LEGISLATIVE COUNCIL

Tuesday 22 March 2011

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

HEALTH AND COMMUNITY SERVICES COMPLAINTS (MISCELLANEOUS) AMENDMENT BILL

His Excellency the Governor assented to the bill.

NATIONAL ENERGY RETAIL LAW (SOUTH AUSTRALIA) BILL

His Excellency the Governor assented to the bill.

STATUTES AMENDMENT (NATIONAL ENERGY RETAIL LAW) 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*.

SOUTHERN HAIRY-NOSED WOMBAT

187 The Hon. T.A. FRANKS (24 November 2010).

1. How many destruction permits have been issued over the last five years for culling of South Australia's faunal emblem, the southern hairy-nosed wombat Lasiorhinus latifrons?

2. How many wombats have been estimated to have been killed by the issue of these permits?

3. Are there geographic areas where these permits are concentrated?

4. (a) What allowable methods can be used under authorised culling permits; and

   (b) Do these methods include bulldozing of burrows and decapitation of pouched young?

5. (a) What information does the government have on the extent of unauthorised/illegal culling that is taking place; and

   (b) What measures are in place to reduce this?

6. What measures are in place to investigate and prosecute illegal culling of southern hairy-nosed wombats?

7. (a) Is the Minister aware of alternatives to culling, such as the Wombat Mitigation project as developed by the Wombat Awareness Association; and

   (b) If so, does the government support non-lethal alternatives such as this project and should they be promoted and supported across all wombat-populated areas in South Australia by Department of Environment and Natural Resources personnel in the first instance?

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 Environment and Conservation has advised that:

1. Between 1 January 2006 and 22 December 2010, there were 139 permits issued for destruction of Southern Hairy-nosed Wombats in South Australia.

2. As at the 24 December 2010, the Department of Environment and Natural Resources database recorded 887 Southern Hairy-nosed Wombats known to have been destroyed under permit during the five year period. This dataset is incomplete pending returns on current permits and further data input.

3. Geographically, the permits were issued for use on properties in the West Coast and Murraylands regions.

4. (a) Shooting is the only allowable method for legal destruction of adult Southern Hairy-nosed Wombats in South Australia, and must be undertaken in accordance with the *Code of Practice for the Humane Destruction of Wombats by Shooting in South Australia*.

(b) In no instance is bulldozing of burrows authorised as a method of destruction of Southern Hairy-nosed Wombats. In instances where a very small, hairless young is found in the pouch of a shot female, the *Code of Practice for the Humane Destruction of Wombats by Shooting in South Australia* recommends decapitation as the most humane method of achieving a sudden and painless death.

5. (a) The Department of Environment and Natural Resources has actively investigated past reports of the illegal taking or killing of Southern Hairy-nosed Wombats that it has received, and takes all reports seriously.

(b) Department staff work with landholders and the local community on issues associated with Southern Hairy-nosed Wombats and relevant legal requirements. Most recently this included two workshops that were held in the Murraylands attended by approximately 120 people.

6. Reports of non-compliance and legislative breaches are received by the Department of Environment and Natural Resources Investigations and Compliance Unit. Reports are graded in terms of reliability and assessed against legislation to confirm that a *prima facie* offence exists. Any investigation which provides prima facie evidence of an offence against the *National Parks and Wildlife Act 1972* is referred to the Crown Solicitors Office (Environmental Division) for prosecution.

7. (a) Yes, the Minister for Environment and Conservation is aware of the Wombat Awareness Organisation and its efforts regarding wombat conservation. The Minister and the Department of Environment and Natural Resources encourages a 'living with wildlife' approach and the use of non-lethal management strategies to issues involving human-wildlife conflict.

(b) DENR has and will continue to support and promote non-lethal approaches to wildlife management.

PAPERS

The following papers were laid on the table:

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

Reports, 2009-10—
Judges of the Supreme Court of South Australia
South Australian Superannuation Scheme
Report on the Inquest into the Death of Mr Ricky James Bais
Rules of Court—Industrial Relations Court—
Fair Work Act 1994—Industrial Proceedings Rules
Response to the Legislative Review Committee's recommendations on the postponement of Regulations from expiry under the Subordinate Legislation Act 1978

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

South Australian Local Government Grants commission—Report, 2009-10

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

Reports, 2009-10—
Carrick Hill Trust
Medical Board of South Australia
Nursing and Midwifery Board of South Australia
Optometry Board of South Australia
Physiotherapy Board of South Australia
Regulations under the following Act—
Radiation Protection and Control Act 1982—Ionising Radiation—Schedule 4 Fees

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

Regulations under the following Act—
Liquor Licensing Act 1997—Dry Areas—Long Term—Bordertown

BONYTHON, MR H.R. (KYM)

The Hon. B.V. FINNIGAN (Minister for Industrial Relations, Minister for State/Local Government Relations, Minister for Gambling) (14:22): I table a ministerial statement made by the Premier in another place on the state funeral for the late Kym Bonython AC DFC AFC.

LONG, DR R.

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) (14:23): I table a ministerial statement made by the Hon. John Hill in another place relating to Dr Randall Long.

QUESTION TIME

TOUR DOWN UNDER

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:24): I seek leave to make a brief explanation before asking the Leader of the Government, representing the Premier, a question about the Tour Down Under.

Leave granted.

The Hon. D.W. RIDGWAY: This morning, the Premier released what he claimed were numbers for this year's Tour Down Under. I remind members that the Tour Down Under of course was a Liberal government initiative, along with the very successful Clipsal event we had just this weekend. It is interesting to note, while interjections are coming from the other side, that in nine years there has not been one initiative in relation to sport and major events in this state.

Members interjecting:

The Hon. D.W. RIDGWAY: I am being distracted by the interjections, Mr President. The Premier tweeted this morning that the 2011 tour had an economic impact of $43.3 million into our local economy, up from $41.5 million last year. He also claimed that the tour had received the attendance of some 782,300 spectators during the week. My questions to the minister are:

1. As people can simply stand by the roadside and, in some cases, watch the tour going past their farm or their shop, how does the government know the figures were not 782,250 or 782,350? How can the government—

Members interjecting:

The Hon. D.W. RIDGWAY: Can I have the clock reset if you are not going to shut them up, please?

The PRESIDENT: Order! The honourable government members will cease to interject.

The Hon. D.W. RIDGWAY: Thank you, Mr President. How can the government claim to know the exact figures when no tickets or very few tickets are sold, no attendance register is kept and no mathematical certainty exists?

2. Is the $43.3 million a net economic impact, minus all expenses (like, for example, the expenses incurred for Lance Armstrong) and other costs, or is this a gross economic benefit?

3. Will the government table the full report into the tour's supposed economic impact and the number of visitors, including the report's methodology, its authors, its tables and a statistical margin for error?

The Hon. B.V. FINNIGAN (Minister for Industrial Relations, Minister for State/Local Government Relations, Minister for Gambling) (14:27): I thank the Leader of the Opposition for his questions. I will refer to them to the Premier in another place and bring back a response. How extraordinary that the leading question from the opposition is some absurd sort of parlour game about whether the Premier is right precisely about a figure that he gives.

The Tour Down Under is a vital part of the major events in this state. It has had terrific support from this government. This is the mob who continually complain about Lance Armstrong.

The Hon. Mr Lucas over there goes through every single detail and dot and comma about what is the cost of Lance Armstrong, and here they are now criticising the economic benefit that this event brings to the state.

I notice when the Leader of the Opposition was asking his question he did not mention Hindmarsh Stadium as one of the great achievements in the sporting field of the previous government. He certainly did not mention, in claiming that this government has had no major initiatives in sport, that we have committed substantial government funds to the Adelaide Oval project. We have cooperated with the parties to try to bring that project to fruition, and progress has been very well advanced.

The Hon. P. Holloway interjecting:

The Hon. B.V. FINNIGAN: My friend the Hon. Mr Holloway points out the aquatic centre at Marion. In marked contrast, the opposition promised this pie-in-the-sky stadium based at the rail yards that was not costed, that was going to have more car parks than Heathrow Airport. It was a complete pipedream. It was going to have a closed roof and then an open roof and then a transparent roof. Who knows what sort of roof it was going to have, because it was never a genuine project or genuine design.

Unlike the honourable members opposite, this government puts its money where its mouth is and we have committed $535 million, from recollection, of government funds to the single most important sports infrastructure project, I would say, probably in this state's history. So what an absurd suggestion that this government has done nothing in relation to sport.

In relation to the figures that were being quoted by the Premier, as I said, I will refer them to him to obtain details. However, as we all know, there are many occasions when estimates are made of the number of people at particular events without every single person necessarily having bought some sort of ticket or filled in a form, or whatever.

Members opposite like to talk about how many people have come to rallies and protests outside Parliament House, but I have never seen any of them walk in here with a pile of statutory declarations from all those attending declaring that they were actually there; instead, they usually go on a projected figure of how many people were there at the time. Of course, the police have great expertise in doing that.

They suggest that this figure has been plucked out of the air or that, because we do not have a photograph of every person who went to the Tour Down Under or a signed form saying they were there, it is somehow not a legitimate figure. This government is proud of the contribution it has made to the Tour Down Under. It is a leading event in this state and one that gets international coverage. All that honourable members opposite can do, again, is carp and whine and try to bring the state down.

Members interjecting:

The PRESIDENT: Okay, both sides have had their circus for the day.

DOMESTIC VIOLENCE

The Hon. J.M.A. LENSINK (14:31): My question is to the Minister for the Status of Women. Can the minister advise whether the domestic violence research and investigation officer position within the Coroner's Office has been appointed? If not, why not; if so, what actions have been taken so far?

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) (14:31): I thank the honourable member for her most important question. Indeed, I am very pleased to announce that the position has been filled; in fact, it has been filled for some time.

The Hon. B.V. Finnigan interjecting:

The Hon. G.E. GAGO: Indeed, it is a Dorothy Dixer for us. The South Australian government has worked very hard to ensure that domestic violence-related deaths are prevented, and the recently appointed position in the Coroner's Office will research and investigate domestic violence-related deaths. This is another really important step that the government has taken to protect communities and, particularly, those individuals who are at risk of domestic violence, and I

am very pleased that the Coroner's Office has worked in conjunction with the Office for Women, as well as with the Attorney-General's Department, to commence the implementation of this position.

The recruitment process has been completed, and I am very pleased to advise that the successful applicant began on 24 January 2011. The new position works with the Coroner and complements other initiatives of the government's Women's Safety Strategy, such as the Family Safety Framework, to ensure that very positive working relationships exist across key systems. As honourable members know, I recently announced that a Family Safety Framework was successfully rolled out to yet another three areas, which means that all the Adelaide metropolitan area is now covered with provisions for access to the Family Safety Framework.

That framework is very successful in reducing the risk of domestic violence. It is a strategy that, in effect, looks at a type of intensive case management across different agencies and disciplines. It helps to coordinate services and information across agencies, and it is particularly targeted towards those women identified as being at high risk of domestic violence. The Coroner's position complements that and also complements our other strategies.

Our domestic violence legislation will be wound out in the foreseeable future. Again, it is radical reform that really transforms what we do here in South Australia. It provides for interim restraining orders to be put in place on the spot. The current arrangements mean that, when police are called out to an incident, generally they are required to leave the perpetrator in the family home and remove the victim and children and place them in a safe house, dislocating them. It is often a place in hiding for security reasons, and that is obviously dislocating women and their children from the very support arrangements—friends, family and schools—that they often desperately need.

The new interim provisions will allow for police to be able to put an on-the-spot restraining order on the perpetrator and to actually remove the perpetrator from the family home and allow the women and children, where applicable, to stay in the home. We know provisions are being made to support and secure women in the family home rather than necessarily to send them off to a safe house.

We know, for instance, that resources are available to assist with the replacement of locks, for instance, to replace security doors on the house, to put detector lights outside the place and even, for that matter, pruning trees around the house where the perpetrator is known to be a stalker, which is sometimes the case. Simple measures such as that can very much improve the safety of women. The senior research officer domestic violence position is only one of the many strategies and initiatives this government has committed towards combatting domestic violence.

DOMESTIC VIOLENCE

The Hon. J.M.A. LENSINK (14:37): By way of supplementary question, given that the minister advised us last year in this place that the position was advertised on 30 October, can she explain why it took three months to appoint a person to the role?

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) (14:37): Oh, Mr President, it is hilarious—it takes my breath away. It took three months to advertise and recruit a position, to set up an appointment panel and so on, to go through the process of interviews.

The Hon. J.M.A. Lensink interjecting:

The Hon. G.E. GAGO: The honourable member is just bizarre. Is she suggesting that we interview successful applicants prior to advertising for a position? Truly, they have lost their marbles—completely lost their marbles. The process has involved the advertising, the setting up of an interview panel and the interviewing. The interviews have to be set up at a time when the applicants are available, and then there is consideration of selection, and a selection is done. It may surprise the honourable member, but often successful applicants are unable to start immediately. They may be on contracts that require four weeks' notice, so a three-month period for advertising, selection, appointment and commencing a position is a very acceptable time frame to appoint to this important position. The honourable member is just making a fool of herself.

SHOP TRADING HOURS

The Hon. S.G. WADE (14:39): I seek leave to make a brief explanation before asking the Minister for Industrial Relations a question on shop trading hours.

Leave granted.

The Hon. S.G. WADE: The minister announced that he would allow shop trading on Easter Tuesday, a public holiday, in 2011. Shop Distributed and Allied Employees Association State Secretary, Peter Malinauskas, is reported as having said that the union has won guarantees from major retailers that no member would be forced to work against their will. He said:

> Our position as a principle is that stores shouldn't be trading on public holidays...But we acknowledge that there was a special circumstance that presented itself this Easter.

The minister is reported as having told *The Advertiser*:

> It's not a precedent or anything like that. It's just a very special or unusual circumstance when you have ANZAC Day abutting Easter.

The Rann government's position, apparently, is not about the special nature of ANZAC Day or Easter. The government allowed shops to open on ANZAC Day in 2010, which was a Sunday. I ask the minister:

1. Was the guarantee given to the SDA significant in the minister's decision to allow trading on Easter Tuesday?

2. Does the guarantee apply to non-union members, and, if so, what will the government do to uphold the guarantee for those workers?

The Hon. B.V. FINNIGAN (Minister for Industrial Relations, Minister for State/Local Government Relations, Minister for Gambling) (14:40): I thank the Hon. Mr Wade for his question. This year, for the first time, ANZAC Day will coincide with Easter Monday. This is an exceptional situation which, I believe, will not occur again until 2095 and, as such, requires special arrangements to ensure that the community is able to recognise the significance of both public holidays.

To preserve the importance of 25 April as ANZAC Day, the government proclaimed a special public holiday on 26 April, creating an extended five-day Easter weekend. The additional Easter Tuesday public holiday would result in shops being closed for an extended period over Easter this year. Given these unusual circumstances, the government has decided that special arrangements will apply to trading hours on Monday 25 and Tuesday 26 April.

As has been the case in previous years, larger stores will again remain closed on ANZAC Day, and I have issued a closure notice that requires partially exempt stores to also remain closed until 12 noon. This ensure that marches and ceremonies remain the focus of attention on the morning of ANZAC Day. The government will also ask that smaller retailers that have exemptions under the act remain closed until midday to ensure that everyone has the opportunity to properly honour those who have served our nation.

As shops would generally be required to close for ANZAC Day if it fell on a different day, this arrangement does not reduce the number of days that shops are required to close. However, to ensure the right balance for the general public, traders and retail employees, I will be allowing city stores to seek an exemption to trade on Tuesday 26 April. This will allow retailers within the CBD to trade between 11am and 5pm on the Easter Tuesday.

Normal public holiday trading restrictions will apply to the remainder of the Easter long weekend, including on Good Friday and Easter Sunday. Shops in the metropolitan area will be able to trade as usual until 5pm on Saturday 23 April, as this day remains unaffected.

The government has a proven record of striking a fair balance between choices for retailers and consumers while protecting workers and their families from fully deregulated trading hours. This includes the flexibility to make arrangements, as necessary, to cater for exceptional events.

As members may recall, I recently allowed exemptions in relation to the visit of cruise ships, which enabled some trading on Sunday morning in Rundle Mall. I also approved an exemption request from Target Australia to allow Target Centrepoint to trade some additional hours during the Clipsal 500 weekend just gone.

This indicates that we have the right legislation and the right balance, which enables us to make exceptions for particular, unusual or specific circumstances, and the coinciding of ANZAC Day and the Easter weekend is certainly one of those. In relation to the SDA and what guarantees they have sought from retailers, that is a question for them.

OUTBACK COMMUNITIES AUTHORITY

The Hon. CARMEL ZOLLO (14:43): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations a question on outback communities.

Leave granted.

The Hon. CARMEL ZOLLO: I understand that the outback's local government authority is taking steps to ensure that people in remote areas can have a say in how their communities are run. Can the minister inform the council of how the Outback Communities Authority is improving its services to people in the outback?

The Hon. B.V. FINNIGAN (Minister for Industrial Relations, Minister for State/Local Government Relations, Minister for Gambling) (14:44): I thank the honourable member for her important question. As members would be aware, seven members of the Outback Communities Authority were appointed in July last year and have formally adopted a community engagement policy at their March meeting. The adoption of this policy, after public consultation, was a requirement under the legislation approved by the parliament in 2009.

This legislation requires that the Outback Communities Authority consults with people who live and work in unincorporated areas when making decisions about infrastructure, service planning and community management. It is pleasing to see, then, that the authority has gone beyond this minimum requirement. The board is committed to consulting and engaging with the community on a continual basis, and it is the aim of the authority and the government to ensure that people who live and work in the outback are able to play a greater role in developing solutions to local issues that arise from time to time.

The Outback Communities Authority's policy of community engagement reflects how community members have indicated they would like to be more involved in decision-making processes. The authority made the draft policy paper open for consultation over a nine-week period from December last year to February this year, and the feedback received resulted in some changes to the draft.

I am told that, owing to direct feedback, changes were made to the draft to ensure that the community will be able to read discussion papers or reports which explore possible solutions to problem areas and, furthermore, there will be a minimum six-week period to allow for feedback. The Outback Communities Authority also noted the importance of after-hours, face-to-face meetings in townships where community members can be consulted and engaged in field trips or local meetings to develop solutions to local problems.

Throughout the consultation, the Outback Communities Authority also received feedback on the best ways to reach people, mostly through local media and local progress association newsletters. The Outback Communities Authority will be able to use this information to ensure that outback residents are able to have their say about future strategic management plans, business plans and budgets. I understand the authority will be writing to everyone who contributed to the consultation process for the draft policy about how their feedback influenced the finished product.

The Outback Communities Authority can now focus and get on with the job of supporting our outback communities and delivering real benefits. This first important step will allow the authority to consult on its draft strategic management plan, which will set out an agenda for the ideas and goals that will structure how the authority operates over the next five years. I look forward to updating the chamber about the progress of the Outback Communities Authority in the coming months.

SUICIDE PREVENTION

The Hon. R.L. BROKENSHIRE (14:47): I seek leave to make a brief explanation before asking the Minister for Regional Development, representing the Minister for Health, a question about suicide.

Leave granted.

The Hon. R.L. BROKENSHIRE: This is a sensitive subject and it is not a political subject but, nevertheless, it is an important issue of public policy. Recent stories in some media about high suicide rates in some regional areas in particular of South Australia are of enormous concern. I acknowledge the work that the Hon. John Dawkins has put forward promoting community responses to eliminating suicide. We also acknowledge Lifeline's work on this matter.

I have expressed concern that our investigation with the health department, where I was seeking some information on suicide rates in South Australia, indicated that the health department did not have any geographical mapping of where suicide or suspected suicide was occurring to deploy government or non-government community suicide postvention and counselling resources into areas so affected. In fact, I advise the minister here that the health department said it had no data, which is of enormous concern. My questions are:

1. What are the rates of suicide in South Australia over the last 10 years, per year?

2. Can the minister, in liaison with the education minister, outline how well the suicide postvention guidelines that have operated within schools since they were released are performing?

3. How much funding or hours of training are provided to public and private bodies servicing schools and the broader community in suicide postvention?

4. Will the government, internally (not for public release), create a process of geographical mapping and alerting of suicide incident rates in sections of the community so that intervention can occur, as it is not, as I understand, presently?

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) (14:49): I thank the honourable member for his most important question, but I think it is a shame that he shows such bias. He states that he does not want to use this as a political issue, yet that is exactly what he has done. I notice that he thanks and acknowledges everyone other than the state government, which committed considerable resources, particularly into drought areas during that time of crisis, particularly around the Riverland.

The state government put in large resources, really significant commitments, to that area to provide a whole raft of support measures, including assistance around mental health and wellbeing and other health issues. There was a range of support services in the form of counselling services, a hotline, referral services, even a buddy type of system where if a person was showing stress someone would call them, drop in and include them in social occasions; so there was a raft of support from highly specialised professional support through to friendship and buddying.

A raft of literature was put out, including a book as well as a wide range of counselling and other on-the-ground support services. A community program equivalent to 'train the trainer' was wheeled out as well that involved a series of community groups and helped to connect their services to ensure that those who were identified as being at risk were highlighted and attended to.

So, I think it is a real shame that the Hon. Robert Brokenshire gives absolutely no recognition whatsoever to those considerable resources that were put into that region. I visited the Riverland just a couple of days ago, and they are still grateful and acknowledging the support that the state government gave during that time.

It's amazing that the honourable members here laugh and scoff, yet those people on the ground, the real people on the ground who lived and worked through a series of adverse events from drought to flood, clearly, as I said, raised with me their gratitude. They acknowledged and indicated how grateful they were for the support that was given and the sensitivity with which this government dealt with them. So, I think it is a real shame. I am not saying that the state government was the only body to lend support—there were others—but I think it is a disgrace that the Hon. Robert Brokenshire failed to give any recognition to the state government. In relation to the specific matters that he raises, I will refer those to the Minister for Health and bring back a response.

SUICIDE PREVENTION

The Hon. R.L. BROKENSHIRE (14:53): As a supplementary question, given the minister's answer, particularly with respect to the Riverland, can the minister advise why the health department of the South Australian government, of which she is a cabinet minister, has no data or information on issues surrounding suicide in that region or indeed in any other region? Secondly, post the drought, can the minister explain why it still has no data or inter-agency working groups on this matter, even though there are still serious suicide issues occurring?

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) (15:54): I do not know whether those assertions are true or not. I will

refer them to the Minister for Health and bring back a response. Nevertheless, the point that I was making was that there were considerable resources committed, considerable services rolled out, considerable acknowledgement from those living through the crisis there in terms of their appreciation of how valuable those resources were, and yet the Hon. Robert Brokenshire still refuses to make any acknowledgement of those valuable services that the government contributed.

RIVERLAND SUSTAINABLE FUTURES FUND

The Hon. R.P. WORTLEY (14:55): I seek leave to make a brief explanation before asking the Minister for Regional Development a question about the Riverland.

Leave granted.

The Hon. R.P. WORTLEY: The Riverland has a special place in the pantheon of the state's remarkable agricultural regions, with its wine, fruit, vegetable and nut producers, as well as being a great place to holiday or for people to put their feet up in their retirement. We all know that the economy of the Riverland—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.P. WORTLEY: Mr President, I find it staggering that, after the pathetic questions asked by this disgraceful opposition, when we get a question about the bread and butter issues of the Riverland, they want to ignore it. We all know that the economy of the Riverland has suffered a good deal over the last few years, with the extended drought having an knock-on effect to the community. Having less money to go around after a poor season causes reductions in spending in the local shops and businesses, and the pressure caused by a couple of poor seasons can be too much for even a well-run business.

Now that the drought has broken, some may think that the problem has been washed away by the floodwater flowing down the mighty Murray, and the public's attention has moved on to other things. Can the minister explain how the government is supporting the Riverland to diversify and adjust to difficult economic circumstances?

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) (14:57): I thank the honourable member for his most important question and, indeed, for giving me the opportunity to talk further about the special needs of those in the Riverland and the support the government is directing towards their needs.

The government has indeed provided significant assistance to the Riverland over the past few years, as I said when answering the previous question, and much of that support relates to drought relief programs. However, it is important to recognise that, although the drought is now over, the Riverland continues to face significantly challenging times. The commonwealth government has acknowledged this by extending assistance through the exceptional circumstances funding, and I certainly welcome this. The South Australian government also remains committed to helping the Riverland economy to adjust and diversify.

Obviously, I was delighted to visit the Riverland last week, where I announced the first grants from the Riverland Sustainable Futures Fund. During that visit, I met with representatives of the citrus, almond and wine industries and a wide range of other key community leaders. I met local government leaders and Regional Development Australia board members.

On Friday, I visited AgriExchange in Renmark to discuss the company's plans to expand its fruit packing operations. The government has contributed $620,000 towards a $1.239 million project, which is expected to create 150 new seasonal jobs in the Riverland. The government assistance is helping the AgriExchange to improve its facilities at Murtho, which will assist the production and marketing of one million additional cartons of citrus. This will add between $20 million and $30 million to the gross domestic product of the region and the state.

I know that members opposite will be pleased to hear this news and that they will be as delighted as I am that the government is delivering on its election promise to support the Riverland community with $20 million over four years. This money is not a handout: it is a hand up—the government is helping the Riverland to help itself. We have provided the funds to enable diversification and adjustment. The problems facing the Riverland are well known to honourable members—years of drought, declining river levels, over-production of grapes, poor commodity prices in some areas, and the list goes on. The government recognised that help was needed and

that it would be extremely difficult for a community to survive these challenges without some support and assistance, and that is why we promised $20 million to assist the Riverland.

The Liberals, I might remind you, Mr President, promised $10 million—half what we promised—until they were exposed, and then they were embarrassed into matching the government's commitment. That is on record; the Liberals promised $10 million. We promised $20 million, and the Liberals were dragged kicking and screaming with egg on their faces (shame, Mr President, shame!) to match the government's promise.

The Riverland Sustainable Futures Fund was established to assist with industry restructuring and to promise sustainable economic and social development in the Riverland. Of course, that is not what the Liberals intended. They had no idea what to do with their $10 million, which overnight in February last year they were shamed, as I was saying, into making $20 million.

The honourable Leader of the Opposition went on ABC Radio and talked about handouts. Can you believe that? She talked about handouts. The people I met in the Riverland don't want handouts. They want a hand up, and that is what this government is doing. The Riverland Sustainable Futures Fund offers matching funds for a range of eligible organisations and businesses that want to invest in the area and provide economic growth. The $20 million fund is accessible by industry and businesses, non-government organisations and local governments, to fund projects and improve infrastructure, support industry attraction and help grow existing businesses.

I know that honourable members care about the Riverland and its future, and I acknowledge the interest in this topic displayed by the Hon. Robert Brokenshire, who talked last year about establishing an enterprise zone in the Riverland. I know that he is committed and at least appears to be genuine in his desire to support the Riverland. The Riverland Sustainable Futures Fund is encouraging business development and enterprise, so it is in fact encouraging enterprise. Instead of low-interest loans, which the Hon. Mr Brokenshire called for in his press release and which indeed would add to state debt on the balance sheet, we are offering matching funds. He called for dollar-for-dollar assistance to be provided, and that is exactly what we are doing.

I invite the Hon. Mr Brokenshire and any other honourable member with policy ideas to promote regional economic development to come and visit me and share their views, before announcing an idea which in fact the government is already doing. I am happy to work together on this. People in the Riverland are sick and tired of being kicked around like a political football between the Liberal Party and Family First. The government has listened to the people of the Riverland, and we have heard them say they want a hand up, not a handout. I look forward to announcing future grants from the Riverland Sustainable Futures Fund and look forward to seeing the Riverland grow and prosper.

RIVERLAND SUSTAINABLE FUTURES FUND

The Hon. J.S.L. DAWKINS (15:03): I have a supplementary question arising from the answer. Why did it take 13 months for the first funding from the Riverland Sustainable Futures Fund to be announced, as noted on the front page of last week's *Riverland Weekly*?

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) (15:04): As Minister for Regional Development, it was really only a matter of weeks into my new role that I commenced making announcements, so no-one can accuse me of not being fast off the mark, because indeed I was. I commenced announcements almost straightaway.

Indeed, these funds are very important to us. They are really a once in a lifetime opportunity. It is very rare that large amounts of money are available to an area like the Riverland. It also coincides with funding from Regional Development Australia, the federal funds of $1.4 billion-odd that will be made available to regional Australia. Clearly there is an opportunity for us to leverage where possible the sustainable futures funds with the RDA funding to get an even bigger bang for our buck.

We are making sure that the decisions that we make in respect of the way we invest in the Riverland are the best decisions possible and that we make decisions that are long lasting and that really do bring about a sustainable future for the Riverland. I believe that should take as much time as it needs to make the very best decision for the long-term future of the Riverland.

RIVERLAND SUSTAINABLE FUTURES FUND

The Hon. J.M.A. LENSINK (15:06): I have a supplementary question arising from the original answer. Can the minister advise whether any of the people she met with raised the issue of their irrigation entitlements, and what was her response?

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) (15:06): I am just trying to recall. I met with so many people. I cannot recall the irrigation entitlements being raised, to the best of my knowledge, with me. If they were raised, it was only raised in a very minor way in passing, which is quite amazing considering the length of time that I was there visiting. I find that remarkable if, as the honourable member believes, it was a significant issue for local members of the public to raise with me, the Minister for Regional Development.

I am sure that most of those members of the public would be aware that it comes under the purview of the Minister for Environment, unlike the honourable member, who seems to confuse portfolio responsibilities every day in this house. Indeed, the people of the Riverland are not as confused as the honourable member opposite me. As I said, it was not raised as a significant issue with me, but I would not expect it to be, because I know that members of the public in the Riverland would know only too well that it would be more relevant to raise that issue with the minister for environment.

The PRESIDENT: The Hon. Mr Wade has a supplementary deriving from the answer.

RIVERLAND SUSTAINABLE FUTURES FUND

The Hon. S.G. WADE (15:08): My question arises from the original answer, Mr President.

The PRESIDENT: Of course.

The Hon. S.G. WADE: In relation to the Riverland Sustainable Futures Fund, considering that the program is $5 million of funding over four years and that her announcements last week represent less than $1 million in the first year, will the minister guarantee that any unspent moneys in one year will be rolled over to the following three years?

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) (15:08): I thank the honourable member for his most important question, and I am indeed ferociously committed—fiercely committed—to ensuring that all of those funds are spent on the purpose for which they were intended, that is, in terms of the sustainable futures fund. If there are any outstanding funds at the end of this financial year, I will be arguing most strongly—ferociously, nonetheless—and fiercely negotiating to ensure that any outstanding funds are carried over.

APY LANDS, SUBSTANCE MISUSE FACILITY

The Hon. T.A. FRANKS (15:09): I seek leave to make a brief explanation before asking the Minister for Regional Development, representing the Minister for Aboriginal Affairs and Reconciliation, a question about the APY substance misuse facility at Amata.

Leave granted.

The Hon. T.A. FRANKS: Members would be aware that the Amata-based substance misuse facility opened on 12 August 2008. Since that time there has been ongoing concern about the 'very low rates of occupancy and use' of the centre, to quote the Coordinator-General for Remote Indigenous Services, Mr Brian Gleeson, in 2009. In the estimates process last year, after the September budget, the Department of Health also reported that the facility remained under-utilised, and on 16 March 2011 DASSA provided the UnitingCare Wesley project, the Paper Tracker, figures regarding this under-utilisation.

I think under-utilisation would be somewhat of a euphemism, given that no clients were accommodated at the facility between 1 July 2010 and 31 January 2011 (some six months) and only 29 people were referred to the mobile outreach services. Given that this facility has an operating cost from the state budget of $1 million per annum, I ask:

1. When will the minister respond to the report, which, I understand, has been on her desk for over four months now, giving consideration to alternative uses for this facility?

2. Will the minister justify the waste of taxpayers' money at a rate, for the last 20 weeks, of $3,864 for a centre that is not being used?

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 thank the honourable member for her questions and will refer them to the relevant ministers in another place. I am not sure whether the primary responsibility for that does rest with the Minister for Aboriginal Affairs and Reconciliation; it may do, but it may also cut across the responsibility of the Minister for Mental Health and Substance Abuse. Nevertheless, I will refer the questions to the relevant minister or ministers for a response.

REMOTE AREAS ENERGY SUPPLIES SCHEME

The Hon. T.J. STEPHENS (15:12): I seek leave to make a brief explanation before asking the Minister for Regional Development a question about electricity prices in Coober Pedy.

Leave granted.

The Hon. T.J. STEPHENS: I refer to a brief released by the Coober Pedy district council on the electricity tariff increase through the Remote Areas Energy Supply Scheme. The brief damningly highlights that the council was notified of the tariff increase via a departmental media release forwarded by email only 10 days prior to its implementation. The process of price adjustment is usually discussed between government representatives, being advised by the Department for Transport, Energy and Infrastructure, and the council.

Data collected by the council shows that energy cost increases to essential services in Coober Pedy will be most significant. The town's major supermarket, The Miners Store, faces an annual increase of $73,890 based on consumption in 2010. The desalination plant, without which the town would not survive, is staring at an increase of $19,156, or 118 per cent, for the month of January alone, based on 2010 consumption. Commercial operators will have little choice but to try to pass on these increases to customers.

Finally, households, as well as facing increased costs in essential services, will also have to cop an increase to their own energy bills. An average household living underground faces an increase of $87.16 per quarter; the same average household living above ground faces an increase of $553.22 per quarter. It should be noted that only limited underground housing is available in Coober Pedy, so that is not the solution. The local Aboriginal population will also be significantly affected, as the majority live above ground and will be subject to the highest increases in household energy prices. My questions are:

1. Why wasn't the Coober Pedy district council consulted about the increase in electricity prices, as per the usual practice?

2. Why wasn't the local population informed of the significant increase to their energy prices and the resulting impact on their cost of living?

3. Was any kind of feasibility study done on the negative impact to local businesses? If not, why not?

4. How can the minister guarantee that this and any subsequent increase will not jeopardise the long term viability of Coober Pedy as a regional community?

5. Why is the government not concerned about the long-term viability of Coober Pedy, a community that contributes so significantly and magnificently to tourism 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) (15:15): I thank the honourable member for his question. It covers an area that is the responsibility of minister O'Brien, Minister for Energy, so I will refer those questions to that minister and bring back a response.

However, I have been advised that a revised remote areas energy supplies tariff schedule was recently approved by the acting minister for energy. The revised schedule was implemented on 7 March 2011. Under the revised tariffs small to medium domestic customers—up to 8,000 kilowatt per annum—will pay on average 4 per cent higher than equivalent on-grid consumers. This is, I am advised, well within the scheme's principle of small to medium domestic customers paying no more than the equivalent on-grid price, plus around 10 per cent.

As the remote areas energy supplies tariff has not kept pace with recent increases in on-grid prices, small to medium remote area energy supplies domestic customers are currently paying less than equivalent on-grid customers. Businesses have been offered energy audits, I am advised, and subsidies for changes to their infrastructure to improve energy efficiency via the federal government funded Renewable Remote Power Generation Program administered by DTEI. I have been advised there is some assistance available. In relation to the specific questions asked, I will refer them to minister O'Brien in another place and bring back a response.

ELECTRICITY PRICES, COOBER PEDY

The Hon. R.L. BROKENSHIRE (15:17): By way of a supplementary question, given the minister's answer, as the Minister for Regional Development does she agree that there should be inequity between the far northern areas like Coober Pedy and the general state of South Australia?

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): As I indicated, the current arrangements have meant that small to medium-sized domestic customers are currently paying less than equivalent on-grid customers, and these changes are about bringing that into line. There is support and assistance available, as I have outlined, so that is a positive thing. I will refer all detailed aspects of the questions to minister O'Brien.

GAMBLING SECTOR REFORM

The Hon. I.K. HUNTER (15:18): I seek leave to make a brief explanation before asking the Minister for Gambling a question on reform of the gambling sector.

Leave granted.

The Hon. I.K. HUNTER: I understand that the minister recently took part in the Flinders University Southgate Institute for Health and Equity Policy Club Q&A on gambling. As an aside, I understand that the minister performed so well that I am sure the ABC's *Q&A* program will be desirous of his appearing on that show too at some point in the very near future. I know the minister can, but will he inform the chamber how the Q&A format was used to discuss pre-commitment technology and broader issues around prevention of problem gambling?

The Hon. B.V. FINNIGAN (Minister for Industrial Relations, Minister for State/Local Government Relations, Minister for Gambling) (15:19): I thank the Hon. Mr Hunter for his important question. I assure him that I did not get any shoes thrown at me, and neither did Julian Assange decide that he wanted to ask me a question by video. It was an important occasion and discussion about a very significant policy area.

The Southgate Institute for Health, Society and Equity at Flinders University administers the Southgate Policy Club to address topical issues of interest to academics, policy makers, the not-for-profit sector, governments and members of the community. As the Hon. Mr Hunter indicated, last week I participated in the panel of the Southgate Policy Club Q&A on gambling held at Flinders in the city in Victoria Square. The panel was chaired by Professor Malcolm Battersby, Director of the Centre for Gambling Research at Flinders University.

Along with myself, other panel members included our former colleague, Senator Nick Xenophon; Dr Charles Livingstone of Monash University, who is a leading academic in this field; Ms Sue Pinkerton, a reformed pokies addict and researcher; Mr Mark Henley of UnitingCare Wesley, who I am sure would be well known to all honourable members as someone who is very involved in assisting those who struggle with problem gambling; and Mr Ian Horne of the Australian Hotels Association.

As members would appreciate, the panel was varied and each member brought differing perspectives and expertise to this important topic. As I have previously informed the chamber, recent trials of voluntary pre-commitment schemes have shown promising preliminary results. Nevertheless, the detail of any pre-commitment model and how the system will be regulated is yet to be determined.

As I said, the panel represented a broad spectrum of views, from Senator Nick Xenophon, initially elected on a no pokies platform, who has continued to campaign actively on a number of related issues, to the industry, represented by the Australian Hotels Association's General Manager in this state, Ian Horne.

The diversity of the panel ensured that meaningful discussion on this subject was able to occur. The panel took questions from audience members, who represented the clubs and pubs industry as well as the not-for-profit sector, on a broad range of topics related to pre-commitment and gambling generally. The panel canvassed specific issues, such as a how a pre-commitment system might best work and what problems would need to be resolved before such a system could be introduced.

The focus of the debate centred mostly on whether a pre-commitment system should be mandatory or voluntary, and there were those panel members, particularly Mr Henley, who characterised the issue as very much being about consumer protection and consumer rights, rather than simply seeing it as a mechanism for targeting problem gamblers.

It was pleasing to participate in a well-informed and constructive discussion about this important policy matter, particularly given that the Select Council on Gambling Reform will be meeting in May in Canberra and considering a potential mandatory pre-commitment system, as the commonwealth has indicated that it intends to either introduce it itself or have it agreed between jurisdictions.

I would like to place on the record my appreciation to the Flinders University for organising these types of fora. I think it is important that discussions on topical issues occur in an open environment. They are of great assistance to policy makers and governments in implementing a reform that will have a significant impact on people, and not just those who play gaming machines, or pokies, but also, of course, those employed and others.

It is pleasing to see that industries, not-for-profit sectors, campaigners and academics were able to work together and share information and research on pre-commitment trials that have occurred nationally and internationally.

In the lead-up to the Select Council on Gambling Reform, it is of vital importance that we have a coordinated approach and that we work together to come up with the best system that we can in relation to this area, even though people do bring different perspectives to it. I understand that the video link of the Policy Club Q&A is to be uploaded onto the Flinders University website so that interested persons can watch the video.

It is certainly a very important policy area. The Select Council on Gambling Reform meeting in May is going to be very important in determining what pre-commitment system might be in place nationally. The commonwealth has indicated that it intends to have states and territories agree to a mandatory pre-commitment system by, I believe, 31 May and, if not, it intends to legislate. So, that is the parameters that the commonwealth brings to the discussion.

South Australia and other states and territories are examining pre-commitment trials and looking at what system is going to best serve the interests of those who participate in gaming activity, whether it be in addressing those who have a problem or those who are excessive in the way they play the pokies and need assistance to overcome that, or whether it is simply those who enjoy an occasional punt on poker machines. The South Australian government's position is still to be determined in light of what the commonwealth is proposing but, certainly, our approach will be based on the best evidence available and taking into account the best interests of gamblers, as well as the industry and those who are involved in this sector.

TRAINING AND SKILLS DEVELOPMENT (MISCELLANEOUS) AMENDMENT BILL

In committee.

Clause 1.

The Hon. R.I. LUCAS: I thank the minister for the answers he gave in reply to the second reading. One or two of the issues might be more easily pursued at clause 1 rather than when dealing with the very many related clauses in committee. Can I pursue the issue of the activities of the government department and current departmental officers in relation to an organisation known as Carrick that provides training nationally but also has up to 80 to 100 students, I understand, here in North Terrace in Adelaide? Is the minister in a position to indicate whether the department has taken any action in relation to the activities of that provider and the interests of the students who are concerned?

The Hon. B.V. FINNIGAN: I am not sure that this is necessarily the right forum to be addressing a specific case, but I am advised that the provider the honourable member refers to is registered in Victoria, so is registered in South Australia through mutual recognition. I understand

there are some inquiries being made in Victoria in relation to that provider but I am not able to comment further on that at this time.

The Hon. R.I. LUCAS: The reason I raised the issue of that provider, which has been publicly reported on in national and local media, is to try to understand how the government currently pursues those sorts of issues and how, under this legislation, that might be different. So I wonder whether the minister can indicate how, under the proposals that we are being asked to support this afternoon, either the government's powers or investigations in relation to a provider like that will be different from those that currently exist?

The Hon. B.V. FINNIGAN: My advice is that there would be no difference in relation to that particular matter. Under the mutual recognition arrangements, if there was a change to the status of a provider in another jurisdiction that would then apply in South Australia.

The Hon. R.I. LUCAS: I will pursue this further under clause 17 but, as I read it, under this legislation we are being asked to give additional powers to the minister or the commission to make public warning statements about various providers and to give a level of protection to the minister and the commission in making those particular statements.

My question is: in relation to this particular provider, has any public warning statement been given by the minister or the commission and, if not, why not? Secondly, if a statement was issued, what are the problems confronting the minister or the commission under the current legislation in terms of issuing a public warning statement about a particular provider?

The Hon. B.V. FINNIGAN: I am advised that this proposed provision or the existing legislation would be relevant to providers that are registered under the South Australian act. The provider to which the honourable member refers, I understand, is registered in Victoria; therefore, the public warning statement provisions in the proposed legislation would not apply. Similarly, there would be no action taken by South Australian authorities in relation to this provider because it is registered interstate. I am further advised that we do have obligations to the students in relation to the Tuition Assurance Scheme, and we do that through the ESOS Act, which is the relevant legislation.

The Hon. R.I. LUCAS: I understand the minister's latter comment, or latter advice; that is, once there is a problem, there are arrangements which are meant to come into play to assist students after there is a problem. The public warning statement provision (as I said, I will go into that in greater detail when we get to clause 17) is there, as I read it, to issue a warning about a particular provider prior to the students getting themselves into a problem. It is prevention rather than trying to solve the problems afterwards.

Under clause 17, what the minister is saying is that under the proposed legislation if the minister here is convinced that a particular provider is providing a bad product and is potentially placing those students in a position where they are wasting their money and not getting value for money, or placing their investment at a risk, because it is registered interstate the minister would not be able to make any public warning about that particular issue. I will pursue that under clause 17.

Can I clarify whether the minister is saying that that is the current situation, that the minister cannot issue any warning in relation to a course which, like this one, might provide up to 100 students with training at considerable cost and that the current legislation does not allow the minister or the commission to make a public statement in relation to any concerns they have?

The Hon. B.V. FINNIGAN: I am advised that, under proposed section 41, if the minister was satisfied that it was warranted, he or she would be able to make a public warning statement in relation to a provider that was registered in another jurisdiction, provided that the due diligence was done to ensure that it was warranted.

The Hon. R.I. LUCAS: Mr Chairman, that is completely opposite to the advice the minister gave to the previous question. So, can I clarify: is the minister, in that statement, now saying that his earlier advice to the committee was incorrect and the latter advice is the accurate advice?

The Hon. B.V. FINNIGAN: What I indicated was that the purpose of this legislation is principally about South Australian registered providers. In that context, the purpose of the proposed section in relation to public warning statements is to enable warnings being given by the minister or the commission in relation to providers registered in South Australia. However, in the event the honourable member has asked about (that is, if there is grave concern about an interstate

registered provider, would the minister be able to exercise their power in this section), I am advised that they would be able to, but that is not a matter that has been tested.

The Hon. R.I. LUCAS: I will not pursue it, but I think the *Hansard* record will show that that particular answer was the opposite to the advice the minister gave the committee when I first put the question. Anyway, I will pursue that during clause 17. The only other general issue in relation to clause 1 is that, having read the second reading explanation of the minister in both houses, one of the intentions is to provide quality training opportunities for Australians, in particular, South Australians, and another one is to provide some degree of consumer protection for people who are investing money in terms of where you go.

As we look at this committee stage of the legislation, where does a consumer or student go to find out who is accredited to provide a particular course? I have been referred to the website of something called the National Training Information Service. Can the minister indicate what the government endorses as being the appropriate website or forum to go to? If I am a consumer or a student and I want to do a particular qualification, where do I go to find out who is accredited to provide that particular course?

The Hon. B.V. FINNIGAN: I am advised that it is the National Training Information Service. If you go to its website, that will tell you who is accredited.

The Hon. R.I. LUCAS: Just to wrap that up, I ask the minister: having gone to that, will that website or service clearly indicate which particular providers are accredited (if that is the right word) to provide a particular course? Is it the government's policy position that students who are wanting to undertake a qualification should go to that website and go only to someone shown on that website to be accredited to provide that course?

The Hon. B.V. FINNIGAN: Of course, students, in considering whether they wish to undertake a particular course of study, need to consider quite a range of matters. Certainly, they would want to be satisfied that the course they are undertaking is properly accredited and will lead to a recognised qualification or what have you, depending on what the area is. I am advised that, as I said, the National Training Information System indicates who the accredited and registered training organisations are on a national basis, so that would be the best place for a student to go to ensure that the provider they wish to attend or be educated by is one that is accredited.

I would say that it would be worth any student considering a course of study making sure that they obtain that information, but that is not to say that they are not able to obtain information from websites or from the providers themselves, which may well indicate what accreditation they have. So it is really a matter for the individual student as to what due diligence they undertake, but it would certainly be the view of the government that they should satisfy themselves that the provider they are being educated or trained by is properly accredited and registered. The principal way in which they can do that easily is through the National Training Information System.

The Hon. R.I. LUCAS: I think the minister would be aware that some students and their families potentially invest up to tens of thousands of dollars in a particular course, and they obviously want to feel confident that what they are being provided with is what they need and what will help them gain employment in the field that they are pursuing.

In relation to the bill we have before us this afternoon, and the various clauses and provisions that we are about to go through, if a particular provider says that it is providing a particular qualification when it is not accredited under the NTIS, will that be an offence under the clauses we are about to approve or not approve during the committee stage? That is, if someone is a provider and they say, 'Look, I'm going to provide such-and-such a course,' and when you go to the NTIS they are not accredited, is that an offence, or is that going to be an offence under this legislation we are debating this afternoon?

The Hon. B.V. FINNIGAN: Can I just clarify with the honourable member whether he is asking whether it would be an offence to offer courses without having the necessary accreditation, or would it be an offence to make a representation that you do have the official accreditation?

The Hon. R.I. LUCAS: I think the minister would understand that they are both potentially related; that is, if a course has a particular designation or qualification and you say, as a provider, that you are going to provide this particular course—'Bakery III' or whatever it might happen to be—and you are not accredited as a provider of Bakery III, is that an offence under the legislation that we are looking at this afternoon?

The Hon. B.V. FINNIGAN: As the honourable member indicated, they may well coincide. Certainly, if it is the latter, it is going to be the former as well—they are misrepresenting not only the course they are offering but also the accreditation they have for it. I am advised that under section 43 of the current Training and Skills Development Act it would be an offence and that the penalties for those offences would increase under clause (19) of the proposed amending act.

Clause passed.

Clauses 2 to 7 passed.

Clause 8

The Hon. R.I. LUCAS: I move:

Page 4, after line 7—Before the current contents of clause 8 (now to be designated as subclause (2)) insert:

(1) Section 29(2)(a)—delete paragraph (a) and substitute:

(a) the prior conduct of the person or an associate of the person (whether in this State or elsewhere), including (for example) such of the following matters as may be relevant:

(i) whether the person or an associate of the person has been convicted of a criminal offence;

(ii) whether the person or an associate of the person has been refused registration as a training provider;

(iii) whether registration held by the person or an associate of the person has been suspended or cancelled;

(iv) whether a condition of registration of the person or an associate of the person has been imposed or varied as a result of contravention of this Act or a corresponding law or a condition of the registration;

(v) whether—

(A) in the case of a natural person—the person or an associate of the person has become bankrupt or has applied to take the benefit of a law for the relief of insolvent debtors;

(B) in the case of a body corporate—a winding-up order has been made in respect of the person or an associate of the person;

(vi) whether the person or an associate of the person has ever been disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth; and

I think it is relatively straightforward in terms of what appears to be a long amendment. As I outlined in my second reading speech, I think it covers a relatively simple principle, and that is that the lobby that represents the training providers has put the view to us that, under appropriate and relevant federal legislation, there is a definition of 'fit and proper person'.

The minister's response from the second reading is that, 'Well, there hasn't been a definition of "fit and proper person"; that has been something according to criteria approved by the Training and Skills Commission.' I will seek some advice from the minister as to exactly what those criteria are, but the view put to me by the providers is that we are moving (in this legislation and in the national legislation, but certainly in this legislation) into a much more rigorous regime. The government is saying, 'Look, we are going to crack down on some of the providers who haven't been doing the right thing. What has occurred in the past has been a set of circumstances; we have now had some problems. Look out now, this is a whole new tougher regime.'

The private providers—and I think they represent over 100 of the training providers—are saying, 'Look, we understand why that occurred, because there have been examples nationally where people have not done the right thing by the students who are studying in their institutions.' They are saying, 'Okay; we understand why we are going down this path, but we have concerns. You are saying you are going to be tougher, more rigorous, etc.; we understand that.' Therefore, issues which in the past they have been happy to live with under perhaps a less onerous regime now obviously take on greater importance for them.

How will regulatory authorities interpret relatively simple phrases like 'fit and proper person'? What they are saying is that, in recent times, as a result of these sorts of discussions,

under that national legislation—the Education Services For Overseas Students Act, which is one of the major pieces of legislation governing the operations of overseas students and training providers—it was accepted that some definition of 'fit and proper person' ought to be incorporated into the legislation.

As I said in the second reading and as I have said to anyone who has raised this issue with me, I am personally not locked into the current precise structure of the definition that parliamentary counsel have very kindly outlined for us, based on the national legislation. If the government, or indeed any other members, had a particular concern with any particular drafting of the proposed amendment, certainly from our viewpoint we are prepared to contemplate working together to see whether we can come up with something that is acceptable to the majority in relation to this. However, this is, as asked of parliamentary counsel, based on the national precedent under the Education Services For Overseas Students Act.

As I said, we are not locked into the current words. I understand the government is going to oppose the provision, from the minister's response to the second reading, but it is the opposition's view that the plea from the private training providers is a reasonable one. They came to us originally with a whole series of concerns, amendments and changes. We worked through a number of those and, to be fair to the government, in the final draft some of their issues were resolved, but there are a number of remaining ones. The one that appeared to me anyway to be a reasonable proposition, based on federal legislation, was that there be some definition.

What the minister is saying is, 'Look; you don't need it in the legislation because we have got a definition, except that it's private. We've got our own definition.' The minister doesn't say 'definition': he says 'registration has been made according to criteria approved by the Training and Skills Commission'. What the minister is saying is that, privately and secretly from those whose businesses are potentially affected by this, the Training and Skills Commission has its own definition and its own criteria of how it will interpret 'fit and proper person' and it makes those judgements. What the private training providers are saying is 'Well, you've got this definition that you've used but we don't know what it is, so how are we to be fairly judged as to whether we have or haven't met it?'

How do they, as organisations, in terms of peer review and talking with their own colleagues and members, say 'Hold on; you're not going to meet this particular provision because the definition says that.' They cannot do that at the moment, because the Training and Skills Commission has its own secret (or private) definition, and does not share that with people who want to be registered or who want to be able to provide training.

If I am a private training provider, for example, and I am looking for someone to invest in my business, I come to the Hon. Mr Hood and say, 'I would like you to put your money into this particular training college.' If he was bankrupted six years ago or he had done something else (and you might like to keep that secret, Hon. Mr Hood) and I knew that the definition was that, then clearly I would not go to the Hon. Mr Hood in the first place, or the Hon. Mr Hood would say, 'I would love to invest in this business—it is a motza to make some money and provide a good service—but I don't meet that particular definition.'

We could potentially save a lot of problems in relation to this regulatory authority, this regime, in terms of providing a good process for students and providers, if we actually shared that sort of information. I would not waste my time going to speak to the Hon. Mr Hood about investing in the business; I would go to the Hon. Mr Darley, because I know that he is as pure as the driven snow and does not have any of those things that would be a problem under the fit and proper person provisions. If you do not know the criteria against which you will be judged, if it is a secret or private criteria, if the commission says, 'No; you don't meet it, but we aren't going to tell you what it is that you don't meet', I think that is unreasonable.

Look on the other hand; people are investing millions of dollars. I have spoken to a couple of people involved in companies who are investing millions of dollars. Some of them are what you might call at the end of the continuum, which is relatively cheap in terms of their upfront costs—office space, classrooms and a few people, that sort of course—but there are others who have to invest significant amounts of money, particularly if they provide hospitality courses and those sorts of courses. They are making a significant upfront investment. They ought to be able to go to an investor and say, 'I would like you to put in $5 million (or whatever it is) for a 50 per cent share in this business, up front', and have a reasonable level of assurance that they have met the criteria.

It also protects against the arbitrariness of a regulator or commissioner (or whatever) who, for whatever reason, does not like the person, or where they come from, or what they look like and just decides to use the fit and proper person criteria, the secret criteria, to keep that particular person, or those people, out of being a private training provider. It provides a protection and means, for example, that if there is a decision they are unhappy with they are able to take some action.

For those reasons, I think this is a reasonable proposition from the training providers, and I urge members to support it to at least keep it alive. If it passes the Legislative Council, the government will know that the majority view in this council is that something along this line should be supported. If the government then wants to come back with an amended version of the fit and proper person, we can negotiate. If it gets defeated at this stage it dies and there is no prospect at all. If it passes at this stage, the government realises that it will need to negotiate with the majority in the council to come up with some provision acceptable to the regulatory authorities, the government and the parliament.

The Hon. B.V. FINNIGAN: I will respond to the last point first. I do not think that adding clauses to legislation should be considered a bargaining tactic. In my view, you should not support amendments to legislation unless you think they are the right clauses that should be in it when it reaches the statute books. This is an example where the honourable member is trying to be too specific as to what a particular term means and enshrining it in the act rather than leaving it to usual processes and the common law to determine.

In particular, I take issue with the honourable member's assertion that there is some Training and Skills Commission conclave where it is all very secret and no-one knows what is decided. There are guidelines, which I am advised are available to those seeking to get registration or to registered providers against which these assessments are made, and the commission has to explain its decisions and why they are made.

The government opposes the amendment because we believe that 'fit and proper' does not need to be defined in statute the way the honourable member proposes. It has been in the act since 2008, and assessments of whether applicants are fit and proper have been made according to criteria and processes approved by the Training and Skills Commission. The commission is responsible for its actions and accountable for its decisions, and applicants who have been aggrieved by a decision of the commission have appropriate avenues to seek recourse.

Often these terms are quite commonly used in the common law. To define someone as being or needing to be a fit and proper person in order to hold a licence or whatever is quite common, and it needs to be considered in the context of individual legislation. The government does not believe it is necessary to enshrine a definition of fit and proper in legislation. The current arrangements give the commission responsibility for specifying the matters it considers to be relevant to fit and proper, and we consider that to be an effective and responsive approach.

As I indicated, I am advised that the Training and Skills Commission has guidelines for registering, renewing or varying registration and determining conditions, which define the nature of the evidence to be considered when considering 'fit and proper' and include:

> Proven serious breaches of consumer legislation; criminal conviction relevant to the scope and scale of the RTO; business failure; registration status previously cancelled and/or refused by registering authority; and, significant and serious issues sustained through substantiated complaints that indicate that the applicant may not be able to provide the service in accordance with the relevant standards.

It is the government's view that there is already a guideline the commission has published, and it is not at all a secret. Those seeking registration I am advised are able to access the guidelines, which indicate the sort of matters that are considered when making a decision about whether a person is fit and proper. In many instances they are quite similar to some of the things the honourable member indicates in his amendment.

This is one of those situations where a decision is principally about whether something needs to be specified clearly in legislation or whether we are able to trust the structures set up under the act, such as the commission, which is obviously a well defined structure with appeal processes and processes that they have to go through to make these decisions, and whether we are happy to let the commission produce guidelines it is able to use to define what fit and proper is, which they are able to modify should circumstances warrant.

The difficulty always of putting things in legislation is that, while it means they are there to be easily found, it can mean also that if some change is required it requires legislative amendment and that, as we know, is not always a very timely response.

So, the government indicates that it opposes the amendment because it believes that the current system, where the commission has guidelines that are available to applicants or providers that take into account the significant important factors in deciding whether or not someone is fit and proper, is the most appropriate system.

The Hon. D.G.E. HOOD: I rise briefly to indicate our support for the amendment. It is a fairly long amendment but fairly straightforward, outlining specifically what the requirements are for a fit and proper person. I see no harm in that. I think the example the Hon. Mr Lucas gave was a valid one and we support the amendment.

The Hon. T.A. FRANKS: I indicate that the Greens will be supporting this amendment. We see it as an excellent contribution to this bill.

Amendment carried; clause as amended passed.

Clauses 9 to 13 passed.

Clause 14.

The Hon. R.I. LUCAS: In my reply to the second reading explanation, I asked a question as to what were the differences between this bill and the proposed national regulatory bill. The minister's response was that there were two or three clauses where there was a difference: the appointment of an administrator. I ask the minister to indicate in what respect this is different; that is, under the national proposal is there not to be a suggestion that you can appoint an administrator, and what is the reason the government believes that in South Australia we need to appoint an administrator, if that is the difference, when the national bodies do not believe that we need to?

The Hon. B.V. FINNIGAN: I am advised that the national VET regulator bill does not cover matters pertaining to consumer protection. That is a question that will still be dealt with by individual jurisdictions. That is why we have this provision giving power to the minister to appoint an administrator.

The Hon. R.I. LUCAS: Is the minister's advice that the appointment of an administrator is a consumer protection provision, and for those reasons the national legislation will not touch something like the appointment of an administrator?

The Hon. B.V. FINNIGAN: Essentially, the reason I characterised it as a consumer protection measure is that it is about protecting students and ensuring that they get the best quality service and training. An administrator is not intended to be appointed because a provider is on the verge of financial collapse, or something of that nature. The appointment of an administrator would be to ensure that the standards of the provider are brought up to the required level and thus protect the students, who have, as the honourable member has indicated before, in some cases, paid considerable moneys to study there. As I understand it, each jurisdiction will have its own measures in relation to that. So, 'administrator' should not be understood to be a term that we might be more familiar with, I suppose, in a financial context. The appointment of an administrator would be intended to ensure that students are protected by the standards of the organisation being brought up to scratch.

The Hon. R.I. LUCAS: It is obviously way too late for making these sorts of suggestions but, to me, if that is the case, I do not think the government should have used the terms 'administrator' or 'administration', because I think it clearly leads those of us who read it to believe that what we were talking about was in terms of going into financial administration and, in essence, we are providing that.

So, for what it is worth at this late stage, maybe it might be something that when we look at the legislation later in the year the government and department might reflect upon and, if that is the case, it might come up with some whizz bang new word which means whatever this means but does not lead us to believe that it is the commonly used interpretation of the word. For what it is worth, I leave that advice with the minister and government.

Can I ask this question, therefore, in relation to the appointment of the administrator (which will only be, as I read it now, in South Australia) in the circumstances where a training provider is (as in the example I gave in clause 1) registered in, say, Victoria but providing up to 100 training

places at a location here in Adelaide? I assume the government will not be able to use this particular provision in relation to a body such as that because it is registered in another state.

The Hon. B.V. FINNIGAN: I am advised that that would be something the commission—or the minister, I suppose, as well—could negotiate with the interstate regulatory authority and indicate that we had reason to believe that there was a problem with the standards provided by the provider. But the act would not provide, as I am advised, the ability for the minister to appoint an administrator in relation to an interstate registered organisation.

The Hon. R.I. LUCAS: Do I take it from the minister's response that the inference is that the other state jurisdictions do have an equivalent provision to appoint an administrator and it is just not under the national VET legislation where this is included?

The Hon. B.V. FINNIGAN: I am advised that there is not consistency across jurisdictions. I suppose the basis of trying to move to a national system is to iron out some of these anomalies but, in relation to this particular area, jurisdictions will still have the ability to have their own provisions. I am advised that at least one jurisdiction has some sort of step-in powers to enable problems like this to be dealt with but there is not consistency across jurisdictions in relation to this.

The Hon. R.I. LUCAS: I note then that, in response to the earlier question, the minister said that the minister could take up the issue with the interstate minister in relation to any concerns they had but, if that particular jurisdiction does not have these step-in or administration rights and if the national legislation is not going to provide it as well, I guess the issue remains then that these particular provisions would not be applicable to a provider that is registered interstate.

I guess it also, indirectly, gives some incentive to a provider that is going to operate in more than one state to register in another state where you do not have these particular powers, knowing that the minister would not be able to avail himself of this particular power.

The Hon. B.V. FINNIGAN: I am advised that what each jurisdiction is able to do does depend on that jurisdiction, so if we believed there was a concern, and we wanted to approach the interstate authorities, it would be a matter of bringing what we knew to their attention and trying to negotiate an outcome. This bill is part of trying to move to a national VET regulated system so that these sorts of problems are dealt with because there are indeed a lot of providers that operate across jurisdictions.

The Hon. R.I. LUCAS: My final question on this, the administrator, is: in the national discussions that have obviously gone on to produce the national bill, was the issue of the appointment of the administrator opposed by other jurisdictions going into the national legislation?

The Hon. B.V. FINNIGAN: I am advised that discussions did not drill down to this level of discussion. A decision was made early on by the commonwealth that they did not wish to delve into the consumer protection mechanisms, which is why it is now in the hands of each jurisdiction. I am advised that it was not discussed in this level of detail at the national level. South Australia does intend to continue to discuss with other jurisdictions and the national VET regulator to try to move towards some consistent system.

Clause passed.

Clause 15.

The Hon. R.I. LUCAS: I move:

Page 7, lines 21 and 22 [clause 15, inserted section 37(2)(a)(i)]—Delete subparagraph (i) and substitute:

(i) the conduct of the provider or an associate of the provider (whether in this State or elsewhere), including (for example) such of the following matters as may be relevant:

(A) whether the provider or an associate of the provider has been convicted of a criminal offence;

(B) whether registration held by an associate of the provider has been suspended or cancelled;

(C) whether a condition of registration of an associate of the provider has been imposed or varied as a result of contravention of this Act or a corresponding law or a condition of the registration;

(D) whether the provider or an associate of the provider has ever been disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth.

This is consequential on the earlier amendment.

Amendment carried.

The Hon. R.I. LUCAS: I move:

Page 7, line 33 [clause 15, inserted section 37(2)(b)(ii)(A)]—After 'bankrupt' insert:

or has applied to take the benefit of a law for the relief of insolvent debtors

This is consequential on the earlier amendment.

Amendment carried; clause as amended passed.

Clause 16 passed.

Clause 17.

The Hon. R.I. LUCAS: I raised this in the second reading and also the minister replied in the second reading, and the minister's response is:

The term 'good faith' is a commonly understood and applied term within legislation. A person who acts in good faith is well-intentioned and acts without malice.

I accept that, and I understand that, but 'well-intentioned and acts without malice' clearly means that a minister who (whether it be he or she, Labor or Liberal, let's not make this political) is plain out incompetent, but nevertheless was well-intentioned and did not act with malice is going to be protected. I seek the government's response to that.

Clearly, in a set of circumstances (and, as I said, forget whether it is Labor or Liberal) where a minister who is incompetent or negligent makes a statement that causes tremendous damage to someone who has invested millions or tens of millions of dollars in their particular business—and in this field clearly a public statement from the minister saying, 'Hey, I don't think this particular provider is any good'—that business can potentially end from that moment onwards, particularly given all the publicity that such a statement would make.

I seek the government's response in relation to at least some level of expectation of competence or lack of negligence. That is, if the minister or his or her advisers have not done some basic checks and they make a statement which is factually wrong and which could have been shown to be wrong, yet the minister's explanation and the advice (I am not blaming the minister here) is that the person who acts in good faith and is well-intentioned and acts without malice is the commonly accepted understanding of good faith, does the minister accept, on behalf of the government, that is reasonable and that is enough of an expectation on something which is as business ending a prospect as a minister's making a public statement saying, 'This isn't a very good business or industry, and we don't think you as a student should be attending it'?

The Hon. B.V. FINNIGAN: I am advised that the public warning statement is intended to be essentially a consumer advice. Obviously, if a provider disagreed, they would probably seek to put alternative information in the public sphere. In relation to the term 'good faith', I think that is a well-understood term in common law. If a provider or individual believed that they had been defamed by something the minister or the commissioner had said in a statement, the defence that they had been acting in good faith may not apply if, as the honourable member indicated, there was some gross error in the information the minister or the commission had relied upon.

Generally speaking, a minister or the commission, acting in good faith, would have to demonstrate that they had undertaken due diligence and were in possession of information which credibly led them to conclude that a public warning statement was warranted and in the public interest. The term 'good faith', I think, is well enough understood that, if it became the subject of a court action, it would be necessary for the minister or the commission to demonstrate that they were acting in good faith in order to rely on that defence.

The Hon. R.I. LUCAS: As a non-lawyer, this is a difficult area for me to pursue detailed argument. Nevertheless, I do not accept that part of what the minister has just said is accurate. I understand the feel-good nature of saying 'acting in good faith'. However, the legal advice the minister has put on the record is that the commonly understood interpretation of 'good faith' is what are the tests of good faith, and the tests of good faith are that you are well-intentioned and you acted without malice. You can, as I said at the outset (and I cannot offer any more specificity than this), be well-intentioned and act without malice and be a fool. Again, without introducing a partisan element to this, we have all been aware of ministers in the past (perhaps all sides, depending on which side of the fence you are on) where that definition might fit aptly.

The Hon. B.V. Finnigan: Don't be so hard on yourself.

The Hon. R.I. LUCAS: I wasn't particularly thinking of myself, the Hon. Mr Finnigan. As I said, I do not want to introduce a partisan element to this because this is Labor and Liberal ministers now and in the future. The reason I asked the question in the second reading is that I know that, in the dim distant past (and I could not turn it up), there was a long and arduous debate in the national electricity legislation about the various measures of, I guess, liability or responsibility for ministers and for regulatory authorities—good faith, bad faith and a whole range of other things in-between.

There were inordinately long arguments about whether one should use the test of good faith or bad faith or, as I said, I know there were half a dozen other varying versions in between in terms of what is a reasonable measure of responsibility or liability to leave with a particular minister or regulatory authority. That is why I asked the question, albeit in an imperfect way, in the second reading. I am relying on the minister's legal advice, obviously, that says, 'Well, this particular measure the government's chosen (good faith) is simply "well-intentioned and acts without malice".'

As I said, I am not in a position to move an alternative amendment. I raise the issue with the government now. This bill will be with us, we assume, for this year, and hopefully this particular power does not have to be used at all in that particular period and, if it is, let's hope that it is used by the minster wisely and also well-intentioned and without malice, that is, that all of those measures are met, not just the good faith measure that the minister's advice has provided.

Maybe, as we look to the debate later in the year for the legislation, my party can take further advice as to the other possible ways of protecting a minister which are reasonable. I think there should be some degree of reasonableness in terms of the minister's actions. It should not just be that, if you are a well-intentioned fool, you are protected from any liability. There should be some other measure as well. As I said, I am not in a position to move an amendment, so I will not, but I just raise this issue, and perhaps we can revisit it later in the year, when I may well find the former advice I had in relation to the electricity provisions.

The Hon. B.V. FINNIGAN: I thank the honourable member for his indication of support for this clause. I think he is perhaps making too much of the definition that I gave, while that is indeed what I am advised and that is consistent with the common law. Obviously, any time that something like that is considered by a court, they will weigh up all the circumstances, and it is hard to see that a statement made recklessly or negligently would be considered to have been made in good faith and in the public interest.

The court would, I think, look at the clause holistically, and the minister, commissioner or advocate would need to demonstrate that they had good reason for acting as they did. I do not think simply turning up to court and saying, 'Well, your honour, I was well-intentioned and had no malice,' would be enough for you to rely on that defence.

I think this is a measure intended to allow for greater transparency in the warnings that are given to students in relation to providers. There is obviously nothing to stop the minister now from hopping up in the chamber and saying something about provider and being protected from liability, but we want to put in place a process where it is more transparent or clearer as to why a statement is being made and the grounds on which the minister or commissioner is relying.

Clause passed.

Clauses 18 to 20 passed.

Clause 21.

The Hon. R.I. LUCAS: The other area the minister indicated which was in our South Australian legislation which would not be in the national legislation was in relation to orders for compensation. Can I just clarify; I assume, based on the previous advice, the reason for that is because the Commonwealth did not want to have any of these sorts of issues in their bill, therefore we have to have it in ours if we wish it?

The Hon. B.V. FINNIGAN: I am advised that that is the case, that consumer protection measures were left to individual jurisdictions.

Clause passed.

Clauses 22 and 23 passed.

Clause 24.

The Hon. R.I. LUCAS: These are the powers of the commission or the training advocate. Can I ask the minister what in this particular provision is new or additional in terms of the power of the commission or the training advocate that does not exist in the existing legislation?

The Hon. B.V. FINNIGAN: I am advised that it is simply a better formulation of the power. It particularly ensures that more modern media are covered, so it specifically mentions films or video recordings. It is just clarifying what may constitute evidence in terms of material that the commission may wish to inspect or take.

The Hon. R.I. LUCAS: That was the point of my question, I guess. Has there been a problem in relation to the commission's powers with any previous investigation? That is, has the commission or the training advocate had difficulty under the existing powers in gaining evidence or information that it required?

The Hon. B.V. FINNIGAN: I am advised that there are not specific examples of the current provision being a problem, but in certain actions the commission has taken it certainly became apparent that there needed to be a more defined clause so that, if they were to exercise that power, there would not be any doubt about that power being able to be exercised.

The Hon. R.I. LUCAS: As I said, I am not going to move any amendment, but I could not see the problems with the current drafting. The dilemma you have once you start specifying is whether you leave yourself open to the issue that there is something you have not specified. I do not think the issue of photographs, films or video recordings is necessarily something new in recent times. Anyway, if that is what the government's advice is, then so be it.

My final question is: do the powers that the commission or the training advocate are proposed to have under this legislation mirror the powers that are proposed to be incorporated in the national legislation that we are going to see later on in the year?

The Hon. B.V. FINNIGAN: I am advised that it is intended that it will be covered in the national legislation. To clarify what I said previously, by making more defined what is covered it just ensures that any potential ambiguity about what document or record means is clarified.

Clause passed.

Remaining clauses (25 and 26) and title passed.

Bill reported with amendment.

The Hon. B.V. FINNIGAN (Minister for Industrial Relations, Minister for State/Local Government Relations, Minister for Gambling) (16:30): I move:

That this bill be now read a third time.

Bill read a third time and passed.

SOUTH AUSTRALIAN PUBLIC HEALTH BILL

In committee.

(Continued from 10 March 2011.)

Clauses 91 to 109 passed.

New clause 110.

The Hon. J.M.A. LENSINK: By leave, I move my amendment in an amended form:

Page 70, after line 39—Insert:

110—Review of Act

(1) The Social Development Committee of Parliament must review the operation of this act as soon as practicable after the expiry of five years from its commencement.

(2) The Social Development Committee must ensure that, as part of the review, reasonable steps are taken to seek submissions from—

(a) State agencies that have an interest in public health; and

(b) the local government sector; and

(c) relevant industry, health and community organisations,

(but may otherwise conduct the review in such manner as it thinks fit under the *Parliamentary Committees Act 1991*).

This amendment is to conduct a review of the act. This has been a contentious issue for a number of parties represented in this chamber, so we think it would be sensible to conduct a review. The proposal is that the Social Development Committee will conduct the review five years after this legislation commences. I commend the amendment to the Legislative Council.

The Hon. G.E. GAGO: The government accepts the amendment moved in an amended form. The proposal of a review is supported as it will be important to ensure any legislation is operating as intended and that unintended consequences are appropriately addressed. I thank the Hon. Michelle Lensink for raising the issue of a need for a review of the legislation. The government believes it is a useful and appropriate suggestion and is obviously happy to support it.

The Hon. D.G.E. HOOD: I place on the record that Family First supports it as well. As the Hon. Ms Lensink said, it has been contentious in parts and a review is therefore a wise addition.

New clause inserted.

Schedule 1.

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

Clause 4, page 71, after line 20—Insert:

(2) Section 24A—after its present contents (as amended by subclause (1) and now to be designated as subsection (1)) insert:

(2) However, if—

(a) an identified major incident or a major emergency relates to circumstances that are or have been the subject of a declaration under Part 11 of the *South Australian Public Health Act 2010*; and

(b) a person is subject to a direction, or series of directions, under section 25(2) of this Act—

(i) that the person be isolated or segregated from other persons; or

(ii) that the person must remain in a particular place; and

(c) the direction has effect, or the series of directions together have effect, for a period exceeding 24 hours,

then the direction or directions will be taken to be a direction or directions that are subject to a right of review under section 90(5), (6), (7), (8) and (10) of the *South Australian Public Health Act 2010* and to section 90(11) to (15) (inclusive) of the Act with respect to a right of appeal (and those provisions apply in relation to any such direction under this Act as if they formed part of this Act but subject to any prescribed modifications).

This is a change to the schedule which would ensure that, if powers were to be exercised under the Emergency Management Act in relation to a public health emergency, they would be subject to the same review provisions as apply in the South Australian Public Health Act per se. It is merely a device to ensure that it would not be possible to circumvent the protections under the South Australian Public Health Act by using the Emergency Management Act in relation to an emergency which has been authorised under the South Australian Public Health Act. In that sense, one could say it is consequential, but I was just explaining the need for it as a related matter.

The Hon. G.E. GAGO: The government sees it as a consequential type of amendment. We oppose it for the reasons that we have already outlined. Rather than delay this matter in the council any longer, the government will be opposing it but will not be dividing on it.

The committee divided on the amendment:

AYES (13)

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

NOES (7)

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

Majority of 6 for the ayes.

Amendment thus carried; schedule as amended passed.

Title passed.

Bill reported with amendment.

Bill recommitted.

Clause 14.

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

Page 12, after line 4—After paragraph (c) insert:

(ca) to be allowed to decide freely for himself or herself on an informed basis whether or not to undergo medical treatment or, in a case involving a child under the age of 16 years, to have his or her parent or guardian allowed to decide freely on an informed basis whether or not the child should undergo medical treatment; and

I will speak briefly because I acknowledge the fact that the Hon. Ann Bressington raised the issue of maintaining a focus on the rights of the individual in relation to whether or not they receive treatment. I acknowledge the work of the minister, with the minister in the other place, to come up with a workable enhancement to the principles in clause 14 of this bill which, as I understand it, will satisfy the various concerns around the table. So I thank the Hon. Ann Bressington and the government, in particular.

The Hon. G.E. GAGO: The government supports this amendment. The amendment inserts a further principle into clause 14 to offer additional guidance to those exercising powers and making decisions under parts 10 and 11 of the bill. In particular, it offers guidance concerning the conscientious objections of persons where the possibility of compulsory treatment is judged to be necessary.

While the government's position is that this issue is already covered by the principles already contained within clause 14, we certainly are willing to support this amendment if it is the will of the council so as, obviously, to put the matter beyond any doubt whatsoever.

Amendment carried; clause as further amended passed.

Bill reported with amendment.

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises) (16:49): I move:

That this bill be now read a third time.

Bill read a third time and passed.

EARTHQUAKE AND TSUNAMI, JAPAN

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises) (16:50): I table a copy of a ministerial statement made by the Hon. Grace Portolesi in another place on the Japanese earthquake and tsunami.

HEALTH SERVICES CHARITABLE GIFTS BILL

In committee.

Clause 1.

The Hon. G.E. GAGO: I have responses to questions asked by the Hon. John Darley, but I am happy to deal with these at the appropriate amendment. It might be more timely to do it that way. There are some more general ones; I have further instructions and advice. On 24 February

the Hon. John Darley asked some questions which were of a general nature, and I agreed to provide answers to those.

I have since been advised that the gifts to the Royal Adelaide Hospital vested in the commissioner under the Public Charities Funds Act 1935 will be vested in the board under the transitional provisions of the Health Services Charitable Gifts Bill and become part of its charitable assets. As is the case under the Public Charities Funds Act 1935, the government will not define the Royal Adelaide Hospital for the purposes of its proclamation as a 'public health entity' under this bill, by reference to its location or address.

After it is proclaimed as a public health entity under this new act, this status as a proclaimed public health entity will continue to have effect after the Royal Adelaide Hospital has moved to its new location, and current gifts to the Royal Adelaide Hospital will continue to be vested in the board as part of the charitable assets at its new location. The commissioners are not aware of any gift for the Royal Adelaide Hospital that would become part of the charitable assets of the board that expressly requires it to be used only at the Royal Adelaide Hospital at its current location.

Decisions made by the board about the application of gifts to the Royal Adelaide Hospital will be subject to the requirements of section 18 regarding the intent of the donor. This section requires the board to determine, if possible, the intent of the donor and, to the extent practicable, give effect to that intent. A gift to the Royal Adelaide Hospital made while the Royal Adelaide Hospital is located at its current premises will be applied to the Royal Adelaide Hospital after it moves to its new premises, and the board, in considering such a gift, must have regard to the matters set out in section 18.

A further question was asked in respect of fundraising donations where the target amount is not raised. Donations that are prescribed gifts to a public health entity under the bill would vest in the Health Services Charitable Gifts Board as part of the charitable assets. This is regardless of whether or not a fundraising effort through public donation meets its target.

Under the bill, the board has the capacity to apply the capital and earnings of a gift for the benefit of a public health entity or prescribed research body in a way it believes can best meet the intent of the donors. The removal of the provisions under the Public Charities Funds Act which restricted the use of capital means that the situation which required the Mount Gambier Hospital Hydrotherapy Pool Fund Act 2009 will not arise. If fundraising efforts fall short, the Health Services Charitable Gifts Board can make the full amount of the funds collected available to the particular health entity for an appropriate alternative purpose, having regard to the intent of the donors.

As it will be required by section 18 of the new act, in the management and/or application of the charitable assets, the board will be required to ascertain the intent of the donor or donors, as far as this can be reasonably done and, as far is reasonably practical, apply the funds raised to a purpose the board considers most likely to achieve the intent of the fundraising. It will be up to the board, on application from the hospital, to make the funds collected available.

In making its decision, it is expected that the board will consult, like the commissioner has done in the past, with the relevant public health entity and, if appropriate, consult with the committee it will establish under the new act to advise on the application of funds for clinical equipment and/or research. The board, therefore, cannot act without due regard to the intended purposes, nor wilfully, in how it applies funds that are raised as part of some fundraising ventures that are now vested in it.

Clause passed.

Clauses 2 to 14 passed.

Progress reported; committee to sit again.

STATUTES AMENDMENT (PERSONAL PROPERTY SECURITIES) BILL

Adjourned debate on second reading.

(Continued from 10 March 2011.)

The Hon. S.G. WADE (16:59): This bill follows the passing of the Personal Property Securities (Commonwealth Powers) Bill in 2009. During that debate, there was substantial debate around this legislation. I do not propose to detain the council long in reiterating that because it was

dealt with at that time. In effect, this bill is an enabling bill for the elements of the national harmonisation that was agreed to by this parliament at that time.

In 2008, COAG adopted the national partnership agreement to deliver a seamless national economy. That was particularly a project of the Howard Liberal government. The Standing Committee of Attorneys-General considered matters in relation to personal property securities in August 2009. The changes, as adopted around Australia, will replace 40 separate registries in the states and territories and consolidate them into a single registry. The single online registry will have benefits to both business and consumers and should make information more accessible to them. We are advised that South Australia has 127,000 entries on its registers, and that there are likely to be more than three million Australia-wide.

It remains to be seen how quickly this register will become available to the public. The advice to the opposition from the Attorney-General's office is that South Australian government departments will be ready from May 2011; however, it was also noted that the migration of data is taking longer than expected. Stakeholders are also still preparing for the merging of data and have requested additional time. The estimated commencement date of the register is stated to be October 2011. The Goods Securities Act 1986 will expire in three years' time, rather than immediately at the introduction of the new register, as we understand it, to allow for any compensation or settlements that need to be made under the previous act.

Yet again, the South Australian government seems to be taking the support of the community for granted, however. The only entities that were consulted by this government were government departments—another case of government seeing consultation as talking to itself. Other stakeholders were not approached. For our part, the opposition consulted with the Australian Bankers' Association, the Australian Finance Association, the Co-operative Federation of South Australia, Elders stock agents, Landmark stock agents and the Motor Trade Association. These were the stakeholders that we thought might be affected most by these changes. The opposition was not advised of any concerns through these consultations.

These organisations deserved to be consulted, nonetheless, by the government. The transition to a so-called 'seamless economy' is, after all, primarily to benefit consumers and the private sector, not government departments. However, yet again, the private sector was completely overlooked. Perhaps this is a better indication of this government's views about the nature of national legislation that, from the Labor tradition, this government enjoys centralising bureaucracy rather much more than it does in enabling Australian businesses to conduct their businesses more efficiently.

State government departments, we are advised, will notify businesses and consumers of the change in the registry arrangements as the commonwealth is under no obligation to do so, and the opposition will be watching the government's management of that communication process. With those few words, I indicate the opposition will be supporting the passage of this bill.

The Hon. D.G.E. HOOD (17:03): I rise to indicate Family First's support for the second reading of this bill that will set up a personal property security scheme held in place with one set of national laws and one nationally accessible register. As I have stated on numerous occasions, Family First is a party that believes in less red tape and less waste. This proposal will certainly reduce those things and this scheme therefore has our support.

For the benefit of some members, personal property is generally property that is not real property; that is, it is not land, water, buildings or fixtures to land. It is primarily all tangible property like personal possessions, cars, boats, crops and the like. It also includes intangible property like shares, intellectual property and other property in a broader sense.

However, this bill will not deal with all personal property. We are told that petroleum, mining, fishing and aquaculture licences will be excluded from the scheme. Nevertheless, this bill, when fully realised nation-wide, will replace around 70 acts relating to personal property securities with a single national scheme with one central register online. It is certainly one of the most significant changes to business laws affecting these issues in recent times.

I understand from documents regarding this scheme that the national register will 'go live', if you like, in October this year, having been moved back from May this year. Around 40 separate electronic and hard copy registers around the country will be abolished and replaced by this new online system that will operate 24 hours a day, seven days a week—a substantial improvement. In our state, data contained on the registers under the Goods Securities Act 1986, the Bills of Sale

Act 1886, the Cooperatives Act 1997, the Liens on Fruit Act 1923 and the Stock Mortgages and Wool Liens Act 1924 will be migrated.

The concept of having property in a thing is actually a fairly ambiguous concept, but I have heard it described as being a bundle of rights that a person holds over something. That is, the right to use, sell, transfer and benefit from the ownership of particular property. John Locke once wrote that, 'The reason why men enter into society is the preservation of their property.' Perhaps this is a fairly cynical view of property rights, but Locke is certainly correct that the preservation of property and the proper recognition of the rights associated with property is important and fundamental in our society. Another view comes from Frederic Bastiat, a French political economist of the 19th century, who wrote:

> Life, liberty and property do not exist because men have made laws. On the contrary, it was the fact that life, liberty and property existed beforehand that caused men to make laws in the first place.

Certainly this bill which seeks to better protect property seems to back up this argument. My understanding is that the impetus behind this particular initiative dates back some 20 years to a 1990 Australian Law Reform Commission inquiry, which resulted in a report published in May 1993 as the 64th report of the commission. The report noted that the method of dealing with personal property securities was both complex and inefficient. I quote from the findings of the report after an examination of the applicable laws:

> A complicated and often overlapping range of laws applied depending on the nature of the security, the type of property the security was taken out over and the class of the debtor. These laws were a mixture of common law and statute law and of federal, state and territory law. They differed widely between jurisdictions. This haphazard method of dealing with personal property securities meant that there was no one simple method of determining whether a particular person had a security interest in certain property. Where two or more people had interests in the one property, there was no clear way of determining which person had priority.
>
> The existing system was inefficient for both borrowers and lenders. Because there were a variety of registers used for different types of property, it was often difficult for those considering a transaction involving that property to determine whether a security interest was attached to it. In addition, the priority rules were unnecessarily complicated and lacked clear standards for businesses to adhere to.

Clearly the system requires improvement in light of that quote and others we could bring to the chamber. My only question is why it has taken more than 20 years from the inquiry until now before we have seen this bill. That is not necessarily a slight on the government; I understand that this is a process that has been in train for some time, but it does seem that it has taken a long time indeed. Certainly this is a very promising bill. We wholeheartedly support the second reading and look forward to the committee stage of the bill.

Debate adjourned on motion of Hon. I.K. Hunter.

SUMMARY OFFENCES (PRESCRIBED MOTOR VEHICLES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 10 March 2011.)

The Hon. S.G. WADE (17:08): The bill before us today shows an emerging trend for the Deputy Premier and Attorney-General John Rau to take on the Atkinson legacy—the legacy of his predecessor, the member for Croydon. Despite all the talk of a different approach, the Attorney-General is just singing from the same song book. When the government announced its plans to legislate in November 2009 there was no substantiation given about the dangers of monkey bikes, just a series of press releases.

Prior to the opposition requesting statistics on monkey bike incidents, I understand the government had not even compiled them to assess the extent of the problem. The government was content to rely on anecdotal reports in the media. To highlight an example of the government's campaign in the media, former attorney-general Michael Atkinson claimed in his release of 10 November 2009, 'Monkey bikes to be crushed', that:

> People should not have to tolerate this behaviour on our streets. People have already lost their lives because of these bikes and I don't want to see these bikes cause any more injuries or fatalities.

Attorney-General Rau, when reannouncing the proposals on 22 July last year, put out a media release titled 'Government tackles monkey bike menace', saying:

> I am advised that there have been cases where riders of these 'monkey bikes' have been killed or seriously injured. These bikes have no place on our roads or anywhere else that places the public at risk.

However, in scrutinising this legislation we asked the government for substantiation of the claim that people have been killed on monkey bikes. We were advised that in the last five years there have been five minor injury crashes, resulting in five minor injuries, and four serious injury crashes, resulting in five major injuries. In addition there was one minor injury from one crash and two serious injuries from another, which is said to have happened on a road-related area.

There is no evidence to support the claim of this Attorney-General or his predecessor that people have been killed. I welcome the opportunity for the government to correct me at the end of the second reading stage if, in fact, the information we have been given does not tell the complete story. I would like to know what the government was referring to; in fact, the advice from the Attorney-General's office in the scrutiny of this bill was that there were no known fatalities involving monkey bikes. So where did the media spin come from?

This performance from the Attorney-General and his predecessor shows the pattern of this government in misleading the public by hyping up risk for the sake of its media presence. It is a classic example of how this government is driven by media, not by the facts. The public should be very sceptical about what it hears from government ministers; that is one of the reasons that the opposition has flagged amendments to the legislation in the other place regarding the declaration of prescribed motor vehicles. We indicate that we share the views of the Hon. Ann Bressington that prescription should occur through regulation rather than through declaration, and we are pleased that the government has adopted the Hon. Ann Bressington's common-sense approach.

Another amendment adopted by the government was to change the definition of prescribed motor vehicle to mean a 'class of vehicles that are not able to be registered, or conditionally registered, under the Motor Vehicles Act 1959'. This amendment takes into account the concerns raised by the member for Schubert, Ivan Venning, in relation to agricultural vehicles and, again, we are pleased that the government was willing to take a balanced approach and take up this amendment. I would like to commend the Hon. Ann Bressington for her advocacy in relation to this legislation to this point. Even before the bill was at the table, she effectively raised a number of concerns in relation to the bill and influenced both the government and opposition's amendments.

During the committee stage I will speak to a number of amendments the opposition will propose to bring this legislation into line with the government's own anti-hoon legislation. The reference to the Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007 applies so narrowly as to remove all discretion related to the forfeiture of the vehicle, thereby mandating confiscation. The police discretion suggested by the Attorney-General in another place, and repeated in this place by the Hon. Bernard Finnigan, applies only to the initial confiscation of the monkey bike and does not apply once the offence is finalised.

In other words, once the person expiates or is convicted the bike is automatically forfeited to the Crown without the possibility of appeal or the proper consideration of circumstances. The opposition will move to make these forfeiture provisions consistent with the Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007. I will speak further to the opposition's amendments during the committee stage, but with those few words I indicate that the opposition will support the second reading of this bill.

The Hon. A. BRESSINGTON (17:14): I rise to speak to the Summary Offences (Prescribed Motor Vehicles) Amendment Bill 2010, which was introduced in another place by the Attorney-General on 14 September last year. As stated by the Attorney-General when introducing the bill, it seeks to reduce the incidence of offences involving unregistrable miniature motorcycles known as 'monkey bikes' or, as was coined by the former minister for consumer affairs in 2006, 'pocket rockets'.

It was, in fact, 2009 when this government, through the former attorney-general, made the commitment to introduce tough legislation to address miniature motorcycles, legislation it promised 'to rush through parliament'. As with any populist government, it did so in response to public angst at the risks taken by and general nuisance of those who ride monkey bikes on roads and footpaths. However, as so often seems to happen, the government soon moved on to another headline, and it is only now in 2011 that we are being asked to give effect to that commitment. The bill before us seeks to insert a new section 55 into the Summary Offences Act 1953 to make it an offence to drive (or, in this case, ride or stand) certain motor vehicles on a road.

The bill defines 'road' to also include road-related areas, such as median strips, footpaths, car parks, cycling trails and other areas declared by the Minister for Transport as road-related areas. Relying on the definition of such in the Motor Vehicles Act 1959 means those looking to

ascertain the law will have to consult a separate act from that in which the offence resides to learn that the term 'road' does not simply mean what one naturally presumes: that it is an area designated for driving motor vehicles, but rather also includes the aforementioned areas.

While I have decided not to amend the bill to provide clarification, I nevertheless indicate that I would have preferred the definition of 'road-related area' to be included in the proposed section 55(9) rather than having to refer to another act. The offence for driving a monkey bike on the road will be expiable with a $315 fine or, if prosecuted, a fine of up to $5,000 can be imposed. Additionally, those who commit this offence will have their monkey bike confiscated and, upon finalisation of proceedings, whether by guilty verdict or payment of the expiation, forfeited to the crown.

Owners of the motor vehicle, as distinguished from riders, will also be subject to the same penalties. The bill does so by assuming that an owner of a monkey bike has permitted the rider to ride it on the road. There is, however, the defence of not being in control of the motor vehicle due to an unlawful act available to the owner, the obvious example being where the bike was ridden by a thief unlucky enough to be spotted while fleeing the owner, presumably on the monkey bike. Given the noise they emit and their limited speed, the thought is somewhat laughable, but stranger things do happen, and the owner in such circumstances is covered.

What is less clear is a situation where a bike is ridden without the direct consent of the owner, say, by a guest at a party. While there is, of course, the separate offence provided by section 86A of the Criminal Law Consolidation Act 1935 of driving the motor vehicle without first obtaining the consent of the owner, it is my understanding that to utilise this offence in defence for the purposes of this bill the owner will be required to exclude the possibility that the rider was not under an honest but mistaken belief on reasonable grounds that they had consent to ride the bike.

As cases prosecuted under section 86A have demonstrated, consent can be implied. Unlike the example of theft, where the owner will presumably be happy to assist the prosecution of the thief for both this offence and section 134 of the Criminal Law Consolidation Act, this cannot be so easily presumed for cases where the bike was ridden without consent, meaning that the owner may not be able to rely upon on the outcome of the prosecution under section 86A to prove the factual elements required of the defence.

The availability of this defence becomes even more blurred in an example where the owner did consent to the bike being ridden, but stated specifically for it not to be ridden on a road or road-related area. It is my understanding from the reading of section 86A of the Criminal Law Consolidation Act that in this example no offence has been committed, for consent to use the vehicle had been granted. This would mean that the defence provided by section 4, which requires an unlawful act to have been committed, would not apply, and hence the owner would potentially face a $5,000 fine for an act which they specifically stated they did not permit.

It is for these reasons that I will be moving an amendment to insert a new subsection 55(3)(a), which inserts a new defence to an offence against subsection (2), if it can be shown that the owner, first, did not consent to the vehicle being driven on the road and, secondly, and had taken reasonable steps to ensure the person lawfully entitled to use the vehicle was aware that the defendant did not consent to the vehicle being driven on the road. As this defence will be in addition to the general defence currently provided by the bill, it does nothing to detract from the bill. It clarifies the protection available to owners and closes the potential loophole where an owner consented to the vehicle being ridden, but not on a road or road-related area.

As members who have read the debates of this bill in another place would be aware, my office also identified early that the bill, in its haste to forfeit monkey bikes used in contravention of this section, created a situation where an owner who played no part in the commission of the offence, whether the bike was stolen or ridden without consent, had no opportunity to intervene in the forfeiture to make this known and subsequently would have their property forfeited with no recourse.

One can imagine a situation where an owner's monkey bike is stolen, the thief is then caught riding it on the road, the bike is confiscated by the police, but instead of being returned to the owner it is then crushed. Farcical it may be, but that was what the bill provided until I raised it in a briefing provided by the Attorney-General, who clearly, upon reflection, has moved to amend the bill in another place. I commend the Attorney-General for correcting what was a significant oversight in the bill and for acknowledging my involvement in that in the other place.

Another amendment moved in the other place at my instigation was to require the list of prescribed vehicles to be prescribed by regulation instead of by gazette. While we are assured that the bill before us is to address miniature bikes, there is nothing in the bill itself to restrict it to this class. It was my concern that in an attempt to broadly capture monkey bikes the definition may inadvertently capture agricultural bikes, trikes or four-wheelers used by farmers to travel around their properties as well as in herding stock, etc.

Many such bikes are not registered, nor, it is my understanding, could they be, at least not without significant modification. Such farmers, especially on large properties that are intercepted by roads, may need to ride across a road or along a road-related area, and if the definition used was broad enough it was my fear that they may be inadvertently captured by this section. I again advocated in the briefing that what is to be a prescribed motor vehicle should be subject to parliamentary oversight and disallowable in the form of regulation. This too was agreed to by the Attorney-General, who, with further input from the Liberal Party, amended the bill accordingly, and again, I thank him for doing so.

I also indicate to members that I will no longer be moving the other amendments that I had drafted and circulated to make the forfeiture process more equitable and flexible to the owner's circumstances and involvement. Instead, I will be supporting the shadow attorney-general the Hon. Stephen Wade's sensible amendments to bring the process in line with that used in the hoon legislation. In closing, I indicate that I support the bill on condition of amendment and I look forward to the committee stage.

Debate adjourned on motion of Hon. R.P. Wortley.

STAMP DUTIES (INSURANCE) AMENDMENT BILL

Second reading.

The Hon. B.V. FINNIGAN (Minister for Industrial Relations, Minister for State/Local Government Relations, Minister for Gambling) (17:23): I move:

That this bill be now read a second time.

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

Leave granted.

The Bill makes a number of amendments to the insurance provisions of the *Stamp Duties Act 1923* (the 'Act').

At the time of the introduction of the Goods and Services Tax (GST), explicit provisions were inserted in the relevant legislation enabling the GST on compulsory third party (CTP) and general insurance premiums to be calculated on premiums exclusive of stamp duty.

These provisions were inserted to avoid a cascading of stamp duty and GST (both of which are applied to insurance premiums). The GST provisions were intended to clarify that while GST would be calculated on stamp duty exclusive premiums, stamp duty under State stamp duty law would be calculated on GST inclusive premium amounts.

The insurance duty provisions in the Act are drafted differently to interstate provisions, a difference which in recent times has cast some doubt over whether the Commonwealth legislation is effective to prevent GST being charged on stamp duty inclusive premiums. Amendments in this Bill will therefore put this matter beyond any doubt.

The opportunity has also been taken in the Bill to address a number of other issues that will simplify the administration of the insurance duty provisions.

The stamp duty rate for general insurance will change from being charged at $11 per $100 or fractional part of $100 of premiums received to a fully proportional rate of 11 per cent of premium revenue received.

Similarly the stamp duty rate for life insurance will change from being charged at $1.50 per $100 or fractional part of $100 of premium revenue received to a fully proportional rate of 1.5 per cent of premium revenue received.

The Bill also introduces general refund provisions in relation to stamp duty charged on insurance premiums to allow for easier and more equitable access to refunds than is currently available.

These amendments are consistent with representations that have been made to RevenueSA by the Insurance Council of Australia and others through RevenueSA's State Taxes Liaison Group to improve administration and will also increase consistency with interstate provisions.

The Bill also amends the insurance provisions of the Act to make it clear that riders attached to life insurance policies are dutiable at general insurance rates.

Life insurers have traditionally offered other insurance products known as 'riders' which cover such risks as trauma, a disabling or incapacitating injury, sickness condition or disease.

RevenueSA have always been of the view that the life insurance riders are properly characterised as general insurance under the Act and are therefore dutiable at the higher general insurance rate.

Whilst a large proportion of the industry have complied with this view, some sections of industry have over time disputed this interpretation and asserted that riders should be chargeable at the lower life insurance rate.

In 2007, objections were lodged by four insurance companies against assessments of the Commissioner of State Taxation. The objections were disallowed by the Treasurer and were then appealed to the South Australian Supreme Court.

The appeals were heard in April 2010 and on 25 August 2010, the Court found in favour of the Commissioner of State Taxation and dismissed all four appeals. The Appellants have now appealed to the Full Court of the Supreme Court of South Australia.

Each of the Appellants contends that life insurance riders should be properly characterised as life insurance, and that the entirety of the premiums paid in respect of these policies are therefore dutiable at the lower life insurance rate.

Other major insurance businesses have continued to pay duty at general insurance rates on these types of insurance.

The Bill will operate to prevent a revenue loss of around $18.5 million per annum ongoing in the event that the appeal to the Full Court is successful.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

The clause provides for the commencement of the measure on a day to be fixed by proclamation.

3—Amendment provisions

This clause is formal.

Part 2—Amendment of *Stamp Duties Act 1923*

4—Substitution of Part 3 Division 3

This clause repeals Division 3 of Part 3 of the *Stamp Duties Act 1923* and substitutes a new Division.

Division 3—Insurance

Subdivision 1—Interpretation

32—Interpretation

This section provides definitions of terms used in Division 3. A number of terms are carried over from the repealed Division.

A *general insurer* is an insurer who carries on insurance business in respect of insurance that is not life insurance. A *life insurer* is an insurer who carries on insurance business in respect of life insurance. *Insurance business* is defined to mean—

- the granting or issuing of life, personal accident, fire, fidelity, guarantee, livestock, plate glass, marine or other insurance; or
- the acceptance, either directly or indirectly, of any premium, renewal premium or consideration for, or in respect of, the granting or issuing or keeping alive or in force of life, personal accident, fire, fidelity, guarantee, livestock, plate glass, marine or other insurance; or
- the receiving of a letter or declaration of interest attaching to a policy of insurance issued in this State or elsewhere; or
- the carrying out, by means of insurance effected out of this State, of a contract or undertaking to effect insurance, whether formal or informal and whether express or implied.

The definition of *premium*, carried over from the repealed Division, is altered to make it clear that 'premium' includes a part of a premium.

Subsection (2) makes it clear that a reference to a premium paid, payable, received, charged or credited in relation to life insurance, or in relation to insurance of another kind, is a reference to the premium being paid, payable, received, charged or credited to the extent that the premium related to insurance of the kind referred to.

Subdivision 2—Registration and payment of duty

33—Registration

Section 33 requires an insurer who carries on insurance business in South Australia to be registered under Division 3.

34—Lodgement of statement and payment of duty—general insurance

Section 34 provides that a general insurer is liable to pay duty in respect of each premium relating to insurance of any kind other than life insurance paid to the insurer. A general insurer is therefore required to lodge a statement with the Commissioner each month setting out the total amount of all premiums relating to general insurance received by the insurer in the previous month. The insurer may also choose to include in the statement the total amount of premiums that have been credited to an account of the insurer but not received in the previous month. (If a premium that has been credited but not received is not included in the statement for the month in which it was credited, the section requires the insurer to include the premium in the statement lodged for the month in which it was received or, if it has not been received within 12 months, in a statement lodged following the end of that 12 month period.) The insurer is also required to pay to the Commissioner duty equivalent to 11 per cent of the total amount included in a monthly statement.

35—Lodgement of statement and payment of duty—life insurance

Section 35 is similar to section 34 but provides for the payment of duty by a life insurer in respect of all premiums paid to the insurer for life insurance. This section requires the insurer to lodge a statement on or before 31 January each year setting out the total amount of all premiums relating to life insurance paid to the insurer in the previous calendar year. The insurer may also choose to include in the statement the total amount of premiums that have been credited to an account of the insurer but not received in the previous year. (If a premium that has been credited but not received is not included in the statement for the year in which it was credited, the premium will be taken to have been received in the following calendar year.) The insurer is also required to pay to the Commissioner duty equivalent to 1.5 per cent of the total amount included in the statement.

Subdivision 3—Exempt insurance

36—Certain premiums exempt from duty

This section provides that the following are exempt from duty:

- a premium received or charged in respect of reinsurance;
- a premium received or charged under a private guarantee fidelity insurance scheme promoted amongst and sustained solely for the benefit of the officers and servants of a particular public department, company, person or firm and not extended, either directly or indirectly, beyond such officers and servants;
- a premium received or charged under a scheme referred to in the above paragraph promoted amongst and sustained solely for the benefit of the officers and members of a friendly society or branch thereof and not extended, either directly or indirectly, beyond such officers and members;
- a premium received or charged for life insurance in respect of investment and not in respect of a risk insured by the policy under which the premium is paid;
- a premium received or charged in respect of a life or personal accident insurance risk where the principal place of residence of the insured person is in the Northern Territory and the policy under which the premium is paid is registered in a registry kept in the Northern Territory pursuant to the *Life Insurance Act 1995* of the Commonwealth;
- a premium received or charged under a policy of workers compensation insurance where the premium is referable to insurance against liability to pay workers compensation in respect of workers under the age of 25 years;
- a premium received or charged under a policy of insurance by a body registered under Part 4-3 of the *Private Health Insurance Act 2007* of the Commonwealth where the premium is referable to insurance against medical, dental or hospital expenses;
- a premium received or charged in respect of life insurance providing for the payment of an annuity to the person insured;
- a premium received or charged in respect of the insurance of the hull of a marine craft used primarily for commercial purposes or in respect of the insurance of goods carried by railway, road, air or sea or of the freight on such goods.

Subdivision 4—General

37—Denoting of duty

This section provides that the duty paid in connection with a statement lodged with the Commissioner as required under the Division must be denoted on the statement.

38—Duty in respect of policies effected outside South Australia

This section is substantially the same as current section 42AA. However, whereas section 42AA provides that the section does not apply to a policy of life insurance, the section as recast does not apply to a policy of insurance if the only insurance provided under the policy is life insurance or to a premium paid to an insurer in respect of life insurance. The section will therefore apply to policies of insurance that relate to both life insurance and other kinds of insurance and, by virtue of section 32(2), to premiums payable in respect of life insurance to the extent that they also relate to other kinds of insurance. The section provides for the payment of duty in relation to policies obtained, effected or renewed outside the State that are wholly or partly in respect of property in South Australia, or in respect of a risk, contingency or event occurring in South Australia, by a company, person or firm that is not required to be registered under section 33.

39—Insurers not required to be registered

Section 39 is similar to current section 42AB. The section as recast authorises the Commissioner to enter into agreements with insurers who are not required to be registered. Under such an agreement, the Commissioner would approve the insurer for the purposes of the section and the insurer would undertake to pay duty as if the insurer were registered.

40—Duty payable on acquisition of insurance business

Section 40, which is similar to current section 38, provides for the payment of duty by a company, person or firm that acquires contractual rights and obligations of, or in connection with, the insurance business of some other company, person or firm. The acquiring company, person or firm is liable to pay to the Commissioner the amount of any unpaid duty in respect of premiums paid to the other company, person or firm after the end of the period in respect of which such duty was last paid by the other company, person or firm.

41—Refunds

Section 41 provides that certain payments are to be taken to be overpayments of tax for the purposes of Part 4 of the *Taxation Administration Act 1996*:

- duty paid in respect of an amount of premium that has been refunded;
- duty paid in respect of a premium credited to an account of an insurer but not received by the insurer at the time the duty is paid if the policy in respect of which the premium was credited is cancelled before the insurer receives the premium.

This means that the refund provisions of the *Taxation Administration Act 1996* will apply in relation to the overpayment.

5—Amendment of Schedule 2—Stamp duties and exemptions

This clause amends Schedule 2 of the Act to remove clauses 1 and 12. These clauses set out the rates of duty payable under the current provisions. Clause 1 also includes exemptions that are now to be incorporated within Part 3 Division 3.

Schedule 1—Transitional provision

1—Transitional provision

The transitional provision provides that an insurer that is licensed under Part 3 Division 3 of the *Stamp Duties Act 1923* immediately before the repeal of that Division will be taken to be registered for the purposes of Part 3 Division 3 of the Act as inserted by that section.

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

RAIL SAFETY (SAFETY COORDINATION) AMENDMENT 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) (17:25): 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 *Rail Safety Act 2007* is based on national model legislation developed by the National Transport Commission and approved by the Australian Transport Council (*ATC*) on 2 June 2006. Among other things, the model legislation made provision for rail transport operators to make agreements with other rail transport operators where their rail operations interface. There was no provision for interface agreements between rail infrastructure managers and road authorities, but in approving the model legislation, ATC also approved the development of provisions to address this deficit.

This decision was given effect in the *Model Rail Safety (Amendment No. 2) Bill*, approved by ATC in December 2007, and the present Bill seeks to introduce these provisions into the Rail Safety Act.

There are approximately 100 crashes between a road vehicle and a train in Australia each year. South Australia has averaged 10 crashes per year over the last 10 years. Level crossings are the single biggest source of death and injury associated with railway operations. For example, in June 2007 at Kerang in Victoria's north-west, a collision between a truck and train at a level crossing caused 11 fatalities and dozens of injuries. A collision occurred in this State in December of the same year at Moloney Road, Virginia, when a truck struck the side of the Indian Pacific train. In that case, the truck struck a car carrier wagon that was between the locomotive and trailing passenger coaches. Although only the truck driver suffered serious injury in that incident, the potential for a Kerang type consequence was present. The effective joint management of level crossings by rail infrastructure managers and road authorities is a key issue for governments, industry and the community.

Fatalities at railway level crossings are a significant issue for rail transport operators; however, they are a very small part of the road network, and road authorities have a different focus of operations.

Historically, in South Australia, the management of level crossings lay primarily with government owned railway authorities. Over time, arrangements with road authorities for shared management and maintenance responsibilities evolved but were never established in legislation. The privatisation of railways in the 1990s has seen many of these informal agreements challenged or implemented in differing ways.

These amendments provide the mechanism to formalise the joint management arrangements between rail infrastructure managers and road authorities where such arrangements exist and will serve to cause arrangements to be made where they do not exist.

The Bill expands on the current provisions of the Rail Safety Act applicable to rail operators, and will require road authorities responsible for public roads to:

- identify and assess safety risks associated with the existence of any road and rail crossing; and
- determine measures to manage those risks; and
- seek to enter into an interface agreement with the relevant rail infrastructure manager.

This will require parties to establish processes for agreeing on appropriate risk controls, responsibilities and other safety risk management strategies at road/rail interfaces, including general maintenance, upgrades or risk assessments, prior to safety issues emerging that require immediate attention

The legislation enables the parties to jointly identify and assess risks, or for one party to adopt the identification and assessment carried out by the other party.

The same obligations will apply to managers of private roads but only if the relevant rail infrastructure manager advises that it is necessary.

The Bill makes provision for a person to be appointed by the Minister to intervene in situations where road or rail infrastructure managers are failing or refusing to enter into interface agreements. This Appointed Person will have the power to direct the parties as to the content of an interface plan, which the parties must then implement. The Appointed Person will be a person appointed by the Minister for the purpose. Most likely this person will usually be the Rail Safety Regulator, although another person may be appointed should the circumstances require.

Consistent with the ATC approved (December 2006) *National Policy Statement for Transitional Arrangements for the Implementation of National Model Rail Safety Legislation*, interface agreements between road authorities and railway infrastructure managers will need to be in place within three years after this Bill is passed.

South Australia is well placed to achieve this timeframe. Significant work has already been undertaken by the Department for Transport, Energy and Infrastructure to identify and assess public road level crossings. Support and guidance to the affected parties on the requirements of the Bill and how to implement them will be provided by the Department and the *State Level Crossing Strategy Advisory Committee* (comprised of representatives from industry and State and local government).

It is proposed that the amendments will be brought into operation as soon as possible after the Bill's passage through Parliament. The Minister for Transport intends to give a general direction to the Rail Safety Regulator, pursuant to section 20 of the *Rail Safety Act 2007*, that the Regulator is to adopt an educative approach to the enforcement of the requirements during the period that road authorities and rail infrastructure managers are developing interface agreements. Such a direction will not interfere with the Regulator's ability to act in relation to immediate or systemic safety issues as the Regulator sees fit.

The National Transport Commission undertook national public consultation during the development of the model amendments in 2007. In addition, the Department has consulted with industry and local government on this Bill. Public information sessions were held in Adelaide and Port Lincoln in June 2010 and assistance will be provided through the *State Level Crossing Strategy Advisory Committee* in relation to the development of template agreements during the implementation period.

This Bill will strengthen level safety crossing safety management by providing a mechanism to bring road authorities and rail infrastructure managers together to assess risks where rail and roads intersect and to develop plans to address those risks.

I commend the Bill to the House.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Rail Safety Act 2007*

4—Amendment of section 4—Interpretation

Various definitions are to be inserted into the Act for the purposes of the new sections proposed to be inserted by this measure.

5—Amendment of section 57—Exemption from accreditation

This clause amends section 57(2)(b) to clarify that conditions imposed by the Regulator for the purposes of the section may be the same as, or similar to, any provisions of Division 4, 5 or 6 of the Act.

6—Amendment of section 58—Safety management system

This clause proposes amendments to section 58 consequential on the substitution of section 62 proposed by clause 7.

7—Substitution of section 62

This clause proposes to repeal section 62 and substitute the following sections that make provision for the identification and management of risks in relation to railway operations, railway infrastructure and roads.

62—Interface coordination—rail transport operators

This section requires a rail transport operator to identify and assess risks to safety that arise in relation to railway operations carried out by or on behalf of the rail transport operator as a result of railway operations carried out by or on behalf of another rail transport operator.

The rail transport operator must determine measures to manage the risks and also seek to enter into an interface agreement with the other rail transport operator. An *interface agreement* is defined as an agreement about managing risks to safety (including those matters listed in the definition).

It is an offence to fail to comply with the section and a maximum penalty of $300,000 for a body corporate and $100,000 for a natural person is prescribed.

62A—Interface coordination—rail infrastructure and roads other than private roads

This section requires both a railway infrastructure manager and a road manager (other than a manager of a private road) to identify and assess, so far as is reasonably practicable, risks to safety that may arise from the use of the existence or use of any rail or road crossing that is part of the road infrastructure of the road manager.

The railway infrastructure manager and the road manager must both determine measures to manage the risks and also seek to enter into an interface agreement with the other.

It is an offence for a railway infrastructure manager to fail to comply with the section and a maximum penalty of $300,000 for a body corporate and $100,000 for a natural person is prescribed.

Nothing in this section authorises or requires a road manager to act inconsistently with, or without regard to, the functions, obligations or powers conferred on it by or under an Act other than the principal Act.

62B—Interface coordination—rail infrastructure and private roads

This section requires a railway infrastructure manager to identify and assess, so far as is reasonably practicable, risks to safety that may arise from railway operations carried out on, or in relation to, the manager's rail infrastructure because of (or partly because of) the existence or use of any rail or road crossing that is part of the road infrastructure of a private road.

The railway infrastructure manager must consider whether the management of those risks needs to be carried out in conjunction with the road manager of the private road. If the railway infrastructure manager is of the opinion that the risks do need to be so managed, the railway infrastructure manager must give written notice to the road manager, determine measures to manage those risks, and seek to enter into an interface agreement with the road manager. If the railway infrastructure manager is of the opinion that the risks need not be managed in conjunction with the private road manager, the railway infrastructure manager must keep a written record of that opinion.

If a railway infrastructure manager gives a written notice to a private road manager under this section, the road manager must identify and assess, so far as is reasonably practicable, risks to safety that may arise from the existence or use of any rail or road crossing that is part of the road infrastructure of the road because of (or partly because of) railway operations. The road manager must then determine

measures to manage the risks and also seek to enter into an interface agreement with the railway infrastructure manager.

It is an offence for a railway infrastructure manager or a road manager to fail to comply with the section and a maximum penalty of $300,000 for a body corporate and $100,000 for a natural person is prescribed in each case.

62C—Identification and assessment of risks

This section provides that a rail transport operator, rail infrastructure manager or road manager may assess risks to safety that arise in relation to another person's operations individually, together with the other person, or by adopting the other person's assessment.

62D—Scope of interface agreements

This section outlines the scope of an interface agreement entered into under Part 4 Division 4.

62E—Appointed person may give directions

This section provides for a person appointed by the Minister to require compliance with section 62, 62A or 62B where a rail transport operator, rail infrastructure manager or road manager is unreasonably refusing or failing to enter into an interface agreement with another person as required, or is unreasonably delaying the negotiation of such an agreement. The appointed person may issue warnings, advise on suggested terms for inclusion in an interface agreement, require the production of information, and give directions in relation to safety arrangements that are to apply under section 62, 62A or 62B. The section creates an offence of failing to comply with a notice or direction given by an appointed person under the section and a maximum penalty of $120,000 for a body corporate and $40,000 for a natural person is prescribed.

62F—Register of interface agreements

This section requires rail transport operators and road managers to maintain a register of all interface agreements to which they are a party and any arrangements determined by the appointed person under proposed clause 62E. A penalty of $10,000 applies for a failure to comply is prescribed.

8—Amendment of section 112—Temporary closing of railway crossings, bridges etc

This clause amends section 112 of the Act to include a subway in the list of areas that may be closed or regulated because of an immediate threat to safety.

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

At 17:25 the council adjourned until Wednesday 23 March 2011 at 14:15.