

## LEGISLATIVE COUNCIL

Tuesday 18 October 2011

The **PRESIDENT (Hon. R.K. Sneath)** took the chair at 14:21 and read prayers.

### **SUMMARY OFFENCES (TATTOOING, BODY PIERCING AND BODY MODIFICATION) AMENDMENT BILL**

His Excellency the Governor assented to the bill.

### **LEGAL SERVICES COMMISSION (CHARGES ON LAND) AMENDMENT BILL**

His Excellency the Governor assented to the bill.

### **SUMMARY OFFENCES (PRESCRIBED MOTOR VEHICLES) AMENDMENT BILL**

**The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (14:24):** I move:

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

Motion carried.

### **DUNSTAN, SIR DONALD**

**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, Minister for Gambling) (14:24):** I move:

That the Legislative Council expresses its deep regret at the recent death of Lieutenant General Sir Donald Dunstan, former governor of South Australia, and places on record its appreciation of his distinguished and meritorious public service.

I rise to express my sadness at the parting of Lieutenant General Sir Donald Beaumont Dunstan, who passed away on 5 October 2011. As members may know, Sir Donald was an Australian Army officer and was governor of South Australia from 23 April 1982 until 15 February 1991. Sir Donald Dunstan was born in Murray Bridge.

What I have read about this remarkable man indicates that he was a passionate South Australian who relished the work he undertook as governor. Many people have written about his very down-to-earth and warm manner, emphasising what a pleasure he was to work with, which is quite a remarkable tribute for someone in public life whose role in our state was such a formal one. There was no hint that his position or many honours made him aloof or led him to set himself apart from the people of the state he served with such distinction. It is a real testament to the kind of man he was that he is so well thought of so many years after he left his leadership role.

Donald will be remembered for the tireless commitment and passion that underpinned his life, no matter what he was doing. In a style which was later emulated by many, I understand he kept trim by striding the streets of Adelaide; he was apparently a regular early morning walker. He was a proud man who had trained in military protocols, a very no-nonsense character who was very thorough and well read. It was reported that on his return from the Eastern States to become Governor of South Australia he brought himself up to date with the local football code, attending several SANFL games and studying Max Basheer's books *How to Play Australian Rules* and *Following the Game*.

Donald was a lifelong and distinguished soldier. After he graduated from the Royal Military College, Duntroon, in 1942, he served in the infantry and as a junior staff officer in New Guinea, Bougainville and New Britain. He rose to become second-in-command of 1<sup>st</sup> Battalion, Royal Australian Regiment, in Korea in 1955, and he was Deputy Commander of the Australian Task Force in Vietnam in 1968 and returned to Vietnam as Major General, Commander Australian Force in 1971.

In addition to taking an active part in three major conflicts, he honed his leadership skills as a member of staff of the Royal Military College and a member of the directing staff at the Australian Staff College and the British Army Staff College, before capping his military career as a leader of the Australian Army as Chief of the General Staff from 1977 to 1982. His bravery was mentioned in dispatches, and his later service was variously recognised by membership of the Order of the

British Empire in 1954, Commander of the British Empire in 1969, and a Companion of the Order of the Bath in 1972. He was made a Knight of the Order of the British Empire in 1980 and a Companion of the Order of Australia in 1991.

It seems that whatever Donald pursued it was always with a sense of vigour and endless spirit for his state and country. In 1986, with Lady Dunstan at his side, I am told that they ensured the state's 150<sup>th</sup> anniversary was marked at every possible opportunity. They attended functions across the state or hosted ceremonies to celebrate this remarkable milestone in our state's history.

I would also like to mention Sir Donald's support for allowing gay people to serve in the armed forces. He publicly indicated his support in 1992, saying that he would have been 'very cross' if sexuality were the basis for not allowing someone to serve, noting that homosexuals were already serving in the forces and that it made sense to formally accept this fact.

Sir Donald will be remembered for his honesty, professionalism and down-to-earth personality. It is clear that South Australia has lost a very committed and passionate man, and I know that all honourable members will join me in noting his passing. I extend my condolences to Lady Dunstan and family.

**The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:30):** I rise on behalf of the opposition to second the condolence motion on the life of Lieutenant General Sir Donald Dunstan. He was born in Murray Bridge on 18 February 1923. He attended Murray Bridge High School and Prince Alfred College. He was selected to enter Duntroon Royal Military College in the class of 1940 and graduated in the mid-1940s at the age of 19. He served in Bougainville and Papua New Guinea in 1945 before returning home to marry Beryl Dunningham, later to be known as Lady Dunstan, in 1948. They had two sons born in Adelaide, James and Richard. Lady Dunstan later described herself as a gypsy, the inherent lifestyle of being an Army wife. She described Government House that they would later occupy—approximately their 30<sup>th</sup> residence as a couple—as salubrious, but they agreed that their lifestyle would not change their values.

Soon after their marriage, the young couple moved to Adelaide, where he served for nearly four years at the Keswick Barracks. He then served in Korea from 1954 to 1955. As a Colonel, Dunstan arrived in Vietnam as Deputy Commander in 1968. The next time he returned in 1971 it was as Major General, Commander Australian Force. During that period he planned and executed the withdrawal of Australians from Vietnam.

Throughout the early 1970s, Sir Donald Dunstan was the Chief of Materiel at the Army headquarters in Canberra. Most of that time was spent as a member of an inquiry into the future of the Citizens Military Force. The inquiry led to substantial changes in the structure of the Army Reserve. In 1977, he became Deputy Chief of the General Staff, but in a matter of weeks was promoted to Lieutenant General. He was 54 at the time.

As the Governor of South Australia from 23 April 1982, he was the state's first military governor since Major General Sir James Harrison in 1968. Both he and Lady Dunstan wanted to use their role to meet as many people as possible. Lady Dunstan described her husband—and I believe it sums him up well—this way:

He was a people person. He was one of those people whose warmth and genuine interest in what others have to say puts them immediately at ease. He can communicate as comfortably and as readily with ordinary people as with the social elite of the diplomatic cocktail circuit in which he must move.

The Liberal government, which recommended him to the position of governor, clearly saw his strength, stability and calm, unflustered outlook. As he had stated about himself, his background mitigated against his being a controversial person. He also described himself as being non-political. He was governor until 1991, and he served South Australia well in his military and governor roles. He was also highly decorated, with honours including a Companion of the Order of Australia and a Knight Commander of the Order of the British Empire, plus a plethora of other military honours.

Along with that, my family had some small connection or involvement with Sir Donald Dunstan while he was governor. My father at the time was involved with the St John Ambulance service. In fact, he was Chairman of the St John Council, and the Governor had a role in that particular organisation. My parents were often guests—when I say often, it seemed like often—at Government House of Sir Donald and Lady Dunstan. I know that Sir Donald Dunstan was always welcoming and always interested in what others were doing and what they had to say, as his wife attested.

He also commented that the Bordertown bakery made the best pies in South Australia and that, whenever he was travelling through the South-East—as the minister indicated in the sesquicentenary—he always detoured past Bordertown to purchase what he described as the best pie in South Australia. With those few words, I endorse the motion and pass on the opposition's condolences to his family.

Motion carried by members standing in their places in silence.

**JACOBS, MR S.J.**

**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, Minister for Gambling) (14:34):** I move:

That the Legislative Council expresses its deep regret at the death of Mr Samuel Jacobs AO QC, former judge of the Supreme Court of South Australia, and places on record its appreciation of his distinguished public service.

It is with sadness that I rise to speak about the life of Samuel Joshua (Sam) Jacobs AO QC, who died on 11 October, aged 90, after a long illness. Born in Adelaide in 1920, I am advised that Samuel was a man of great intellect and character. He was educated at Scotch College and enrolled at the University of Adelaide in 1938. During his time at university, he also made his mark as an all-rounder on campus as editor of *On Dit* and in the intervarsity golf team. During his university years, Samuel was an active member of the intervarsity debating team, and some say that this was a foretaste of things to come.

He enlisted in July 1940 in the Second Australian Imperial Force in World War II, serving in the Middle East and the Northern Territory and rising to the rank of captain. After the interruption caused by war, he completed his legal studies and went on to begin a private law practice in 1946, developing his practice as a barrister in the ensuing years.

Samuel led a distinguished career. In 1965, he was appointed Queen's Counsel, and in 1971 he was made President of the Law Society, before being appointed a judge of the Supreme Court in 1973, a position which he held until his 70<sup>th</sup> birthday at the end of 1990—when he reached what has been called the 'age of judicial senility', or the compulsory retirement age—and left the bench.

After his 17 years of experience as a judge, he was called on to help improve judicial standards, drafting a questionnaire which was administered to his fellow judicial officers in the Australian Institute of Judicial Administration and used as the basis for the first Australian guide to judicial conduct and ethics, a practical aid to our lawmakers which was published in 2002. After his retirement, Samuel Jacobs was also appointed to look into complex issues, including the state debt and the legal and contractual issues associated with the Hindmarsh Island Bridge.

In 1982, Samuel was made an Officer of the Order of Australia for his dedicated service to law and education. He was also awarded honorary doctorates from both the University of Adelaide and the University of South Australia. Samuel obviously understood the importance of education, and from the early 1950s he was involved in voluntary work in support of education, including 32 years as a member of the council of the University of Adelaide, where he was Deputy Chancellor.

Samuel's involvement in community affairs was evidenced by his support for organisations such as the Kindergarten Union of South Australia, and the Crippled Children's Association. He also served as a director of the South Australian Gas Company. Samuel was an active freemason, and in South Australia and the Northern Territory he achieved the rank of Grandmaster of Freemasons from 1979 to 1982. I understand that he is commemorated in the North Terrace Freemasons Hall, where two large function rooms were named after him in September 2010. In recognition of his service to both law and the community, Justice Jacobs became an Officer of the Order of Australia in the Queen's Birthday Honours List in 1982. He was also awarded a Centenary Medal in 2001.

I understand Samuel had a great love for Adelaide. He recognised the spacious green environment and unique attractions that South Australia had to offer, and he was known to express his appreciation of its relaxed lifestyle. While some may say South Australia is too small, Samuel could also see the opportunities for commercial activity this state presented. Samuel Jacobs is survived by his two sisters, three sons, one daughter, five grandchildren and three great-grandsons. His wife Mary died in 2007. On behalf of us all, I extend our condolences.

**The Hon. S.G. WADE (14:40):** As shadow attorney-general and on behalf of the Liberal opposition I rise to support the condolence motion upon the death of the Hon. Sam Jacobs AO QC. The Hon. Samuel Jacobs died on 11 October at the age of 91. The Hon. Sam Jacobs was respected for his perspectiveness, his tolerance, his commitment to justice and his sense of humour—characteristics which defined him over 17 years as a Supreme Court judge.

The Hon. Samuel Jacobs served in three ways. First, he served his country in war. Having started studying law in the late 1930s, these studies were deferred when he went to war in 1940. On his return he was able to take up a training contract which he had entered into before he went to war and, as such, he became a judge's associate with credits for his service. Some years before that the Law Society had reached an agreement with the state government to administer a legal assistance scheme. The scheme was operating under the Poor Persons Legal Assistance Act and was not replaced until the Legal Services Commission was established in 1979.

The Hon. Sam Jacobs was one of the early practitioners to work under this scheme and he joked occasionally that members would receive assignments in the mail without any warning. However, he saw himself as a volunteer and he served to support the less fortunate members of the community. He was also a member of the firm Browne Rymill and Stevens, and in 1965 was appointed as a QC.

From 1973 until 1990 he served as a Supreme Court judge. It is interesting, so soon after the condolence motion for Justice Mullighan (who served as Commissioner in the Commission of Inquiry into Children in State Care), that the Hon. Samuel Jacobs—following compulsory retirement at the end of 1990—served as the Commissioner in the Royal Commission into the State Bank of South Australia from 1991 to 1993. Samuel Jacobs did this state a great service by exposing the mismanagement of the South Australian Bannon Labor government. Highlighting the toxic assets of the State Bank, he cautioned governments on what has been seen as a worldwide problem in relation to toxic assets.

In recognition of his service to both the law and the community, Justice Jacobs became an Officer of the Order of Australia in the Queen's Birthday Honours List in 1982, and was awarded a Centenary Medal in 2001. The Hon. Samuel Jacobs lost his much-loved wife, Mary, in 2007 and is survived by four children, five grandchildren, three great-grandsons and two sisters.

On behalf of the opposition, I express my condolences to his family and thank them on our behalf for the tireless work of the Hon. Samuel Jacobs—to both the community and the state.

Motion carried by members standing in their places in silence.

**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, Minister for Gambling) (14:44):** I move:

That as a mark of respect to their memories, the sitting of the council be suspended.

Motion carried.

*[Sitting suspended from 14:44 to 15:06]*

## ANSWERS TO QUESTIONS

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

### APY LANDS

**190 The Hon. T.A. FRANKS** (9 February 2011). Can the Minister for Families and Communities advise—

1. How many new dwellings were completed on the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands in 2010?
2. How many of these new dwellings were equipped with a functioning washing machine as of 31 December 2010?
3. How many refurbishments of existing dwellings were completed on the APY Lands in 2010?

4. How many of these refurbished houses were equipped with a functioning washing machine as of 31 December 2010?

**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, Minister for Gambling):** The Minister for Housing is advised:

In the calendar year of 2010, a total of 47 new dwellings and 54 refurbishments of existing dwellings were completed on the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands. This includes houses funded under the National Partnership Agreement on Remote Indigenous Housing, as well as houses funded under the former Community Housing Program.

Washing machines are the responsibility of the tenant and are not provided as part of the standard fitout. Therefore, the number of washing machines in new or refurbished housing is unknown.

#### APY LANDS

**191 The Hon. T.A. FRANKS** (9 February 2011). Can the Minister for Aboriginal Affairs and Reconciliation advise—

1. Which stores located on the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands received an electricity rebate from the South Australian Government in 2010?

2. What was the monetary value of the rebate provided to each store in 2010?

3. Which stores located on the APY Lands, if any, did not receive an electricity rebate in 2010?

**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, Minister for Gambling):** I am advised:

Stores receiving an electricity rebate in the 2009-10 financial year, and the value of that rebate, were as follows:

Store	Rebate value
Amata Community Store	\$8,667.74
Indulkana Community Store	\$2,588.53
Kaltjiti Store Inc.	\$9,476.50
Kanpi Community Store	\$3,831.61
Mimili Community Store	\$8,238.43
Pipalyatjara Store Inc.	\$7,783.97
Pukatja Store Inc.	\$6,433.42
Watarru Store Inc.	\$6,157.88
Watinuma Store Inc.	\$2,482.58
Total	\$55,660.66

All stores on the APY Lands are included above and all received rebates.

#### PAPERS

The following papers were laid on the table:

By the President—

Reports, 2010-11—

Auditor-General and Treasurer's Financial Statements, Parts A and B  
Legislative Council  
Office of the Employee Ombudsman

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

Reports, 2010-11—

Capital City Committee Adelaide  
Construction Industry Training Board  
Department of Treasury and Finance  
Distribution Lessor Corporation  
Education Adelaide

Essential Services Commission of South Australia  
Generation Lessor Corporation  
Motor Accident Commission  
Operations of the Auditor-General's Department  
Playford Centre  
Police Superannuation Board  
RESI Corporation  
South Australian Asset Management Corporation  
South Australian Government Financing Authority (SAFA)  
South Australian Parliamentary Superannuation Scheme  
South Australian Superannuation Board (Super SA Board)  
South Australian WorkCover Ombudsman  
State Emergency Management Committee  
State Procurement Board  
Superannuation Funds Management Corporation of South Australia (Funds SA)  
Transmission Lessor Corporation  
WorkCover SA

Report of the Interim Operation of the Barossa Valley and McLaren Vale protection Districts—Ministerial Development Plan Amendment

Report on the Inquest into the Deaths of Mr. Rhys Allan Gerard Ryan and Mr. Jake Spencer Henschke

Report on the Interim Operation of the District Council of Orroroo Carrieton—Heritage Development Plan Amendment

Regulations under the following Acts—

Classification (Publications, Films and Computer Games) Act 1995—Applications for Exemptions

Development Act 1993—Trusses

Electoral Act 1985—Registration of Political Parties

Road Traffic Act 1961—Miscellaneous—Emergency Workers

Miscellaneous—Road Trains—Inspection Fees

Superannuation Act 1988—Remuneration Exclusions

Rules of Court—

Workers Compensation Tribunal—Workers Rehabilitation and Compensation Act 1986—Representation Costs

By the Minister for Public Sector Management (Hon. G.E. Gago)—

Reports, 2010-11—

Administration of the State Records Act 1997

Privacy Committee of South Australia

By the Minister for Industrial Relations (Hon. R.P. Wortley)—

Reports, 2009-10—

Adelaide Hills Wine Industry Fund

Barossa Wine Industry Fund

Citrus Growers Fund

Clare Valley Wine Industry Fund

Eyre Peninsula Grain Growers Rail Fund

Langhorne Creek Wine Industry Fund

McLaren Vale Wine Industry Fund

Olive Industry Fund

Riverland Wine Industry Fund

SA Rock Lobster Fishing Industry Fund

SA Sheep Industry Fund

South Australian Apiary Industry Fund

South Australian Cattle Industry Fund

South Australian Deer Industry Fund

South Australian Grape Growers Industry Fund

South Australian Pig Industry Fund

Reports, 2010-11—

BioInnovation SA

Dairy Authority of South Australia  
Non-Government Schools Registration Board  
Report of Actions taken in Response to Coronial Recommendations in relation to the  
Deaths of Rhys Allan Gerard Ryan, Jake Spencer Henschke, Derrick Terence Lee  
Wanganeeen and Mark Anthony White  
Regulations under the following Acts—  
Electrical products Act 2000—Revocation 14A  
Health Practitioner Regulation National Law (South Australia) Act 2010—Midwife  
Insurance Exemption  
Management Plan for the South Australian Charter Boat Fishery  
Water Amendment Regulations 2011—Amendments to the Murray-Darling Basin  
Agreement 2008  
District Council By-laws—  
Peterborough—No. 6—Moveable Signs Variation

#### **STATUTORY AUTHORITIES REVIEW COMMITTEE**

**The Hon. CARMEL ZOLLO (15:11):** I bring up the report of the committee, 2010-11.

Report received and ordered to be published.

#### **LEGISLATIVE REVIEW COMMITTEE**

**The Hon. G.A. KANDELAARS (15:12):** I bring up the report of the committee on criminal intelligence.

Report received and ordered to be published.

#### **BUDGET AND FINANCE COMMITTEE**

**The Hon. R.I. LUCAS (15:12):** I bring up the report of the committee, 2010-11.

Report received and ordered to be published.

#### **OLYMPIC DAM**

**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, Minister for Gambling) (15:13):** I table a copy of a ministerial statement relating to the Olympic Dam project indenture to be introduced to parliament made earlier today in another place by my colleague the Premier.

#### **QUESTION TIME**

##### **NORTHERN CONNECTIONS OFFICE**

**The Hon. D.W. RIDGWAY (Leader of the Opposition) (15:18):** I seek leave to make a brief explanation before asking the Minister for Public Sector Management a question concerning the recruitment process for the position of Director of the Northern Connections Office.

Leave granted.

**The Hon. D.W. RIDGWAY:** The position of Director of the Northern Connections Office, which comes with a six-figure salary, was filled by the former Labor MP and minister Ms Lea Stevens on 31 January 2011. However, a handwritten note obtained by the opposition on an email from the deputy chief executive's office, dated 9 December 2010, states, 'Lea Stevens, 31 January 2011 start.'

The email was sent to departmental officers who were involved in the recruitment process more than a week before the interviews for the job took place. In fact, there were six applicants. The other candidates went through the process in good faith, not knowing that the email had confirmed the start date for Ms Stevens. Ms Stevens did in fact start her new position on 31 January 2011. The DPLG website states:

Our culture enables us to maintain credibility, integrity and trust with all stakeholders.

I am also advised that the position has a tenure of five years. My questions are:

1. Does the minister agree that the appointment procedure may have given the impression of favouring Labor mates at the expense of other genuine candidates?

2. Does the minister agree that the appointment procedure could undermine the confidence in the independence of the public sector and send the wrong message and that therefore this procedure must be investigated?

3. Does the minister agree that the appointment procedure is cause for concern about the probity of the recruitment process?

4. Can the minister confirm the salary package and the tenure of five 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, Minister for Gambling) (15:20):** This is what we have come to see on a regular basis in this place, isn't it, Mr President—snide innuendo, trying to discredit the good name of very good people and trying to discredit the reputation of our Public Service? These are dedicated people who work extremely hard and are committed to working for the best interests of this state. In relation to the former lower house member, Lea Stevens, again, you are trying to somehow discredit her with snide innuendo. It is absolutely disgraceful, the sort of conduct that goes on in this place.

These appointments are a routine process that takes place, and I am confident that this was part of the usual process that takes place. I have no reason to believe that all of the appropriate parts of the process took place in relation to Lea Stevens in terms of the position of Director of Northern Connections.

In relation to the details of the length of the contract and the remuneration package, these are not details I carry around. These are operational matters which are usually readily available, and I will ensure that any of those details which are available I will bring back.

#### PREMIER'S COUNCIL FOR WOMEN

**The Hon. J.M.A. LENSINK (15:22):** I seek leave to make an explanation before directing a question to the Minister for the Status of Women on the subject of the Premier's women's council.

Leave granted.

**The Hon. J.M.A. LENSINK:** Under freedom of information, I sought correspondence between the Premier and the Premier's Council for Women over a one-year period, from July 2010 to July 2011. Some 35 documents were received by my office between the Premier's Council for Women, mostly relating to letters of appointment to the council. Contained in there was an invitation to, I think, tea and Christmas drinks, but there were no documents which related to policy matters, and there was not a clear indication of whether the Premier had even met with his council for women. My question is: is this title, the Premier's Council for Women, in fact accurate, and will she seek to change it so that it reflects more accurately what their relationship is?

**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, Minister for Gambling) (15:23):** The opposition really have a bee in their bonnet about this committee. I have to say that I find it quite perplexing to see the level of agitation that the title 'Premier's women's council' elicits in the opposition. It sends them into an absolute frenzy, which is quite curious. They just can't get their heads around the fact that the Premier is very much committed to this committee and that he is also very committed to women's issues in general.

In terms of providing for a Strategic Plan target around increasing women's representation, we led the nation—and we are still leading the nation—in setting targets for women's representation on government boards, chair positions and also executive numbers. This is a premier who was prepared to be brave enough to put forward targets that could be clearly monitored and measured, and clearly available in the public arena, and we have achieved an enormous amount in those areas. From inheriting from the former Liberal government something like a low 30 per cent membership of women on boards and committees, we are now sitting at about 46 per cent. I am absolutely convinced that setting a target such as we did was a major contributor to us being able to focus public awareness on this issue and achieve the increased representation we have. Similarly, we have done extraordinarily well with women in executive positions in our Public Service as well.

The Premier's Council for Women was established in 2002. It provides leadership and advice to ensure that the interests of women are at the forefront of government policy. I have said

before in this place and in the estimates hearings that the council conducts a planning type forum. From time to time it does a sort of environmental analysis on where its efforts might best be focused for the next year or two; and it determines its priorities accordingly. The government does not interfere in that process. The council is given the ability to determine and assess what it believes from the experience contained within its committee—and there is vast experience there, with women from all sorts of different walks of life with all types of backgrounds and qualifications. The council conducts that, determines what its priorities will be, and works around those priorities.

The Premier has met with that committee, and I also meet with it regularly. It has contributed to highlighting of a whole range of issues, particularly the importance of gender disaggregation data. As members would be aware, the PCW was key to developing the gender indicators on the online website, a free resource that assists policymakers across government and non-government sectors, researchers and students in terms of having access to this gender disaggregated data.

I was also very pleased to see that the PCW had a very influential effect on the refreshed Strategic Plan target, where a commitment has been given to provide gender disaggregation to an increased number of data collected in relation to monitoring our progress in terms of our Strategic Plan targets. Again, that assists us not only in assessing how well we are doing but it also points out where we might need to direct our efforts in the future.

As I said, the PCW has played, and continues to play, an integral role in the revision of our Strategic Plan targets. The PCW conducted a comprehensive public engagement session in the lead-up to the revised Strategic Plan targets, and had a quite significant input there. It meets with chief executives in relation to the planned targets, particularly those relating to their policy areas. For example, it has met with the Chief Executive of the Department of Health to discuss the council's priorities around health targets, which involves health, weight, Aboriginal health and a number of other health targets, with the chief executive of the department for education to progress the council's priority around women in science and maths, with the Attorney-General's Department to progress towards the council's priority regarding statewide crime rates, and, of course, with the Commissioner for Public Employment in relation to women in the executive of the Public Service.

They are to be absolutely commended for the extremely valuable work that they do. As I said, the status that this council has been given reflects on the commitment our Premier has had in relation to ensuring that we receive sound advice in relation to women's issues.

#### **WEBB, MR M.**

**The Hon. S.G. WADE (15:30):** I seek leave to make a brief explanation before asking the Leader of the Government a question relating to the parole of a life prisoner.

Leave granted.

**The Hon. S.G. WADE:** Last night on *Today Tonight* the Parole Board chair, Frances Nelson, and the Hon. Ann Bressington raised their concerns about the ongoing imprisonment of Michael Webb. Veronica Hay and Michael Webb both pleaded not guilty to the 1992 murder of 34-year-old Lance Patrick. Both were convicted. Both received the same sentence. Both had the same nonparole period imposed. Now, 19 years on, Veronica Hay has been out of gaol for six years and Michael Webb is still imprisoned.

Parole Board chair, Frances Nelson, said that there was no reason to say that Ms Hay was more meritorious than Mr Webb, so she thinks that it is a very unfair situation. Justice DeBelle, the presiding judge, first raised his concerns on his treatment with the Parole Board and then with the Correctional Services minister, the Hon. Carmel Zollo, in March 2006. In his letter, he wrote:

I respectfully suggest that the situation is not only unfair, but it is also unjust...I ask that you consider the matter urgently and recommend to Executive Council that it revoke its decision and release Mr Webb at the earliest possible date.

Reflecting on the current situation, Frances Nelson asserted to the program last night, 'The process has to be fair, it has to be open, it has to be transparent and it has to be judicial.' She goes on, 'It isn't a transparent process, they don't publish reasons.'

Elsewhere, she said:

It does worry me though that it seems to intrude into the separation of powers and that is a cornerstone of our democratic process.

This revelation follows hot on the heels of the public concern at the lack of transparency in the government's handling of the Malcolm Fox case, in contrast to the case of Paul Nemer. A court making such decisions would be compelled to give reasons as to how they arrived at their decision.

My question is: consistent with the duties of public accountability and the need for transparency in judicial decision-making, will the leader ensure that this council is provided with a statement as to the reasons Mr Webb remains imprisoned?

**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, Minister for Gambling) (15:33):** I thank the member for his question and will refer it to the Minister for Correctional Services in another place and bring back a response.

### CONSUMER PROTECTION

**The Hon. G.A. KANDELAARS (15:33):** I seek leave to make a brief explanation before asking the Minister for Consumer Affairs a question about South Australia's elderly consumers.

Leave granted.

**The Hon. G.A. KANDELAARS:** It is the responsibility of the Office of Consumer and Business Affairs to oversee the protection of consumers by promoting awareness within the community and, in particular, empower vulnerable consumer groups. Could the minister inform the chamber of recent initiatives by Consumer and Business Services to keep older consumers informed of their rights?

**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, Minister for Gambling) (15:33):** I thank the honourable member for his most important question. I am very pleased to provide the chamber with an update on the latest initiatives by Consumer and Business Services (CBS). Elderly and mature-age South Australians can sometimes be seen as vulnerable and provide an easy target for fraudsters and those seeking to take advantage of consumers. Many are open to exploitation through high pressure and misleading sales tactics and unfair strategies that can pressure people into entering into a sales agreement which they cannot afford and does not meet their needs. I am not suggesting that all of these tradespeople are unscrupulous; most do the right thing, but unfortunately there are some who do not.

This year has seen CBS bolster its efforts in a number of areas to provide additional information and protections for vulnerable consumer groups, including older South Australians. The 'Do not knock' campaign is a new initiative from CBS, and includes a new poster and sticker for consumers who do not want to interact with door-to-door salespeople. The sticker can be displayed prominently on or near the person's front door, and will act as a deterrent for unsolicited salespeople.

It is anticipated that this campaign may also be a popular initiative with a broad range of household consumers, including shiftworkers, those with chronic illness and the financially illiterate, but will have particular appeal to older people and those looking after their loved ones who are concerned they might be exploited. 'Do not knock' stickers have been supplied to Housing SA to send to clients who are predominantly low-income, vulnerable disadvantaged tenants, and will be available through organisations such as the Council on the Ageing, Seniors Information Service, Service SA and other related organisations.

Another popular initiative released earlier this year, and which has been approved for a re-release, is a publication entitled *Savvy Seniors: A guide to consumer rights for older people*. This guide is produced by CBS through collaboration with the Department for Families and Communities and the Office for the Ageing. This initiative has been hailed a great success by consumers. There is a vast range of topics including things like: top travel tips and safeguards—working out a budget, keeping track of your income and expenses; having a contingency plan; registering online in case things do not go exactly as planned when one is overseas; and money-saving tips, like applying for a seniors card, joining your local library and the dos and don'ts of signing up for a credit card.

Importantly, and in light of recent revelations about the maliciousness of scammers and their attempts to target Australian retirees, there is also an entire section on scams and ID fraud and some of the things older Australians can do to help protect their hard-earned savings, plus a

vast range of other topics, including consumer guarantees, telemarketing, buying mobile phones and advice on how to become tech-savvy.

CBS was invited to participate as a stallholder at the International Day of Older Persons at the Adelaide Festival Centre on Friday, 30 September. The materials distributed included *Savvy Seniors*, the 'Do not knock' stickers, and promotional magnets, carry bags and the like. The demand for these resources was extremely strong, and it is estimated that CBS staff distributed resources to approximately 1,000 older South Australians who attended the event.

There has been extremely positive feedback from the community on the *Savvy Seniors* booklet. They continue to be distributed to local councils, the Office for the Ageing and electorate offices, and can be downloaded by visiting the CBS website and accessing the link on the homepage. South Australia's older population makes an amazing contribution to our community, and I congratulate CBS on their efforts to support and educate them around protecting themselves from unscrupulous and unwanted traders.

### ARKARoola WILDERNESS SANCTUARY

**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, Minister for Gambling) (15:38):** I table a ministerial statement made earlier today in the other place by Premier Mike Rann on the Arkaroola bill.

### QUESTION TIME

#### FAMILIES SA

**The Hon. A. BRESSINGTON (15:38):** I seek leave to make a brief explanation before asking the minister representing the Minister for Families and Communities questions about family support by Families SA

Leave granted.

**The Hon. A. BRESSINGTON:** My questions are:

1. In the last three years, how many children have been reunified with their families after being placed under a care and protection order for 12 months, and how many have been reunified after being placed under an order until the age of 18 years?

2. Does the Families SA procedure manual require a reunification plan to be developed in all cases in which a child has been under care for a significant duration and is to be returned to their parents?

3. Is this reunification plan to be made available to the parents or intended caregiver?

4. Whilst I appreciate all cases are different, is there a minimum expectation of services to be made available to families to assist the reunification process?

5. In cases where a child under a Youth Court order until the age of 18 is reunified with their parents, what criteria are used to determine whether or not to rescind that order?

**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, Minister for Gambling) (15:40):** I thank the honourable member for her important questions. I will refer them to the Minister for Families and Communities in another place and bring back a response.

#### RUNDLE MALL

**The Hon. I.K. HUNTER (15:40):** I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations a question about management of the Rundle Mall precinct.

Leave granted.

**The Hon. I.K. HUNTER:** I understand that the state government and the Adelaide City Council are working together to address unsafe and antisocial conduct in Rundle Mall. Will the minister update the chamber as to what action is being taken to address this issue?

**The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (15:40):** I thank the honourable member for his very important question.

As members would be aware, for a number of years a group of street preachers have been preaching in Rundle Mall without permission from the Adelaide City Council. Previously, the Adelaide City Council had enforced a by-law, known as By-law 4, Roads, which provided that persons must not preach, canvass, harangue or distribute literature on a road (including Rundle Mall) without a permit issued by the council.

As many members would also be aware, in mid-2010 the preachers challenged the validity of by-law 4 in the District Court, pursuant to section 276 of the Local Government Act 1999, and the matter went on to appeal to the Full Court of the Supreme Court. In August 2011, the court held that the words 'preach, canvass, harangue' in clause 2.3 of the by-law and the entirety of clause 2.8, 'distribution of literature', infringed upon the freedom of political communication implied from the Commonwealth Constitution. The Full Court held that those words were invalid and should be severed from by-law 4.

Owing to the decision of the Full Court, the preachers do not currently require a permit to preach, canvass, harangue or distribute literature in the mall. The Attorney-General from another place has sought special leave to appeal the decision of the Full Court to the High Court of Australia; however, that appeal is some months away. The Adelaide City Council has since adopted a by-law, known as By-law No. 6, which sought to deal with unsafe and antisocial conduct in Rundle Mall. The by-law again contained references regulating preaching, canvassing, haranguing and the distribution of literature, as the by-law was drafted prior to the Full Court judgement being delivered invalidating those words.

As members would be aware, last month this chamber passed a motion that disallowed by-law No. 6. The current state of the law, therefore, is that by-law No. 4 is operative with the words 'preach, canvass, harangue', and the distribution of literature has been severed. On Friday 7 October, I walked through Rundle Mall during the evening shopping period and saw first-hand the disruption caused by a group of street preachers and the negative impact this disruption has had on the traders.

I was joined by Mr Martin Haese, of the Rundle Mall Management Authority, and the Lord Mayor, the Hon. Stephen Yarwood. The situation in Rundle Mall was quite confronting. The activities of this group of street preachers can be offensive to passersby—and by no means were they preaching Christianity; it was just one big homophobic rant as far as I could see—by virtue of the volume and content. Large numbers of protesters have been gathering each Friday night in Rundle Mall to protest against the preachers' views.

I spoke to retail owners, who noted that business has been adversely affected by the preaching and subsequent protesting. At the outset, I want to make clear that the state government does not want to infringe upon the implied freedom of political and religious communication; nevertheless, I believe that the Adelaide City Council must have the ability to regulate unsafe and antisocial conduct and appropriately balance the interests of all mall users.

I am pleased to advise the chamber that a model by-law has been developed by the state government in consultation with the Adelaide City Council. The model by-law for Rundle Mall will allow for the Adelaide City Council to regulate the use of amplification generally, the use of equipment, such as platforms and stages, and prohibit the interference or disruption of any person's permitted use of Rundle Mall.

The introduction of this model by-law should assist in meeting the concerns of Rundle Mall traders and balance the competing interests of Rundle Mall users and enable council to better regulate the conduct of preachers. The model by-law has been published in the *Government Gazette* and will be laid before both houses of parliament under the Subordinate Legislation Act 1978. The model by-law may be adopted by the Adelaide City Council after the time for disallowance under the Subordinate Legislation Act 1978 has passed. This means that the model by-law is likely to come into effect in February of next year.

Members of this chamber may be interested to know that, once the disallowance period has passed and when adopted by the Adelaide City Council, the model by-law will operate in addition to the operative portion of Adelaide City Council by-law No.4 as it does not contain any overlapping clauses. The model by-law operates only in respect of pedestrian malls, whilst by-law No. 4 relates to all public roads. Unlike disallowed by-law No.6, the model by-law does not contain any of the words 'preach', 'canvass', 'harangue' or 'distribute literature' which were held to be invalid by the Full Court of the Supreme Court.

At the last session of parliament, I was quite critical of the Hon. Mr Stephen Wade for moving the disallowance and, on reflection, I must say that I realise that the whole motive behind this for Mr Wade was his defence of freedom of speech. He may not have understood the consequences that arose out of this through the mall and the traders but, in a spirit of good faith, I extend an invitation to the Hon. Mr Wade to join me for a walk down Rundle Mall to talk to some of the traders and put this issue beyond partisan politics and work together in a bipartisan way to overcome the problems in the mall.

**The PRESIDENT:** Does the Hon. Mr Wade have a supplementary or has he accepted the offer?

#### RUNDLE MALL

**The Hon. S.G. WADE (15:46):** I was in the mall last Friday night. I am happy to go there with the minister any time he wants to. Anyway, rather than making a disorderly response to invitations, I rise to ask this supplementary question: on Friday 7 October when the minister was in the mall, did he speak to any police officer about the application of state laws on that night or any other night, and what was their response?

**The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (15:47):** I actually did not speak to any police officers, but I did speak with the mayor. There were about 10 or 12 police officers in attendance, three of whom were on the greys. The thing that struck me then is that there is a perception that the most dangerous parts of Adelaide are down the western side of Hindley Street and I thought what a shame it was that all these police resources were actually in the mall looking at this quite disgraceful behaviour.

I understand that these preachers have been very litigious. A number of police officers, I have been told, have been sued personally for their actions and a number of people who have actually signed affidavits have been sued by these preachers, so it is becoming much worse than just bad behaviour in the mall. It is actually getting out of order, where people are too frightened to confront them.

The reality is that under this model by-law, the Adelaide City Council will be able to control or regulate the amplification, the stages. Having been there and heard the noise of, I think, three megaphones screeching out and having seen the preachers on their stages, if the council can actually regulate the way they confront people using the mall, they would be able to handle the problem instead of wasting very valuable police resources on this issue.

**The PRESIDENT:** The Hon. Mr Wade has a further supplementary question.

#### RUNDLE MALL

**The Hon. S.G. WADE (15:48):** Considering the council has acknowledged that council by-laws cannot be enforced without police assistance if a person is not willing to give their name or address, will the government commit to police assisting the council to enforce the model by-law?

**The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (15:49):** The police are there to serve the public of South Australia. I will say again that this new model by-law does give the tools to the Adelaide City Council to regulate certain issues which would negate a lot of the problems in the mall.

The police force and its resources in particular—such as the 12 officers whom I saw there on that Friday night—should be well and truly used in other parts of the city where they are required. All I am saying to this council now is let us give the Adelaide City Council the tools with which they can regulate the preachers and allow the police to get on and look after other parts of the city that could be dangerous.

#### MULLIGHAN INQUIRY RECOMMENDATIONS

**The Hon. T.J. STEPHENS (15:50):** I seek leave to make a brief explanation before asking the Leader of the Government representing the Minister for Aboriginal Affairs a question about the upcoming report on the implementation of the recommendations of the Mullighan inquiry.

Leave granted.

**The Hon. T.J. STEPHENS:** I recently received correspondence from the Reverend Peter McDonald of UnitingCare Wesley. He, Jonathan Nicholls, and those at the paper tracker are concerned that at the last report there was an absence of any detailed information on funding commitments, the absence of any data on mandatory notifications, a failure to report consistently

over time, the omission of key information, the publication of inaccurate and misleading information, a repetition and rehashing of earlier statements and a lack of a long-term plan. Also of concern is that no youth strategy is mentioned in the second report either. My questions to the minister are:

1. Why does last year's report have so many holes in it?
2. Can the minister ensure that none of the inadequacies of the last report will be repeated in this year's report?
3. When does the minister expect this year's report to be tabled in parliament?

**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, Minister for Gambling) (15:50):** I thank the honourable member for his important questions and will refer those to the relevant minister in another place and bring back a response.

#### INDEPENDENT GAMBLING AUTHORITY CODE OF PRACTICE REVIEW

**The Hon. T.A. FRANKS (15:51):** I seek leave to make a brief explanation before asking the Minister for Gambling a question on the process of the public consultation for the Independent Gambling Authority's advertising and responsible gambling code review.

Leave granted.

**The Hon. T.A. FRANKS:** I note that recently there were nine submissions to the Independent Gambling Authority's (IGA) code of practice review into the advertising and responsible gambling code. Of these, all but one—that is, eight out of the nine—were from the gambling industry itself, those with a vested financial interest in gambling.

The voice of those who work with problem gamblers and their families—the sole voice—was that of SACOSS. I was shocked and concerned that, when you read the SACOSS submission, it simply highlights the fact that they did not have the resources to make substantive comment, and they raised their ongoing concern that there is, in fact, a power imbalance between the industry and the NGOs representing those at the coalface of dealing with problematic gambling.

SACOSS's submission noted in its one page that, despite previous requests to this government, funding has simply not been made available to enable advocacy to represent the interests of those most vulnerable South Australians. My questions are: in light of this, is the minister confident that she is getting balanced input into gambling policy and, if not, has she undertaken to consult further with NGO stakeholders, and in what way will she seek to address this imbalance? To facilitate this, will the minister commit to providing funding to SACOSS to, in turn, resource their member groups from the sector to input the side of the story that actually presents the views of those who are affected by problem gambling, or is she happy with the stacked deck as it currently stands?

**The PRESIDENT:** The honourable minister will disregard the opinion in the question and also the question asking the honourable minister for opinion.

**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, Minister for Gambling) (15:53):** Thank you, Mr President, and I thank the honourable member for her question. There is just really no pleasing the Greens, is there? There is just no pleasing them at all. We have an Independent Gambling Authority that is at arm's length from government, so it really has the independence that it needs to conduct itself. It has introduced mandatory advertising and responsible gambling codes of practice for all gambling providers, and there is a process for reviewing those.

The review process involves a very open, transparent and public consultation, and I am absolutely confident that, if any group had needed an extension of time, it would have been granted. Sometimes organisations want the ability to provide comprehensive answers, and putting these responses together can be quite time consuming and resource intensive, but to suggest that somehow the government is manipulating the public in a way to prevent a balanced input into the code of conduct is absolutely outrageous. It is just wacky stuff, completely wacky stuff.

As I said, the IGA is independent of government, and if they were not the Greens would be squealing first. If there was any ministerial or government interference, you could imagine what the

Greens would be doing. It is just outrageous. It is a public process, it is in the hands of the IGA, and they are a very competent group of people. If any organisation needed further assistance or time, SACOSS is a pretty sophisticated group and has asked for extensions in the past and I am sure they would have the wherewithal to have approached the IGA and sought whatever assistance they needed.

### **TORRENS UNIVERSITY 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, Minister for Gambling) (15:56):** I table a ministerial statement made today in another place by the Hon. Jack Snelling on Torrens University Australia.

### **QUESTION TIME**

#### **INDEPENDENT GAMBLING AUTHORITY CODE OF PRACTICE REVIEW**

**The Hon. T.A. FRANKS (15:56):** By way of supplementary question, does the minister understand that they are not asking for more time but asking for more money, and that it takes money and resources to actually provide facilitated feedback to government?

**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, Minister for Gambling) (15:56):** Time is money. As I said, SACOSS is a very sophisticated organisation and has a national identity. If they are saying that they don't have the resources to put together a response in the time frame given, I am sure that if they had requested further time to be able to manage it within their current resources I am sure the IGA would assist. As I said, it is absolutely outrageous to suggest that the government should be interfering in any way, shape or form in this very public, open process.

#### **RURAL AGENT PROGRAM**

**The Hon. CARMEL ZOLLO (15:57):** I seek leave to make a brief explanation before asking the Minister for Government Enterprises a question about government services in rural areas.

Leave granted.

**The Hon. CARMEL ZOLLO:** People in rural areas have the same need for South Australian government services as those of us who live in the metropolitan area. People from these areas have had to travel, sometimes unreasonable distances, to access government services. My question to the minister is: can she advise the council what the government is doing to improve access to government services for smaller rural communities in 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, Minister for Gambling) (15:58):** I thank the honourable member for her important question. Service SA implements various strategies to improve access to government transactions and information services. As part of this ongoing strategy, Service SA provides smaller rural communities with access to a range of state government information services through its rural service agent program.

As I have previously mentioned in this place, Service SA's Rural Agent Program is already successful in many locations throughout the state. Service SA has expanded a range of services, including a number of commonly used registration and licensing services, which were not previously available in these communities for delivery by service agents.

On behalf of Service SA, Anglican Community Care Inc. is the Millicent rural agent, and it previously provided a limited number of transactions and information on behalf of various government agencies. It is with great pleasure that I announced on Thursday 13 October the opening of the Millicent service agent centre with the expansion of services. The Millicent community will benefit from the improved accessibility to registration and licensing transactions. This site has become the location of the third service agent in South Australia and demonstrates the state government's commitment to expand the range of government services and information to rural communities.

Due to the popularity of Service SA transactions in the local community, Country North Community Services (the Clare rural agent) was the first to be expanded, and in May 2011 the

Clare service agent was launched. In July 2011, Yorketown service agent became the second service agent in South Australia. Both Clare and Yorketown service agents continue to provide a range of government services to their local community. Service SA plans to continue to expand the rural service model to transform some other existing rural agents into service agents to further service additional rural communities with more cost-effective measures that will help provide a greater number of popular registration and licensing services closer to people's homes.

The opening of the Millicent service agent has provided access to many more additional registration and licensing services that have not been previously available. These include renewal or replacement of a driver's licence and learner's permit, ability to register a motor boat, renewal or transfer of vehicle registration, and ordering special or replacement vehicle plates. I am advised that Service SA trained Anglican Community Care Inc. staff in an additional range of transactions before the Millicent service agent was officially opened to the public on the 13<sup>th</sup>.

I once again take this opportunity to recognise Service SA for their hard work and their commitment to providing an extremely high benchmark in the service provided to South Australian communities. They are indeed a very hardworking, very committed and very dedicated agency. I believe they have one of the most highly-honed, focused and dedicated commitment to customer service, which can be held up as a model in this state.

### **SOUTH AUSTRALIANS LIVING IN POVERTY**

**The Hon. J.S. LEE (16:02):** I seek leave to make a brief explanation before asking the Leader of the Government a question about South Australians living in poverty.

Leave granted.

**The Hon. J.S. LEE:** The South Australian Council of Social Services released a survey to mark Anti-Poverty Week this week. It reviews what poverty means to South Australians. In the SACOSS Anti-Poverty Statement 2011, it was reported that, at the last count, 200,000 South Australians (or 12.3 per cent) were living in poverty. That is more than one out of every 10 people in our state.

The Australian Bureau of Statistics' household expenditure survey also shows that 14 per cent could not pay their gas, electricity or telephone bill on time; 3.5 per cent went without meals because of financial stress; and 2.3 per cent could not afford to heat their homes. The survey also shows that general living prices have risen in Adelaide over the last year, including that fruit and vegetables have risen by 38.1 per cent, electricity by 16.8 per cent and utilities by 13.4 per cent. My questions are:

1. How is the government addressing problems faced by some 200,000 people living in poverty in South Australia?
2. Can the Leader of the Government explain whether she believes that the government is meeting its goals and targets of growing prosperity, improving wellbeing and expanding opportunities within the vision of the South Australian Strategic Plan when so many people cannot even afford to pay for food or to heat their homes?

**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, Minister for Gambling) (16:04):** I thank the honourable member for her most important questions. Indeed, it is always a very sobering and very confronting thing to face some of these reports which show us that there are still members of our community who suffer considerable disadvantage, including poverty. We know that poverty is associated with a number of factors. We know that it is associated with things such as access to employment, education, family modelling, mental health issues and health issues as well.

In South Australia, we have one of the oldest populations, and this also has an impact on poverty. We continue to strive to ensure that every South Australian and, for that matter, every Australian—and that extends internationally as well—do whatever they can to address issues of poverty. There is a wide range of government amenities and services in place to assist and support people, and there is a wide range of services and supports with family and community services. There are our comprehensive health services, our policing services that help provide protection for people, and our education and training programs, as well as a range of concessions, rebates and assistance that we provide to people on low incomes.

I guess part of the bottom line in addressing this is a strong, prosperous economy, as well as jobs. The Rann Labor government has worked extremely hard to ensure that South Australia enjoys a strong economy. We have been able to retain a AAA credit rating when many other countries around the world, and other states, are losing theirs. I know it is not the end to all our problems; nevertheless, it does represent sound economic management and a degree of economic confidence.

The Rann Labor government has been able to do this through a number of mechanisms, but particularly by working very hard to diversify our economic base through defence, mining and education, to name but a few. Of course, fundamental to this are jobs, and we are currently enjoying an unemployment rate of just over 5 per cent. A highly esteemed international guest indicated that, from an international perspective, a figure of around 5 per cent is extremely good; some countries sit at about nine, 10 or 11 per cent.

We work very hard to ensure jobs availability, and key to that, of course, is our Olympic Dam proposal. This is a very important opportunity for the future prosperity of this state, and it is just one example of a project on the horizon.

**An honourable member:** The only one.

**The Hon. G.E. GAGO:** To suggest it is the only one is outrageous. There is the work we have done in defence, and we have just received a ministerial statement advising that another international university wants to open here; it is paying us to open up here in this state, so our education industry development is also something we have advanced a great deal. It is completely wrong and misleading to suggest that Olympic Dam is the only project on our horizon.

#### **MY TEHRAN FOR SALE**

**The Hon. D.G.E. HOOD (16:08):** I seek leave to make a brief explanation before asking the minister representing the Minister for the Arts a question regarding the funding of the movie, *My Tehran for Sale*.

Leave granted.

**The Hon. D.G.E. HOOD:** As the minister would be aware—there was extensive media coverage just last week—the actress Marzieh Vafamehr has been gaoled in Iran for a period of one year and sentenced to an unbelievable 90 lashes after appearing in the South Australian-sponsored film, *My Tehran for Sale*. The movie is apparently critical of the Islamic Republic's policies and includes footage of Ms Vafamehr without the Islamic hijab covering her head and neck. Iranian authorities have also claimed that the film did not obtain the necessary permits, although that has been disputed. The film was funded partly by the South Australian Film Corporation and the Adelaide Film Festival. I make it clear that I make no criticism of that funding. My questions, quite simply, to the minister are:

1. How much funding did the South Australian taxpayer provide for the making of the film *My Tehran for Sale* and what additional funding was provided for flights, accommodation, living costs and other incidentals?
2. What foreknowledge, if any, did the South Australian government have as to the possible ramifications that the actress may be subject to once the film was released? Was there any discussion to that effect? What knowledge, if any, did the government have of the possible risks?
3. What representations, if any, has the South Australian or federal government, to the best of the minister's knowledge, made to the Iranian government in order to assist the actress and her family?

**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, Minister for Gambling) (16:10):** I thank the honourable member for his important questions and will refer them to the Minister for the Arts in another place and bring back a response.

#### **SAFE WORK WEEK**

**The Hon. J.M. GAZZOLA (16:10):** My question is to the Minister for Industrial Relations. What are the some of the highlights for Safe Work Week, which commences next week?

**The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (16:11):** I thank the honourable member for his very important question and acknowledge the many years that the Hon. Mr Gazzola spent in the industrial relations sphere. I am looking forward to Safe Work Week 2011, which is South Australia's premier event to educate the community on the need to stay safe at work, and commences next week, running from 24 to 28 October.

This year's program consists of more than 70 free information sessions at the Education Development Centre at Hindmarsh. These have been tailored to meet the needs of a range of stakeholders in the work environment, including employers, employees, occupational health and safety professionals, contractors, health and safety representatives, and human resource personnel. The program also caters to specific sectors that have acute workplace safety issues. Hence, there are valuable sessions on offer that deal with issues such as manual handling, hazardous chemicals and risk management.

While there is something in the program for everyone with an interest in occupational health and safety, there has been a very strong interest in the highlight events, such as the mock occ health and safety dispute and the mock Industrial Court trial. The mock occ health and safety dispute will feature a simulated work health and safety provisional improvement notice dispute to raise employer and employee awareness of risk management responsibilities under the proposed work health and safety laws, while the mock Industrial Court trial will provide a realistic look at how a safety matter is dealt with in the South Australian Industrial Court.

I can also inform the chamber that Safe Work Week has already been to the regional areas of the state, with 48 presentations made this year to over 2,500 people. These have been delivered at times and in places that better accommodate the needs and schedules of our regional workplaces and industries. Alongside this, 274 businesses have also signed up to receive the Take 10@10 packages. These packages provide training material on 12 safety topics of concern to most workplaces. Participants can then discuss these topics in their own space and environment, meaning tens of thousands more South Australians can participate in workplace safety awareness training beyond those attending the Safe Work Week sessions in metropolitan Adelaide.

Alongside the prevention and enforcement activities of SafeWork SA, Safe Work Week is another key part of this government's efforts to achieve our strategic plan target regarding greater safety in South Australian workplaces. Appropriately, and in the spirit of consensus that should guide all workplace safety activities, Safe Work Week 2011 is presented by the SafeWork SA Advisory Committee, in partnership with SafeWork SA, SA Unions, Business SA and WorkCover SA.

I urge employers, employees and health and safety representatives from a range of organisations to continue to register for these important free workshops on the SafeWork SA website, including the Take 10@10 training initiative.

#### **PREMIER STAFF PAYOUTS**

**The Hon. R.I. LUCAS (16:14):** I seek leave to make a brief explanation prior to directing a question to the minister representing the soon to be departed Premier on the issue of payouts for spin doctors and ministerial staffers.

Leave granted.

**The Hon. R.I. LUCAS:** There was a story in *The Advertiser* on Monday under the heading 'Second Payout to Rann Adviser', which referred to a second termination payout to a ministerial adviser to the Premier, Ms Rowan Roberts. It indicates that Ms Roberts had left her position as economic adviser to the Premier early last year and accepted a payout of about \$38,000. The job was kept open. She returned to the job earlier this year, she is now understood to have secured employment with the Gillard government and was in line for another taxpayer-funded 16-week or four-month termination payment.

On 8 June of this year, I also asked a question of the Leader of the Government, representing the soon to be departed Premier, about the Chief of Staff to the Premier, Mr Nick Alexandrides, and whether he had made an application to have leave entitlements cashed out and, if so, what was the estimated cost of the application to cash out leave entitlements, was the application approved and, if it was approved, who approved it, and a range of other questions in relation to that particular issue. Unsurprisingly, the soon to be departed Premier has not

responded—and neither has the Leader of the Government—to that particular question asked in June of this year.

One of the issues that has been raised with me by observers of these questions and of the Public Service entitlements is: if a ministerial staffer who has a substantive position in the Public Service returns to the Public Service after a job in a minister's office cashes out their long service leave entitlement in the minister's office, is it cashed out at the higher ministerial staffer rate, or is it cashed out at the rate which applies in their substantive position which they held prior to going into the minister's office and which they returned to in the event that they leave the minister's office in the coming days? My questions are:

1. Will the minister—the soon to be departed Premier—actually provide a reply to the question I asked on 8 June of this year about his Chief of Staff Mr Nick Alexandrides' entitlements?

2. How many ministerial staffers since June of this year have cashed out any of their leave entitlements? If there are any, what are the names of those ministerial staffers, the cash payment that was made, and who authorised the payments in each case?

3. Will Ms Roberts be receiving a second payout when she leaves her position to join the Gillard government, and, if so, how much will that termination payout be?

4. If a ministerial staffer returns to a lower paid substantive position they hold in the Public Service, is the cashed-out long service leave paid out at the higher ministerial staff rate, rather than the lower level rate which is associated with their substantive position in the Public Service?

5. How many other ministerial staffers and spin doctors will receive termination payouts in the period between 20 October of this year and 30 November of this year; if there are any, what are the names of those ministerial staffers and/or spin doctors and the level of payout in each case?

**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, Minister for Gambling) (16:18):** Again, this is just so typical of the Hon. Rob Lucas—the snide innuendo that we just know and expect of him now. He continually comes into this place and seeks to discredit the names and reputations of really hardworking, committed and dedicated public servants. It is absolutely outrageous.

I am happy to take the details of the questions on notice and bring back a response, but I have been advised that, in relation to Ms Rowan Roberts, in 1996 a new contract was prepared in consultation with crown law to enable the Premier to appoint a person or staff pursuant to section 69 of the new Public Sector Management Act 1995. I remind members that that was 1996, so it was the former Liberal government that was responsible for that.

Prior to that date, the Governor confirmed such contract appointments made by the Premier, pursuant to the Constitution Act 1934. The new contracts were modelled on provisions contained in those documents and updated and added to. I am advised that both the old arrangements and the new contracts drawn up in 1996 contained provisions for a payout of the contract if proper notice was not given. Pre-1996 the payout was 12 weeks and the then government increased it to 16 weeks, so the former Liberal government increased it from 12 weeks' payout to 16 weeks.

At the change of government in 2002, the new Liberal Leader of the Opposition also requested contract arrangements for appointments to his office that specifically provided for a payout similar to that given to ministerial staff. So what is good for the goose, Mr President—it was a standard that he actually adopted himself. Contracts were prepared in consultation with crown law and exactly the same provision is included in contracts used by the Leader of the Opposition.

A person appointed by the Premier pursuant to section 71 of the Public Sector Act is entitled to a 16-week payout if the term expires and the Premier has not given at least three calendar months prior notice of the expiration date. On 20 October 2011, contracts for ministerial staff employed in the Premier's office will expire when the Premier is no longer Premier or a minister, and contractually those staff will be entitled to a 16-week payout in lieu of proper notice. All contracts stipulate that any such payment received in lieu of notice in the case of the 16 weeks must be paid in full or such part if, during that period, the person is in receipt of remuneration arising either from election to the parliament of the state or appointment or employment of any office of profit under the Crown whether in the Public Service or otherwise.

So that is some advice that I have at hand. As I said, in relation to other detailed questions I will take them on notice and bring back a response.

## ANSWERS TO QUESTIONS

### LAND MANAGEMENT CORPORATION

In reply to the **Hon. D.G.E. HOOD** (3 February 2009).

**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, Minister for Gambling):** The Minister for Infrastructure has been advised:

1. The Charter was amended in 2008 with section 3(b)–Strategic Directions–amended by deleting the words 'and seek to maximise returns for government'.

Section 3(b) now reads:

(b) To be accountable and operate commercially in accordance with:

- sound business and financial management;
- government policy objectives; and
- prudent risk management practices.

Section 3(a) of the LMC Charter also provides as follows:

The government has approved the following strategic direction for the Corporation.

To create economic, environmental and social benefits via the acquisition, management and disposal of government assets.

2. LMC is required by both the LMC Regulations and the LMC Charter to address the economic, environmental and social benefits of all projects it undertakes and in the context of its land release program. LMC mandates that a minimum of 15 percent of all allotments in its developments must meet the affordable housing targets as required by the State Housing Plan.

3. It should be noted that the Housing Industry Association Residential Land Report for the September 2010 quarter indicated that the median residential lot price were; \$280,000 for Sydney, \$199,000 for Brisbane, \$189,500 for Melbourne and \$180,000 for Adelaide.

### NORTHERN SUBURBS BUS ROUTES

In reply to the **Hon. D.W. RIDGWAY (Leader of the Opposition)** (3 December 2009).

**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, Minister for Gambling):** The Minister for Transport has been advised:

1. The Port Adelaide Viaduct upgrade has been designed with future gauge conversion in mind. Broad gauge sleepers have been used at this stage because of the complex rail arrangement which requires the use of 'check' rails. 'Check' rails are a second rail that sits inside the running rail to minimise the risk of a derailment on bridges.

When the line is standardised, the sleepers will be replaced with standard gauge check rail compatible sleepers. The broad gauge sleepers removed will be able to be re-used in other broad gauge environments.

### CORRECTIONAL SERVICES, PEOPLE WITH DISABILITIES

In reply to the **Hon. K.L. VINCENT** (5 May 2011).

**The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling):** The Minister for Mental Health and Substance Abuse has responded to questions one, two and three. The Minister for Disability has responded to question four. They have been advised:

1. The number of people during the calendar years of 2008, 2009 and 2010 who were detained in correctional facilities and who have been found guilty or deemed unfit to stand trial by reason of mental incompetence were:

Year 2008-17

Year 2009-12

Year 2010-34.

2. On 5 May 2011 there were nine forensic mental health consumers held in correctional facilities.

3. A person has been detained in a correctional facility since 20 April 2009. There is ongoing planning coordinated by the Exceptional Needs Unit, Department for Families and Communities, to facilitate the transfer of this person from prison to a more suitably resourced setting.

4. People with a disability in the criminal justice system often have multiple issues—including psychiatric disability, intellectual disability, acquired brain injury and chronic substance abuse—which do not fall within the responsibility of a single agency. Delivering the right services for people with a disability who have forensic issues requires agencies to work together.

The Minister for Disability is advised that at any given time there are approximately five patients in James Nash House with non-psychiatric mental impairment, arising from intellectual disability or brain injury rather than mental illness.

Disability Services are able to support people with daily living issues resulting from their disability.

A number of departments have also worked together to develop strategies to improve the current service response to people with a disability who are involved in the criminal justice system.

A memorandum of administrative arrangement between the Department for Families and Communities (DFC) and the Department for Correctional Services (DCS) was implemented in July 2010, to improve the day to day management and standard of life experienced amongst offenders with a disability.

Interagency practice guidelines between DFC and SA Health were introduced in February 2011. These guidelines support the delivery of coordinated interagency services to people with mental impairment on supervision orders (licence) in the community.

A project jointly sponsored by DFC, SA Health, DCS and the Social Inclusion Unit was established in May 2011 to look into and prepare options to address the specific needs of people with a disability who are involved with the criminal justice system.

#### URANIUM EXPORTS

In reply to the **Hon. M. PARNELL** (21 June 2011).

**The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling):** The Minister for Mineral Resources Development has been advised:

1. & 2. The question from the Honourable Member is not one the Government of South Australia is in a position to answer, nor should it be. The responsibility for controls on the export of uranium lies with the Australian Government.

It is suggested that the Honourable Member direct his enquiries to the Department for Resources Energy and Tourism—RET controls the issue of Uranium Export Permits. Australian Uranium may only be exported to countries which observe the Treaty on the Non-Proliferation of Nuclear Weapons and are committed to non-proliferation and nuclear safeguards.

#### LYELL MCEWIN HOSPITAL COLONOSCOPE

**The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (16:21):** I table a ministerial statement relating to colonoscopes at the Lyell McEwin Hospital made earlier today in another place by my colleague the Minister for Health.

## HOME BIRTHING

**The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (16:21):** I table a ministerial statement relating to home birthing made earlier today in another place by my colleague the Minister for Health.

### SMALL BUSINESS COMMISSIONER BILL

Adjourned debate on second reading.

(Continued from 29 September 2011.)

**The Hon. R.L. BROKESHIRE (16:22):** I rise this afternoon to support the Small Business Commissioner Bill. Whilst, at this point, my speech will not be long, I will be talking to a couple of amendments that Family First has tabled before the house when we get to the committee stage.

First and foremost I want to say that, after careful deliberation (as Family First always does with these bills), we will be supporting the government with this bill. We will be supporting the government because, whilst we have been concerned—and I declare my interest as a small business person, as a family farming enterprise—about the lack of support from government over a period of time for small business, the fact that we are now the highest taxed and charged state in Australia and we have lots of bureaucratic red tape being put before us that is an absolute impost on running a small business, on this occasion one needs to give credit where credit is due.

I am giving credit on the public record for the government bringing this bill forward, particularly the Hon. Tom Koutsantonis, who I know also comes from a family involved with small business. Clearly, he has had significant representation (like many of us in the parliament) when it comes to problems with small businesses not having any teeth and nowhere to go for assistance.

Having served in both houses, I have heard firsthand from constituents about issues of concern around small business matters generally and also issues of concern around franchisors from franchisees—that is, my constituents being franchisees and getting the pretty rough end of the pineapple (if I can put it that way) from agreements and contracts that they signed in good faith with franchisors.

Being in small business today is not an easy task whatsoever. Of course, no matter how well educated you are—you may be highly educated and qualified with double or triple degrees—when you actually come to the practice of running your business there are lots of anomalies. There are lots of issues that come up that you would never have even forecast having to encounter in small business. Between the three tiers of government, I might add, anyone in small business today only has to look back over a 10-year period to see that those impediments and imposts to doing the work as a small business person are getting more and more complex and demanding.

Therefore, I think it is going to be refreshing to go to a dedicated, focused small business commissioner so that between the structure of the bill, and the codes of conduct that will come after this, we will actually see an opportunity for those people to get some support directly for their particular concern. I add that it might actually take a little bit of pressure off us as members of parliament when we are trying to work through the maze of complexity to assist those constituents.

Small business is the backbone of this state and this nation, and Family First is well aware of that. In fact, Family First also knows that most small businesses are owned and operated by families, and those families may sometimes only employ two or three people, but it is the two or three people here, there and everywhere across the state who actually produce the hundreds of thousands of jobs that we need.

Large business has organisations like Business SA that supposedly look after them, although I would have to question sometimes just how well Business SA looks after those businesses. There are also other industry sectors they can be associated and affiliated with and, of course, the very large ones have in-house solicitors and accountants. They have almost as much opportunity as the government to access support but, when it comes to small business, that is certainly not the case.

I have seen situations where governments of the day have offered redundancy packages to public servants, and of course once you take that redundancy package you are not in a position to go back into the Public Service for at least two years or so; in most cases, that is part of the agreement. So, what do they do? Often they have thought that they would love to work as husband and wife, as an example, so they feel there may be some benefit there.

They have a look at some advertising and promotion and think, 'Gee, that franchise would be an opportunity for us. We'll take that on.' They take it on, they sign the contract and then sometimes they also are directly or indirectly signed up with a lease agreement to some of the big shopping centre management agencies such as Westfield and Centro, and the nightmare often starts there for them.

In the worst-case scenarios, I have seen a situation where they have ended up losing all of that redundancy package, mortgaged their own properties and lost them. Some would say, 'Well, that's their own fault. Caveat emptor: let the buyer beware,' but I certainly do not think that is always the case. Where can you send them? The Ombudsman is very busy. I am sure we have all experienced it in recent times, with even members of parliament having to go to the Ombudsman to get a decision made on FOI requests that are being refused by departments, so we do need a dedicated small business commissioner.

I hope that this bill is passed, and passed with expediency, because I think it is important for South Australia. I am not sure what other colleagues' experience has been, but certainly my personal correspondence, both in letters and emails, has been, conservatively I would say, tracking at about 95 per cent asking us as a party to support this bill, and I would suggest that probably less than 5 per cent are opposed to the bill.

I understand arguments have been put forward by the Franchise Council of Australia. We have considered that. I understand that there are amendments coming through. We will listen with intent to those amendments put forward by honourable members and, also, as is normal practice, to the response from the Leader of Government Business in this council, who has carriage of this bill on behalf of minister Koutsantonis.

If this bill is passed, I hope that it actually starts to build momentum across other states. I understand that Victoria already has a similar structure in place that is working, from my advice, reasonably well. Western Australia is in the process of going through similar legislation, and I understand that New South Wales is also looking at a similar legislative process.

Members will recall that I have often been critical of the duopoly and the way they are allowed to conduct their business against the best interests of many other businesses in this state and nation. I hope that we are now starting to turn the corner and building some momentum so that there is more scrutiny, as well as more equity and fairness, for all of us in South Australia and Australia who are in the business of small business and business generally.

There is nothing more rewarding and nothing more that I love in my own situation, with our three full-time employees and one part-time employee, than that we as a family are contributing to bread and butter being put on the table and other opportunities for our employees' families. However, on the flip side of that, as I said, it is becoming quite a strain at times when issues come up and I do not know where a lot of these people would, at this point in time, go for assistance.

I also want to put on the public record my appreciation of Professor Frank Zumbo. Many members of parliament—Independents, smaller parties like Family First, the large parties like the Liberal Party and the Labor Party right across the nation—have worked with Professor Zumbo and other professors and learned people from our universities.

I was concerned about aspects of this particular bill. My office contacted Professor Zumbo, and I have to say that he was very open to sharing his knowledge with us as we deliberated on the content and the intent of this bill. As I said, when we get to the committee stage, I will have more to say on amendments, but this is a very good step in the right direction. Whilst I am often on the public record as being critical of this government, on this occasion, with the focus on small business, I congratulate the government and, in particular, the minister. I hope that this will make a positive difference to small businesses in South Australia.

However, it is important that the commissioner has teeth, and the commissioner can only have teeth if the codes of conduct are correct. My understanding is that, if those codes of conduct are not framed and structured properly, we will have an opportunity—because they will be put into regulation—to disallow them. Hopefully that will not happen, because my colleague the Hon. Dennis Hood has an amendment to ensure that there is a consultation period.

My experience is that, when government actually has proper consultation, after legislation is passed and signed off by Executive Council and assented to by the Governor, most of the time we do not have representation and problems with regulations. However, when there is no consultation or it is just done by the bureaucracy, that is when the regulations often become a

mess, and that is why many of us over the few years I have been here have moved disallowance motions. I would certainly have an open mind about that if the codes of conduct were not within the common direction of the consultation period with these stakeholders.

I have an amendment to change the title to that of the small business and farming commissioner. I will not take up any more of honourable members' time now; I will talk to that specifically when the amendments are debated during the committee stage. Again, in summary, Family First will be supporting this bill.

**The Hon. A. BRESSINGTON (16:35):** I rise to speak to the Small Business Commissioner Bill 2011, which seeks to establish in South Australia a small business commissioner, loosely modelled on what all acknowledge to be the successful Victorian small business commissioner, who mediates between small businesses and other businesses, most often in relation to retail tenancy disputes. I say 'loosely modelled on' because, as has been emphasised by those opposed to the bill, the commissioner model before us significantly departs from the Victorian commissioner.

For while that commissioner is limited to mediating disputes, the proposed South Australian small business commissioner will also have the ability to investigate and penalise breaches of industry codes proclaimed under the Fair Trading Act by the minister. It is this departure that has caused this bill to be one of the most contentious on the *Notice Paper* this year—a bill that has a lengthy history, including a parliamentary committee into franchising chaired by the minister, a franchise-specific private member's bill introduced by the member for Light prior to the 2010 election, a consultation phase (which I will return to), and, finally, a government bill.

The parliamentary committee, the report of which I have now read in some detail, uncovered the deficiencies of national regulation and the national code of conduct. While the committee did not recommend a small business commissioner per se, it did recommend the establishment of a similar body, either under the auspices or not of the Australian Competition and Consumer Commission, to provide the enhanced alternative dispute resolution services that it also recommended.

I have often sat in this place and thought to myself that all roads lead to court and this is because we look to the courts for resolution of our disputes. All too often this is the underlying premise of bills before this place. While in some cases it is inevitable, I have long believed in the virtue of alternative dispute resolution, where parties engage to mediate outcomes and avoid the expense and delay of proceeding to court. I note with pleasure the rise of alternative dispute resolution (or ADR as it is known) as a dedicated and advertised skill in the legal profession and the efforts to promote ADR to potential participants.

The key to the success of ADR is the willingness of parties to meaningfully engage with each other and the mediator, something I fear the small business commissioner, if established, will not always find forthcoming, given the inequities between the small business and the presumably big business sitting opposite. The power to compel information and, to a lesser extent, the proposed enforcement powers will at least encourage all to sit at the table, something I understand the Victorian small business commissioner, who does not possess such powers, is unable to achieve in a percentage of cases. However, the fact that the Victorian commissioner is able to achieve an 80 per cent success rate for mediation is a testament to the value of ADR and speaks in support of a South Australian small business commissioner.

Like other members, I have been lobbied heavily by those both for and against the bill. Along with other members, I have been inundated with emails, calls and letters from newsagents and other small businesses welcoming the small business commissioner and the assistance and protection it promises. They talk of their struggles with major shopping centres, franchisors and other businesses who, due to their disproportionate size, are able and also willing to disregard any interests of the smaller operator.

I have also met with Mr John Chapman of the Motor Trade Association who, on behalf of his membership, spoke in particular of the abuses of some franchisors and the untenable situation in which they are willing to put their franchisees. Mr Peter Strong, from the Council of Small Business of Australia, also passionately argued for the need for the franchising sector to be subject to the commissioner's oversight. I have also received correspondence from the Independent Contractors of Australia, Business SA, and the South Australian Farmers Federation in support of the bill as introduced. The minister rightly points out with some pride that many of these organisations are traditionally associated with the Liberal Party, yet here they are lobbying for a Labor bill to protect small business, which the Liberal Party opposes.

The majority of the opposition to the bill has come from the franchising sector, more specifically, franchisors, their representatives and their peak body, the Franchise Council of Australia. They are joined by several peak legal organisations, such as the Queensland Law Society and the Law Council of Australia, which have withdrawn their support for the bill following the changes made between the exposure draft and the bill introduced. While I have not been personally approached, I believe that the Shopping Council of Australia has also seen the writing on the wall and is opposing the bill.

As I have mentioned, many of those opposed to the bill have decried the changes made between the exposure draft and the bill introduced in the other place. While the minister points to a brief mention of industry codes in the exposure draft and then to the consultation outcomes papers, which foreshadowed the expanded role of the small business commissioner and the introduction of enforceable state industry codes, I nevertheless understand why many, particularly the franchising sector, which obviously believed it would be immune due to it being subject to national regulation, feel as though they have been duped by the minister.

It is my suspicion that the Minister for Small Business always intended for the small business commissioner to have the powers proposed in the bill before us, that is, to both mediate and regulate industries within its purview. The Queensland Law Society, which evidently shares my suspicions, alleges in a letter sent to the minister yesterday that the minister and the minister's office seemingly lobbied stakeholders, such as the South Australian Farmers Federation, to recommend amendments to the exposure bill to prescribe industry codes, which would then be enforced by the commissioner.

Using letters from the South Australian Farmers Federation proffered by the minister in support of the commissioner's expanded powers, the Queensland Law Society asserts that the minister and Associate Professor Frank Zumbo, who has been advising the minister on this project, had sought public support from SAFF for expanding the commissioner's role well before the consultation period ended. It is beyond me why the minister would choose to go to consultation on a bill that was not his ideal and then manipulate that consultation, as the Queensland Law Society suggests, to recommend amendments to reflect the minister's ideal. I was pleased to see that I was not alone with my suspicions.

Seemingly working off a model script, many of those opposing the bill have called for it to be referred to a parliamentary committee so that consultation can occur on the bill as introduced and identified issues can be explored in detail. Given that the bill has so significantly deviated from the bill that was originally sent out for consultation, I believe that the amended bill should have been resubmitted for consultation prior to its introduction in the parliament. However, this having not occurred, I indicate to the council that I am inclined to see the bill subject to the in-depth consideration of a parliamentary committee.

Unfortunately, it is my understanding that referring the bill to a committee does not have the majority support. Hence, it falls to the parliament and, in particular, to this council, to determine whether we support the model of small business commissioner as proposed. Putting franchising to one side, for despite the vocal lobbying this is not the only sector concerned, the ability for the minister to proclaim a code of conduct for retail tenancies, as I believe the minister is intending to do, breaches of which are then penalised, either by expiation or civil prosecution by the small business commissioner, is, at least to my mind, a welcome addition to the Victorian model.

As I stated earlier, almost 70 per cent, from memory, of the complaints made to the Victorian commissioner relate to retail tenancies; a similar figure is expected here in South Australia. Provided the terms of the code of conduct are reasonable (a point I shall return to), why should the small business commissioner have the ability to penalise those businesses which engage in unfair, unreasonable and, in some instances, unconscionable, conduct? The answer is simple: without such powers, South Australian small businesses will have yet another body able to sympathise but unable to act on complaints and achieve outcomes.

On more than one occasion, I have decried the toothless tigers this parliament creates and has created. Here, for once, the minister is proposing a bill that has the strength to penalise those it uncovers breaching the industry code and hence deter further breaches. To my mind, the question is: do we seek a commissioner who is able only to mediate disputes, or do we seek a commissioner who is able to both mediate disputes while also enforcing the rules regulating the businesses that are the subject of the dispute?

I do have particular concerns about the process for the development of the codes of conduct. The bill, at present, requires no consultation with the industry to be regulated, although I note and indicate my support for the Hon. Robert Brokenshire's amendment that requires at least nominal consultation. Given the limitations of this parliament when assessing regulation, I am particularly uncomfortable with the codes of conduct being enacted in this way rather than as a scheduled appendix to the act. Breaches of the code will be subject to penalty, so I believe the code should go through full parliamentary scrutiny rather than be introduced by regulation. I note that peak bodies such as the Queensland Law Society and others agree with that.

I can foresee that this parliament will be placed in a position where it is asked to agree to a code of conduct, 99 per cent of which is uncontroversial and is supported by small business—who will no doubt be crying out for the protection—but 1 per cent of which, due to poor expression or overreach, is unacceptable to the other half of the industry. Again, as usual we will be creating a situation where we must have winners and losers—because, according to government, that is what happens.

If the parliament were able to amend regulations, as is proposed by the Subordinate Regulation (Miscellaneous) Amendment Bill currently before the council but unsurprisingly not supported by the government, then we as legislators could go through amendment and work to address those concerns. Instead, our only option will be to disallow the regulation—which, when disallowed, could be reintroduced the following day, although the minister has given me a commitment in writing that, if I successfully move to disallow a code of conduct, he will not do so. I seek leave to table that letter from the minister.

Leave granted.

**The Hon. A. BRESSINGTON:** As I stated, much of the opposition has come from the franchising sector, which is currently regulated by the Australian Competition and Consumer Commission in accordance with the Competition and Consumer Act and the national franchising code. It can be fairly summarised that franchisors believe they should be exclusively regulated at the national level, and that any state-based regulation is unnecessary and would create confusion, expense and red tape when doing business in South Australia.

However, those in support of the bill contend that the ACCC, due to its broad mandate and other priorities, has been a lax regulator and has let many breaches of the code of conduct go unpunished. They also argue that the national code has deficiencies that, unfortunately, the federal government has been unwilling to address. Ultimately, I have formed the opinion—with some reservation—that the franchising sector should be subject to the regulation of the small business commissioner.

On the deficiencies in the national code, prior to the committee stage I have some specific questions of the minister about the limitations that section 51AEA of the commonwealth Competition and Consumer Act 2010 will place on any code of conduct South Australia passes under the Fair Trading Act. Specifically, does the wording 'directly inconsistent' in section 51AEA require an entirely uniform code of conduct or could the state introduce a code of conduct that adds additional obligations to the national code? If section 51AEA does enable the minister to impose additional obligations, the next question would obviously be: is this the intention?

Clearly the current minister, when chair of the Economic and Finance Committee, believed the current national Franchising Code of Conduct could be enhanced, with the report of that committee recommending no less than 11 amendments to the code. Having found that there is no appetite for such reform at the commonwealth level I asked the minister, in this council, whether it was the small business minister's intention to follow through with some or all of the recommended amendments.

Every stakeholder to whom I have spoken has either warned of or encouraged enhancements to the Franchising Code of Conduct. Those in favour point to the need for enhanced disclosure and the need for good faith when dealing with franchisors, particularly when negotiating renewal terms. To my mind their arguments sound reasonable, and some examples of where such obligations would be beneficial, given by bodies such as the Motor Trade Association and the Council of Small Business of Australia, are of concern. There is no doubt in my mind that we need a strong small business commissioner and not, as I said, another toothless tiger.

However, the benefits of an enhanced code, assuming it is not held to be inconsistent, do come with some drawbacks, namely, an increase in compliance costs, uncertainty and, worryingly, the provision of an incentive for franchisors based in South Australia to relocate their headquarters

to an interstate jurisdiction. While their intentions with South Australian franchisees will remain covered, there will be no question as to whether their dealings with interstate franchisees, whether they are in the state they relocate to or another, will be captured by the South Australian code.

It is argued by the Franchise Council of Australia and individual franchisors that if they remain in South Australia, however, the South Australian code of conduct will be enlivened with their dealings with all their franchisees, regardless of where they are based. This means that a franchisor based in South Australia would potentially have to comply with the South Australian code even when interacting with a Victorian or Queensland franchisee. This places South Australian franchisors at a distinct disadvantage to those based interstate. It is for this reason that Mark Langford, Managing Director of Gametraders, a South Australian franchise success story, has suggested that he, along with other franchisors, are considering moving interstate.

Whilst I support the proposed small business commissioner having the ability to regulate and not simply mediate, I am, unlike the government, not closed to the concerns of those opposed to this bill. While the minister and others have been quick to demonise the Franchise Council of Australia and dismiss any points its members raise, I certainly do not want a consequence of this bill to be that South Australian franchisors are disadvantaged nationally and hence move their headquarters, their staff and, ultimately, their profits interstate.

It is all very well and good for the minister to say, 'Don't worry about the Franchise Council of Australia. They've got their own interests, they've got their own agenda, they've been overly zealous in their claims, and it's just a threat that they are going to move interstate,' but I would ask members of this house to consider whether we can afford to lose any more small businesses in this state at this point in time.

For this reason, I have drafted an amendment which, if passed, would limit the operation of proposed part 3A of the Fair Trading Act, which introduces the industry codes and the penalties for breaching them, where it applies to franchising, to cases involving a franchisee carrying on a business in this state. The wording of the amendment I propose is:

28G—Application of Part to franchising

If the regulations declare that franchising is to be taken to be an industry for the purposes of this Part and that franchisors and franchisees are to be taken to be participants in the industry, this Part applies to a franchisor whether carrying on business in or outside this State, but only in relation to a franchisee carrying on a business in this State.

So, regardless of where the franchisor is located, if they breach the foreshadowed code of conduct when dealing with a South Australian franchisee they are liable to penalty. However, crucially, a South Australian franchisor will not be disadvantaged by being subject to the South Australian code of conduct when dealing with an interstate franchisee. This is the bill's intention, as we were told.

Of course, this does not address all the concerns of the franchisors, who simply do not want to be subject to state-based regulation. Why would they when national regulation is working so well for them? However, it does address one of their legitimate concerns, the consequence of which, if left unaddressed, could see this state lose successful businesses to our interstate counterparts.

Last week, I approached the minister with my amendment, who agreed to get crown law advice. As members would have seen, that advice concluded that, whilst the state can, with some limitations, regulate interstate trade, the act attempting to do so needs to be explicit of its intention. That is the key—that the act is explicit of its intention. Unlike the original franchising bill proposed by Mr Tony Piccolo, which did explicitly intend to capture such trade, the bill before us currently provides no guidance on whether a South Australian business will be subject to the South Australian law when dealing with interstate businesses. Hence, the Crown Solicitor's advice is ultimately that such dealings are possible, but unlikely to be captured.

So we have a possibility—we have a loophole—and I am suggesting that, before we pass a bill that can affect a number of businesses in this state, we should ensure that we have no loopholes in this bill, that we have no cause for franchisors to have to take this to court to get a judgement and a determination on a court's interpretation of this bill.

I have a note here from Greg Parker of the Crown Solicitor's Office and also a response from the lawyer for the Franchise Council of Australia. They are two legal opinions, and the short answer is that this amendment is indeed necessary. Crown law states:

In relation to the specific question asked by the Minister, constitutional law does not limit the effect of the South Australian law to dealings between participants substantially carried out in or substantially connected with SA. An SA law can apply outside SA if it deals with some matter or thing which has some connection with the state, albeit a slight connection. However, unless the SA law is very clear, the courts will interpret it as not affecting matters that occur outside the state.

Mr Stephen Giles, Chairman of the Franchising Council of South Australia and a major partner in the prominent legal firm Norton Rose Australia, in reply states:

So, in summary, the answer to the Minister's question is 'No.' The Minister has clearly been operating on the assumption that the answer is 'Yes', which is not correct. And the amendment is therefore indeed necessary.

Not being a lawyer, I can only accept this advice, and I had considered pulling my amendment; however, Mr Giles has made it clear that the major assumption of the Crown Solicitor—that is, 'a franchising agreement under which a business is to be conducted in, say, Victoria would be subject to Victorian law'—is wrong and that in almost all franchise agreements the applicable law is the law of the franchisor's state.

Hence, he argues that the bill will capture South Australian franchisors' interactions with their interstate franchisees not by any extraterritorial application but by the law's normal application. It therefore follows that the bill disadvantages South Australian franchisors in comparison to their interstate counterparts and provides an incentive for them to relocate.

Whether or not the minister thinks this is a pie in the sky thing, it is something for every member of this council, when voting on that amendment, to take into consideration. Quite frankly, I am sick and tired of passing legislation in this place, and then we find out 18 months or two years down the track that we have actually disadvantaged a group of people, and the response to that is normally, 'Too bad, too sad.' We do not have the political will to fix our mistakes in here or admit that we have made a mistake, so I am actually proposing that we plug the hole beforehand and save some people the possibility of a great deal of grief having to go through court proceedings to get a determination on this legislation.

For this reason and given that my amendment will in no way impede or detract from the bill, and from my discussions with the minister I believe it simply restricts the bill to its original intention, that is, to protect South Australian—and only South Australian—small businesses, I have decided that I will put my amendment to the council in an attempt to provide some clarity and certainly to franchisors.

As I said, I support the small business commissioner proposed by the minister and I support, with some reservation, the commissioner having oversight of the franchise sector. However, I do not see why that support should make us blind to the concerns of those opposed to this bill and to potential unintended consequences.

**The Hon. CARMEL ZOLLO (16:59):** I rise to speak on the Small Business Commissioner Bill 2011. I know we would all agree that small businesses are the lifeblood of our economy. The reality is that all businesses were once small businesses, and without them being given the platform to thrive and grow neither can the state.

The running of a small business is, at times, an emotional rollercoaster. It can be unpredictable and involve hours with limited returns. This government has long held the view that it is not our job to tell small business how to run their operations but that it is, indeed, to provide the best regulatory framework for them to be profitable and sustainable.

Business owners do not expect the government to solve all their problems; they just want to get on with business and put their ideas into practice. However, if they have a dispute with another business they want to know that there is a place to go where they have a voice. This is what this legislation gives them. The small business commissioner will provide a range of functions with a central purpose of a low-cost mediation service for business-to-business disputes.

Other key functions of the commissioner are: to provide education and guidance to help inform decision-making to minimise disputes occurring; to monitor and investigate unfair market practices and noncompliance with industry codes and report to the Minister for Small Business of the day; to offer other alternative dispute resolution mechanisms, where appropriate; to work proactively with key groups to encourage better business conduct and the principles of fair dealing and good faith; and to advise the minister on matters affecting small business.

This bill has been through a successful statewide business, community and departmental consultation process. This involved over 300 people, with 57 formal submissions being received,

93 per cent of which supported this reform. The South Australian bill has largely been modelled on Victorian legislation which was initially developed in 2003 and which has been an overwhelming success. The Victorian Office of the Small Business Commissioner has now mediated over 6,800 disputes, with a success rate of up to 84 per cent.

Great improvements have been made to our legislation based upon the Victorian experience, advice and research, and also on feedback received from South Australian businesses during the consultation process. In the main, these changes relate to the ability to prescribe industry codes as well as the power to require information under certain circumstances. These are important to ensure that the commissioner has a range of mechanisms to promote fairer conduct. It is also important to mention that industry codes are not new to the legislative process. They already exist under the Fair Trading Act and have been used to create a better standard of business and consumer conduct in the fitness industry and, indeed, the funeral industry.

The Franchise Council of Australia has tried to whip up the mother of all scare campaigns over the industry code provisions, but one must ask why: does it not want strong accountability in the industry; does it not want greater fairness in this sector; does it think that if a business breaks the law it should not be penalised? I am happy to report that whatever mysterious agenda the Franchise Council of Australia has, it is almost a lone voice—and I say almost.

Before I get to who the other scaremongers are, I point out to the chamber that this legislation has the support of the vast majority of industry bodies that support small businesses. The Council of Small Business of Australia, the peak industry body for small business in Australia, has been glowing in its praise for this legislation. The Motor Trade Association (MTA) has also congratulated the government on this bill, and I will come back to them shortly. Business SA has given its support to the reforms. The South Australian Farmers Federation has been very supportive of the government throughout the reform process and said that it is vital to the sustainability of its industry.

These are not, as the Minister for Small Business has said, hotbeds of socialism. These associations, it would be fair to say, are not traditional allies of Labor governments, so it is important to note that these associations recognise that this reform goes beyond politics. It goes beyond the traditional battlelines of our differences.

However, I do want to come back to another group of scaremongers, a group that you would expect to have small business mum-and-dad investors at their core—the Liberal Party in this state. The fact that the opposition will not support this legislation, I think, is nothing short of a disgrace. The Liberal Party has abandoned small business. The fact that it is prepared to play politics with something so crucial and throw it in the face of its core constituency is breathtaking.

I want to make it clear just how bad the opposition's decision to oppose the bill is. I will read a statement from the Executive Director of the Motor Trade Association by none other than Mr John Chapman, former chief of staff to one Hon. John Wayne Olsen, a former premier of this state. The statement is entitled 'Liberals lose their way on small business.'

The state's peak retail automotive group, the Motor Trade Association has called on the State Opposition to reverse a decision not to support vital Government legislation for small business. MTA Executive Director John Chapman said he was disappointed that the party which prides itself on supporting business, had abandoned them in the debate on the Small Business Commissioner Bill.

'We are at a loss as to why the Opposition has decided not to support a piece of legislation which is designed very much to help their own natural constituency. This is about rebalancing the power between small and big business and I call on the Liberal opposition to support small business and review their decision before the bill is debated in the Upper House of State Parliament,' Mr Chapman said.

So, there is the challenge to those opposite from one of their own. Let us see who on the other side really has the guts and, indeed, the integrity to admit they got it wrong in the party room and cross the floor and vote for the government in the best interests of their core constituency. Be it on their heads: if they want to play politics and send the message they are sending to their core, be it on their heads.

This government governs for all South Australians, not just our traditional base. We govern for all. This bill sends a clear message that this government is governing for all stakeholders in our economy. These reforms will significantly help small business and give them a greater level of confidence in dispute resolution. I wonder what those opposite find threatening in that. These reforms, I would have to say, are a credit to the minister and the government and I commend the bill to the house.

Before concluding, I would like to place on the record that I was pleased to have the opportunity to serve on the Business Development Council for a year between my resignation as the minister and the last election. I was the deputy chair. Mr Phil Sims was the chairperson and still is, and I particularly commend Mr Sims for his leadership. It was a pleasure to work with him. He is totally dedicated to the small business community in our state.

**The Hon. D.W. Ridgway:** He married a good Bordertown girl. I know him well.

**The Hon. CARMEL ZOLLO:** Is he a former Bordertown—

**The Hon. D.W. Ridgway:** No, his wife is.

**The Hon. CARMEL ZOLLO:** Oh, his wife is; well, that's just as good. The Business Development Council is primarily of course made up of small business owners and I understand is fully supportive—I will repeat that: is fully supportive of this legislation before us.

I again urge the opposition to be responsible. Ultimately, good governance is about recognising that it is appropriate to change one's mind in the face of better information or being better informed. I would ask the opposition to throw its support behind this important initiative, which will be of enormous assistance to the small business community in our state.

**An honourable member:** Rubbish.

**The Hon. CARMEL ZOLLO:** You think it is rubbish. I should place that on the record, perhaps.

**The Hon. D.W. RIDGWAY (Leader of the Opposition) (17:10):** I rise to speak to the Small Business Commissioner Bill 2011. In doing so, I will read into *Hansard* some of the letters that have come to me—and I think to others—to put on record some of the concerns that other industry groups have. Before doing that, it is interesting to note that this bill is very much like—and members might think this strange—the McLaren Vale and Barossa Valley protection bills. This is a bill where everybody who is a stakeholder looks at it through their own eyes and thinks, 'This will give me the protection or the comfort that I want.'

As an example, with the Barossa Valley and McLaren Vale protection bills, everybody who was involved thought, 'This is fantastic. It will give us the protection we need to preserve our communities.' Whereas now, if the great people who produce Vale Ale were to try to establish a microbrewery in McLaren Vale, it would be a noncomplying development and would not be allowed. There are hundreds of examples of unintended consequences with that legislation, which we will explore at a later date.

I am concerned that, with this legislation, there will be a whole range of unintended consequences and it will not really deliver the outcomes that the small business community wants. I am not sure that the concerns raised by the Franchise Council are as bad as they seem, but, nonetheless, there is a range of concerns. I will come to some comments made by the Law Society shortly.

I am intrigued with the Hon. Robert Brokenshire's inclusion of farming in his amendments, because the opposition has always considered farming to be part of the small business community. However, it is interesting to note that there is no definition of a small business. There have been comments and questions in this chamber about Mr Brinkworth and some of his animal husbandry practices in the South-East over the years. He has one million acres in the South-East, yet he is still a farmer. Is he a small business? Are big corporate farmers in other parts of the state that are large businesses in their own right still small businesses under this particular legislation?

I also wonder what the peak industry bodies are doing. Looking back at the way our society has evolved and the union movement, as much as we on this side are often critical of the union movement, has stuck up for its members: the employees. As the Hon. Carmel Zollo said, Business SA supports this legislation. I am not sure that Business SA is handballing its responsibilities to government, or maybe it does not represent all businesses. I am not sure what percentage of farmers are members of the Farmers Federation today, but I know that it is significantly less than it was a couple of decades ago, because farmers simply do not believe they get value from that particular organisation.

While the opposition is not supporting this bill, we are opposed to a bigger government, more red tape, more bureaucracy, more taxes. We are the highest taxed state in the nation, and small business is suffocating under the blanket of over-regulation, red tape and taxes. I just wonder whether there would not have been an opportunity to sit down with those peak bodies to look at

some way of having some collaborative approach to dealing with these issues. I think the issues are, by and large, genuine and real, although I will want to explore with the minister all the intimate workings of how this will actually work when we get to the committee stage of the bill.

Having been a small business operator—and I think there are far more small business operators on this side of the chamber than there are on the other side—I have had experience with trying to run a business and, in some cases, dealing with less than friendly suppliers, people who have purchased equipment from landlords, franchisors, and the like. I really want to explore exactly how the government envisages it will work because, as we go through the committee stage of the bill, we will see that this is quite cumbersome and will not deliver the easy outcomes that people think.

People are looking at this through rose-coloured glasses, looking at their own personal circumstances and thinking it will deliver the outcome they want to give their business some security, or force the company that is slow at paying its bills, and that this will be the easy way out for them to be able to get some comfort through the legislation for a small business commissioner to bring about a satisfactory outcome if they have someone who is perhaps being a bit recalcitrant in paying their bills or dealing with them in a business sense.

I also want to explore with the Hon. Robert Brokenshire some of the issues to do with his amendments in relation to farming and exactly how he envisages them working. With his own personal experience, he talks about having been a farmer for virtually all his working life and running a successful dairy farming operation and a mixed farming business. I want to explore with him how he sees this bill enhancing and protecting his particular operation, without his having to wear the burden of extra taxes and charges and more red tape.

I am also intrigued as to who will be appointed to the commissioner and the assistant or deputy commissioner positions. I am just wondering whether this is not just a couple of positions the Labor Party is creating for some of its mates. The Hon. Carmel Zollo talked about the 6,800 disputes that the Victorian Small Business Commissioner has resolved. I put on the record that I would like some details from the minister as to the costs and time frames involved, and the burden placed back on any of the small businesses involved.

I wish to refer to comments provided by the Law Society of South Australia. It may be just as easy for me, rather than to selectively quote, to read a couple of these letters. The first is from the Law Society of South Australia as follows:

Definition of 'Small Business'.

1. The bill contains no definition of 'small business'. It is not clear how businesses, or their advisers, can determine whether they qualify to seek the assistance of the Commissioner.
2. Under the bill most of the Commissioner's strongest enforcement powers are to be inserted into the Retail and Commercial Leases Act...This could raise issues as to their effectiveness in respect of parties or disputes to which that act does not apply.

Independence of Commissioner.

3. The explanatory material relating to the Bill stresses the independence of the Commissioner. Independence is essential, particularly if the Commissioner is to assist small businesses in their dealings with state bodies...However, the independence may be uncertain in view of the following:
  - a. the Commissioner is appointed by the Governor, on conditions determined by the Governor (presumably on advice of the Government);
  - b. a Deputy or Acting Commissioner is appointed by the Minister and may be a Public Service employee;
  - c. the Minister may give directions to the Commissioner;
  - d. the Bill does not specify any necessary qualifications for the Commissioner, Deputy Commissioner or their delegates.

Potential Duplication.

4. There are risks of duplication in some of the functions of the Commissioner with those of other similar officers or instrumentalities with similar functions, for example:
  - a. assisting in dealing with State and local government bodies could duplicate the functions of the Ombudsman.
  - b. monitoring and investigating non-compliance with industry codes and market practices could duplicate the functions of the ACCC or the Office of Consumer and Business Affairs under Australian Consumer Law.

Harsh provisions.

5. Many of the enforcement provisions inserted into the Retail and Commercial Leases Act are very harsh, for example:
  - a. retention of seized books and documents for extended periods could cause considerable hardship;
  - b. parties should be given suitable opportunities to remedy alleged breaches and the operation of the rules of natural justice should apply before public warning statements are able to be made to those parties, potentially causing them considerable harm, with no entitlement to compensation;
  - c. it seems unreasonable to impute the state of mind of, for example, a junior employee of a Landlord or a Tenant company to that company.

The power to require information...It is inappropriate that the commissioner's power under clause 12 should apply indiscriminately to the performance of all their functions under clause 5 of the bill. It is reasonable of them to be available for an investigation under clause 5(1)(d) or perhaps for the purposes of an investigation under 5(1)(a) but is not appropriate or necessary for any of the other functions of the commissioner that he or she should be able to intrude into the private business rights of confidentiality and privacy.

Furthermore, we would submit that the commissioner's power to require information for the purposes of clause 5(1)(a) should be limited to investigations made under that clause and should not be available to assist in mediation and the like where the essence is the voluntary participation of parties and that the rights that are in dispute are private rights. In those circumstances, the power to compel provision of information should be left to the formal litigation process, under the supervision of the courts, according to well developed rules and procedures of the court.

They are some issues raised by the Law Society of South Australia, which I think cast some doubt over how and whether this legislation will operate and whether it will deliver the outcomes that the stakeholders want.

Further, I think it was on 23 September this year, the Franchise Council of Australia issued a press release, as follows:

Franchise Council of Australia Executive Director Steve Wright says the bill in its current form is not the same as was originally presented for public consultation earlier this year.

I think one of the key points that the Hon. Ann Bressington raised was that we are now dealing with something very different from what went out for public consultation. While the opposition is opposed to the bill in its current form, I suspect that there might be some willingness on the opposition's part if we can gain sufficient support for this to be referred to a parliamentary committee, which the Hon. Ann Bressington indicated she thought would perhaps be a sensible route, given that we are now dealing with something that is different from the bill that went out for consultation. Mr Wright went on to say:

It now includes de-facto franchising legislation, which will be an extra hindrance for small business in South Australia. South Australia already trails the rest of the nation in terms of business confidence—

Again, this week, we see that unemployment in South Australia is now the highest in the nation—

This can only make a bad situation worse,' Mr Wright says. Cartridge World Master Franchisee Kurt Muller says the government should be assisting small businesses, not adding...[more] stumbling blocks. As a master franchisee based in South Australia, with franchises also in Victoria, Tasmania, Western Australia and the Northern Territory, I believe that if the South Australian government was to pass this legislation it will add further complications to our business by adding additional legal fees, red tape and paper work in an already very challenging business environment.

Mr Wright goes on to say:

The government should be focused on assisting small businesses to get on with the job of creating employment, growing business, and kick starting the economy, not adding additional road blocks when the current franchise code offers all stakeholders consistent national guidelines and protections.

Outside Concepts' Jock Dean says the legislation will cost small business in South Australia money. 'My initial concerns with the bill is that it may well decrease the value of my franchise because there is a potential of the whole system being devalued because of another layer of laws that will be imposed by this being passed,' Mr Dean says.

Also, it is interesting to note that the Hon. Carmel Zollo was happy to read comments from the MTA and Mr Chapman, who I happen to know very well, but she did not want to read into the record comments made by Senator Nick Sherry, the federal Minister for Small Business. Again, I quote from an article, which states:

SA franchising moves 'bizarre and strange'—Senator Nick Sherry.

Moves to introduce new franchising rules in SA are unwise and unfathomable,' federal Minister for Small Business Nick Sherry told attendees at the Franchise Council of Australia's National Franchising Council yesterday—

This was on 11 October, a little over a week ago—

Senator Sherry reaffirmed the federal government's strong preference for national regulation of franchising, criticising moves by South Australian small business minister Tom Koutsantonis to introduce franchising regulations in South Australia.

Senator Sherry said he had repeatedly expressed his disapproval of the SA moves directly to Mr Koutsantonis. 'It is totally inappropriate,' Senator Sherry said. 'It flies in the face of the significant progress we have made on the seamless national economy.' Senator Sherry said it is likely that if made law, the SA bill would conflict with federal laws. 'It is an unhealthy development which I expect will ultimately end up in the courts,' he said. 'The constitutional issues will have to be determined by the courts. That is the last place you probably want to be, but I believe that is likely to happen.' Senator Sherry explained that the proposed bill could impact on or duplicate commonwealth arrangements. It was 'bizarre and strange' that the state would want to 'go it alone' down this path, Senator Sherry said.

When the federal minister says that we have rocks in our head in South Australia for going down this path, you have to ask yourself—especially given that the legislation has changed from the original consultation—whether it is not time to perhaps consider the suggestion of the Hon. Ann Bressington and refer this to a parliamentary committee. As members would know, for the best part of a century, or for half a century or more, the Liberal Party has stuck up for small business, but I do not believe that this will deliver the sort of outcomes that members are concerned about.

Finally, it will take a few minutes, but I will read into the record the letter to the minister, the Hon. Mr Tom Koutsantonis, dated 17 October from the Queensland Law Society. It reads:

Dear Minister,

SMALL BUSINESS COMMISSIONER BILL 2011 (SA)

Thank you for your letter dated 6 October 2011, received by the Queensland Law Society on 12 October 2011, in response to our letter of 15 September 2011 concerning the Small Business Commissioner Bill (the Bill).

In short, the proposals run counter to the micro-economic reform. They will both impede the operation of South Australian franchise businesses interstate as well as the operation of interstate franchise businesses in South Australia.

Application of the Bill to industry codes beyond State-based codes

The Explanatory Paper you provided to us was publicly released on 14 February 2011, along with the Exposure Draft of the Bill (the Exposure Draft).

Whilst we acknowledge that there is fleeting mention of 'industry codes' in the Exposure Draft we direct you to our written submission of 23 March 2011 in particular pages 3 and 4 which deal specifically with the issue of industry codes and the Society's concerns regarding the potential for an overlap with the Commonwealth mandatory industry code regime particularly in relation to the franchising sector.

The express concern of the Society that the Bill now before Parliament is intended to introduce a power for prescription, regulation, investigation and enforcement of industry codes beyond South Australian State-based codes that is embodied in our letters of 23 March 2011 and 15 September 2011 continues to be ignored.

In addition the definition of industry code in section 3 of the Exposure Draft is significantly different to that contained in the Bill because of the inclusion of reference to industry codes prescribed by the Commonwealth. The original definition in clause 3 of the Exposure Draft that made no mention of the Commonwealth codes was subsequently moved to the proposed amendments to the Fair Trading Act 1987 contained in Clause 28D.

Ultimately the effect of this significant alteration of the Bill from the Exposure Draft is to allow the Commissioner to investigate compliance with a mandatory industry code of the Commonwealth immediately on the Bill's commencement even though there is no corresponding express function to liaise with the relevant Commonwealth regulatory body.

That new power is significant and the extent of information that the Commissioner could immediately seek from those regulated by a Commonwealth Industry Code...irrespective of whether a complaint received is of significant and substantial concern to those in the franchising sector, as is the obvious significant direct cost of replying to such a request. There are aspects of the extra-territorial application of the Bill and the amendments to the Fair Trading Act 1987 which need further consideration and consultation to avoid any form of constitutional challenge that Senator Nick Sherry recently foreshadowed could occur.

There is also no clear obligation requiring the Commissioner to cease taking action to investigate a complaint including where:

(a) the Commonwealth is proceeding with an investigation or prosecution in relation to a complaint it has received based on the same conduct; or

(b) the parties to a dispute are engaged in a form of mediation in accordance with Part 4 of the Franchising Code of Conduct.

It appears that the Commissioner also does not have an express function to refer a complaint (received by it from a small business) to the ACCC for consideration.

It goes on and talks about consultation and private briefing:

The substantial and significant amendments made to the Exposure Draft should have been released for further sector consultation before the Bill was introduced into parliament. There are many stakeholders in industries that are now directly affected by this Bill that were denied the opportunity to consider the proposed amendments and to be heard on this significant alteration to the Exposure Draft.

With respect, your offer of a private briefing after the Bill was introduced is not equivalent to timely, meaningful industry wide consultation about such wide-sweeping changes to the Exposure Draft to amend the Bill before its introduction.

Similarly, the release after the introduction of the Bill to Parliament of the Outcomes Paper denies those who made submissions to consider, review and further consult with you on the proposed reforms.

It is also relevant that the written submissions concerning the Exposure Draft were not made publicly available other than by way of an FOI request so that transparency to the extent of support or criticism of the Exposure Draft is not easy to gauge.

They go on with the topic of support for industry and introduction of industry codes:

You have publicly released letters of support for your initiatives from a number of Industry Associations that clearly indicate their support for the introduction of industry code regime in South Australia. It is relevant that those industries are by and large not already regulated by a complementary mandatory industry code of the Commonwealth. It is clear that those letters of support from industry associations are dated shortly after the Exposure Draft was released but before the expiration of the Consultation Period, even though those letters of support are predicated on substantial changes being made to the Exposure Draft to include industry code provisions.

The Society notes that you have released copies of various letters of support from those industry associations to these initiatives. Of those, there are two letters of support from the South Australian Farmers Federation (SAFF)...which confirm that you and the Honourable Tony Piccolo MP met with the Chief Executive of the SAFF on 22<sup>nd</sup> February 2011, a short time after the Exposure Draft was released and some 3 weeks before the end of the Consultation Period.

From our reading of those letters of support, your advisor Associate Professor Frank Zumbo also subsequently discussed the Exposure Draft (and presumably your proposals) with the SAFF Chief Executive. As a result of that discussion 2 days later in its letter of 10 March 2011 the SAFF then stated:

'In the South Australian Farmers' Federation's (SAFF) view the legislation could be improved by creating a head power in the proposed Act that would enable the Governor to create industry specific codes of practice through regulation.

This would require a minor amendment to the current draft Bill as the Federal Industry Codes of Practice are already incorporated.'

The letter indicates that your advisor had discussed or suggested amendments being made to the Exposure Draft to empower prescription of industry codes (including industry codes or prescribed provisions to regulate industries already subject to Commonwealth industry codes) immediately after the Exposure Draft was released.

It appears that your advisor has sought public support for this initiative even though the Consultation Period and opportunity for consideration of other initiatives and submissions had not expired. It is not surprising that it is this initiative which has been the subject of the most controversy since it unexpectedly appeared in the Bill with the controversial aspects relating to the powers of investigation of and potential adoption (and subsequent enforcement) of Commonwealth industry codes.

The definition of *industry codes* released in the Exposure Draft stated:

'*Industry code* means a code regulating the conduct of participants in an industry towards other participants in the industry or towards consumers in the industry.'

In the Law Society's view this initial definition arguably would not have included a prescribed Commonwealth industry code. There is no reference in the Exposure Draft to your stated intention to confer a power on the Small Business Commissioner to investigate or regulate (or provide enforcement powers for) Commonwealth industry codes or any state based industry codes that adopted a Commonwealth industry code. There was no provision in the Exposure Draft that referred to a power to prescribe '*industry codes*' rather it simply followed a basic function similar to the Victorian model.

Presumably this is the reason the definition of *industry code* has been subsequently amended in the final version of the Bill to be:

'*industry code* has the same meaning as in Part 3A of the Fair Trading Act 1987 and includes a code whether or not prescribed for the purposes of that Act or any other Act of the State or the Commonwealth.'

The Society is concerned that if this initiative was of such vital concern to you at such an early stage in the Consultation Process then it should have been made clear in the Explanatory Paper (or in a subsequent public statement or supplementary statement) that Commonwealth industry codes were either already incorporated within the relevant definition or that it was your intention to subsequently do so by prescribing industry codes.

That information would have been extremely relevant and beneficial to those making submissions (including the Society) prior to the end of the Consultation Period and prior to when the views of all stakeholders could be known.

In your letter to us dated 6 October 2011 you stated that:

'I confirm the consultation process for the development of the final Bill was taken seriously.'

The apparent solicitation of support for making significant and wide sweeping amendments to an Exposure Draft prior to the end of the Consultation Period without providing a significant body of affected parties an opportunity to understand or be heard on that proposal is not appropriate consultation. In addition there have been significant concerns raised by the Law Council of Australia as well as the Law Society of South Australia of this process and the nature and extend of amendments to the Exposure Draft which have been publicly dismissed by you.

They then go on to speak about the concerns of the franchising sector:

We are aware of your public stance (and that of the Honourable Tony Piccolo MP and your advisor Associate Professor Frank Zumbo) regarding your intentions to regulate the franchise sector in South Australia. Associate Professor Frank Zumbo has on numerous occasions publicly described himself as the architect for or has been identified as being significantly involved in the push for state based franchise reforms in South Australia and Western Australia so naturally it flows that the Society is concerned that the consultation process regarding the Exposure Draft has not been as transparent as you indicate in relation to the franchise sector, particularly since the suggestion has consistently been made by you and your department that the Bill would be based on its Victorian equivalent.

We are also aware from the outcomes of numerous inquires in South Australia and other States that overwhelmingly the franchise sector wishes to remain regulated by the Commonwealth under their mandatory industry code regime. It remains the Society's view that any reforms (regarding investigation, penalty regimes or any other matter), should occur at the Commonwealth level, rather than the imposition of an additional layer of state based legislation seeking investigative and enforcement powers over an industry already regulated by a Commonwealth mandatory industry code.

The Honourable Senator Nick Sherry recently advised that the Commonwealth have no intention of reviewing the Franchising Code of Conduct before 2013. At that time there will presumably be additional opportunity to consult with the sector on changes (if any) that may need to be made to enforcement powers.

We remain concerned that a number of issues that the Society and indeed our colleagues the Law Society of South Australia and the Law Council of Australia have raised have not been dealt with at all concerning the Bill.

Most importantly, the Society is of the view that the valuable initiative of the introduction of a Small Business Commissioner role is being overtaken by a determination to use the Bill as a means to regulate Commonwealth industry code sectors such as the franchising sector without adequate consultation or support from those industry sectors in a way that fractures the balance reached in Australia at a commonwealth level to regulate participants in those industries.

Amendment of the Bill.

To remove that immediate concern and to allow those industries not currently regulated by an industry code to allow for state based industry codes to be prescribed for their protection, the Society believes that it would be relatively simple to amend the Bill in the definitions of 'industry code' in clause 3 of the Bill and clause 28D of the proposed amendment to the Fair Trading Act 1987 as follows:

1. In Section 3 of the Bill delete the words 'or the Commonwealth' and add the words:

'but does not include an industry code that is prescribed as a mandatory industry code by the Commonwealth under the Competition and Consumer Act 2010 or any other Act of the Commonwealth'.

2. In the proposed amendment to the Fair Trading Act 1987—contained in Part 3A—(Industry codes)—28D—in the definition of industry code in 28D after the words 'participants in the industry' add the words:

'but does not include an industry code that is prescribed as a mandatory industry code by the Commonwealth under the Competition and Consumer Act 2010 or any other Act of the Commonwealth.'

We understand that all of the functions and the powers of the Small Business Commissioner that you propose under the amendments to the Fair Trading Act 1987 are linked to an industry code or prescribed provisions of an industry code. These amendments would therefore remove the right for the Small Business Commissioner to investigate compliance with an existing or future Commonwealth prescribed industry code but would preserve the prescription investigation and enforcement of industry codes for those unregulated sectors who sought regulation of their industry in this manner.

This simple amendment would also remove the right to prescribe as an industry code or to prescribe a provision relating to an industry code any existing or future Commonwealth industry code. We understand that this

simple amendment may remove the immediate and significant concerns of the franchise sector and enable them to publicly support the creation of the Small Business Commissioner model although we maintain there are still other significant issues that need to be addressed that have already been highlighted.

This amendment would also remove the possibility of a party needing to deal with both Commonwealth and State bodies on an alleged breach of a Commonwealth industry code.

The Society also points out that the functions of the Small Business Commissioner are linked to dealing with 'state and local government bodies' and to allow representations on behalf of small business although there does not appear to be any express function of the Commissioner to liaise with Commonwealth bodies such as the ACCC, who are ultimately charged with the enforcement of the mandatory industry code.

The Society is well aware that it is normal for the States and the Commonwealth to engage in protocols concerning avoidance and duplication or overlap of legislation. The Society welcomes initiatives undertaken towards the harmonisation of state and commonwealth legislation and removal of unnecessary 'red tape' for small business, however the significant amendments to the Bill which clearly are intended to cover Commonwealth codes departs substantially from that process and that initiative.

We also understand the Federal Minister for Small Business, Senator Nick Sherry, recently expressed his concerns regarding the current proposals in South Australia and the immediate and direct effect that the Bill would have on the franchising sector.

I thank you for your letter and trust our response will be of assistance to you and members of the South Australian Parliament in their deliberations concerning this Bill.

You can see that there is a whole range of issues raised by the Queensland Law Society. It is not just in relation to any one particular group. This proposed legislation appears to have some real concerns in the community, particularly as we have had a draft bill—the exposure draft released some months ago—and now this legislation is significantly different from it. The opposition believes that we do not need more and more regulation and more and more red tape.

I am reminded of a couple of emails that I received from some small business operators who are newsagents. One of the emails—and I will not read out the name because the person might not wish to be named in parliament—states:

I am a small business owner and along with my wife...I like a lot of other small business's find it hard to deal with big business because they treat us with contempt. I see the establishment of a Small Business Commissioner as the first and most important step in granting equality for everyone who runs their own business.

I believe that people are lobbying MPs asking them not to support the Bill.

All I ask is that you look at the proposed Bill and ask yourself...is this Bill going to make a difference for the better for Small Business in S.A.?

If you think it will (and its hard to see that it won't) then vote in its favour.

Today (and the last time we sat when members spoke to this bill) we can see that there are a significant number of concerns, especially given the changes from the draft that was put out for consultation and the lack of transparency in relation to changes that have been made. That is why, while the opposition is opposed to this bill, I can indicate that we would probably consider favourably sending it to another committee so that it can be looked at in the cool light of day with exactly what the minister is proposing, and then sit down with all the stakeholders and try to come up with something that delivers small business the comfort they want, the outcomes they want and that it does not burden them with more red tape, higher taxes and higher charges.

As I said before, small business is suffocating in this state under the highest taxing government we have ever seen. While members opposite like to think that they are standing up for small business, they have had a decade of throwing a bucket of cold water on small business and over-regulating them and taxing them out of existence. There is now an opportunity to take a deep breath and have a look at this bit of legislation and try to come up with something that delivers the outcomes that the people of South Australia want.

**The Hon. J.A. DARLEY (17:43):** I rise briefly to indicate my support for the Small Business Commissioner Bill. At the outset, I commend the Minister for Small Business for seeing this issue through on behalf of small businesses in South Australia. I also commend the member for Light, Tony Piccolo, who played an integral role in paving the way for this legislation.

It is very comforting to know that the government is being advised by Associate Professor Frank Zumbo, one of Australia's leading experts on competition, consumer and franchising laws, with respect to this legislation. Professor Zumbo may be known to many honourable members in this chamber for his extensive work in this area of the law. He has worked with governments and

individual members of parliament of all political persuasions, including my colleague Senator Nick Xenophon.

I also have personally had the pleasure of working with Professor Zumbo on various matters over the past few years and his knowledge and expertise are certainly invaluable. I have an enormous amount of respect for Professor Zumbo who has also given his time and advice freely and has even travelled to South Australia to assist in various matters that I have been involved with.

My support for this bill stems, if you like, from my involvement with newsagents. At the end of 2009, my office was inundated with requests for assistance from newsagents who were negotiating—if you can call it that—new contracts with News Limited. After several meetings with newsagents and the Australian Newsagents' Federation, a public meeting was convened in order to discuss the very difficult issues confronting newsagents.

That meeting was attended by about 200 newsagents, all experiencing similar issues. I attended and spoke very briefly at that meeting together with Senator Xenophon. From my memory, the Hon. Robert Brokenshire, Steve Georganas (the federal member for Hindmarsh) and Rowan Ramsey (the federal member for Grey) also spoke on that occasion. Professor Zumbo also attended and spoke to newsagents about the need for this very sort of legislation in South Australia.

I understand that many of those newsagents subsequently made submissions during the consultation phase of this bill. Since that time, the newsagents I have been dealing with have been patiently waiting for the introduction of this bill. Many of you would have received emails from many of those very newsagents and from the Australian Newsagents' Federation calling for you to support the bill. I am sure I am not alone in having received correspondence from the Franchise Council of Australia and some of its members—by and large, franchisors—asking members to oppose this bill. I did meet with the FCA and I would like to take a few moments to address some of the concerns and criticism that they raised with me.

The first of these is that the bill is nothing more than franchising legislation via the back door. With respect, I have to disagree. This legislation is not purely about franchising: it is a vehicle to promote better conduct amongst small and big business generally. It is about raising the standards and giving small business, including newsagents and farmers, the opportunity to grow by affording them better protections against unfair and unconscionable practices. Importantly, it will also level the playing field between those small businesses and big business which, in many cases and for too long, have been able to get away with appalling behaviour.

The second criticism is that this legislation is unnecessary because there is already a federal franchising code of conduct and regulatory scheme in place. I am advised that the ACCC has a national priority and rarely gets involved in individual disputes. In practice, if an individual wrote to the ACCC, they would be advised of their rights and options, such as mediation. The ACCC simply does not have the resources to deal one-on-one with all disputes that are referred to it.

Generally speaking, unless there have been numerous complaints by franchisees about the behaviour of the same franchisor, the ACCC is unlikely to take action. In a nutshell, there is really no specific body in South Australia that small business, including franchisees, can go to for help over individual disputes. The office of the small business commissioner, with all its investigative powers, would provide this opportunity.

The third criticism is that the establishment of a small business commissioner will have negative budgetary implications. Those concerns have to be weighed against the deterrent effect that this legislation will have, particularly in light of the penalty regime that will apply. It is this aspect of the bill that provides some real teeth in terms of ensuring that businesses do the right thing, which will in turn lead to fewer disputes. Put simply, if businesses know that there is a penalty for dubious practices they are less likely to misbehave. The scheme, if applied and enforced correctly, should have a deterrent effect, resulting in fewer breaches of the codes and a reduced number of prosecutions.

The fourth criticism is that banks will be less inclined to offer lending packages to small businesses and, in particular, franchises as a result of these legislative changes. I am advised that in all likelihood these measures should have the opposite effect. This is because banks will be more confident in their lending ability. Franchisors, in particular, will be more compliant as a result of this legislation, resulting in reduced risk to franchisees.

The FCA also argues that this sort of legislation should be implemented at a federal level rather than at a state level. I think it is fair to say that there are no immediate plans to implement similar legislation at the federal level, and any such federal initiative will take much longer to implement. We now have an opportunity with this current bill, which affords protection to small businesses. Any national initiatives can be dealt with if and when they occur.

Further, the FCA argues that this bill will result in additional and unnecessary red tape. I will be the first to say that I am opposed to any government measure that results in increased bureaucracy and red tape. I do not think that this is the intention or, indeed, the effect of this bill. Put simply, franchisors who do the right thing will have nothing to fear from this bill.

Lastly, the FCA has raised concerns about the fact that codes of conduct are to be dealt with by regulation. I will be looking to the minister to give an undertaking to properly consult with relevant parties. If proper consultation does not occur and the regulations are not acceptable to those in the industry, there is the opportunity for this chamber to disallow the regulations. As long as the minister can provide this assurance, the debate over the content of the codes can be had at a later date.

On a related note, I might add that my office has been in ongoing discussions with the minister's office in relation to farmers. To that end, I have asked the minister to provide an undertaking on the public record that it is the government's intention that protections afforded by this bill will extend to farmers and that they will be consulted with in relation to the code of conduct applicable to them.

Further, I have asked that members of this parliament be able to have some input into that process in conjunction with, or on behalf of, stakeholder groups. The reality is that this bill should have bipartisan support. On that note, I am disappointed with the position of the opposition. I would have thought that any bill aimed at stamping out unfair and unconscionable conduct and better promoting and protecting the interests of small business in South Australia would have the opposition's unequivocal support. That said, I urge all honourable members to support this bill.

Every day that this bill is delayed is another day that small business has to operate without the protections afforded by this bill. In concluding, I would like to again acknowledge all the newsagents who have been pushing so hard for this legislation. I hope that all their hard work in lobbying for these important changes is rewarded with the speedy passage and implementation of these much-needed and overdue law reforms.

**The Hon. R.I. LUCAS (17:52):** I rise to speak to the second reading of the bill. As I listen to the contributions this afternoon, I am reminded that politics, indeed, makes for strange bedfellows. We have an ex-Labor minister in this council quoting a former Liberal Party chief of staff to a minister in support of the government's position on the bill. We have Liberal spokespersons quoting federal Labor minister Sherry ripping apart minister Turbo Tom Koutsantonis with words, such as, 'It's an unhealthy development. It's bizarre and strange. It flies in the face of significant progress. He strongly expresses his disapproval,' etc. As I said, politics certainly makes for strange bedfellows.

I note that the Hon. Ms Zollo quoted a number of business groups who supported the legislation as a reason why the Liberal Party should support the bill. When we debate the Work Health and Safety Bill, I will be comforted by the position that has been adopted by the Hon. Ms Zollo, because every one of those groups is urging a very significant amendment to the Work Health and Safety Bill. So, I look forward to the Hon. Ms Zollo and government ministers standing up and quoting all of those business organisations and associations.

*An honourable member interjecting:*

**The Hon. R.I. LUCAS:** Indeed, as my colleague says, the Hon. Ms Zollo was challenging whether she, too, would have the courage, the guts and the integrity to cross the floor and vote in the best interests of Australian business and injured workers in South Australia. Politics makes strange bedfellows. Choose your supporting arguments as a matter of convenience—that is the way of politics. I want to address some specific issues. My colleagues have raised most of the general ones and I do not intend to repeat all of those. I start from the position that anything the honourable minister Turbo Tom Koutsantonis is involved with—

**The Hon. J.M. GAZZOLA:** On a point of order, sir, the Hon. Mr Lucas should refer to the minister by his proper title.

**The PRESIDENT:** That would be very helpful. The Hon. Mr Lucas should refer to the minister with some respect, the same respect that was given to him when he was a minister.

**The Hon. R.I. LUCAS:** Well, if that is the case I will refer to him as the honourable minister Koutsantonis, also known as Turbo Tom and the welsher from the west, because I was never shown any respect by the honourable minister Koutsantonis, minister Foley, Premier Rann or, indeed, anybody, Mr President. Anything that comes from this minister I would start off with a healthy degree of scepticism and cynicism. As I have listened to some of the debate this afternoon, it has only added to some of the concerns I have.

This bill seeks to establish a small business commissioner. When I look at the small business commissioner's functions and the terms and conditions of the appointment of the commissioner, one of the arguments for it—and I respect the arguments for the bill from those inside and outside the chamber (whilst our party does not agree with them, I respect their arguments, nevertheless)—is that somebody needs to be given the power or authority to make decisions and to, in essence, enforce resolution of disputes between disputing parties. That is what I thought we actually had courts for, legally trained people—and there is an argument about costs of accessing justice in our legal system, and one of the responses for that is to have a low-cost jurisdiction. We had a small claims tribunal and various other low-cost options, and that is one of the responses that governments of all persuasion may well address.

But that is one of the reasons being proffered for this particular piece of legislation. So, we are going to appoint a person, and when I look at the requirements of that person there is nothing that would prevent this minister and this government from appointing the Hon. Mr Foley, the Hon. Mr Finnigan, the soon to be retired President (the Hon. Mr Sneath) to the position of small business commissioner—there is nothing that would prevent this Labor government doing that. We have seen today former Labor ministers being shoehorned through dubious processes into six-figure-sum positions within the public sector. In question time the details of the appointment of former health minister Stevens to a significant position was outlined and there have been many others.

There is nothing in this that requires anyone with any legal training. With a number of other positions short of a court, you outline in the legislation that the person you appoint has five or seven years legal training or some knowledge of it. We are going to allow this government to appoint either an ex-pollie, an ex-union hack or both—

**The Hon. J.M. Gazzola:** Or Liberal Party—

**The Hon. R.I. LUCAS:** The Hon. Mr Gazzola sparks up because his eyes lit up at the sound of ex-union hack and politician as he qualifies there, so his eyes sparkled at the prospect of becoming the small business commissioner. There is nothing in here that prevents the appointment of somebody. Let me be fair in relation to this, because maybe an ex-union hack, an ex-pollie, or both, might be appointed, but what you might appoint is a well-meaning, incompetent fool. With the greatest of respect to this and other governments, there are many of those who have been appointed to these semi or quasi-judicial positions, these statutory officer positions. They are not ex-politicians or ex-union hacks—they are just well-meaning incompetents or fools.

They are not well suited to positions which are going to have significant influence and significant power in relation, supposedly, to resolving a whole range of difficult issues. They do not have to have any legal training at all—and I will turn later on to some of the powers of this in relation to the power to require information.

You are going to have somebody shoehorned into one of these positions, with significant power in relation to resolving potentially multimillion dollar disputes between franchisors and franchisees, or between landlords and tenants, etc. Potentially, we will have a well-meaning and incompetent fool being appointed to a position—someone well intentioned, as I said, but just incapable, really, of being able to make the sorts of sensible decisions that are generally being made by a court of law by someone trained in relation to making some of these sorts of decisions.

Then you go to the powers to require information; under clause 12 of the bill, this well-meaning fool, or ex-union hack politician who is appointed has the power, by written notice, to require a person to give him or her any information in the person's possession that the commissioner requires for the performance of the commissioner's functions under the act. If you go to the functions under the act, under clause 5, they are considerable—and I will not read them all into the debate. This commissioner has the power to require any information at all. If there is a landlord and tenant dispute, does this mean that this small business commissioner will be able to

say to the landlords, 'I want from you every document, email and contact you have had with other potential tenants within this particular development'?

Let's say that there is a landlord who wants, at the conclusion of tenancies, to undertake a redevelopment of that particular site and the tenant is complaining about that (and there are many of those, as we are well aware). The small business commissioner, under clause 12, is going to be given the power to require the provision of any or all of those documents the commissioner believes is required for the performance of the commissioner's functions. The only restriction I can see there is that you cannot be compelled to give information which is protected on the grounds of legal professional privilege or which might tend to incriminate you—relatively limited exemptions there.

So, there is information that might be commercially confidential or might be information that a landlord does not believe should be shared with the small business commissioner or, indeed, with the other party to the dispute. I ask the government—and we will pursue this in the committee stage, but the minister can respond at the end of the second reading—what are the restrictions on the commissioner, in particular, in terms of sharing that information with the other party to the dispute, the tenant?

Clause 13—Confidentiality places some restrictions in relation to sharing that information with others not engaged in the dispute, etc., but I ask the government to indicate what will be the restrictions? I also ask the government: what does it believe the restrictions are in relation to the commissioner's power to require information? Will the commissioner, in the example I have given, be able to require that sort of information from a landlord?

In relation to any other dispute between a franchisor and a franchisee, will the commissioner, under whatever is the relevant industry code or the provisions of this legislation, be able to require information from a franchisor in relation to other potential franchisees they have been negotiating with in terms of the conditions or the potential conditions? Will the commissioner be able to require from the franchisor any discussions they might have been having at the national level in relation to potential changes in their business?

Will the commissioner be able to require from the franchisor any details in relation to potential marketing budgets and the details those marketing or advertising budgets the franchisor is going to undertake on behalf of the franchised within that particular state? Will all of that sort of detail be accessible to the small business commissioner when the small business commissioner (he or she) is endeavouring to resolve a dispute between a franchisor and a franchisee?

Equally, of course, will the commissioner be able to demand all sorts of financial information from either tenants or franchisees that they may be uncomfortable providing, not realising that this is the power we are providing the commissioner in this particular legislation? For example, can the commissioner require tax records, tax information, profit levels, all that sort of information from a tenant in a residential tenancy dispute?

The tenant goes to the commissioner and says 'Hey, I'm having this argy-bargy with the landlord. I don't want to pay the increased rent,' or 'I want an option of three plus three plus three and they are only offering me an option of three years. This is outrageous. What are you going to do about it?' In those circumstances can the commissioner not only require a range of information from the landlord in relation to that but also say to that particular tenant, 'Okay; you are part of this process and I now require from you all your tax records, all your detailed financial records, your profitability margins and that sort of thing in terms of what you are telling me about profitability and what you can afford to pay as a rental'?

Can the commissioner require information from the tenant regarding potential offers they have had for the sale of their business, depending on the various leases that they have been offered by the landlord? If you have an option of a lease for three plus three plus three, the sale of your business will be at a higher level than if you had an option of only three years' tenancy from a landlord at a particular location.

Will the small business commissioner have the power under this act, if he or she so determines, to demand that sort of information from both the tenant and landlord? I can see nothing in clause 12 or clause 13 that will prevent the commissioner from demanding that sort of information. If the commissioner says that is required for the performance of his or her functions under clause 5, then the commissioner is entitled to demand that information from the landlord or the tenant, and similarly from the franchisor and the franchisee.

As one of my colleagues said earlier, I think, these things sound just wonderful, and we get all these emails from well-intentioned people saying 'Hey, a small business commissioner is what we want because that would help resolve disputes.' The numbers appear to be here for the legislation to pass in one form or another, so I guess time will tell in relation to the operation of the small business commissioner. One dispute that I am familiar with at the moment involves a government department that manages a tenancy, and government officers are already saying to the tenant involved in the dispute, 'Look, if this small business commissioner bill goes through it will help resolve the issue for you. You should get the Libs to support this legislation.'

My question to the minister, specifically with regard to commercial tenancies, is: with the passage of this legislation in the form there, what specific powers—in addition to those that already exist—will the small business commissioner have in relation to a retail and commercial tenancy dispute between a landlord and tenant? There are certain powers that already exist in relation to retail and commercial tenancies; some people are frustrated with those and some are comfortable, but there are some existing powers. We understand that the small business commissioner will take over the operations of the legislation as part of this proposal, but I want to know what specific additional powers there will be.

For example, if you have a government department negotiating with a private sector tenant in terms of a commercial tenancy and the government department is saying, 'I'm only prepared to offer you a three-year lease on that tenancy,' and the tenant wants three plus three plus three (they want nine years), what powers exist in this legislation for the small business commissioner? Is the small business commissioner in a position to say to the tenant, 'I am going to deliver for you a nine-year (three plus three plus three) leasing arrangement from the government department'? Does the small business commissioner have the power to direct the landlord—in this case, a government department—to do that?

Similarly, if the position was in relation to a private sector arrangement, does the small business commissioner under this proposed package have any additional powers in relation to resolving that level of dispute? On my reading, I cannot see, in relation to those specific acts, that there are additional powers. However, if there is going to be something additional added, I am seeking that response at the end of the second reading to those specific questions; if they do not come at the end of the second reading, during the committee stage we will pursue them and pursue them at length until we get some answers. People out there are being told by government officers that if this bill goes through they are going to be assisted, that this is going to help them resolve the dispute in their favour. That is the inference and the impression that is being given to people out there in relation to this particular issue. If that is the case, what are the specific powers in the bill that will in fact allow that to occur?

The second area on which I raise those general questions is in relation to my very good friends from the South Australian Farmers Federation. The Hon. Ms Zollo has quoted the Farmers Federation's support for the bill. Indeed, we have received copies of letters from Ms Vincent, the chief executive, dated 20 September, including a copy of a letter to the honourable minister on 10 March of this year. I note that in the first letter the Farmers Federation, amongst other things, says:

SAFF has worked closely to ensure that the Bill provides the legislative framework for prescribing mandatory codes of conduct under the South Australian Fair Trading Act, thus empowering industry to self-regulate, especially helpful in mediating and settling disputes between farmers and big business (e.g. farm machinery manufacturers and grain handling companies).

Then, in the letter that went to the minister on 10 March, the Farmers Federation said:

In regards to the agriculture industry, a code of practice for farm machinery (to be negotiated later with the industry) would enable SAFF to play a bigger role in resolving disputes and act as a clearing house before unresolved disputes are escalated to the Small Business Commissioner.

I seek a specific response from the minister at the end of the second reading. Again, if that is not provided, this is an issue that a number of us will pursue in detail during the committee stage of the debate. Has the government indicated to SAFF or are they indicating to this parliament that they will be—as the SAFF are lobbying—implementing a code of practice for farm machinery? If that is the case, exactly what does that mean? I have a general question which will flow from this in relation to what these codes of practice will look like or relate to. I think the minister should give to the house and to the committee an example of the types of codes of practice that are envisaged by the government.

For example, as the SAFF are saying they have had these discussions, is the government going to introduce a code of practice for farm machinery? If it is, what does that actually mean? Will it be a code of practice arrived at between whom—which parties? Between farm machinery manufacturers? My colleagues the Hon. Mr Dawkins and others will advise me, but most of the farm machinery manufacturers are overseas.

**The Hon. J.S.L. Dawkins:** Absolutely.

**The Hon. R.I. LUCAS:** There are some perhaps interstate or whatever it is, but—

**The Hon. J.S.L. Dawkins:** Just about all overseas.

**The Hon. R.I. LUCAS:** Just about all overseas, my colleague advises me. If we are going to have this code of practice for the farm machinery sector to be negotiated with the industry, is it the government's intention and SAFF's intention that this is going to be negotiated with these overseas farm machinery manufacturers, or is it going to be negotiated with the local distributors on behalf of the farm machinery manufacturers? That is hardly satisfying if you were the SAFF, I would have thought, and you are going to resolve warranty issues with farm machinery.

Everyone is saying, 'Hey, this small business commissioner is going to resolve all these disputes.' Let's get into the detail of exactly what is meant, because it all sounds terrific. We are going to have a small business commissioner, and he or she is going to resolve tenancy disputes, farm machinery warranty disputes, disputes with Viterra and grain handling—this is fantastic!

**The Hon. R.L. Brokenshire:** Who fixes them now? Who fixes them at the moment?

**The Hon. R.I. LUCAS:** Well, a lot of them are a problem; I can see that, but what I am saying is, before we rush willy-nilly down the path of saying, 'Thank goodness. The Hon. Mr Koutsantonis has delivered the solution—the small business commissioner—and he or she is going to resolve these disputes. Viterra's problems are going to disappear, the farm machinery warranty problems will disappear, the disputes with government department agencies over tenancies will disappear and the disputes with tenancies at Burnside Village because of rapacious landlords will disappear, because the Hon. Mr Koutsantonis's small business commissioner has materialised from nowhere and he or she, with magical powers, is going to resolve all of these disputes.'

So, the Farmers Federation, the motor traders and Business SA rush to support it. The whole world rushes to support it. You are right in that the easy solution for the Liberal Party would be to roll over and say, 'Everyone wants it; you can have it.'

**The Hon. R.P. Wortley:** No, that's a harder decision—

**The Hon. R.I. LUCAS:** No, that's the easy solution, because the numbers are here to support it. We could just roll over, lie down, have our tummies tickled, roll over again, do nothing and let the bill go through. That is the easy solution for the Liberal Party. What we are saying is, 'Let the buyer beware.' Those of you who are supporting this legislation at least convince yourselves that all these wonderful things are going to happen, and then let's ask the question: how are they going to happen?

The Farmers Federation, with their code of conduct for farm machinery, how is that going to happen? How are the changes in relation to commercial tenancies going to happen? Given the time tonight, I will not go through all of them at this stage, but I do intend to go through them in the committee stage because it is so easy to make the claims in relation to this legislation.

It is so easy to criticise the Liberal Party, but at least the Liberal Party has had the courage to stand up and say, 'Hold on, pause, reflect, think about this, and then you explain exactly how it is going to provide a solution.' I want to hear from the government how the grain handling problems are going to be solved by the bill. I want to hear from the government how the issues in relation to farm machinery warranties are going to be resolved by the bill. I want to hear from the government about how retail and commercial tenancy disputes are going to be resolved by the bill.

I think we owe it to small business in South Australia. We owe it to the newsagents who believe that, in some way, this is going to resolve problems they might have negotiating deals with News Corp (as the Hon. Mr Darley was talking about) and maybe also resolving disputes with the Lotteries Commission. Is this small business commissioner going to say to the Lotteries Commission, 'Whoops, you're not able to do that. When you sell the Lotteries Commission, you're not going to be able to put a provision in the contract to have an online sale of tickets, because that is going to impact on the newsagents'?

That is what the newsagents want; they want this dispute resolved. They are a small business, so they will go to the small business commissioner and say, 'We want this particular position resolved,' in terms of the unconscionable conduct of either big business or, in this case, big government (the Lotteries Commission) and the impact on the newsagents, because it is a huge part of their revenue flows that exist at the moment.

As I said, there is a lot more at this stage that I could and would like to say but, given the time, I will not. However, because I know everyone else other than the Liberal Party is supporting this bill, I implore members to at least satisfy themselves that some of the claims that this minister and this government and those who support it are making are at least justified. That is all I am asking—at least explore those issues.

The Hon. Ms Bressington has suggested one way but, if you are not going to do it that way, at least through the committee stage satisfy yourselves or, if you have access to the minister and the government departments, ask some of those questions of the minister and his advisers over the next few days and see if you can satisfy yourselves that all these things are going to be resolved in the way that some of these lobby groups believe they are going to be. What are these specific additional powers that the business commissioner is going to have in relation to these issues?

In particular, there are earlier questions that I asked as to whether or not there ought to be some check, at least, in terms of the power to require information by the small business commissioner. I did not put on the record the question: is there any appeal right from somebody required to provide information to the commissioner? If you are so aggrieved that you believe that this is an abuse of power by the small business commissioner, what access do you have to object to a request for information from the small business commissioner that you do not believe is consistent with its functions under the act? They are the sorts of issues that certainly I and my colleagues will be pursuing in the committee stage of the debate.

**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, Minister for Gambling) (18:21):** There being no further second reading contributions, I would like to take this opportunity to thank all honourable members who contributed to the second reading debate. We have seen a wide range of issues raised during the debate and a range of different levels of support and concern for this particular bill which seeks to put in place a new small business commissioner and the powers associated with that to protect small businesses and particularly franchisees.

A number of questions have been raised through the debate, particularly today, and I seek to address those issues and provide answers to those questions during the committee stage. With that, I commend this bill to the chamber and seek that the committee stage be dealt with expeditiously.

Bill read a second time.

At 18:23 the council adjourned until Wednesday 19 October 2011 at 14:15.