicated our willingness to receive alternative amendments from the government. I reiterate that the opposition stands ready to develop our amendments, to evolve them. We are committed to the need to focus these special powers on serious and organised crime. We are open to changing the form of our amendments but, to ensure that we are not driving in the dark, we need the government to engage.

On Wednesday 24 November I met with the Attorney-General, and I understood that we had an undertaking from the government that it would come back with an alternative set of words. On Thursday 25 November 2010 we were advised that the government was not intending to do so. Since 8 February, I understand that all crossbench members have received briefings from senior police and a legal adviser to the police, and I understand that the Attorney has also met with a number of crossbench MLCs. I received a briefing last Thursday. However, even to that date, the government has not been engaging in a collaborative approach to legislating in relation to clause 6 or, for that matter, any other part of the bill.

What has become clear is that the government's lack of engagement on alternative amendments is founded on a determination to ensure that criminal intelligence should be available to the police in any case; that is, even where there is no suggestion of the involvement of serious and organised crime. The government does not want us to get the amendments right so that we get the focus right because the government does not want any amendments because the government does not want any focus.

So, a clear focus has emerged for this committee: is the community and this committee comfortable with secret evidence becoming a standard tool in regulatory and licensing proceedings (that is the government's position), or is criminal intelligence a special tool that should be reserved for cases with some relationship to serious and organised crime (that is the opposition's position)? The government is effectively trying to pressure the parliament not to address the policy issues. So, where does that leave us? Tomorrow, the council will consider a motion to refer the issue of criminal intelligence to the Legislative Review Committee. I consider that that proposal (a proposal to refer to a committee with government control) would be a valuable initiative, and I will speak on that tomorrow.

The government tells us that the bill will not be workable but refuses to engage this committee in developing the bill. In my view, there is therefore no point in this committee continuing its consideration, and I move:

> That the committee report progress.

The committee divided on the motion:

AYES (12)

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

NOES (9)

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

Majority of 3 for the ayes.

Motion thus carried.

SOUTH AUSTRALIAN PUBLIC HEALTH BILL

In committee.

(Continued from 22 February 2010.)

Clauses 7 to 13 passed.

Clause 14.

The Hon. A. BRESSINGTON: I move:

Page 12, after line 8 [clause 14(5)]—After paragraph (d) insert:

(e) that the least restrictive means necessary to prevent the spread of disease be adopted when isolating or quarantining a person at the person's home or on other premises under this Act; and

(f) that his or her needs, including, but not limited to the provision of—

(i) adequate food, clothing, shelter and medical care; and

(ii) a telephone or other appropriate method by which the person may communicate with others,

will be addressed in a reasonable and competent manner to the extent that the person is unable or restricted in his or her own capacity to meet such needs; and

(g) that any premises at which the person must reside as a result of an order, direction or requirement (other than the person's home), are—

(i) maintained according to safe and hygienic standards; and

(ii) to the extent possible, maintained in a way that is respectful to the person's cultural and religious beliefs; and

(iii) designed or managed to minimise the likelihood that—

(A) infection may be transmitted; and

(B) the person may be subjected to harm or further harm.

This amendment seeks to insert in clause 14(5) the paragraphs (e), (f) and (g), which deal with people's rights when being detained.

Paragraph (e) requires health authorities, after having made a decision that it is necessary to detain or isolate a person, to then give effect to that decision in the least restrictive manner possible. This would obviously include detaining an individual or family in their own home, rather than in a designated facility.

The concept of the least restrictive approach is by no means unfamiliar in our law, with it appearing in both the Mental Health Act 2009 and in the Guardian and Administration Act 1993. It also appears in Victoria's equivalent of this legislation, the Public Health and Wellbeing Act 2008.

Paragraph (f) deals with the minimum expectations people can expect when being detained, including that their basic needs such as food, clothing, shelter and medical care will be

met in a reasonable manner. It also requires health authorities to provide those detained with access to a telephone or other means of contacting those outside detention where possible.

At the last briefings provided by the government, it was suggested by the minister's representatives that, to ensure that my amendment was practical in their eyes, the wording 'to the extent that a person is unable or restricted in his or her own capacity to meet such needs' be added. It was, of course, my intention to capture those being detained in a facility for that purpose and the government's suggested wording, which I have incorporated into the amendment before the committee, does effectively narrow the scope of the clause to that intention.

Paragraph (g) deals with the minimum expectations that people can expect of the facilities in which they are detained. These include that facilities be maintained to safe and hygienic standards and that they be designed to minimise infection. Additionally, the facility is to be managed in a manner that is respectful to people's cultural or religious beliefs. Obviously, this subclause does not apply to a person being detained in their own home.

The Hon. G.E. GAGO: The government supports this amendment, because it provides somewhat greater clarity about what must be considered and provided to a person or persons who are subject to an order, direction or requirement under part 10 or part 11 of the bill. In relation to subclause (f) of this amendment, it makes it a particular requirement to ensure needs such as food and medical treatment, among other things, are provided, especially where a person is unable or restricted in his or her capacity to meet such needs, and I note that people in this circumstance may include the elderly, children, persons with disability or other vulnerable groups.

The Hon. D.G.E. HOOD: I would like to place on the record that Family First also supports the amendments. I think it is essentially common sense to put these things in the legislation, for example, statements that infection transmission be minimised, that no further harm come to the person, that their personal beliefs be respected and that they have adequate food, clothing, shelter etc. These are things that you hope would happen anyway, but it certainly does not hurt to put them in the bill, and for that reason we support the amendment.

The Hon. S.G. WADE: I briefly indicate the opposition supports these sensible amendments.

Amendment carried.

The Hon. A. BRESSINGTON: I move:

Page 12, after line 11—insert:

(7) Without limiting subsection (6), if a power is to be exercised under Part 10 or Part 11, so far as is reasonably practicable, the power that least infringes on the rights of individuals must be the power that is exercised, unless to do so would involve the use of measures that are likely to be less effective in protecting or minimising risk to public health.

(8) Any requirement restricting the liberty of two or more members of the one family should ensure, so far as is desirable and reasonably practicable and so far as is appropriate to the requirements for the protection of public health, that the family members reside at the same place.

(9) If a requirement restricting the liberty of a person is imposed, all reasonably practicable steps must be taken to ensure that the person's next of kin, or a nominated person, is informed (unless the person to whom the requirement relates instructs otherwise).

This amendment seeks to insert three new subclauses into clause 14. The first is similar to my earlier amendment in that it restricts the exercise of the power under part 10 or part 11 to that which least infringes the rights of individuals while still achieving the objectives of the bill.

The amendment does not impact on the ability of authorities to manage the emergency but, rather, simply requires them to restrict their impact on an individual's liberty to that which is minimally required for the protection of public health. Again, this bill asks us to extend what are extreme powers to health authorities. It is only right that we as legislators seek to ensure that these powers are moderated and used only as necessary.

The second proposed subclause requires members of a family unit who are being detained to be detained together. This is of particular importance in scenarios in which children are being detained outside the family home. While it is likely this would occur regardless of this amendment, there is nothing in the bill presently that gives such a right, and I believe there should be. This right is subject to significant wriggle room to ensure that it is desirable and reasonable in the

circumstances and, following government input, is also subject to the requirement that it is appropriate to the protection of public health.

Thirdly, where it is practicable to do so, I am seeking to require authorities to notify a person's next of kin or other nominated person of any requirement imposed that restricts the liberty of that person. Next of kin would subsequently be alerted as early as possible to their loved one's detention and would know where they were being held and hence where they could be contacted.

The Hon. G.E. GAGO: The government also supports this amendment. The subclauses add to the set of principles that guide decision-making in the exercise of powers under part 10, which deals with controlled notifiable conditions and under part 11, which deals with management of significant emergencies. I thank the honourable member for moving the amendment, which fits very well and appropriately within clause 14, and consequently parts 10 and 11, which contain the powers to which it refers.

Clause 14 reflects a requirement to provide an appropriate balance between the protection of individual rights and the rights of the public to the protection of public health under the World Health Organisation's international health regulations 2005. This amendment restates these requirements in a different but, we believe, useful way.

The Hon. D.G.E. HOOD: I would like to put on the record that Family First will also be supporting these amendments. They do not change the intent of the bill, but what they do is provide a little extra protection for people in difficult circumstances, and we support them.

Amendment carried; clause as amended passed.

Clauses 15 to 89 passed.

Clause 90.

The Hon. A. BRESSINGTON: I move:

Page 55, after line 41 [clause90(2)]—Insert:

(ia) section 25(2)(fc) is to be read as if it did not include the words 'or treatment (including preventative treatment)';

This amendment seeks to remove from health authorities acting under the South Australian Public Health Bill the power to compel people to undertake treatment, including preventative treatment. A person's right to consent or refuse consent to medical treatment is a fundamental principle of medical ethics. It is also a principle enshrined in our law; namely, through common law but refined by the Consent to Medical Treatment and Palliative Care Act 1995, which provides that a person over the age of 16 may consent to, and in turn refuse, medical treatment.

It is only in the most limited circumstances, such as when a person is incapacitated or held to be not of sound mind, that medical treatment may be administered without consent or against a patient's wishes respectively. In all other scenarios, a person's individual autonomy is held to prevail and they are free to decide for themselves. Similarly and arguably, as a result of this right a person is additionally afforded the right to make an informed decision about the medical treatment being proposed.

This is specifically provided for by section 15 of the Consent to Medical Treatment and Palliative Care Act 1995, which compels a treating practitioner to explain the nature, consequences or risks of proposed treatment, the consequences for not taking the treatment and any reasonable alternatives available. However, the advice I have received is that, by taking away a person's right to consent or refuse treatment, then the right to have proposed treatment explained to you will become redundant and, hence, will not be required by law.

The government will no doubt put to members that the power to compel treatment is necessary or, as was argued in the briefings provided, crucial to the operation of the bill. However, when in the first briefing I questioned why, I did not receive a direct response but, rather, a statement that the ability to compel treatment needs to be part of the powers available, and I dispute this.

While I fully appreciate that, in a state of emergency, time is of the essence, it is my position that, where alternatives to forcing treatment are available, such as detaining and isolating an individual, compelling treatment should not be an option. It needs to be understood that this amendment will not remove the power to compel treatment under the Emergency Management Act 2004. As was conveyed in the briefings provided by the government, if systems are collapsing

and the crisis becomes unmanageable, then a declaration will likely be made under the Emergency Management Act 2004 and many of the limitations on the powers of authorities provided for by this bill will no longer apply.

It is my argument that, prior to this status being reached—that is, while it is still possible to effectively exercise the power to detain and quarantine an individual who refuses medical treatment—then this should be the power exercised and, indeed, the only power available. This is, as far as I can tell, the position of the equivalent Queensland act which, while extending health authorities the same extensive powers to detain and isolate individuals, does not permit its officers to force treatment upon those who refuse. In fact, the Queensland Public Health Act seemingly empowers people not only to refuse treatment but also request to be treated by their preferred practitioner.

Many of the other state jurisdictions public health acts are unfortunately not so clear and instead provide that a person must comply with the direction given by the relevant authority. Given that these jurisdictions, either through common law or statute, impart a legal right to consent or refuse medical treatment, I am unsure whether such a direction could compel medical treatment without consent. My understanding has always been that in order to override an existing legal right, the act must expressly state this as the intention; that is, it cannot be implied. I have been unable to seek legal advice on this question and I ask the minister whether the public health acts of Tasmania, Victoria and the Australian Capital Territory do or do not permit forced treatment?

The Hon. G.E. GAGO: The government will not be supporting this amendment. The effect of this amendment would be to remove a vital public health power to deal with a genuine public health emergency where there is a material risk to community health. It will prevent public health authorities from acting assertively to treat affected persons, or to provide preventative treatment, for instance, antibiotics, where this treatment may be directed towards preventing the spread of an illness to others.

It is noted that the provisions of the Emergency Management Act would still allow these powers to be applied in the case of any other generally declared emergency, but should this amendment succeed it would restrict a definite health response to a clear public health threat. This is not logical or consistent with the intention of part 11, and we will be opposing the measure.

The provision to require treatment would apply only to emergency situations where the lives of others are at risk. It is not just the individual with the disease, or the contaminant, whose life might be at risk, but it is when their contamination of others is at risk. We are talking about those situations that can involve groups of people: a plane load of people landing who have been contaminated, or similar types of events. So, it is not just one or two people, it could involve, potentially, hundreds of people who are at risk of infecting hundreds of others in the community. It is only when that risk has been assessed that these powers would be triggered.

The honourable member talks about waiting for a triggering of the Emergency Management Act. She is saying that the powers to require treatment apply to the Emergency Management Act, so wait until that is triggered. However, by the time it is triggered, it would allow, possibly, for the contamination of hundreds of other people. It is a much less timely instrument.

What this provision would allow us to do is to act at an early intervention stage to require treatment, for instance, antibiotics, or whatever treatment is assessed as being adequate, to reduce the risk of contamination to others and to the community. I stress that this is not about protecting the individual's right, the focus here is about protecting the community. This is a public health bill and it is about preventing the contamination of others.

This provision is particularly targeting the potential to contaminate hundreds of other people. It could be a bus load of people who have been faced with a contaminant, a boat load of people who come into our harbour or a plane load of people who come. That is the scale that this bill is particularly targeted at. The principles that we have all agreed to clearly outline that requiring treatment would only be utilised as a very last resort that we would explore. So, we have already passed that.

We have already said that we will commit to exploring all other avenues before resorting to this: to work through a minimalist, or least interventionist approach, before landing at requiring people to be treated. So, we think the principles clearly protect the rights of individuals, but ultimately this is about protecting community health.

The Hon. S.G. WADE: Could the minister further expand on why the Emergency Management Act is likely to be much later coming than the application of the South Australian Public Health Act?

The Hon. G.E. GAGO: I have been advised that the bill before us, this public health bill, is to do with the level of power. So, the bill before us allows us powers that focus on a much smaller scale specific health emergency, whereas I have been advised that the Emergency Management Act provides much broader, if you like, umbrella provisions.

So, it would mean that a small contamination would have to escalate into a much larger emergency before it could actually trigger the Emergency Management Act, whereas this provision gives us specific powers to focus on health issues that are of a specific emergency. So, it gives us the powers to operate when the problem is much smaller.

The Hon. S.G. WADE: Could the minister name the provision in the Emergency Management Act that she is referring to there?

The Hon. G.E. GAGO: I would have to take that on notice.

The Hon. D.G.E. HOOD: This is obviously a very substantive issue, and I think that, when you are talking about giving people medication, potentially against their will, it is something that I am sure every member in this chamber takes very seriously. My inclination, when I first saw the amendment, was of support, because I think all of us have a dislike for people being forced to do almost anything against their will, but I want to give the government a chance to make its case.

At this particular time, I would say I am not persuaded to oppose the amendment. For that reason, I ask the following questions of the minister: what other states or jurisdictions have similar provisions in Australia; that is, what other states require these measures to be carried out against people's will specifically? Secondly, can the minister outline a circumstance in our state where such legislation would have been valuable or would have been to the benefit of the public had it been in place at that time?

The Hon. G.E. GAGO: I will take both of those questions on notice.

The Hon. S.G. WADE: I share the position of the Hon. Dennis Hood in that, whilst initially attracted to this amendment, we are very concerned as an opposition that we do nothing to undermine the capacity of public health authorities to deal with emergencies. In that context, as the Hon. Mr Hood has put in questions on notice, can I add to those in terms of questions that would obviously help the opposition to clarify its position. In providing the answers to the Hon. Mr Hood's questions, I wonder if the minister could also advise: what is the definition of preventative treatment in this context? In the same ilk as the Hon. Dennis Hood's questions in terms of scenarios (and I am not asking he government to engage in hypotheticals), can the government explain why—

The Hon. D.G.E. Hood interjecting:

The Hon. S.G. WADE: That's true—in past instances or if the government chooses to or, for that matter, in examples from other jurisdictions, where treatment would need to be mandated because isolation, segregation, detention were not possible. My reaction to the Hon. Ann Bressington's amendment was to say that it is appropriate not to mandate treatment because, as the minister has highlighted, our health principles say that people should not be required to undergo medical treatment against their will.

My presumption would be that in a situation where somebody was refusing treatment, it may well lead to the public health authorities reacting to that refusal to take medical treatment by escalating the segregation, isolation or detention, which would foreseeably be a very responsible response. In other words, the choice to refuse treatment is not without consequences. I hope that that is not too convoluted to be a question, but the key point in my mind is: is the maintenance of a person's right to refuse treatment likely to actually inhibit the response to a public health emergency?

The Hon. A. BRESSINGTON: Just to be clear on this, when we are talking about preventative treatment or medical treatment, the minister uses the example of antibiotics, that they would not be able to force people to take antibiotics. The bigger issue here is that the government, the health department or health officials could be in a position where they could force people to be vaccinated against their will for, say, what was building up last year—the swine flu.

Many people decided that they did not want to have the swine flu vaccination because it was their actual right to do so. In a situation of a plane-load of people and a person is infected with

a particular virus or bacterial infection or whatever, the first step would be to notify those people who were on that plane in order to have them come in and be checked and diagnosed with an illness and, if they had that illness, I guarantee you that if they were offered treatment they would accept it. Who wouldn't?

None of this is laid out clearly in this bill, and this is what concerns me: we do not have trigger points, we do not have examples. We are making a decision about people's choice to refuse medical treatment based on theory, if you like, when there is a gradual process in place to get to the point where mandatory treatment would be necessary; instead of going from zero to a hundred, we take incremental steps to that.

I certainly do not believe that there is any scenario where, if people know they have a deadly infection and there is medication available for them that will help prevent that spread through the community, they would refuse it. It is the mandatory part of it that I do not like, and neither do many other people out in the community. They are not comfortable with giving health officials this level of power to force treatment.

The Hon. G.E. GAGO: I am happy to take those questions on notice. In relation to the Hon. Ann Bressington's last comments, as law makers we are faced with really difficult situations. It is not easy to make good laws. We often have to balance a whole range of interests and get that balance right, and that is a very difficult and challenging thing to do. These are dilemmas for us. However, I do believe that people have the right to make decisions about their treatment, but I also believe that people do not have the right to go out and infect other people.

The Hon. A. Bressington: But they can be detained.

The Hon. G.E. GAGO: You might not be able to detain a person, though, forever. We have had the situation with the HIV chap who had a very strong personal view about his rights to have unprotected sex. How long does the state have the right and the responsibility to detain, feed and care for, etc. someone who is personally asserting their rights? That is just one person. As I have said, this legislation is not necessarily dealing with a singular situation but with a group. Again, I do not believe that people have the right to go out and deliberately infect and contaminate and put at risk other people's health. These are last resort measures. We have agreed to a set of principles—

The Hon. A. Bressington interjecting:

The Hon. G.E. GAGO: We have agreed to that. We have agreed to a set of principles, the Hon. Ann Bressington, which outline a commitment that we would use the least interventionist approach and that we would exhaust other means before progressing to the more highly interventionist approaches. We have a suite of powers that are necessary to be available to deal with unforeseeable emergencies, and that is what these provisions provide us with; it is not just one provision.

As I have said, I suffer the same dilemmas in relation to individual and community rights but, being a former healthcare professional, I feel very strongly about this. People have a wide range of different personal views; they do not necessarily share the same responsible views as members share in this chamber. As I have said, we have seen the example of the HIV-infected gentleman who felt that he had the right to have unprotected sex.

This legislation is to deal with those very, very difficult situations, which are often extreme situations. Wherever possible, we should uphold the rights of individuals. Nevertheless, I do not think that should never be the expense of people deliberately being able to go out and infect and contaminate other people, and possibly end up with the death of many other people on their hands.

The Hon. S.G. WADE: On the point about the principles under clause 14, protecting a person in relation to treatment, can the minister point out where that is available? The Hon. Ann Bressington's amendment talks about the least restrictive means, and 'restrictive' in that sense to me refers to isolation, segregation and detention; it does not relate to the issue of treatment.

The Hon. G.E. GAGO: Under clause 14—Specific principles, subclause (2) states:

> (2) The overriding principle is that members of the community have a right to be protected from a person whose infectious state or whose behaviour may present a risk, or increased risk, of the transmission of a controlled notifiable condition.

Under subclause 5(a), it states:

> (a) to have his or her privacy respected and to have the benefit of patient confidentiality;

That is another provision, and paragraph (b) states:

> (b) to be afforded appropriate care and treatment to have his or her dignity respected, without any discrimination other than reasonably necessary to protect public health;

Paragraph (c) states:

> (c) insofar as is reasonably practicable and appropriate, to be given a reasonable opportunity to participate in decision-making processes that relate to the person on an individual basis, and to be given reasons for any decisions made on that basis;

Paragraph (d) states:

> (d) to be subject to restrictions (if any) that are proportionate to any risks presented to others (taking into account the nature of the disease or medical condition, the person's state of health, the person's behaviour or prepared or threatened behaviours, and any other relevant factor).

Subclause (6) states:

> (6) Any requirement restricting the liberty of a person should not be imposed unless it is the only effective way remaining to ensure that the health of the public is not endangered or likely to be endangered.

The Hon. S.G. WADE: The clause that seemed relevant to the question, in my view, was 14(5)(b), which is the right for the patient (for want of a better word) 'to be afforded appropriate care and treatment to have his or her dignity respected, without any discrimination other than that reasonably necessary to protect public health'. I understand that puts a positive duty on the public health authority to make care and treatment available, but it does not address the issue of whether or not the person has the right to refuse.

Subclause (5)(c) gives a person the opportunity to participate in the decision-making process, but it gives no suggestion as to whose decision it is. The Hon. Ann Bressington's concern is that it is not the patient's decision. This bill is saying that the public health authority will tell you what treatment you require.

The Hon. G.E. Gago interjecting:

The Hon. S.G. WADE: I am sorry, minister, let me reiterate my concern. The minister told us that the principles would protect the application of the treatment provisions, so I am looking at those principles to look for protection and I cannot see any. The third element, subclause (6), another element the minister referred to:

> (6) Any requirement restricting the liberty of a person...

Again to me that is an isolation, segregation, detention issue—it does not go to treatment. Giving somebody antibiotics or vaccinations does not restrict your liberty. Again I, too, look to the principles for protection for people and I cannot see them.

The Hon. A. BRESSINGTON: I remind members who attended the briefing with the health department emergency services that, when this issue was raised, it was asked: in what scenario would we been be talking about forced treatment? The response from the spokesperson for that group was that it is a resource issue, that we may not have enough resources from the government in the case of an emergency or a public health situation to be able to detain people. In short, we will put the resources a government is prepared to provide to the health department in a public health situation.

It is going to be resources outweighing the cheapest way to get this done, and that will be forced treatment, trust me. How many bills do we have to pass in this place that infringe on the rights of people—WorkCover for one and I could name a few others—in order to learn that when the government says, 'It is all good; it is all in the best interests of the public; it is all for the injured workers,' that in actual fact it is all about the bottom line, what this is going to cost? Those public health people verbalise it themselves. This will be a resource issue and decisions will be made on resources. That is it, bottom line.

The Hon. D.G.E. HOOD: I just want to be clear for the minister on our position. If we were to vote right now, we would support the amendments. What would change our position would be a clear example of a case in the past, something that has actually happened where this bill minus the amendment would have been beneficial for the safety of ordinary South Australians. Can we be provided with such an example—and I accept that maybe the minister does not want to provide that in the chamber; there may be some confidentiality issues perhaps, I am not sure, or

whatever—because that question needs to be addressed in order for us to oppose this amendment.

The Hon. S.G. WADE: If it would assist the government, I would reiterate that the opposition's position is very similar to that of Mr Hood. I would also indicate that we are interested in the response to Mr Hood's earlier question about what other jurisdictions find necessary, because the Hon. Ann Bressington highlighted, as I understand it, that a number of jurisdictions are getting by without mandatory treatment. So, the answer to the Hon. Dennis Hood's question would also be of interest to the opposition.

The Hon. G.E. GAGO: I am happy to provide those answers. I do not have the answers here today. I am happy to take them on notice.

Progress reported; committee to sit again.

NATIONAL ENERGY RETAIL LAW (SOUTH AUSTRALIA) BILL

In committee.

The Hon. G.E. GAGO: The Hon. Mr Lucas asked a number of questions in his second reading contribution in relation to this bill. He noted that the bills before us today represent the national law and that the application of this national law in South Australia will require another legislative package. I can confirm that application legislation will be introduced into this parliament later this year. The application legislation will amend existing South Australian legislation and apply the national framework in South Australia with necessary state-specific provisions.

Mr Lucas has requested that further information be provided regarding the likely content of the application legislation. The national framework contains many of the obligations that will apply to South Australian energy retailers and distributors relating to the sale and supply of energy to small customers that will apply in South Australia from 1 July 2012. However, the application legislation will also contain necessary additional state-specific provisions, which will bind retailers and distributors. The regulatory arrangements for those off-grid areas not covered by the national framework are to be maintained in the South Australian legislation.

The application legislation will complement the national framework to form a sound regulatory structure for energy market participants and energy consumers in South Australia. The national framework is designed to operate in an environment of fully effective retail competition, without price regulation, although it can be adapted to jurisdictions with price regulation. As I indicated in my second reading response, it is the government's intention that retail price regulation for small customers will be preserved in South Australia once the national framework is applied.

It is also proposed that the current South Australian small customer threshold of 160 megawatt hours per annum will continue. Given that retail price regulation will continue, the obligation to offer supply will continue to apply only to AGLSA and Origin Energy for electricity and gas respectively, as are current arrangements. In regard to the Residential Energy Efficiency Scheme (REES), which requires retailers to actively assist South Australian energy consumers with energy efficiency in their homes, it is proposed that the REES will continue to operate in South Australia under South Australian legislation.

In accordance with the Australian Energy Market Agreement, the national framework does not contain regulatory obligations on energy entities to comply with jurisdictional energy concession schemes. Accordingly, this obligation will continue under South Australian legislation. The South Australian Energy Industry Ombudsman will also continue to perform current duties and hear matters arising under the national framework. There will be no change for South Australian consumers in their interaction with the Ombudsman.

It is the government's intention to consult widely with industry and consumer representatives on a consultation draft of the application legislation prior to it being presented to parliament later this year.

The Hon. J.M.A. LENSINK: I thank the committee for the indulgence to place these questions on the record, which all relate to the Residential Energy Efficiency Scheme (REES). My questions are:

1. How many assessments have been conducted under REES over the current and previous two financial years?

2. What is the minimum qualification for those carrying out audits under REES?

3. How is their work audited and quality assured?

4. Have all employees under this scheme had police checks?

5. How many are South Australian residents?

6. How much is the gross fee for an assessor for each audit?

7. How do businesses tender for this work?

8. How many companies or individuals carrying out these audits are based in South Australia and how many are not based in South Australia?

9. How many complaints have been received by:

(a) AGL; and

(b) the state government?

10. What are the terms of reference of the review of REES?

11. How can an individual or an organisation make a public submission?

The Hon. G.E. GAGO: I am happy to take those on notice, and we will start work on that.

Clause 1.

The Hon. R.I. LUCAS: The minister has responded to questions raised by members at the second reaching speech at the outset of the committee stage, and there are a number of issues that the minister has raised, a small number of which I seek to pursue. The minister has confirmed in her response and also her second reading response, I think, the government's current intention in relation to price control and price regulation in South Australia.

Can the minister confirm that there was a communiqué agreed by the previous minister and the government which broadly indicated that it agreed to the provision that, if a review was conducted on the extent of competition within a particular jurisdiction and if it broadly indicated that there was competition and it was a competitive market, that would be the trigger point for removal of price control and price regulation in each jurisdiction?

The Hon. G.E. GAGO: I have been advised that the Minister for Energy has provided this information: the Australian Energy Market Commission received submissions from 21 separate organisations and individuals to its review of the effectiveness of competition in the electricity and gas retail markets in South Australia. Five consumer groups and two business groups made submissions to the AEMC review disputing that there is effective competition in South Australia, which included: COTA Seniors Voice, the South Australian Council of Social Service, the Energy Consumers Council, Uniting Care Wesley, Uniting Care Kildonan, the SA Farmers Federation and the Corporate Rate Group. There were a number of other stakeholders that also raised issues, in submissions to earlier stages of the review, with the level of effective competition in areas of the market, but nonetheless supporting the removal of price control in South Australia, which included: Simply Energy, TRUenergy and South Australia Electricity.

The Hon. R.I. LUCAS: I thank the minister for that, but that is not the question that I put to her. I understand the position of the former minister for energy, who was not supporting the removal of price control in South Australia. We now have a new Minister for Energy, and I will not enter into a debate about the position of the new minister and those sorts of things. All I am trying to establish, firstly, is what agreements have been entered into by the government and the former minister through the ministerial council in relation to the process for removal of price regulation.

My question, again, was: was the government a party to an agreement at the ministerial council that in each jurisdiction there would be a review, which the minister has just referred to, of the extent of competition in the market, and if it was determined that there was competition in the market that that would be the trigger for the removal of price control in that jurisdiction? My question is: were we, the state of South Australia, a party to that agreement at the ministerial council?

The Hon. G.E. GAGO: I have been advised that, yes, we were party to the agreement that you refer to. However, the advice that we received from the AEMC, that they were asked to provide, was, yes, it was effective. However, we responded to that advice in a way that said we did not accept that and we were, in fact, not required to accept the AEMC advice. So, it is up to the

jurisdiction to decide whether they are prepared to accept that or not and whether to proceed or not. It is at our election to provide.

The Hon. R.I. LUCAS: Thank you, minister, for that. Can the minister confirm, based on her advice, the nature of the agreement that we entered into? Was that a communiqué issued by the ministerial council or was it a formal agreement signed by each of the jurisdictions at some earlier stage that was signed by our minister on our behalf?

The Hon. G.E. GAGO: I am advised that it is the Australian Energy Market Agreement.

The Hon. R.I. LUCAS: My understanding is that, whilst I do not have a copy with me, that document is available on the various websites.

The Hon. G.E. GAGO: Yes, it is publically available.

The Hon. R.I. LUCAS: Yes, that is certainly my understanding. Minister, thank you for that. The confirmation is that we were signatories to the agreement; we set up this structure; the AEMC then conducted this review and, whilst there were various submissions to which the minister has referred, the AEMC eventually concluded that, in their view as the independent management body, there was a competitive market in South Australia and that, in their view, retail price control should be removed. What the minister is saying is that, even though that occurred, the original agreement signed by the minister gave the minister in each jurisdiction the power to reject that argument and maintain price controls.

The Hon. G.E. GAGO: I have been advised that there is nothing in that agreement that requires us to adhere to the advice of the AEMC.

The Hon. R.I. LUCAS: That is essentially what I was seeking; that is, what the minister is advising this committee is that, even though that structure has been entered into by the government on our behalf in that agreement, and the review concludes that it is competitive in South Australia and that, clearly in the AEMC's view, price control should be removed, there is nothing that requires a minister, in essence, first, to agree with it and, secondly, then remove the price control.

I seek a specific response from the minister: firstly, has our minister on our behalf given any undertaking in relation to the future in relation to price controls to the AEMC; that is, has he said to the AEMC, 'I hear what you say but we're never going to remove price controls.' Is that the government's position or is he saying, 'I hear what you say, but we're reviewing this on a year-by-year basis' or, indeed, is it somewhere in between? What is the government's position that has been formally outlined to the AEMC on behalf of our jurisdiction?

The Hon. G.E. GAGO: I have been advised that there has been no formal undertaking by the current minister.

The Hon. R.I. LUCAS: Just to clarify that, are we talking about minister Conlon?

The Hon. G.E. GAGO: No; the current energy minister.

The Hon. R.I. LUCAS: So minister O'Brien has given no commitment, but I am assuming that he has not attended a ministerial council meeting yet, so I can understand that he could not give a commitment in that he is only new to the job. I accept that, but has former minister Conlon on our behalf previously given a commitment to the AEMC in relation to our position; that is, is the position that minister Conlon gave to the AEMC, 'Never, ever; we're not going to do it' or 'We're keeping it under review on a year-by-year basis' or somewhere in between?

The Hon. G.E. GAGO: I have been advised that the AEMC has undertaken to conduct a further review, but a date has not been set for that at this time. I have also been advised that, to the best of our officers' understanding, there has been no formal undertaking to the AEMC by either minister other than the signing of the agreement.

The Hon. R.I. LUCAS: I am happy if the minister is prepared to take that on notice to confirm that that is the case—that there has been no undertaking or indication given by the former minister on our behalf to the AEMC—and, if the bills have passed the council, if the minister is prepared to respond by way of correspondence.

The Hon. G.E. GAGO: The agreement that has been signed is an IGA which is not legally binding on parties. To the best of our knowledge, there has been no formal undertaking by either minister which means that it is now in the power of the current minister to determine any future positions. Clearly, he is not bound by any past commitments, and we are saying that we are not

aware of any, but it is now for the new minister, who has the power now to position ourselves. So, what the member is asking for is, in fact, irrelevant.

The Hon. R.I. LUCAS: I thank the minister for that and, indeed, the answer from the minister makes it clear that it is irrelevant, first, if she is indicating that, to the best of the officer's knowledge, there has not been a commitment. Secondly, she has confirmed that, even if there had been a commitment, that is irrelevant now because the new minister could undertake a completely different direction if he so chose in relation to this.

Of course, this is a critical issue for South Australians (that is, the issue of regulation and price control in South Australia), and that has been the position of the former minister, which he has put down for the last nine years, and that is that he was not going to see price control removed. But, as the minister has now conceded, there is an intergovernmental agreement which did establish a framework through which price control would be removed.

The minister has now indicated that the AEMC is about to do a further review. Can the minister advise the committee: is that further review just a replication of the previous review of the extent of competition in the market, albeit it done at a later date, or is it to be structured in a different way from the previous review to the extent of competition in the South Australian marketplace?

The Hon. G.E. GAGO: I have been advised that we have not been informed of the terms of reference at this point.

The Hon. R.I. LUCAS: I assume, then, that the minister's advice is that at this stage there has been no call for submissions or, indeed, any commencement of a process in relation to the review. If that is the case, are the minister's advisers able to indicate when they believe this further review by the AEMC will be conducted; in particular, is it to be conducted this year (2011) or at some later stage?

The Hon. G.E. GAGO: I have already put on the record that we have not been informed of the timing of this review.

The Hon. R.I. LUCAS: Can the minister indicate how, then, officers are aware of this particular review?

The Hon. G.E. GAGO: I have been advised that the Australian Energy Market Agreement indicates that there will be further reviews.

The Hon. R.I. LUCAS: Is it the government's position that there has been no communication, verbal or written, from the AEMC representatives to state jurisdictional representatives in South Australia that there will be activated a further review?

The Hon. G.E. GAGO: To our knowledge, no, I have been advised.

The Hon. R.I. LUCAS: If that is the case, it is nothing more than an imponderable; that is, there may well not be a further review. If it says that there may well be further reviews, that does not mean that the AEMC will necessarily be conducting a further review, particularly, as the minister has just outlined, it has already conducted a review of the extent of competition, it has made a decision or provided advice, and the South Australian jurisdiction has rejected that. I do not propose to proceed any further with that issue. If that is the only extent of it, there is no clear indication at all that there will be a further review of the extent of competition in the South Australian marketplace.

The second broad area I want to clarify with the minister is the issue of postage stamp pricing, which ensures equity between pricing for country consumers and metropolitan consumers. Is that impacted in any way through the National Energy Retail Law framework we have before us? The provisions that exist in South Australia are different from the provisions that exist in some other jurisdictions. Is it this particular framework that confirms our capacity to do that, or is it the later bill that we are to see introduced later in the year that either confirms or changes that?

The Hon. G.E. GAGO: I have been advised that it will not have an impact and that it exists within the previous national electricity law of 2007.

The Hon. R.I. LUCAS: So the minister's advice is that clearly this bill does not impact on it but that, when the later bill, which refers to the specific jurisdictional arrangements, is introduced to the South Australian parliament, that bill will not cover those provisions at all either?

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

The Hon. R.I. LUCAS: The third area: I think the minister in her response today or perhaps at the end of the second reading said that the bill we will see later in the year (and I indicated in the second reading that my view was that a number of the issues that some members like myself may need to pursue will be the ones that are jurisdictionally specific, which will be covered in the bill we see later in the year, evidently) will relate to some provisions specific to South Australia as they relate to retailers and the distributor.

Specifically in relation to the regime that used to exist (or still exists, I assume) in relation to bonuses and penalties in terms of the payments made to the distributor in South Australia for rewarding good performance and penalising bad, is that structure threatened by the national framework and does it have to be confirmed by the jurisdictional specific legislation we will see later in the year?

The Hon. G.E. GAGO: I have been advised that the answer is no.

The Hon. R.I. LUCAS: To clarify the answer: no, it is not covered by this legislation and no, it will not be covered by the bill later in the year?

The Hon. G.E. GAGO: That is correct, I have been advised.

The Hon. R.I. LUCAS: Thank you.

Clause passed.

Remaining clauses (2 to 14) passed.

Schedule 1.

The Hon. M. PARNELL: I move:

Clause 2, page 20, after line 21—Insert:

> *extreme weather event* means an event declared by a local instrument to be an extreme weather event for the purposes of this law as it applies in the jurisdiction in which the local instrument is made;

My first amendment relates to the disconnection of energy to customers during a heatwave. For the benefit of the committee I advise that this amendment should be treated as a test for amendments Nos 2 and 3 and the first part of my amendment No.4. In my second reading contribution, I outlined why I believed this was an important amendment. I think that most members who have discussed this with me have understood that it is very poor practice for energy retailers to be disconnecting customers during a heatwave and, in fact, that is not how it has worked in South Australia. We have had rules against disconnection during extreme weather events.

The national laws and rules we are debating now also recognise that it is not good practice to be disconnecting consumers during a heatwave. As I understand it, it is intended to include this provision in rule 116, to be precise. Notwithstanding that this will have some level of force, I still move this amendment.

I agree with SACOSS that it is such an important issue, especially in an age of climate change, as we are going to be experiencing more and more extreme weather events, that we should give this rule the force of law by including it in the act, rather than relying on disallowable instruments. Whilst some members might take some comfort from the fact that it is covered elsewhere, I think it deserves to be in the act, and that is why I have moved this amendment.

The Hon. G.E. GAGO: The government does not support this amendment. The national regime for presenting disconnection for non-payment during an extreme weather event is located in the National Energy Retail Rules which are binding on retailers and distributors. This location allows each jurisdiction to nominate whether events are relevant to local conditions. The rules have the force of law and can be enforced by the Australian Energy Regulator in the same way as it enforces statutory provisions.

South Australia currently has a regime to prevent disconnection in heatwaves where a person has not paid their bill. An equivalent regime will be retained when South Australia adopts the national framework. The current South Australian regime is located in the Energy Retail Code, which is enforced by the Essential Services Commission of South Australia, similar to the National Energy Retail Rules. The code has the force of law and has been a successful instrument for the establishment and enforcement of the South Australian regime.

The Hon. D.W. RIDGWAY: I indicate that the opposition will not be supporting the Hon. Mark Parnell's amendment which, as he explained, elevates this provision from the rules or the regulations, if you like, into law. It is not that we do not agree with the sentiment so much as that we think that this legislation, as the minister explained, is national framework legislation. I know the minister referred to it earlier in answer to some questions from the Hon. Rob Lucas, that we will have a South Australian application act and the accompanying miscellaneous amendment bill later in the year.

As to provisions that are specific to South Australia, which clearly heatwaves are—and in discussions I have had with departmental officers in Tasmania, extreme cold is extreme weather, not extreme heat—it is clear to the opposition that, while we are not necessarily opposed to the intention of the Hon. Mark Parnell, we think that it is probably better dealt with when this place visits the South Australian application act and the accompanying miscellaneous amendment bill later in the year. So, we will not be supporting it at this stage.

Amendment negatived.

The Hon. M. PARNELL: I will not move amendments Nos 2 and 3, which are consequential. I will also not move the first part of amendment No. 4, which was the insertion of proposed new clause 64A. If it is useful to the committee, I will move just the inclusion of the proposed new clause 64B, which relates to compensation for wrongful disconnection. I would then, depending on the result of that, like to move the proposed new 64C, which is a separate issue. So, whilst my amendment No. 4 comprises three issues, we have dealt with one, but I would like to deal with the second and third separately. I move:

Page 47, after line 24—Insert:

Division 13—Miscellaneous

64B—Compensation for wrongful disconnection

(1) It will be taken to be a condition of a customer retail contract that the retailer will make a payment of the prescribed amount to the customer under the contract if the retailer—

(a) arranges for the de-energisation of the customer's premises; and

(b) fails to comply with the terms and conditions of the contract specifying the circumstances in which de-energisation (or disconnection) may occur.

(2) A payment under a condition under subsection (1) may be made directly to the customer or by rebate on an energy bill of the customer.

(3) A payment under a condition under subsection (1) must be made as soon as practicable after the supply of energy to the premises is restored.

(4) Nothing in this section affects any other right that a person may have to take action against a retailer or other person in relation to the de-energisation (or disconnection) of premises or the supply of energy.

(5) This section applies despite anything to the contrary in any terms and conditions that form part, or are taken by or under this Act to form part, of the contract between a retailer and a customer.

(6) In this section—

prescribed amount means—

(a) the amount specified by a local instrument to be the prescribed amount for this section as it applies in the jurisdiction in which the local instrument is made; or

(b) if no amount is specified under paragraph (a) with respect to a particular jurisdiction—$250 for each whole day that the supply of energy is disconnected and a pro rata amount for any part of a day that the supply of energy is disconnected.

In my second reading contribution, I pointed out that this was a provision that has existed in Victoria for some time. In fact, it has been a point of some pride to the Victorians that their disconnection rates were so much lower, because there was a provision for those who were wrongfully terminated to get compensation. I mentioned in my second reading contribution that the Victorian Essential Services Commissioner was asked to look into this whole question in January 2010 and was asked to advise whether they thought the scheme should continue or whether it should be abandoned.

I would just like to elaborate a little bit more on the findings of that inquiry. The Essential Services Commission's final recommendations included, firstly, that the scheme be retained and that it be retained in the same form it had operated for some time. That included the $250 per day payment. The commission recommended that the payment should continue until the customer was reconnected to their power, or for 10 business days, whichever came first. The commission also recommended that, if the customer contacts the retailer within 10 business days seeking reconnection, then the $250 per day payment should continue to accumulate until the customer is reconnected and without upper limit.

Importantly, the commission recommended that, if a customer does not contact the retailer within 10 business days seeking a reconnection, then payment for any economic loss beyond the 10 days would not be guaranteed and would be subject to the existing dispute resolution mechanism. That final point, I think, was important, because the examples that are usually trotted out as to why this scheme is unfair are the two examples of holiday homes which are only partially occupied and the case of a prisoner whose power was disconnected while they were in prison and therefore entitled to compensation.

So, I think it is possible to work around those two situations. It is probably also worth pointing out that, in Victoria, in the year 2008-09, which is the last year for which I have figures, there were only 155 wrongful disconnection payments made, so it is not a huge number. It involved nine retailers, and the total amount of compensation paid was $90,832. I think that this provision, which has worked well in Victoria and has resulted in them having an enviable low rate of disconnection, should be incorporated in this national law.

I will finish with a quick quote from the Victorian Council of Social Services (the Victorian equivalent of our SACOSS). What it says is:

> The introduction of the payment in Victoria saw a sharp decline in disconnections that had previously been rising. While Victoria has generally had lower disconnection rates compared to other states, it is clear that the payment has been a key factor in retaining these enviable disconnection rates and protecting disadvantaged households from disconnection due to an incapacity to pay.

So, I would urge all members to support this amendment.

The Hon. G.E. GAGO: The government does not support this amendment. The Hon. Mark Parnell highlights that the Victorian Essential Services Commission indicated in its January 2010 review that the principal intent of the payment was to place an additional incentive on retailers to guard against disconnecting relevant customers who are willing to pay but do not have the immediate capacity to pay their energy bills.

The commission also found that the number and proportion of wrongful disconnections does not show an obvious pattern as to whether the payments are having an effect on reducing the retailer's wrongful disconnection. The commission also found that the scheme's simplicity was appealing but that it has proven too blunt in its application and led to outcomes that are unintended and perhaps disproportionate.

The Energy Retailers Association of Australia has provided information from their members that the Victorian scheme has caused them to establish policies that cause a delay in implementing the disconnection, during which time the customer's debt continues to increase. The result is not only an increased burden to the customer but an increase in the level of bad debt for retailers.

Where a customer has been wrongfully disconnected, they can make a claim with their retailer and, if this is not successful, with the energy ombudsman. In fact, over 70 per cent of wrongful disconnection cases in Victoria are handled by the energy ombudsman. Each claim made, whether through the retailer or ombudsman, requires case-by-case analysis and investigation by the retailer, thereby increasing staff costs.

Retailers have informed the ERAA that the costs of the wrongful disconnection scheme, including the costs of increased bad debt and increased staff, are much greater than the wrongful disconnection compensation payments made to customers. These increased costs are then passed on to all customers through the electricity price.

In South Australia, an alternative more proportional compensation regime exists through the Energy Industry Ombudsman. This allows wrongful disconnection disputes to be heard and payment to a consumer may be required. This is a more targeted and a much lower-cost approach. Most jurisdictions agree that the national framework does not need to include a wrongful

disconnection scheme because it contains a wide range of protections which achieve the goal of preventing disconnection of vulnerable customers.

The national framework adequately addresses the issues of disconnection of customers who lack the capacity to pay their bills on time via a range of measures. These include the introduction of a customer hardship policy to identify customers experiencing hardship and an explicit statement that disconnection of a hardship customer must be a last resort option. There is also a general requirement that retailers seek to make personal contact with the residential customer and offer a payment plan prior to the disconnection.

It is important to recognise that the increased costs of a wrongful disconnection regime, including the necessary regulatory arrangements, oversight and compliance costs, will be recovered over time from all customers, including vulnerable customers. It is for those reasons that we do not support the amendment.

The Hon. D.W. RIDGWAY: I indicate that the opposition will not be supporting the Hon. Mark Parnell's amendment for wrongful disconnection for a whole range of reasons, mostly as outlined by the minister in her response from the government. I reiterate the comments I made earlier, and we will look at it again when we have the South Australian application act. I am sure the Hon. Mark Parnell will take the opportunity to re-introduce amendments of a similar nature when that bill comes before us. We do not see the national energy framework legislation as the place to have these measures.

The opposition agrees with the minister that there is significant protection for people for wrongful disconnections through non-payment. In particular, we have the energy ombudsman and, under the new framework, we have the mandatory customer hardship policy. My understanding of that is that, once somebody enters into a payment plan, if they are having trouble meeting their energy bill, then they will not be disconnected and the issue of late fees will not apply. I will cover late fees now. I suspect the Hon. Mark Parnell will not progress with the third section of his amendment No. 4, but I will cover that while I have an opportunity.

The Hon. M. Parnell: I am going to speak to it separately.

The Hon. D.W. RIDGWAY: Well, it will save me having to stand up again. Late payment fees. I understand the intention of the Hon. Mark Parnell. If somebody is suffering financial hardship and unable to pay their energy bill, then to hit them with a late payment fee makes it even more difficult for them to pay. Under the mandatory hardship policy those late fees will not apply. However, late payment fees should not be abolished for all customers. There would be a number of customers who would use late payment fees as a tool to manage the cash flow in their own businesses. Abolishing late fees would mean that the energy retailers would have to have some sort of mechanism to make sure that they were not exposed to people not paying their accounts on time. Ultimately, of course, it would end in pressure on prices and prices going up if customers start using the energy retailers as a second bank. For those reasons, I indicate that the opposition will not be supporting the second part or the third part of the Hon. Mark Parnell's amendment No. 4.

Amendment negatived.

The Hon. M. PARNELL: I move:

Page 47, after line 24—Insert:

Division 13—Miscellaneous

64C—Prohibition of fee for late payment

(1) A term or condition in a customer retail contract is void to the extent that it permits the retailer to charge the customer a fee or charge for the late payment of an energy bill.

(2) Nothing in this section prevents a retailer from offering an incentive or rebate to a customer for paying an energy bill on or before the due date for payment.

(3) This section applies despite anything to the contrary in any terms or conditions that form part, or are taken by or under this Act to form part, of the contract between a retailer and a customer.

This is the final amendment, and, I think, the most significant. They have all been important, but this is the most important. This is the issue that is going to affect most consumers. Quite simply, the issue is whether energy retailers should be able to add extra to their bill on account of late payment. In my second reading contribution I gave the broad case. I was subjected to an interjection from the Hon. Rob Lucas, which I will come back to in a second, because the

Hon. David Ridgway has also referred to that same issue. The issue is whether people are going to start using electricity and gas companies as some sort of second bank to avoid paying their bills.

I think we have to put this in context. I know that the majority of people are not of the type that was described today by the Hon. David Ridgway, or by the Hon. Rob Lucas the last time we debated this. We have to acknowledge that access to affordable utilities, such as electricity, gas, water and sewerage, are basic rights and necessities for anyone living in a modern society. These services are vital to our health and wellbeing. If you do not have access to those services it is a major barrier to social participation. From the consumers' point of view, the cost of these utilities is as non-discretionary as rent. You have to have a roof over your head. You have to have the power on. You have to have the water on. So, these utilities need to be incorporated into, if you like, the cost of housing.

When we are looking at people who are living under poverty, one of the tests is the proportion of your income that is spent on your housing, including all of its associated costs, such as utilities. SACOSS has estimated that expenditure on utilities can be up to 9 per cent of many people's total expenditure. In fact, 9 per cent is an average—it is not a maximum. For average welfare recipients and low income earners, up to 9 per cent of their total expenditure is what they spend on utilities. The SACOSS cost of living update from July last year, showed that welfare recipients were very likely to be living in housing stress, or extreme housing stress, where their total housing costs were more than 30 per cent of their income, or more than 50 per cent of their income. So, what we are looking at is one of the major determinants of poverty, that is, the cost of utilities.

The issue with these late payment fees (and I will directly address the issue that the Hon. David Ridgway raised) is that, whilst only two to four customers in every 1,000 are on hardship programs and therefore have any late payment fees waived under the proposed new National Energy Retail Law rules, about 250 per 1,000 customers struggle to pay their bills on time due to financial pressures. So, about one in four struggle to pay their bills on time because of financial pressures. SACOSS has written to me, stating:

> These figures are consistent with what we know about the level of poverty in the community and the number of families and households that live below the poverty line. With growing numbers of customers unable to pay on time as prices continue to rise in real terms over the coming years, the concern is that retailers will both shorten collection cycles and charge late payment fees to put further pressure on households to pay their bills on time.

The relationship with this amendment is that, if we do not put a stop to the charging of late payment fees, that is the outcome—shorter payment cycles. You will have to pay your bill sooner after having received it, and there will be a late payment charge added to it when you do get around to paying it.

UnitingCare Australia did a survey recently, and they looked at the priority that people attach to paying their utility bills on time. They found that 40 per cent of low income households gave a high priority to trying to pay their electricity bills on time, compared with 30 per cent for middle and higher income households. What that indicates is that late payment fees or penalties, if you like to call them that, are less likely to prompt low income people to pay more quickly but more likely just to compound their situation.

The industry, of course, argues that late payment fees will provide an incentive for households to pay their bills on time, but even the retailers will acknowledge that it is difficult to differentiate between the 'can't' payers and the 'won't' payers. The question has to be asked: where is the evidence that the 'won't' payers exist? The Hon. David Ridgway has referred to them. The Hon. Rob Lucas, last time, mentioned that it was interest free if you did not pay your bills on time. The fact of the matter is, as I understand it, that there is no clear evidence as to the different relationship between the 'won't' payers and the 'can't' payers.

The closest I could get was analysis in the United States, which suggested that the 'won't' payers was between about 8 and 12 per cent of consumers, whereas we know that the number of people who cannot pay or struggle to pay on time is a much higher proportion, possibly up to around 25 per cent. So, the question is: should 90 per cent of customers be hit with a late payment fee because a small percentage of people want to hold out paying their bills until the last possible moment?

I think that we have got it wrong if we think that there is a massive proportion of people out there who are thinking, 'If I delay paying my electricity bill, and I can afford to delay it because they

are not going to charge me any late payment fees, I will just put that money on the stock market for a little while, or maybe as some short-term cash or bonds or something, and somehow use it to increase my wealth.' It is not how the world works. A very small proportion of people hold out paying their bills until the red letter arrives or someone knocks on their door. It is a very small proportion, but a bigger proportion is genuinely struggling to pay their bills.

I also just mention that, if we consider utilities as an essential, as we do housing, if you do not pay your rent on time there is no provision for late payment fees for rent, so I think we need to consider utilities in the same category. I think that it makes no sense to have a legal response to people who cannot afford to pay their bills on time to increase their total bill and make it even harder for them to catch up.

The experience is that low income customers do not withhold payment of their utility in order to gain a higher return by devoting their resources to alternative uses. They are not out there on the share market spending their electricity money. If they cannot pay, it is because they are under financial stress, so increasing the bills of low-income people will provide no inducement to prompter payment and may, in fact, be counter-productive as it delays rather than accelerates their eventual payment of arrears.

I am disappointed that the Liberal Party has already said that it is not going to support the amendment. I imagine that the Hon. David Ridgway will now be writing to the *Herald Sun* to counteract the articles that it was writing about how Ted Baillieu was so fond of these measures and was keen to make sure that Victoria kept all its consumer protection measures in place. Maybe the Liberal Party is such a broad church that it does not mind what each other does in different states, but certainly the Victorian Liberals are right behind these consumer protection measures, and it is a big disappointment that the Liberal Party is not. Notwithstanding that, I would urge all other honourable members to support this important consumer protection amendment.

The Hon. G.E. GAGO: The government also does not support this amendment. The national laws and rules preclude retailers from charging late payment fees for the most vulnerable customers, those experiencing hardship. In relation to other customers, retailers may choose to impose late payment fees for those customers who can pay but consistently fail to do so on time. This is an important tool for retailers to manage their commercial costs of supply to customers. If retailers are unable to recover these costs from those who fail to pay on time, the increased costs end up being recovered indirectly from all customers, who include hardship customers. For those reasons we will not be supporting the amendment.

The Hon. D.W. RIDGWAY: I am interested to know whether, if we do not have this late payment fee policy, the honourable member expects that energy retailers will then tweak their pricing mechanisms to, if you like, recover the money if people are starting to use them? The Hon. Mark Parnell claims that there are only 10 or 12 per cent from some US data that shows the 'won'ts' and the 'can'ts' but, clearly, if people start doing that, the retailers will be out of pocket, so how do you expect that they would recover their revenue? Do you expect that they would pass it on and then eventually everybody would wear the cost, including the people who are least able to pay?

The Hon. M. PARNELL: The answer, I think, is clearly that there is no evidence that that has happened in any of the jurisdictions where they do not allow late payment fees. What we have to remember, of course, is that the ultimate sanction for not paying your bills is that you get cut off; you get disconnected. When you are disconnected, they make extra money by charging you a reconnection fee, so they get their money back. The point is that the idea of setting a time frame in which bills have to be paid is a fairly arbitrary exercise.

People are involved in commerce. There are some bills that you are supposed to pay as you take the goods out of the shop immediately; other things have seven-day net terms or 28 days; other people provide credit for longer. I do not think there is any evidence that there is going to be a particular or verifiable spike in the prices for energy paid by other consumers because we ban unfair late payment fees, which we know hit low-income earners. I do not see any evidence for that at all.

If the honourable member or the minister or anyone else wants to point to a before-and-after study in other jurisdictions where they did not have late payment fees and then they allowed late payment fees, I bet that you would have trouble finding a jurisdiction where the price of energy went down when they introduced late payment fees. You cannot argue that it is going to go one

way and not the other. If you are saying, 'If we prohibit late payment fees the cost of energy will go up,' show me where the cost of energy has gone down where the reverse situation applies.

The Hon. G.E. GAGO: It costs money to bill people. There are administrative costs with issuing further accounts: it costs money. I ran an organisation based on fees applying to members. We issued a late payment fee, and that fee covered our administrative costs. It was purely cost recovery. We worked out what would be the administrative costs of having to put out another billing round, on average, to that many people, and we covered our costs—and it is reasonable to do that. We know that it costs money to issue and mail out accounts to people. It costs in staff time and money to input and manipulate data, and there are also postage costs.

It costs money, and it is reasonable that those costs are passed on to people who are incurring those costs. These are not hardship cases—they are already captured and precluded from having this supplied to them—but people who, for a wide range of reasons, choose not to pay on time. These are people who were habitual late payers; they cost the organisation, and it is unfair and unreasonable to pass on those costs to other members.

Amendment negatived; schedule passed.

Title passed.

Bill reported without 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) (17:37): I move:

That this bill be now read a third time.

Bill read a third time and passed.

STATUTES AMENDMENT (NATIONAL ENERGY RETAIL LAW) BILL

Adjourned debate on second reading.

(Continued from 10 November 2011.)

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) (17:38): I thank all honourable members for their second reading contribution to this bill, which was covered in their second reading contribution as part of the National Energy Retail Law (South Australia) Bill.

Bill read a second time.

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) (17:39): I move:

That this bill be now read a third time.

Bill read a third time and passed.

SUMMARY OFFENCES (WEAPONS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 10 February 2011.)

The Hon. B.V. FINNIGAN (Minister for Industrial Relations, Minister for State/Local Government Relations, Minister for Gambling) (17:41): I assume that no other members wish to contribute to the second reading debate, and I thank the members who contributed to the debate on this bill. As has been pointed out, the bill seeks to prevent and reduce knife crime and weapons-related crime more generally by curbing access to knives, preventing persons with a propensity for violence from possessing prohibited weapons and providing police with appropriate powers to search for knives and other weapons in specific circumstances.

The Hon. Mr Wade asked a number of questions in his second reading contribution on the bill, and I will answer them as far as they can be answered. The first question asked by the Hon. Mr Wade was: 'How many charges and offences have involved the use of a knife since 1996 in South Australia?' Information has been extracted from the police apprehensions and police

incident reports database to try to provide the information requested on weapons offences and charges.

Statistics are only available from 2000, as prior to that time weapons-related offences were grouped into broad categories that did not allow the ability to distinguish the individual weapon used. I am advised that between 2000 and 2009 there were 10,448 victim reported offences in which a knife or machete was used as a weapon. The number of recorded offences per year have ranged from 1,043 in 2000 to 815 in 2004 and 1,290 in 2009.

The number of charges between 2000 and 2009 in which a knife or machete was listed as a weapon ranged from 625 in 2000 to 697 in 2004 and 1,068 in 2009. The total number of charges involving a knife or machete over that period is 8,282. As the weapon field was an optional component of a police report prior to 2009, the above figures should be used as an indication only. The above figures include possession offences.

The Hon. Mr Wade has asked how many of those charges and offences have involved the use of a knife by a minor since 1996. I am advised that it is not possible to determine the age of the offender from police incident reports. The number of victim reported offences by age of the offender is therefore not available. Of the 8,282 knife or machete charges recorded on the police apprehensions report database between 2000 and 2009, 1,414 of these have involved the use or possession of a knife or machete by a minor under the age of 18 years.

The Hon. Mr Wade asked how many of those charges and offences have involved the purchase of a knife by a minor before the charge or offence occurred since 1996. As there is no offence for the purchase of a knife by a minor this data cannot be extrapolated. The Hon. Mr Wade asked how many charges and offences have involved each age cohort since 1996. I am advised that it is not possible to determine the age of the offender from police incident reports.

The number of victim reported offences by age of offender is therefore not available. However, the total number of recorded charges in which a knife or machete was listed as a weapon between 2000 and 2009 for each age cohort are as follows: 10 to 14 years, 206 charges; 15 to 19 years, 1,472 charges; 20 to 24 years, 1,260 charges; 25 to 29 years, 1,124 charges; 30 to 34 years, 911 charges; 35 to 39 years, 782 charges; 40 to 44 years, 560 charges; 45 to 49 years, 285 charges; 50 to 54 years, 98 charges; 55 to 59 years, 52 charges; 60 to 64 years, 33 charges; 65 years and over, 25 charges; and, age unknown, 1,474 charges. These figures include possession.

The Hon. Mr Wade has sought information on the possession and use of other weapons, including firearms and other edged weapons (other than knives) in South Australia. As all bladed weapons are recorded under knife/machete, there is no further information about other edged weapons.

Information on the possession and use of other weapons (including firearms) has been taken from the police apprehension reports. The number of apprehensions between 2000 and 2009 that list an offence involving the use or possession of a weapon according to the primary weapon listed are as follows: bats, 2,056; bottle or glass, 138; chemical, 107; crossbow, 64; crowbar/iron bar/gemmy bar, 488; firearm (other), 1,146; hammer, 125; hypodermic syringe or needle, 18; replica firearm, 2; keys, 12; pistol, 286; rifle or air gun, 776; shotgun, 177; screwdriver, 250; rock, stone or brick, 322; shovel, 22; and spanner, 15.

The Hon. Mr Wade has asked in relation to the carrying and possession of weapons: what weapons other than knives cannot lawfully be carried or possessed in schools or public places under South Australian law? What is currently considered to be a weapon under section 15 of the Summary Offences Act is not changed by this bill. An offensive weapon includes: rifle, gun, pistol, knife, sword, club, bludgeon, truncheon or other offensive or lethal weapon or instrument but does not include a prohibited weapon.

Whether an object is an offensive weapon will depend on its nature or on the intention with which it is to be used. Examples of things that have been found by courts to be offensive weapons include: camping shovels, iron bars, baseball bats, broken bottles and pieces of timber.

It is an offence to carry an offensive weapon anywhere without lawful excuse. A dangerous article is a thing or article declared by the regulations to be a dangerous article. These are listed in schedule 1 of the Summary Offences (Dangerous Articles and Prohibited Weapons) Regulations 2000 and include bayonets, blow guns, dart projectors and self-protecting sprays. It is an offence to possess or use a dangerous article anywhere without lawful excuse.

Prohibited weapons are listed in schedule 2 of the Summary Offences (Dangerous Articles and Prohibited Weapons) Regulations 2000 and include ballistic knives, extendable batons, nunchakus, star knives, knuckle dusters and fighting knives such as daggers, butterfly knives and flick knives. It is also an offence to use or possess a prohibited weapon anywhere. However, there is no defence of lawful excuse for this offence. Instead, a person must prove that they are an exempt person in the circumstances of the alleged offence.

The Hon. Mr Wade asked: how broad is a public place in terms of the meaning of the act? A public place is defined in section 4 of the Summary Offences Act to include:

- a place to which free access is permitted to the public, with the express or tacit consent of the owner or occupier of that place;
- a place to which the public is admitted on payment of money, the test of admittance being the payment of money only; and
- a road, street, footway, court, alley or thoroughfare which the public is allowed to use, notwithstanding that the road, street, footway, court, alley or thoroughfare is on private property.

The Hon. Mr Wade has asked three questions about the scope of 'lawful excuse' within the act. He queries the position of parents or guardians transporting a child to a school where the weapon is not needed for a task at the school but is being carried or in their possession for a purpose beyond the school. He also asks about the presence of a fruit knife in a student's lunchbox, or a Stanley knife in the art kit of a student in their locker. The Hon. Mr Hood has also sought clarification regarding lawful excuse. He raises two scenarios: whether the bill will restrict Boy Scouts, for example, or other groups, such as the Sea Scouts or Girl Guides, who use pocketknives from being able to use, possess, or buy a knife. His second scenario relates to the use of knives by recreational fishers and duck hunters in public places.

The defence of lawful excuse is a defence to several offences in the Summary Offences Act, including the offences of carrying an offensive weapon or possessing and using a dangerous article. It is also a defence to the new offences in section 21E of the bill relating to possession and use of a knife in a public place or school. Such a defence is necessarily included so that people who innocently and legitimately possess and use knives are not in breach of the law. Lawful excuse and similar defences are intended to allow the accused to explain his or her possession of the thing by reference to his knowledge and intent. What constitutes a lawful excuse will depend on the circumstances.

The act does not define a lawful excuse as it would be impossible to set out every circumstance that would amount to a defence of lawful excuse. It could also result in the law becoming too inflexible in its application, while, at the same time, giving offenders a ready-made list of excuses. The police decide in each case whether to charge the person. The explanation given by the person when questioned by police will be relevant to the decision whether or not to prosecute. If the person is prosecuted, the person bears the onus of proving that he or she had a lawful excuse for possessing the knife. The court must determine on the evidence and its credibility whether the accused had a lawful excuse.

The police will not charge a person if they think that the explanation is credible and the reason for possessing or carrying it is lawful. Thus, those with a legitimate reason for possessing a knife in a public place or school would have nothing to fear. A parent or guardian who can prove a legitimate reason for carrying a knife, or a child who has a fruit knife in his lunchbox and can show that it is for the purposes of cutting fruit, would be considered to have a lawful excuse, as would a child who carries a Stanley knife in his or her art kit for the purposes of participating in an art class at school.

Whether a child who has a knife in their possession on their way to school, for use in an activity after school, would have a lawful excuse would depend on the circumstances. If the child is participating in an activity after school that requires the use of a knife, such as a Scout group, then that would likely constitute a lawful excuse, particularly if the child was travelling straight from school to that activity. If a Boy Scout, Girl Guide, or Sea Scout has a pocketknife or other knife for the purposes of participating in their activities as a member of one of those groups, then that would be a lawful excuse.

As for buying a knife, the bill does place some restriction on this. If the child is under the age of 16 years, then they will not be able to purchase the knife themselves. They will need to ask their parent or guardian, or Scoutmaster (as the case may be) to purchase that knife for them.

The final question put by the Hon. Mr Wade is whether a person needs to know that they are carrying or possessing a weapon for the offences under this bill to be established. According to the High Court in He Kaw Teh v The Queen (1985) 157 CLR 523, the idea of 'possession' connotes knowledge of the thing possessed. The majority held that where a statute makes it an offence to have possession of particular goods, knowledge by the accused that those goods are in his custody will, in the absence of sufficient indication of a contrary intention, be an ingredient of the offences, because the words themselves, 'in his possession', import a mental element.

Honourable members have also raised submissions made by the Law Society on the bill, and particularly those aspects of the bill dealing with weapons prohibition orders. The government has considered the Law Society's submissions on the bill and plans to move amendments in the committee stage to include a statutory defence to subsection 21H(4)(a)(i) and to delete subsection 21 H(8). However, the government believes that the majority of the weapons prohibition order provisions and associated police search powers, while strong, are appropriate.

We are not talking about preventing the possession of a kitchen knife, a baseball bat, a screwdriver or other such items by an ordinary law-abiding citizen. We are talking about preventing a person who has demonstrated a propensity for violence from possessing or using the kinds of weapons that are primarily designed to harm or kill and have little or no legitimate social uses.

Some honourable members have suggested that weapons prohibition orders would be more appropriately issued by a court. The government disagrees. Not only would this be inconsistent with the firearms prohibition orders upon which the weapons prohibition orders are modelled but it would add a layer of complexity to the process that the government considers unnecessary, considering the thresholds that already apply for issuing a weapons prohibition order and the right of appeal to the District Court.

The honourable Mr Hood also asked whether it is anticipated that ordinary eating utensils will always be exempt. Any knives, including those used for eating and cooking, is, by definition, an offensive weapon and can only be carried or possessed with lawful excuse. The bill does not change this. However, the bill will make it an offence to sell a knife to a minor under the age of 16 years. The only knives that the government intends to exempt from this offence at this stage are razorblades permanently enclosed in a cartridge and plastic takeaway-style knives, as these knives pose little risk of harm.

The honourable member also says that under the current domestic violence order regime a magistrate must issue a firearms prohibition order against a person if a domestic violence order is made against them. I understand that is not entirely accurate. Section 10 of the Domestic Violence Act states that a court making a domestic violence order must also make supplementary orders relating to firearms. If a person has a firearm, it must be confiscated. Any firearms licence held by that person must also be cancelled and the person is disqualified from obtaining a firearms licence. They are also prohibited from possessing a firearm in the course of their employment.

Firearms prohibition orders are different. They are made by the Registrar of Firearms pursuant to the Firearms Act and have a number of strict conditions along with significant penalties for a breach of those conditions associated with them.

As noted by the Hon. Mr Hood, although the removal of firearms is automatic if the person is subject to a domestic violence order or a restraining order, it is not the same for weapons. Courts instead have a discretion to order that a weapon or an article that has been used, or might be used, to threaten or harm someone be confiscated. While firearms are lethal and can kill or maim from a distance and are readily identifiable and subject to a licensing scheme, anything can be a weapon if it is carried with intent to threaten or harm someone.

To require automatic confiscation of all weapons would be unmanageable, as weapons can include everyday items such as kitchen knives or household chemicals. Because of the different nature of weapons, the threshold for issuing a weapons prohibition order is higher than for a firearms prohibition order. Finally, some members have foreshadowed that they will be moving amendments to this bill. The government will consider those amendments in the committee stage. I commend the bill to honourable members.

TERRORISM (SURFACE TRANSPORT SECURITY) BILL

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

The Hon. B.V. FINNIGAN (Minister for Industrial Relations, Minister for State/Local Government Relations, Minister for Gambling) (17:58): I move:

That this bill be now read a second time.

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

Leave granted.

The threat from terrorism is global and ongoing, presenting a challenge to Australia and Australian interests wherever they may be. Australia has been fortunate to escape the attacks that have been perpetrated in Madrid, London, Mumbai and last year in Moscow. We need to remain vigilant to the potential risk and ensure we have means at our disposal to deter terrorists.

Surface transport systems, particularly mass passenger transport systems, concentrate large numbers of people in the confines of vehicles, vessels, stations and terminals at predictable times and places. As such, they offer substantial potential for mass casualties and injuries in a terrorist attack, as well as significant economic and social impact on Australian society and interests.

The Council of Australian Governments endorsed an Intergovernmental Agreement on Surface Transport Security following recommendations from the Australian Transport Council and the National Counter-Terrorism Committee. The primary aim of the Agreement is to put in place nationally-consistent arrangements to protect the community through strengthening security measures on surface transport systems. The *Terrorism (Surface Transport Security) Bill 2011* was drafted to fulfil South Australia's obligations under this Agreement.

Queensland and Victoria have enacted similar dedicated legislation while the remaining jurisdictions have modified their existing legislation.

This Bill will assist in reducing the vulnerability of the surface transport system in South Australia to terrorism in the event that changes in the security environment require its application. The Bill also aims to minimise the possibility that a terrorist act will be displaced from another jurisdiction to South Australia simply because South Australia, in the absence of such legislation, might be perceived to have a lower level of security preparedness.

The Bill provides the Minister for Transport with the power to identify operators at significant risk of a terrorist attack due, for example, to their size, location or iconic status, the number of passengers using the operation and any other factor considered relevant by the Minister, and to declare them a 'security identified surface transport operator' (a 'SISTO').

The primary object of the Bill is to impose an obligation on SISTOs to prepare, implement and review a counter terrorism plan. A counter terrorism plan must:

- contain an assessment of the vulnerability of the transport operation to a terrorist act;
- set out arrangements for assessing the likelihood of a terrorist act affecting the transport operation being committed;
- set out a series of measures designed to minimise the risk of such a terrorist act being committed and to minimise the effect of such a terrorist act on the transport operation; and
- set out measures to be taken in the event of a terrorist act, including measures designed to facilitate an immediate and effective response to the terrorist act, and the recovery and continued safe operation of the transport operation.

The development of security plans will include identification of further measures which will be implemented if the current National Counter-Terrorism Alert Level changes to a higher level, or if made necessary by an alert level applicable to a geographical area or specific transport sector (or part of a sector) issued by a security intelligence agency or a law enforcement agency.

Consultation with key transport industry members has demonstrated that most potential SISTOs are sophisticated organisations that have already introduced a range of security measures and training plans to mitigate the potential effects of terrorism and other security threats on their businesses. This will significantly reduce the compliance burden on operators under this new legislation. Further, the major metropolitan public transport providers are already required under their contracts with the Government to introduce and maintain counter-terrorism measures that match the requirements of this legislation.

Under the *Rail Safety Act 2007*, rail transport operators are required to prepare and implement a security management plan, which must incorporate measures to protect people from general security matters including theft, assault and sabotage, as well as terrorism. This Bill therefore makes provision for rail operators who may be declared a SISTO by allowing them to include the requirements of the counter-terrorism plan in their existing security management plan. This avoids the need to have two plans and ensures their security planning is fully integrated.

If changes to the security environment require this legislation to be invoked, it is anticipated that meeting its requirements will reduce the vulnerability of transport operations to terrorism.

I commend the Bill to the House.

Explanation of Clauses

1—Short title

2—Commencement

Clauses 1 and 2 are formal.

3—Interpretation

Clause 3 proposes definitions necessary for the measure. In particular, a *security identified surface transport operation* means a place, activity or system, associated with or relating to, the movement of people or goods by road, rail or water identified by the Minister under the measure as a security identified surface transport operation.

4—Civil remedies not affected

Clause 4 provides that the provisions of the measure do not limit or derogate from any civil right or remedy and that compliance with the measure does not necessarily indicate that a common law duty of care has been satisfied.

5—Notice relating to security identified surface transport operation

Clause 5 proposes that the Minister may, by notice in writing—

- declare a specified place, activity or system, associated with or relating to, the movement of people or goods by road, rail or water to be a security identified surface transport operation; and
- declare a person to be the operator of the operation; and
- specify the period within which the operator must prepare a counter terrorism plan in accordance with the measure.

The clause further provides that the Minister may identify an operation as a security identified surface transport operation if of the opinion that the operation has a significant risk of being the target of a terrorist act.

6—Counter terrorism plan

Clause 6 provides that the operator of a security identified surface transport operation must prepare a counter terrorism plan in accordance with the measure, and must not, without reasonable excuse, fail to implement such a plan. Each offence has a maximum penalty of $50,000.

A counter terrorism plan must—

- contain an assessment of the vulnerability of the transport operation to a terrorist act; and
- set out arrangements for assessing the likelihood of a terrorist act affecting the transport operation being committed; and
- set out a series of measures to be taken according to the assessed likelihood of a terrorist act affecting the transport operation being committed, and designed to minimise the risk of such a terrorist act being committed and to minimise the effect of such a terrorist act on the transport operation; and
- set out measures to be taken in the event of a terrorist act; and
- set out a scheme for the preparation and conduct of training exercises to test, from time to time, the operation of the counter terrorism plan; and
- set out a scheme for the provision of information and training to staff and others about the arrangements and measures set out in the plan; and
- specify the persons or classes of persons responsible for taking action under the plan; and
- set out a scheme for the review and updating of the plan; and
- comply with any other requirements of the regulations.

7—Provision of information relating to counter terrorism plan

Clause 7 provides that the operator of a security identified surface transport operation must, at the request of a person authorised by the Minister, provide the person with a copy of the counter terrorism plan for the transport operation and information in writing about the implementation or review of the counter terrorism plan for the transport operation. The clause proposes a maximum penalty of $10,000.

8—False or misleading information

Clause 8 provides that a person must not make a statement that is false or misleading in a material particular in any information provided under the measure. If the person made the statement knowing that it was false or misleading a maximum penalty of $10,000 or imprisonment for 2 years is proposed, and in any other case a maximum penalty of $5,000 is proposed.

9—Compliance notice

Clause 9 proposes that if the Minister is satisfied that the operator of a security identified surface transport operation is contravening the measure, the Minister may give the operator notice in writing specifying the action that the Minister considers should be taken in order to ensure compliance with the measure.

10—Confidentiality

Clause 10 provides for confidentiality. It states that a person engaged or formerly engaged in the administration of the measure must not disclose information obtained in the course of official duties except—

- as required or authorised by or under the measure or any other Act or law; or
- with the consent of the operator of the security identified surface transport operation to which the information relates; or
- in connection with the administration of the measure; or
- to an agency or instrumentality of this State, the Commonwealth or another State or a Territory of the Commonwealth for the purposes of the proper performance of its functions.

The clause proposes a maximum penalty of $10,000.

11—Freedom of Information Act

Clause 11 provides that information obtained under the measure is not liable to disclosure under the *Freedom of Information Act 1991*.

12—Service

This clause provides for the method of service of a notice or other document under the measure.

13—Evidentiary provision

This clause provides evidentiary aids.

14—Regulations

This clause provides a general regulation making power.

Debate adjourned on motion of Hon. J.M.A. Lensink.

STATUTES AMENDMENT (PERSONAL PROPERTY SECURITIES) BILL

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

[Sitting suspended from 18:00 to 19:47]

TRAINING AND SKILLS DEVELOPMENT (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 24 February 2011.)

The Hon. B.V. FINNIGAN (Minister for Industrial Relations, Minister for State/Local Government Relations, Minister for Gambling) (19:48): In concluding the debate, I thank honourable members for their contribution and for their indications of support for the bill, recognising the contribution it will make to ensuring we have an appropriate regulatory regime in this state for tertiary education and training.

Honourable members will note the provisions in the bill are not designed to constrain registered providers who are operating in compliance with national standards and providing quality services to their clients. However, the bill makes it clear that there are serious repercussions if standards are not met. The bill strengthens protection for consumers, who can seek redress if they suffer loss from a provider that is not delivering services to the required standards.

Honourable members who spoke in support of the bill sought further information on a number of matters. I am able to provide responses to these. The Hon. Tammy Franks stated that the government did not provide a copy of the final bill to those who commented on the draft. I understand the bill was approved by cabinet and introduced into parliament in the same week. The Treasurer issued a press release regarding the bill on the day he brought it into parliament.

In finalising the bill, the government took into account the views of those who commented on the draft bill. I note that the Hon. Mr Hood acknowledged this in his speech. The government acknowledges and thanks those who responded to the invitation to comment on the draft bill. The Hon. Mr Hood stated it would be good policy to have a complaint service for international students that properly caters for culturally and linguistically diverse people. The Hon. Tammy Franks raised

a similar concern about this and the employment rights and conditions for overseas students while studying in this state.

The Training Advocate, which is an initiative of this government and who was appointed by the Governor as an independent source of advice to clients of the tertiary education sector, provides these services to international and Australian students. The functions of the Training Advocate are set out in the Training and Skills Development Act. I am advised that in 2010 the Training Advocate assisted some 620 international students from 28 different countries, the majority of whom were from India.

The Training Advocate uses a range of services to ensure that support is tailored and culturally appropriate, and they include interpreting and translating services through the state government Interpreting and Translating Centre—

The PRESIDENT: Order! The Hon. Mr Wade will take his seat and change his gym. The Hon. Mr Finnigan.

The Hon. B.V. FINNIGAN: Thank you, Mr President. The Training Advocate uses a range of services to ensure that support is tailored and culturally appropriate, and they include interpreting and translating services through the state government Interpreting and Translating Centre, Auslan interpreters and telephone typewriters to support the hearing impaired, a front counter hearing system phone for the hearing impaired, and consultation at an alternative location, including rural or remote areas. These services are provided at no cost to the student.

The Office of the Training Advocate is currently involved in two tailored programs to assist international students as new workers in South Australia. These programs, developed with the cooperation of relevant and non-government agencies, are designed to assist students understand their rights and obligations in the workplace and to guide them to available information and advice. In addition, the Australian Council of Private Education hosts information sessions for international students on these matters.

The Hon. Mr Hood raised questions about the audits of the Adelaide Pacific College. These audits were underway prior to the matter being brought to the attention of the public through *The Advertiser* and were not initiated as a result of its articles on the matter. Previous audits of the college conducted with industry specialists confirm that the college had the relevant facilities and equipment for the qualifications they had applied to deliver; however, later audits conducted in conjunction with the Department of Immigration and Citizenship identified fraudulent and inappropriate record-keeping practices that led to the delegate in the Department of Further Education, Employment, Science and Technology cancelling their registration.

A review of regulatory arrangements in South Australia by the Commissioner for Public Sector Employment, commissioned by the Minister for Employment, Training and Further Education and tabled in this parliament, identified measures, including those in this bill, that this government is now taking to reduce the likelihood of such instances recurring.

The honourable member asked what protections there were for international students if an organisation failed. All providers registered to deliver education to international students must have approved tuition protection arrangements in place. In most cases providers are members of an approved overseas student tuition assurance scheme. The largest of these is operated by the Australian Council for Private Education and Training. If a provider collapses and is not able to refund fees to students, the overseas student tuition assurance scheme will offer each student a place in an equivalent or similar course at no additional cost to the student. If the scheme is not able to place a student, they may make application for a refund of course fees from the nationally administered tuition assurance fund.

The Baird review of legislative and regulatory arrangements for overseas students, commissioned by the commonwealth government, has recommended improvements to these consumer protection arrangements. The commonwealth government is currently consulting on proposals for change.

This bill has been introduced at a time when we are moving, as agreed by the Council of Australian Governments, towards the establishment of a national regulator for the vocational education and training sector and a national regulator for the higher education sector (Tertiary Education Quality Standards Agency). The government supports both of these national initiatives.

Given that legislation to establish each of these bodies has not yet been passed in the national parliament, it is not possible to say exactly when legislation will be brought into this

parliament to give the national VET regulator jurisdiction in South Australia. Subject to passage of federal legislation, we anticipate that it may happen towards the end of this year. Events in other jurisdictions may also impact on its timing.

The establishment of the Tertiary Education Quality Standards Agency and the regulation of higher education do not require a referral of powers from states and territories, as the commonwealth is applying its powers under corporations law. The states are negotiating with the commonwealth to ensure that their legislation does not prevent a state from establishing or disestablishing a university. In the event that the state did take such action, it would need to comply with any national regulatory requirements in force at that time. The Hon. Mr Lucas sought information on the similarity of provisions in this bill and those in the commonwealth bill to establish the national VET regulator. I can confirm that there is a high level of correspondence between the two.

There are two areas where sections of the Training and Skills Development (Miscellaneous) Amendment Bill are not directly covered in the national VET regulator bill. They are section 36A, appointment of an administrator, and section 44B, orders for compensation. However, the national VET regulator bill does provide for a state to negotiate to confer a requirement within a state act on the regulator through part 8, division 2, conferral of functions and powers by state law. In relation to compensation for consumers who have suffered loss from a provider, state and commonwealth consumer protection legislation will continue to apply, although not specifically covered in the national VET regulator bill. The government will, therefore, retain these provisions in the bill.

The honourable member requested information on the number of staff in the department dedicated to functions that will be conducted by these two national bodies. At present, I am advised that there are 23 full-time equivalents (31 persons) working in the department on the regulation of VET sector providers, and six full-time equivalents (10 persons) in the regulation of higher education providers. Negotiations about the terms and conditions of state government staff who may wish to transfer to the national VET regulator are currently in hand.

The honourable member raised concerns about how an applicant is assessed to be fit and proper if the term is not defined in the act. This term has been in the act since 2008 and assessments of applications for registration have been made according to criteria approved by the Training and Skills Commission. It is not a common occurrence to refuse an application on these grounds but when it does occur the delegate informs the applicant in writing of their reasons for the decision. The applicant can appeal the decision to the District Court.

The term 'fit and proper' is commonly used in a range of state and commonwealth legislation without definition. This is because its meaning is circumstantial. The Education Services for Overseas Students Act referred to by the honourable member is an exception. The term is not defined in draft legislation for the national VET regulator or the TEQSA but, rather, it is anticipated to be expressed within legislative instruments. The honourable member also raised a question about the legal recourse for a person if a public statement made under the act is not made in good faith. The public statement provisions in this bill are consistent with those in sections 91A and 91B of the South Australian Fair Trading Act. The term 'good faith' is a commonly understood and applied term within legislation. A person who act acts in good faith is well-intentioned and acts without malice.

The Public Sector Act provides overarching immunity provisions for public officials carrying out their official powers or functions with liability arising from the exercise of these attaching to the crown. However, section 74 does not limit the crown or a public sector agency in respect of an act or omission of a person not in good faith. If a person believes they have been wronged by a public statement made under the act their legal recourse will be through a defamation claim made in the courts. The bill provides further tests to safeguard statements made under this section. The bill requires the Minister, the Commission or Training Advocate to be satisfied that the public statement they make is in the public interest relevant to the operations of the provider regulated under the act and/or relevant to persons being adversely affected by their interaction with a registered training provider.

The Hon. Tammy Franks asked whether an interstate campus of a training provider registered in another state is covered by South Australian VET legislation. I understand that the answer is no. The registration and regulation of training providers is a national scheme such that providers registered in one state can operate in any other state and territory. If there are concerns about an interstate provider's operations in this state these concerns are taken up with the

registering body in the state where the provider is based and holds its registration. Once the national VET regulator comes into operation all training providers delivering across more than one jurisdiction will be regulated by that body.

In conclusion, I thank honourable members for their contribution and expressions of support for this bill. I commend the bill to the council.

Bill read a second time.

HEALTH SERVICES CHARITABLE GIFTS BILL

Adjourned debate on second reading.

(Continued from 23 February 2010.)

The Hon. J.M.A. LENSINK (20:01): I rise to indicate the Liberal Party's position on this particular piece of legislation, which has already passed through the House of Assembly. In doing so, I would draw honourable members' attention to the contribution by our health spokesperson, Dr Duncan McFetridge, on 22 February 2011. In his contribution, Dr McFetridge spoke at considerable length about the importance of medical research in South Australia and some concerns that had been expressed relating to funding to be provided to those institutions.

I do not propose to repeat those remarks, but I think it is important for members to note those if they are interested in that particular aspect of the bill. From my understanding that is not the primary clause, if you like, relating to this legislation, which is to modernise what is currently the Public Charities Funds Act 1935, which I think people would agree is quite an old bill. Part of what the legislation before us does is to update some of the language and particularly some of the governance for the commissioners and their powers in relation to decision-making.

I understand, from the letter that I have received from the minister, that there is some uncertainty in the current legislation relating to commissioners acting as individuals and acting as a body corporate, therefore, the bill will establish the Health Services Charitable Gifts Board, which will consist of the commissioners. The bill will also remove restrictions on some of the investment capabilities of the commissioners and establish an investment advisory committee. The minister states in his letter that the bill will provide greater public transparency and accountability through more detailed reporting requirements, and I would certainly support those particular aims.

At present the Commissioners of Charitable Funds are applied through the Public Charities Funds Act 1935 for the administration of gifts for the maintenance and support of public charitable institutions in South Australia, such that funds, which may include bequests, donations and gifts from corporate and community groups, are vested in the commissioners and held for the benefit of those particular institutions for which the assets are held. I understand that those funds are in the order of $80 million, which is largely funding for the Royal Adelaide Hospital.

The Commissioners of Charitable Funds have experienced some delay in lodging their 2008-09 annual report due to matters related to the Auditor-General. The Auditor-General has noted that gifts received on behalf of these institutions do not vest with the commissioners and therefore there is a need for some amendments to the existing provisions.

The responsibilities of commissioners under these new provisions will be to receive assets which are gifted to public charitable institutions, to administer those assets, to ensure security and integrity, to ensure that the assets are used appropriately for the benefit of that particular charitable institution, to ensure that prudential requirements are complied with, and so forth.

The member for Morphett also made some comments in relation to estates which form part of these funds. It is quite an interesting read in a historical context in terms of understanding where some of these considerable funds have been provided from, so I would refer people, again, to that particular speech.

I turn to the items that are contained within the bill. The government will be able to apply for public health entities to be proclaimed, which, I understand, excludes HACs (health advisory committees). They chose not to participate within this legislation. A number of bodies will be included, such as IDSC and Domiciliary Care.

There will be a board, as I have mentioned, and commissioners. Fairly standard clauses are contained within those sections, and I understand that specific clauses will provide for prescribed gifts which will enable chattels, and so forth, to be managed in an appropriate manner and which will allow for flexibility and also auxiliaries to apply funds to a particular purpose.

As described to me in my briefing (and I would like to thank the minister and his officers for the briefing), the key change in the bill is the application of charitable assets in that, subject to certain conditions, the board will be able to apply for funds to be applied to certain purposes, which it may not have been able to do so in the past. I was advised that this would avoid the board having to apply to the Attorney-General to seek a variation of intent through the courts. I think that probably concludes my remarks, and I look forward to the committee stage of the debate.

Debate adjourned on motion of Hon. Carmel Zollo.

HEALTH AND COMMUNITY SERVICES COMPLAINTS (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 24 February 2011.)

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) (20:09): I understand that all second reading contributions have been completed. I wish to thank all members for their contribution to the debate on this bill and their support for it. A number of matters were raised and I would like to respond to each of these in due course.

I would like to address some of the questions raised in relation to the bill. I can advise that the Health and Community Services Advisory Council has met twice, on 16 December 2010 and 27 January 2011, with the next meeting scheduled for 22 March 2011. In the section 88 review of the act undertaken by Ms Schreiber, from Ernst & Young, it is reported that the commissioner indicated that the council has not been established due to a lack of resources to service the council. I can advise that, as part of the government's response to this review, additional funding was provided by the Department of Health to the commissioner to cover costs of sitting fees and executive support to the council.

In regard to whether or not people who contributed to the development of the Charter of Health and Community Services Rights have received any response to their input, I have been advised that this is a matter for the commissioner, not for the Minister for Health, as specified in section 19 of the act. The charter has been tabled in both houses of parliament today, 8 March 2011.

The question was asked about whether or not this bill will address issues regarding faith healers. The bill will be able to address issues concerning faith healers in the same way as it will address issues regarding social workers, naturopaths or homeopaths. It must be remembered that this bill is about unregistered health practitioners, so practitioners only come within the ambit of the bill when they are providing a health service as defined in the act.

In regard to faith healers, firstly, the commissioner will have to establish that they are providing a health service. The first definition of health service in the act is 'a service designed to benefit or promote human health'. Assuming that the faith healer is providing a health service as defined in the act, the commissioner may then undertake a preliminary assessment to determine the appropriate course of action to be taken, which may include conciliation, investigation or referral, amongst other options.

The commissioner may then commence an investigation. If the commissioner has reasonable belief that the faith healer has breached a code of conduct, which will be included in the regulations, or committed a prescribed offence, a list of which will also be included in the regulations, the commissioner then has to be of the opinion that action needs to be taken under the provisions of the bill to protect the health or safety of members of the public. If all these elements are satisfied, the commissioner may make an interim or final order which may prohibit the faith healer from practising, either permanently or for a specified period of time, or place conditions on the practices of the faith healer. There is an appeal mechanism to the District Court.

It should be noted that the bill is not about preventing people from seeking assistance from people many may consider to be bogus practitioners. It does not prevent people from seeking assistance from such people. What the bill is about is protecting the health or safety of the public from those practitioners whose behaviours or practices may compromise public health or safety. The provisions of the bill therefore only come into play when there is a need to protect the public.

It is anticipated that the provisions of the bill will make it easier for the commissioner to protect the health or safety of the public as it provides a streamlined means for this to occur. Often, health and community complaints cases can involve consumer affairs, the South Australian police or Public Health. While these agencies may continue to be involved, the commissioner will be able to make an order to protect the health or safety of the public of her own volition. Evidence will, of course, be required if an order is to be made.

In regard to the need for a standing committee to investigate the functioning of the Health and Community Services Complaints Commissioner, I would advise members to read the operational review which has been previously tabled. The review analyses a range of data and information supplied by the commissioner to the reviewers, and makes 10 recommendations.

As I have previously mentioned, the provisions in the bill concerning unregistered health practitioners are modelled on the provisions in force in New South Wales. The New South Wales Health Care Complaints Commissioner has advised that, when the new provisions were introduced in that state, there was no significant impact on the commissioner's resources. In 2009-10 in New South Wales, the Health Care Complaints Commissioner received 79 complaints against unregistered health practitioners, which was 3.5 per cent of the total complaints received.

The question has been asked as to whether or not the provisions in the bill and the proposed code of conduct, which will be established in the regulations under the act, will place undue restrictions on, for example, naturopaths and homeopaths. Members have the opportunity to comment on the proposed code of conduct in due course. It is not the intention of the bill or the proposed code to unnecessarily restrict the activities of practitioners who practise safely and ethically.

The bill is not concerned with restricting the right of people to use health practitioners of their choice. It is designed to protect the public when a practitioner places the health or safety of the public at risk. It should be noted that the commissioner is an independent statutory officer who provides advice to the Minister for Health. As such, the commissioner is autonomous, determining her own approach to the management of her office, the allocation of resources and the administration of the act.

Comment has also been made in the media about the commissioner's salary. The Remuneration Tribunal of South Australia is responsible for setting the remuneration payable to parliamentary members, the judiciary, statutory office holders (which includes the commissioner), and of course, local government allowances. The tribunal is independent from the government. The health budget is not bottomless, obviously, and resources must be allocated carefully.

The review suggests that a number of changes are needed within the Office of the Health and Community Services Complaints Commissioner, and it is the view of the government that these changes should be made as soon as possible. The role of the commissioner is to assist the public and the taxpayers who fund the activities of the office.

In response to questions raised by the member for Morphett in another place, that were raised during the committee stage of this bill about the Community Visitors Scheme (CVS) under the Mental Health Act 2009, I can advise that part 8 division 2 of the Mental Health Act 2009 establishes a Community Visitors Scheme in South Australia. The purpose of the Community Visitors Scheme is to provide further protection of the rights of people with mental illness who are admitted to treatment centres in South Australia.

To this end, the CVS will provide an opportunity for community visitors to visit treatment centres and other incorporated or private hospitals to inspect premises and consult with consumers and staff to ensure that people with serious mental illness are receiving appropriate care and treatment.

The act requires the CVS to be in place and operational by 11 June 2011 (within two years of the date of enactment of the legislation) and assigns ultimate responsibility for the scheme to the Minister for Mental Health and Substance Abuse. The act seeks out a basic framework for the operation of the CVS and leaves key details of the scheme to be established accordingly. Significant work is currently being undertaken to set up the necessary governance, administrative and operational structures for the CVS prior to its commencement. Key elements of the CVS are currently being developed, and they include:

- community visitors will be trained volunteers who will be independent of mental health services and appointed by the Governor for a term not exceeding three years;

- community visitors will be required to undertake comprehensive training before commencing their role and will be reimbursed for costs incurred per visit, as well as receiving an annual honorarium;
- a principal community visitor will be appointed by the Governor to oversee, advise and assist community visitors in their role, report on matters of concern regarding the care and treatment of consumers and assist with the resolution of issues relating to the care, treatment and management of patients; and
- the CVS will visit treatment centres as required by the act.

Over the coming months, targeted information packages and education sessions promoting the CVS will be rolled out across mental health services and also the wider community. I commend this bill in enabling the commissioner to act in a more timely and effective manner if and when it is determined that the health and safety of the public is being compromised by an unregistered health practitioner.

Bill read a second time.

In committee.

Clauses 1 to 5 passed.

New clause 5A.

The Hon. R.L. BROKENSHIRE: I move:

New clause, page 3, after line 9—After clause 5 insert:

5A—Amendment of section 16—Annual report

Section 16—after subsection (1) insert:

(1a) Without limiting matters that may be included in a report of the Commissioner under subsection (1), each report—

(a) must include the following information relating to the relevant financial year:

(i) the number, type and sources of complaints made;

(ii) a summary of all assessments and determinations made under the section 29 in relation to a complaint;

(iii) a summary of all determinations under section 33 to take no further action in relation to a complaint;

(iv) if a complaint was referred for conciliation—the outcome of the conciliation;

(v) if a complaint was dealt with under Part 7—the outcome of any action taken by a registration authority;

(vi) a summary of all investigations conducted by the Commissioner under Part 6, including the outcomes of those investigations;

(vii) a summary of the time taken for complaints to be dealt with under the Act;

(viii) a summary of all complaints not finally dealt with by the Commissioner; and

(b) may include the following information relating to the relevant financial year:

(i) such information relating to complaints (other than that required to be included under paragraph (a)) as the Commissioner thinks fit;

(ii) any report made to the Minister under section 54;

(iii) if a complaint was dealt with under Part 7—a summary of any advice, notification or information provided to the Commissioner in relation to the complaint by a registration authority.

(1b) Matters included in a report under subsection (1)—

(a) are to be reported, as far as practicable, according to professional groupings (as determined by the Commissioner); and

(b) must not identify a person who has made a complaint, a person in relation to whom a complaint has been made or a person who has been subject to an

investigation under this Act, unless the identity of the person has already been lawfully made public.

In summary, this amendment is pretty self-explanatory. It simply provides that, with respect to the annual report, there would be a far more detailed summary of the matters that are dealt with in respect of that office during the preceding 12-month period.

It is not singling out this particular office; I put that on the public record. I am concerned about the lack of transparent reporting generally with a lot of agencies and offices. I think it makes it harder for us as legislators to be able to make assessments on whether we support the government or the opposition with respect to issues that may arise around budgetary components and other matters to do with offices.

It is not singling them out but, having said that, when I have had a look at the reports (some of which, I might add, have been quite late in being tabled) and the concerns we have had over the charter—and the list goes on, way back for several years—I believe that this is an important amendment to ensure transparency. I commend the amendment to my colleagues.

The Hon. J.M.A. LENSINK: I rise to indicate support for this amendment. The mover spoke about transparency. I think there is also a lot of very important information that can be collected from agencies such as this which can inform our health system. The report in *The Advertiser*, which I assume is referring to the annual report, refers to 708 complaints in a year, and I think that if we are able to break down that data as per the amendment to this bill moved by the Hon. Robert Brokenshire, that would be very useful in informing our health services.

I would have thought that it would be fairly standard practice for any complaints commissioner or ombudsman or such agency whose role is to deal with complaints and investigations to collect the sort of data that this amendment outlines to be provided in the annual report, and I think that that sort of information is also important to us as legislators to assist us to understand the operations of the health system. With those words, I indicate support for this amendment.

The Hon. G.E. GAGO: The government also supports this amendment. The amendment will require the commissioner to provide further information in her annual report. The government has asked the commissioner for her advice on the proposed amendment, and she has expressed concerns about the amendment, primarily that the current resources available to her will not enable the commissioner to extract all the data required under the proposed amendment.

I have to say that this is not a claim the government has had the opportunity to fully assess. However, despite the concerns raised by the commissioner with respect to this proposed amendment, there appears to be support for the amendment in this house, therefore the government will not impede this parliamentary process and will, in turn, support this amendment.

The Hon. T.A. FRANKS: I rise briefly to indicate that the Greens also support this amendment. As we said in our second reading speech, having this sort of information and having an effective complaints body creates a cost reduction in the longer term in our health and community sector. We think that the more comprehensive the information that can be provided in an annual report the fewer problems we will have in the longer term because we will be able to see emerging trends and issues, so we welcome this amendment from the Hon. Rob Brokenshire.

New clause inserted.

Remaining clauses (6 to 14) and title 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) (20:27): I move:

That this bill be now read a third time.

Bill read a third time and passed.

HEALTH SERVICES CHARITABLE GIFTS BILL

Adjourned debate on second reading (resumed on motion).

The Hon. CARMEL ZOLLO (20:28): I place on the record my congratulations to the Minister for Health in the other place for bringing this legislation to the parliament. The

Commissioners of Charitable Funds is an area that I have kept an interest in since the Statutory Authorities Review Committee inquiry in 1998.

In my earlier years in the parliament, whilst in opposition, I had the pleasure of serving on the Statutory Authorities Review Committee, along with the Hon. John Dawkins. I believe we are the only two members in our chamber from that particular time of the committee. It was the recommendation of that committee, following an inquiry into the Commissioners of Charitable Funds, that the commissioners be wound up.

That there are two of us in this chamber from that original committee is not surprising, but what is surprising is that one of the commissioners at that time is now one of our colleagues in this place, the Hon. John Darley. At this stage, I quickly hasten to add that the committee found that there was no question that the commissioners themselves were doing anything other than an excellent job.

The decision to recommend that the CCF be wound up was a unanimous one at the time and ultimately reflected the view that there had been enormous changes to the manner in which funds to public health institutions were gifted and then subsequently invested, along with changes to the institutions themselves. It was certainly the view that there was some ambiguity and confusion because of changed circumstances, if for no other reason than the fact that the original act first came into being in 1875.

I am pleased to see this bill before us. The bill maintains the independent decision-making powers of the commissioners. I will not attempt to reiterate the minister's second reading speech, but I note that what the legislation before us does is to recognise the importance of the entity, as well as widening the powers of the board and improving its governance and the use of current terminology.

As stated by the minister, whilst the functions and responsibilities are broadly consistent with those that the commissioners currently undertake, for the first time there will be provisions that clearly describe the functions and responsibilities of the board. I am pleased to see the issues raised in the inquiry all those years ago are addressed. I remember that one of the issues identified at the time of the inquiry was the manner in which money gifted to country hospitals is dealt with. Whilst it is the government's intention that the act before us apply to all public hospitals, there will be some exceptions.

I understand the health advisory councils and their local country hospital sites will be the main exception, consistent with the commitment to people in country regions of South Australia that the health advisory councils established for those hospitals would retain control of local assets, including any donations to their local hospital. The government specifically precludes health advisory councils from being proclaimed public health entities and the property they hold on trust from being vested with the Health Services Charitable Gifts Board; that is proposed to be established by the bill. Circumstances where the health advisory councils prefer to transfer the property to the board are enabled in the bill.

I would also like to make mention of a couple of other important improvements: firstly, the enabling of the commissioners to act as trustees where they will have the same responsibilities that are now required of any other trustee under the Trustee Act 1936. The bill gives, as an example, the Helpmann Family Foundation in which the commissioners are co-named to be actively involved, but at the moment they are precluded from undertaking those duties because the current act does not have such a provision.

Whilst the current act enables the commissioners to apply a gift held on trust for a particular hospital to a more general one of being applied for the benefit of that hospital, the bill proposes a widening of those powers as sought by the commissioners. However, the legislation also requires the board to consider the intent of the donor, as far as can be reasonably ascertained, in order to ensure that the application of the funds is in a manner most likely to fulfil the intention of that donor.

The bill also reflects the fact that a considerable part of the charitable assets are funds for health and medical research and that the future focus of those funds for research will be taken up by the South Australian Health and Medical Research Institute as opposed to individual hospitals. So, as to be expected, the SAHMRI will be a prescribed body, and commissioners will also be given the option of applying those funds to SAHMRI where it is believed that this will best achieve the health outcomes that a donor may have intended.

Whilst always wishing to respect the wishes of donors, the bill states that the board will have the capacity and the flexibility to apply funds where it believes there is better research infrastructure and the hoped-for health benefits for patients can be best achieved.

In recognising the limitation on the current board in relation to its investment powers, this legislation will also allow the board to invest in the sharemarket, with the added support in its decision-making of a newly established investment advisory committee. I am pleased to see that it will have at least a representative from the Department of Treasury and Finance. It is clearly important that the generosity of people is well respected and that they can have trust in those who are the decision makers. Even with all of the best intentions and advice still fresh in our minds of the unfortunate experience of the global financial crisis, I think all agree that the more safeguards that are put in place the better.

I believe that, whilst the committee I then served on recommended the abolition of the Commissioners of Charitable Funds, I nonetheless feel that the spirit of this legislation before us captures the concerns that were expressed during that inquiry. I say that, given the changes that have occurred since 1998, whether they be in the governance and size of our health institutions, the financial market, different research facilities and even the manner in which medical research institutions attract their funding. I believe the deficiencies that were raised in the inquiry have been addressed.

The bill before us deals with not just the widening of the powers of the commissioners but, just as importantly, the clarification and improvement in the management of the existing act. We still have the board acting independently and not being compelled in its decisions by any person or body, including the government, as well as the government recognising its responsibility, with the bill ensuring that governmental role. So, for all those reasons I am pleased to add my support to this legislation.

Debate adjourned on motion of Mr Gazzola.

At 20:37 the council adjourned until 9 March 2011 at 14:15.