LEGISLATIVE COUNCIL

Tuesday 27 March 2012

The PRESIDENT (Hon. R.K. Sneath) took the chair at 14:20 and read prayers.

BUSINESS NAMES (COMMONWEALTH POWERS) BILL

His Excellency the Governor assented to the bill.

BUSINESS NAMES REGISTRATION (TRANSITIONAL ARRANGEMENTS) BILL

His Excellency the Governor assented to the bill.

TOBACCO PRODUCTS REGULATION (FURTHER RESTRICTIONS) AMENDMENT BILL

His Excellency the Governor assented to the bill.

SUMMARY OFFENCES (WEAPONS) AMENDMENT BILL

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (14:23): I move:

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

Motion carried.

PAPERS

The following papers were laid on the table:

By the President—

District Council of Mount Remarkable—Report 2010-11
Ombudsman's Report on Investigation into the City of Charles Sturt—additional correspondence

By the Minister for Agriculture, Food and Fisheries (Hon. G.E. Gago)—

Reports, 2010-11—
AustralAsia Railway Corporation
Commissioner for Consumer Affairs
Professional Standards Council of South Australia—Financial Report, 2010-11
Regulations under the following Acts—
Fair Trading Act 1987—
Health and Fitness Industry Code—Variation 2012
Pre-paid Funerals Code of Practice—Variation 2012
WorkCover Corporation Act 1994—Claims Management Contractual Arrangements

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

Tandanya—National Aboriginal Cultural Institute—Report, 2010-11

By the Minister for Communities and Social Inclusion (Hon. I.K. Hunter)—

Upper South East Dryland Salinity and Flood Management Act 2002—Quarterly Report, October-December 2011
Regulations under the following Acts—
Motor Vehicles Act 1959—Demerit Points—Entering a Level Crossing
Road Traffic Act 1961—Miscellaneous—Photographic Detection Devices

CITY OF ADELAIDE PLANNING

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (14:25): I table a copy of a ministerial statement relating to an overhaul of the city planning system made earlier today in another place by my colleague the Premier.

QUESTION TIME

TOURISM COMMISSION

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:30): I seek leave to make a brief explanation before asking the Minister for Tourism a question about the visitor information centre.

Leave granted.

The Hon. D.W. RIDGWAY: As members would be aware, as part of a savings measure and a budget announcement last year, the government tendered to shift the visitor information centre from its previous location on King William Street to a basement location on a side street, being Grenfell Street. On Tuesday 13 March, I asked the Minister for Tourism a question in relation to an ex gratia payment that had been made to Holidays of Australia just before Christmas. My question was:

> Could the minister explain the $32,000 ex gratia payment made to Holidays of Australia just before Christmas?

The minister's response was:

> Any payments that were made, my understanding is that it was not an ex gratia payment but, rather, the payment was part of the original lease agreement.

My questions to the minister are: which original lease agreement is the minister referring to and, secondly, was the commission paying the lease on the building, given that this was meant to be a savings measure to deliver some $900,000 worth of savings?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (14:31): I thank the honourable member for his important questions. In relation to the issue of which lease agreement, I have been advised that it was the lease agreement that was current at that time when the payment was actually made. I believe it was around December sometime, but I don't have the exact date in front of me; it was the lease agreement that was current at that particular time.

My understanding is that there was a discussion about a particular payment and there was a disagreement about that payment. However, we argued the point that that particular payment was not covered by the lease, the owner put forward an argument that he believed it was covered by the lease, and the final advice that we received was that it could be included in the lease, so we were advised that we should pay it. As I said in my initial answer, the advice that I received at the time was that it was not an ex gratia payment: it was a payment pertaining to those lease arrangements at that time.

In terms of the lease agreement, the specific terms of that lease agreement are commercially confidential, so I need to be fairly careful about any details that are divulged because it could, in fact, limit any future tender process that the government might be involved in, and it could prejudice the ability of the government to be able to maximise returns to this government. I know that no responsible person in this chamber would want to disadvantage the government's negotiating position, but I will consider the question, and if I am able to provide some detail I will take that on notice and bring back a response.

TOURISM COMMISSION

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:35): I have a supplementary question. Was that payment a regular payment of $32,000 over a monthly or quarterly period, and what was the payment for?

The PRESIDENT: You should have included that in your original question.

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (14:35): My understanding is that it was a once-off payment—

The Hon. D.W. Ridgway: An ex gratia payment.

The Hon. G.E. GAGO: I have already said in this place that it was not an ex gratia payment. In terms of the details of that payment, I am just trying to recall: I believe that it had something to do with administrative costs with the dissemination of material, the posting out of

material, or some such. Again, I do not have those details with me. It was of an administrative nature, so I believe. As I said, the owner believed that that function was included in the lease. We had initially argued that it was not. As I said, further advice indicated that we were obliged, in fact, to pay the costs of those administrative matters, which we did.

TOURISM COMMISSION

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:36): I have a further supplementary. Can the minister explain, then, what the difference is between a one-off payment and an ex gratia payment? It is either part of a lease that was agreed or an ex gratia payment.

The PRESIDENT: Order! The minister did make it quite clear that she would get back to you on anything that she might—

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (14:37): No, no, Mr President.

The Hon. D.W. Ridgway interjecting:

The PRESIDENT: I'm not. I'm just reminding you what the minister has said. It is hardly a supplementary.

The Hon. G.E. GAGO: It is just disappointing. Obviously, the honourable member has had a week off from parliament and is having trouble engaging his thoughts. The concept is not a difficult one. This is not rocket science. I think this is the third time I have put it on the record, but I will say it again. It was a once-off payment. There was a disagreement initially about whether or not that function was included in the lease.

As I have indicated, I have put it on the record now several times. The honourable member clearly has problems taking in this very simple piece of information. We were advised that, in fact, those functions were part of our obligations under the lease at that time, and therefore we made that payment in light of that. It is quite simple. It is not rocket science. I have answered the question in a full, open and honest way, and I cannot help it if the honourable member is having trouble grasping such a simple piece of information.

PASTORAL LEASE RENTS

The Hon. J.M.A. LENSINK (14:38): My question is to the Minister for Agriculture, Food and Fisheries. Will the minister support the reintroduction of the Pastoral Board's Rent Review Committee to review lease rate increases of up to 230 per cent, which are hitting our outback agricultural producers very hard?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (14:39): I thank the honourable member for her most important question. I know that the issue of pastoral rent increases has been a fairly contentious one. Pastoralists have expressed a high degree of disquiet around these increases. I am advised that, under the Pastoral Land Management and Conservation Act 1989, the Valuer-General is charged with determining the improved value of the land and an appropriate rate of return from which an annual rent is then derived.

I am advised that unimproved value is determined with regard to the market evidence, primarily sales of properties used for pastoral pursuits. I am advised that sales are then analysed to remove any value related to the improvements of that land, and I am advised that the evidence obtained from sales is used to value various land types which, in turn, forms the basis for rent. I am advised that rents are determined by the application of an appropriate rate of return for the purpose to which the land is put and that increases in the rentals for the current year are a result of both positive market movement over an extended period in land value and a realignment of rents with market.

I am advised that, under the provisions of the Pastoral Land Management and Conservation Act 1989, lessees have the right to appeal to the Valuer-General for a review of the rent if they are dissatisfied and, should lessees be dissatisfied with an objection decision of the Valuer-General, they then have a further right to lodge an application for review, which will be undertaken by an independent valuer appointed by the Governor. A further right of court appeal then exists beyond that, Mr President, so you can see there are a number of layers of protections or provisions to ensure that a fair price is applied to the pastoral lease.

I am also advised that reviews are generally undertaken every five years, with the approval from the Pastoral Board, and that was extended to seven years. I am advised that, for the last seven years, lessees have only seen indexed increases of varying amounts. Most increases have varied from 10 to 15 per cent, with few seeing an increase higher than that. There are 225 pastoral leases in South Australia; 15 inquiries have been received in relation to these new rentals.

The PRESIDENT: The Hon. Ms Lensink has a supplementary.

PASTORAL LEASE RENTS

The Hon. J.M.A. LENSINK (14:42): A supplementary question arising from the recitation of that briefing note: does the minister actually support the rent review committee being reintroduced?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (14:42): I have outlined in detail the process that this government supports. As I have indicated, there are a range of levels of appeal and review that this government supports, and I have outlined them quite clearly in this chamber today. Again, the opposition seems to be having a lot of trouble hearing the answers; they are very clear, very concise and very detailed.

The PRESIDENT: The Hon. Mr Brokenshire has a supplementary.

PASTORAL LEASE RENTS

The Hon. R.L. BROKENSHIRE (14:42): Given the minister's answer, can the minister advise the house what the additional collection of money will be with the increase in lease payments?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (14:42): To the overall increase? Is that what the honourable member is asking?

The Hon. R.L. BROKENSHIRE: Yes.

The Hon. G.E. GAGO: I am happy to take that question on notice and bring back a response.

MURRAY-DARLING BASIN AUTHORITY

The Hon. S.G. WADE (14:43): I seek leave to make a brief explanation before asking a question of the Minister for Regional Development in relation to the Murray-Darling Basin Authority.

Leave granted.

The Hon. S.G. WADE: More than 1,200 people attended the Murray-Darling Basin Authority meeting in Renmark earlier this month, including five Liberal parliamentarians, state and federal shadow ministers, and local members. In answer to a question on 13 March, the minister tried to excuse her absence by accusing each and every Liberal member of leaving early. I am advised that the minister was factually wrong.

I have not been able to speak to all Liberal members in attendance, but the member for Chaffey advises me that not only did he stay to the end but he engaged the head of the Murray-Darling Basin Authority, Craig Knowles, after the meeting. What is beyond doubt is that neither the Premier nor any of his ministers attended the meeting in Renmark—early, late, or ever. Further, none attended the Murray-Darling Basin Authority meeting in Murray Bridge on 9 December.

In that context, I ask the minister: given that no minister of the Weatherill government bothered to attend the Murray-Darling Basin Authority consultation meetings in Renmark and Murray Bridge, will any ministers bother to attend the consultation meeting in Adelaide on Tuesday 3 April 2012?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (14:44): I thank the honourable member for his question, and I do apologise to the member for Chaffey if what the honourable member says is true—that he did stay to the end. I was given advice by other members who were in attendance to the whole of the forum that there were no Liberal members who stayed to the end, but I stand corrected if the honourable member for Chaffey did attend to the end, and I apologise for that.

An honourable member interjecting:

The Hon. G.E. GAGO: It was a high degree source, indeed; the President himself was there. I find it incredible that the opposition can stand up straight and raise the issue of the Murray-Darling Basin plan in this place. It has done nothing more than sell out our River Murray and our irrigators. All it has done is sell out this state. We know that our irrigators have put in more than their fair share in relation to producing efficiencies around irrigation. We have been advanced in our water saving practices and infrastructure changes.

We have led the nation, and in doing so have significantly improved our efficiency over the years in terms of use of water. Not only are we a very small user of water from the River Murray, in terms of our allocation compared to other states but, to add insult to injury, those other water-guzzling states have failed to produce the same degree of efficiencies around water management that we have. We now see a plan before us that further disadvantages South Australians for all that investment and all that effort.

This government has the guts to stand up and fight against that. We have drawn a line in the sand. We are standing behind our irrigators and the health of our river, and we have the guts to stand up and fight for this, while this mealy-mouthed opposition (they are nothing but cowards) stands there and whinges about who did or did not attend a meeting. The important thing is that we are fighting. We are putting our money where our mouth is and we are fighting for our River Murray. We are standing beside our irrigators, fighting for the health of the river and getting on with the job of saving our river.

REGIONAL DEVELOPMENT AUSTRALIA

The Hon. CARMEL ZOLLO (14:47): I seek leave to make a brief explanation before asking the Minister for Regional Development a question about Regional Development Australia committees.

Leave granted.

The Hon. CARMEL ZOLLO: As we all know, regional areas are of immense importance to the economic development of South Australia. These areas play host to some of our key export industries, including primary production, our resources sector and a significant component of our tourism market. Empowering local communities to determine their strategic priorities and lead this development is also important. Will the minister advise the chamber of the recent appointments to the Regional Development Australia committees and how these appointments will aid regional South Australia?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (14:48): I thank the honourable member for her most important question. Regional South Australia has figured large in the thinking and planning of this government: just look at the seven strategic priorities announced by the Governor at the opening of parliament. Clean, green food as our competitive edge clearly refers to the great contribution the primary producers of South Australia make to this state.

Whether you look at the sector's contribution to the gross state product, the export of South Australian produce, such as grain, legumes or fruit and vegetables, and whether they come from the Eyre Peninsula or the Mid North, all are important economic contributors to this state. The food and wine we produce and sell across the world are something that we should all be very proud of.

The contribution made by primary industry producers does not stand alone in regional economies. Immensely important as they are, they only form part of the economic base. Our regional areas are also home to an unprecedented expansion of mining and exploration, which is set to deliver immense benefits across the state for generations to come.

Similar to the clean, green food bowl priority, the government is also focused on two key areas, namely, growing advanced manufacturing and realising the benefits of the mining boom for all South Australians. It is imperative for this state to have a creative, agile and globally competitive advanced manufacturing industry, and this can in part be led by our mining and clean tech industries.

We also have tourism, of course. It is widely acknowledged that tourism is also an important economic driver, whether it be South Australians visiting their own backyard or interstate or overseas visitors experiencing the wonderful landscapes, the natural environment and the

attractions which our state has to offer. None of these enterprises and the communities they support can, or will, continue to develop without planning and being connected to the communities in which they operate. Any business, small or large, benefits from having access to strategic thought and planning so that there is clarity on where to invest and how to maximise returns and opportunities.

The South Australian RDA network obviously has a role to play in contributing to and identifying each region's strengths and opportunities in setting a strong policy agenda that promotes our local interests.

Regional Development Australia committees span the three levels of government established by an MOU between federal, state and local governments. These eight regional bodies exist to develop regional plans which describe the region, its attributes and industry and set out economic, environmental and social vision for the region; provide advice on funding opportunities available to regional communities from the Australian, state and territory governments; contribute to the planning process with other regional stakeholders, including local government; conduct workshops to build the skills required by businesses and community organisations; hold regional forums on key issues affecting their regions; and, importantly, help the region to attract new industry and investment.

I am pleased to advise the chamber that, via a tripartite process between the three levels of government, the membership of these important committees has recently been refreshed. The RDA committees established during 2009-10 draw together people with a broad range of skills and expertise best placed to respond to the challenges and opportunities in each region.

Original appointments to the RDA committees were made for terms of either two or four years, which meant that approximately 50 per cent of the RDA appointments in South Australia fell due towards the end of last year. Following a call for expressions of interest in late 2011, nominees were collated for each region. Candidates were assessed in relation to skills required to best support the region, while providing both generational change and technical expertise in relevant areas, such as finance or business growth.

The board/committee composition has remained approximately one-third local government and the balance comprising nominees by federal and state governments with the ability to best support regional innovation and development. These volunteers will guide the eight Regional Development Australia organisations in their work until November 2015.

There are many new appointments. A number of appointments have been renewed, plus there are a number of new appointments. Obviously I am not going to refer to all of those by name, save to say that I was very impressed by the calibre and commitment of those volunteering to serve their community in this capacity. It is great to see that there was a degree of continuity as well as refreshment in this particular round. I obviously look forward to seeing the fruits of their labour over the years to come.

REGIONAL DEVELOPMENT AUSTRALIA

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:54): Supplementary question. Can the minister explain why the Eyre Regional Development committee does not have any representation from agriculture, aquaculture or mining, given that they are the three biggest industries on Eyre Peninsula?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (14:54): It is an open democratic process, where expressions of interest are called for. The three levels of government encourage people to be aware of the nominations being opened and encourage people with relevant expertise to nominate. It is an open process. I cannot go out there and force people to take up these positions. I am aware that there are gaps in some of the regions, and we will seek to encourage those people with the appropriate skill sets and interests to fill those positions in the future.

The bottom line is that no level of government—neither federal, state nor local government—has the power to mandate individuals to participate in this particular forum. The honourable member might want to propose a change of legislation, perhaps, where such an impost could be forced upon individuals. I doubt that it would gain support, but really if that is what he is suggesting—that we devise some means of forcing people to participate—that is a nonsense. In the meantime, all levels of government—federal, state and local government—have done a great

deal of work to get information out and to encourage individuals with the appropriate skills and interest to participate and will continue to do that.

The PRESIDENT: The Hon. Mr Ridgway has a further supplementary.

REGIONAL DEVELOPMENT AUSTRALIA

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:56): Will the minister assure the house that neither she nor her department intervened after the closure of the expressions of interest time?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (14:56): I am just so sickened by the innuendos that constantly serve to undermine these bodies. If the honourable member has any evidence of anything improper, then he should put it forward. If the honourable member has a skerrick of evidence, I demand that he do the responsible thing and hand over that evidence. If there was any impropriety whatsoever, I would take appropriate action. They slink into this place, under the cloak of privilege—

The Hon. D.W. Ridgway interjecting:

The PRESIDENT: Order!

The Hon. G.E. GAGO: —a cowardly, cheap thing to do. It undermines these really important bodies, these RDAs and our agencies. They come in here and undermine and discredit individual bureaucrats, and I absolutely challenge the honourable member. I believe he has an onus of responsibility: if he has any skerrick of evidence whatsoever that anything improper occurred, then I insist he hand on that information to me so I can take appropriate action.

Members interjecting:

The PRESIDENT: Order!

REGIONAL DEVELOPMENT AUSTRALIA

The Hon. J.S.L. DAWKINS (14:58): Has the minister received a request from the Murray and Mallee Local Government Association to add a member to the Riverland and Murraylands RDA Board to add to the balance between the two regions and, if so, will she agree to it?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (14:58): I am happy to take that question on notice and bring back a response. I tend not to get involved in the individual regions' operational matters.

The Hon. J.S.L. Dawkins: It was correspondence to you.

The Hon. G.E. GAGO: I may or may not: I receive thousands and thousands of pieces of correspondence. I am happy to follow that up and to check whether there was a request and bring back a response. I am always willing to assist RDAs in any way I possibly can, to encourage extensive representation and participation. I am certainly very committed to doing that and always have been, and I will continue that practice and will check whether I have received such a request, and I will be more than pleased to bring back a response.

DISABILITY SERVICES

The Hon. K.L. VINCENT (14:59): I seek leave to make a brief explanation before asking the Minister for Disability questions regarding sex and people with disabilities.

Leave granted.

The Hon. K.L. VINCENT: This morning I held a press conference where I discussed the taboo subject of people with disabilities and sex, followed by a lunchtime briefing co-hosted by the Hon. Steph Key of MPs and staff on these same issues. Tonight, along with Touching Base and the SA Sex Industry Network, I am hosting a screening of the groundbreaking documentary *Scarlet Road*. I have also brought in experts Rachel Wotton and Denise Beckwith from People with Disability Australia to discuss this subject, to brief MPs, the public and the disability sector as well as the media on this matter.

It is time that this issue was brought out into the open. Along with long-time sex worker advocate Ari Reid we have spoken about the important and often brushed-under-the-carpet topic of the sexual rights of people with disability. My questions to the minister are:

1. Does the minister agree that accessing sex, including the services of sex workers, is a fundamental right for people with disabilities?

2. Does the minister agree that we need to decriminalise sex work in South Australia to facilitate access to sexual expression for many people with disabilities?

3. Will the minister create policies within his department which facilitate a more open-minded and accepting attitude toward people with disabilities when it comes to accessing any form of sexual expression, including sex workers in this state?

4. Will the minister ensure that bureaucrats and government employed support workers and Disability Services staff are educated about sex and sexuality issues for people with disabilities?

5. Will the minister expand the definition of service providers to allow funding allocated for physical or mental health services for people with disabilities to be used to access sex workers?

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (15:01): I thank the honourable member for her very important questions about the sexual rights of people who are living with a disability. I am not insensitive to the sexual needs of people with disabilities or lack a certain understanding of the issues raised by the Hon. Kelly Vincent in her questions today. A close friend of mine has raised this issue with me in the past, and I am quite aware of the difficulties involved for people who are profoundly disabled regarding their needs in terms of access to sexual services.

However, at the present time, the purchase of sexual services is illegal in South Australia, I am advised. Should the laws change in the future and sex work is legalised at a later date, a future government will need to reconsider this issue again. Additionally, I should say that part of the agreement around an individual's budget and their individual plan is that the money is to be used for the purposes agreed to in their personal plan and is not to be used for illegal activities.

The Hon. Kelly Vincent's remarks will certainly stir public debate around this issue, and this is a good thing. We should be talking about the needs of people living with disability, and I imagine that some people will see Ms Vincent's suggestion as provocative while others will see it as a basic human right that every human being should be able to enjoy. I believe that a mature society should be able to have a sensible debate about this issue, and I acknowledge that the honourable member has begun that process here today. I congratulate her for doing so. I look forward to listening to the views of honourable members in the chamber and the wider community on this topic.

LOCAL GOVERNMENT

The Hon. G.A. KANDELAARS (15:03): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations a question about the release of the local government governance discussion paper.

Leave granted.

The Hon. G.A. KANDELAARS: I understand the minister and the Local Government Association have agreed to work together to canvass a number of reforms on the issues of governance, accountability and standards of conduct in the local government sector. Will the minister provide further information on this important matter?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (15:03): I would like to thank the honourable member for his very important question. Members will recall that in October last year the Premier announced a range of new public integrity reforms, including the establishment of an independent commission against corruption (ICAC). These reforms included proposed new measures in the local government sector, including a framework for a mandatory code of conduct for elected members and staff, sanctions for breaches of standards, dealing with complaints and processes for investigation of allegations of maladministration.

The new public integrity reforms will also consider structure and powers of investigation where there have been allegations of corrupt or illegal behaviour. In the context of these reforms, it is appropriate to give further consideration to several important issues within the local government sector with the aim of further strengthening public integrity processes within councils. These proposals include prescribing a mandatory code of conduct for elected members and staff.

Also, I am pleased to advise the chamber that, last week, the president of the LGA (Mr Kym McHugh) and I jointly released a discussion paper which has been distributed to all councils and interested parties. The discussion paper also addresses conflict of interest provisions, training and education support to councillors and council staff, consideration of councils for items 'in confidence', and meeting procedures.

The paper will canvass further legislative reform of the Local Government Act 1999, as well as other regulatory measures for assisting councils and their elected members in undertaking their duties. Any member of parliament, council member or interested person can make comment or provide a submission, and I would encourage anyone who is interested in this important matter to please do so.

PASTORAL LEASE RENTS

The Hon. J.A. DARLEY (15:06): I seek leave to make a brief explanation before asking the Minister for Communities and Social Inclusion, representing the Minister for Transport and Infrastructure, questions concerning pastoral lease rents.

Leave granted.

The Hon. J.A. DARLEY: Section 23 of the Pastoral Land Management and Conservation Act outlines the procedure for determining rent for pastoral land. Under the act, the Valuer-General is to determine the unimproved value of land, taking into account a number of factors. The Valuer-General is then to fix an annual rent for the lease as a percentage of the unimproved value of the land. The Valuer-General recently reviewed rents for pastoral leases in the north of the state. This review resulted in sharp increases, reportedly in the order of up to 200 per cent.

At a meeting held at Port Augusta on 9 March 2012, which was attended by pastoralists and staff from the Valuer-General's office, I understand pastoralists were told that the rents were calculated on the unimproved value of each lease by the Valuer-General and a rate of return determined by the Pastoral Board. Under the act, the Pastoral Board had no involvement in the rent-setting process: it is merely responsible for issuing and sending to lessees annual rent accounts. On 14 March 2012, the Assistant Valuer-General suggested on ABC radio that one of the reasons for the sharp increases in rentals was that rents were last reviewed in 2004. My questions are:

1. Given that section 23(4) of the Pastoral Land Management and Conservation Act expressly states that rents must be reviewed at least every five years, were rents reviewed before 2009—in other words, five years after the 2004 review?

2. Can the minister advise who determined the rate of return—the Valuer-General, as per the act, or the Pastoral Board?

3. If the rate of return was determined by the Valuer-General, why was incorrect information provided at an information session? In other words, are the public servants not aware of the process or are they not aware of the requirements under the act?

4. If the rate of return was determined by the Pastoral Board, what actions will be taken, given that this is in contravention of the act?

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (15:08): I undertake to take those questions to the Minister for Transport and Infrastructure in the other place and seek a response.

PASTORAL LEASE RENTS

The Hon. J.S.L. DAWKINS (15:08): My question is directed to the Minister for Agriculture, Food and Fisheries. As the minister responsible for agriculture, including the wool industry, and for food production, does the minister support the retention of the Pastoral Land Management and Conservation Act under the responsibility of the minister for the environment or the alternative position of its coming under her own portfolio?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (15:09): I support the current arrangements: I think they have served us well. I think that, if there are issues of concern that need to be addressed, there are processes available to do that. The minister for the environment is an extremely competent person and has dealt very well with managing the pastoral lease arrangements in the past. As I said, if improvement is required then I think the current arrangements lend themselves to that.

PASTORAL LEASE RENTS

The Hon. J.S.L. DAWKINS (15:10): My supplementary question: will the minister concede that officers of PIRSA have a much greater ability to understand the negative effects that the significant increase in pastoral lease rates will have on agricultural producers and production in the pastoral areas of the state?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (15:10): I thank the honourable member for his question. The honourable member is quite right that PIRSA officers do have a great deal of knowledge and understanding around pastoral matters, particularly in relation to stock densities and markets, biosecurity issues and suchlike. However, there are also significant environmental issues around pastoral leases. Having visited a number of stations within the last month, I have seen some of the flood damage there. I have been up there since the floods have receded and it is quite remarkable.

The outback is quite green at the moment and there are a lot of very plump, fat, shiny animals out there grazing, so they are doing very well from that. However, there are significant environmental issues around hoofed animals. The way they eat grasses: unlike kangaroos that have a scissor action and cut grass off, these animals pull grasses out by the roots so it is much more damaging to them. There are also issues with water management and supply, and catchment management as well, so there are significant environmental issues.

We also see the significant environmental impact of animals like camels to the region. A number of quite complex issues are involved, so the environment definitely does have a significant role to play in that. If we do not manage those environmental issues well then we will destroy all future prospects, or destroy future prospects for a considerable period of time. So it is within all of our interests (including the pastoralists' interests) to make sure that we manage those things. The input from both perspectives is valuable and contributes in a significant way.

PASTORAL LEASE RENTS

The Hon. J.S.L. DAWKINS (15:13): As a further supplementary: will the minister concede that, in the great majority, pastoralists are excellent conservationists?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (15:13): I absolutely concur with the honourable member. I have met a number of them—remarkable people who have shown me around their stations. I have had the great privilege to be able to fly around some of these stations. It is quite remarkable and truly amazing. I am astounded at the incredibly harsh environment in which they live and the enormous degree of self-reliance that is required of them. They are, as I said, truly remarkable.

I have not met one pastoralist yet who does not absolutely understand the importance of getting that balance right. The way they manage their stock in terms of numbers: they de-stock when they need to and increase their numbers when they need to. The way they manage the waterholes: there are very few examples of those who fail to do that really well. I absolutely concur with the Hon. John Dawkins that they are indeed very good at understanding the importance of conservation. They are also very good at balancing that with making an income, and that is their purpose.

Many of these stations are hugely successful businesses. Not all are successful (some of the smaller players are having trouble) but particularly the larger players have managed extremely successful businesses over a very long period of time, and that has been a balancing act between good years and bad years, stocking and destocking and managing their assets, including their environmental assets, extremely well. But that does not mean that we should not be continuing to develop and involve new and better ways of managing those environmental values. I still think it is very important that the Department of Environment and Natural Resources does have input into

that as we continue to strive for better practices to better conserve our environment and to maximise outcomes for our pastoralists.

FORESTRYSA

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (15:16): I table a copy of a ministerial statement relating to conditions to protect forestry's future in the South-East made by the Hon. Jack Snelling.

QUESTION TIME

GEARED 2 DRIVE

The Hon. J.M. GAZZOLA (15:17): My question is to the Minister for Youth. Minister, will you inform us how the government is assisting disadvantaged young people to learn to drive?

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (15:17): I thank the honourable member for his very important question. The Weatherill Labor government has embarked on a very innovative program, in partnership with the Service to Youth Council and community sector volunteers, and also the business community (in this case, Smiths Holden and EPAC) to commence a trial of a new initiative to help new learner drivers. The program is aimed at disadvantaged South Australians aged between 16 and 25 who lack the opportunities and support needed to successfully obtain a provisional driver's licence. Not all young people have access to supervised driving; not all young people have a responsible adult in their life who has the time that is needed to help them do their supervised driver training.

Geared 2 Drive will provide up to 42 places on an ongoing basis for the remainder of this year, whereby professional lessons will be provided by driving instructors. Not having driving skills or a licence can affect a young person's ability to get to job interviews or to gain or retain employment and education opportunities, or access essential services or even maintain social and family networks. That is why we have provided $40,000 in funding to enable young people to complete their 75 hours of supervised driving required for a provisional driver's licence.

By investing the time and resources to foster the potential of our young people, we are ultimately investing in South Australia's future. Participants are referred to Geared 2 Drive through Service to Youth Council programs, other agencies and promotional activities in schools and local communities. Referral to the program will be based on the need to take into account the participant's lack of access to a driving supervisor or a vehicle and, of course, the funds to pay for private tuition. The program is reliant upon the goodwill of volunteers.

At the launch last week, I also met a volunteer driving instructor named Grant, who told me that he was encouraged to take up this role by his wife, who works in the youth sector. He said that he had been through a rigorous selection and training process in preparation for Geared 2 Drive. In fact, I am advised that the volunteer instructors have to resit their driver's test again to qualify as a volunteer, which is a good process. Perhaps honourable members might want to emulate that and sit for their driving test again. There is a big learning curve involved. Things have changed, and some of us might like to refresh our skills. Nineteen volunteers are already on the program and, of course, many more are welcome.

The Service to Youth Council has developed this initiative, which contributes to *youth*connect, the government's strategy for young people, in particular, to support young people gaining and retaining their driver's licence, particularly for employment-related purposes. Additionally, the program teaches participants to be safe drivers by educating young drivers about negative peer influence, drugs and alcohol. Geared 2 Drive is yet another example of how the Weatherill Labor government is helping and supporting the youth of South Australia.

WORKPLACE SAFETY

The Hon. T.A. FRANKS (15:19): I seek leave to make a brief explanation before directing a question to the Minister for Industrial Relations on worker safety and government contracts.

Leave granted.

The Hon. T.A. FRANKS: Following on from revelations over past months that bus drivers' safety has been increasingly threatened, including verbal and physical assaults that have arisen from complaints about delayed or missing bus services, it has been reported that incidents have

arisen largely as a response to unrealistic deadlines being set as conditions of contracts and tenders undertaken by the private operators. I believe that we have also seen here these separate, unrelated incidents as part of a larger pattern not only in public transport but across the board.

Through my role in chairing the desal project select committee, I have heard time and time again about safety coming second behind meeting deadlines, and these deadlines appear to be set to suit government spin doctors' timelines rather than a realistic analysis of construction realities. Concerns have also been raised around the Adelaide Oval redevelopment project and schedule; that has seen the government announce a $5 million bonus to finish (ostensibly) in time for the Ashes but also, coincidentally, just in time for the March 2014 state election.

My question to the minister is: what undertaking do you give, as Minister for Industrial Relations in the Labor Weatherill government, to ensure that workers' lives are not put at risk through unreasonable time frames imposed or mandated by government contracts?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (15:21): I would like to thank the honourable member for her very important question. I also acknowledge her interest in worker safety in this state over a long period of time. First of all, as Minister for Industrial Relations, I would expect, when contracts are given out—and I am quite sure this takes place at the moment—that no worker would be expected to be put into a dangerous or unsafe situation.

It is an unfortunate fact that, on large projects, people sometimes do get injured, and sometimes, unfortunately, are killed. These incidents, as tragic as they are, the government will always try to keep to a minimum, or to prevent them altogether. All I can say is that, as Minister for Industrial Relations, I would expect that no contract is undertaken or given out to be signed that would put a person—a worker or anyone—in danger of losing their life or being injured.

TOURISM COMMISSION

The Hon. R.I. LUCAS (15:22): I seek leave to make an explanation prior to directing a question to the Leader of the Government on the subject of Tourism SA.

Leave granted.

The Hon. R.I. LUCAS: On 1 March and a number of other days, questions were directed to the minister in relation to the termination of the previous chief executive and the decision to restructure the position from a full-time CEO position to a part-time position. On 1 March, the minister said:

> The decision to restructure was made by the board yesterday afternoon and I was informed of the recommendations that came from the board yesterday evening.

In evidence taken at the Budget and Finance Committee, the Commissioner for Public Employment gave evidence which was in stark contrast to public statements made by the minister on this particular issue. The Commissioner for Public Employment (Mr McCann) was asked a series of questions which related to the termination of the former chief executive and the decision to turn the full-time position into a part-time position.

Mr McCann indicated, when asked when he was first involved, that he had been first involved in January of this year. He had firstly had a meeting with the chief executive of the Department of the Premier and Cabinet, Mr Jim Hallion. He then met in January with minister Gago and her legal advisors, being crown law. He then further indicated there were two meetings with minister Gago, and he has gone back to his diary to advise the committee of the precise dates of those particular meetings.

In relation to what was discussed at those meetings with the minister in January of this year, well before the March decision to terminate and restructure, the commissioner was asked the following question, 'if someone was terminated, and what you would have to offer in terms of a contract for a part-time person. So, you provided that technical advice in relation to the contractual provisions.' Mr McCann said, 'Correct, Mr Chairman.' The chairperson said, 'The legal implications of terminating someone...were Crown Law's bailiwick, if we can put it in that particular way.' Mr McCann said, 'Exactly, yes.'

So, the commissioner made it clear in his evidence that there had been a discussion about the termination of the chief executive and the legal implications of that. Advice was provided by crown law, and he provided that advice to the minister, in relation to: if you terminate someone what are the contractual arrangements of such a termination? He was also asked when he first had

a discussion with the chair of Tourism SA, Ms Jane Jeffreys. He indicated that was some time later, possibly February or even as late as March, but that he would check his records in relation to when he actually had a discussion with the chair of Tourism SA.

The commissioner has made it quite clear that the sequence was: a discussion with the chief executive of the Department of the Premier and Cabinet and then meeting with the minister and her legal advisers in January, at which time there were discussions about termination and restructuring of the position. My questions to the minister are:

1. Is the Commissioner for Public Employment correct in his evidence to the Budget and Finance Committee that in January of this year the minister was involved with him and legal advisers in relation to discussions on both the termination of the former chief executive and the restructuring of the position from a full-time to a part-time position?

2. Prior to that discussion in January with the commissioner, when did the minister meet or discuss the issue with Mr Jim Hallion, the chief executive officer of the Department of the Premier and Cabinet?

The PRESIDENT: The honourable minister should ignore the questions to do with the Budget and Finance Committee. I understand that committee has not yet made a report to parliament. The Hon. Mr Lucas would well know that he should not be asking questions on evidence given to the committee when it has not been reported to parliament as yet.

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (15:27): I thank the honourable member for his questions, although elements of them are obviously out of order. However, I will attempt to provide a response within the parameters that I am permitted. I have not heard anything that is inconsistent with the information I have already put on the public record and that I have already said in this place.

I have already said that the Mid-Year Budget Review resulted in a further $1.2 million saving required from the SATC. The SATC not only incurred a series of other budgetary savings, along with other agencies, but then the Mid-Year Budget Review resulted in a further impost of $1.2 million. I have already put on the record that pretty much from that day, or from that time when I became aware of that additional impost, I conducted a series of discussions and took advice in relation to how on earth we were going to achieve all of those savings, because it was clear to me that it was going to be a very challenging task.

On the afternoon of 29 February, I received a recommendation from the SATC board, which I considered and acted upon. On Thursday 1 March, a joint recommendation from the board and myself was then considered at a special cabinet meeting before being referred to and endorsed by executive council. All of that information is on the record.

I had discussions with a range of people, and I have already put on the record that I had a number of meetings with Ms Jane Jeffreys. I also had discussions with Mr Warren McCann and also Jim Hallion. There possibly were others. As I said, I certainly put my mind very seriously to the issue of how we were going to meet those savings and what strategies and alternatives we might put in place to achieve those.

I looked at a number of different options, or considered a number of different options, and sought advice in relation to the viability of those options, which is, I would have thought, an incredibly responsible and very practical and sensible thing to do. I have been very open and clear in this place: that I had put my mind to that issue for a number of months and that I held a series of discussions with a number of different people to look at ideas and explore the viability of potential options.

ANSWERS TO QUESTIONS

YOUNG PEOPLE, NURSING HOMES

In reply to the **Hon. K.L. VINCENT** (21 July 2010) (First Session).

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers): I am advised:

According to the most recent data available (April 2011), 317 Disability Services clients are living in residential aged care facilities, with the majority between 56 and 64 years of age.

The Younger People in Residential Aged Care (YPIRAC) program, supported by the South Australian and Commonwealth Governments has assisted 93 people with disability living in aged care facilities, including:

- Moving 29 people from residential aged care to supported community accommodation;
- Diverting 47 people from residential aged to supported community accommodation; and
- Supporting 17 people who chose to remain in residential aged care through a Lifestyle Enhancement Package to stay connected to their family, friends and local community networks.

In January 2012, the youngest Disability Services client currently living in residential aged care is 24 years of age.

The State Government through the YPIRAC program continues to seek to support young people to be supported in appropriate accommodation.

YOUNG PEOPLE, NURSING HOMES

In reply to the **Hon. S.G. WADE** (21 July 2010) (First Session).

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers): I am advised:

The latest Commonwealth Department of Health and Ageing Data (April 2011) reports that in South Australia over the past ten years, there was a net reduction of five people with disabilities under the age of 50 in residential aged care.

NURSES AND MIDWIVES ENTERPRISE AGREEMENT

In reply to the **Hon. T.A. FRANKS** (22 February 2011) (First Session).

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women): The Minister for Health has advised:

1. As at 1 March 2011, all nursing/midwifery employees covered by the Enterprise Agreement had received the new salary rates and allowances.

This is consistent with the commitments given to the Australian Nursing and Midwifery Federation during the dispute heard in the Industrial Relations Commission of South Australia. The Government is committed to ensuring that all subsequent salary increases under the Agreement are given effect to in accordance with the terms of the Agreement.

STRATHMONT CENTRE

In reply to the **Hon. K.L. VINCENT** (6 April 2011) (First Session).

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers): I am advised:

The former Minister for Disability acted immediately to ensure that the matters of concern were investigated and steps taken to address them.

In June 2010, the former Minister for Disabilities directed the Minister's Disability Advisory Council to provide a high-level advice about best practice mechanisms for safeguarding vulnerable adults with disabilities.

The Council provided a comprehensive report on inclusion and protection. This report provides a framework for determining what measures already exist and how the situation in South Australia can be improved.

The role of a community visitor scheme is being considered in the context of the 'Strong Voices' report.

Staffing levels at Strathmont Centre have now been increased to better support residents.

A manager has also been rostered overnight to provide leadership and direction to support staff.

The Strathmont Centre management team meets with a Psychologist on a regular basis to review behaviour support strategies for residents.

The Strathmont Centre Client Forum continues to be encouraged to speak out about the quality of services provided and improvements that should be made.

DISABILITY SERVICES

In reply to the **Hon. K.L. VINCENT** (6 July 2011) (First Session).

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers): I am advised:

1. As at 30 June 2011 3.8 per cent of people on the unmet needs list identify themselves as Indigenous Australians. It is not possible to disaggregate those who live in Aboriginal communities.

2. Community and Home Support SA employs six Aboriginal Cultural Advisors/Service Coordinators in its Disability Services division. These staff work with Disability Services staff and mainstream disability services to administer culturally appropriate programs to Indigenous people. Other disability workers are located at Marla Bore and on the Anangu Pitjantjatjara Lands.

In July 2005, the Tri-State Disability Strategic Framework, tjulngula (we are together), commenced. By endorsing this historic Framework, South Australia, Western Australia and Northern Territory agreed to a cooperative approach in the delivery of quality disability services to the Ngannyatjarra, Pitjantjatjara and Yankunytjatjara (NPY) Lands in central Australia. The framework aims to ensure State and Territory borders are not an impediment to accessing disability services. Policies and methods are being developed on an ongoing basis with acknowledgement of the cultural, social, economic and family links between Indigenous people on the NPY Lands.

3. Clinicians visit the Lands regularly to prescribe equipment and aids to meet individual needs, as well as home modifications if required. It is expected that wheelchair prescriptions will often be for items that are normally not provided by the Department for Communities and Social Inclusion's Equipment Program. This may include powered wheelchairs with larger wheels and more powerful motors for the rugged environment. The policy supports the provision of such items where there is a clinical need.

The effectiveness of equipment is continuously evaluated by clinicians, who seek feedback both from users and local health and disability support workers. They work closely with clinicians at the Alice Springs Hospital and the Alice Springs Seating, Equipment and Assessment Team Clinic to share information about equipment that is most suited to people living in the remote areas of central Australia.

The clinicians keep up-to-date with new products, and are involved in evaluating and recommending changes to equipment.

4. This Government recognises and values the contribution of all carers. The SA Carers Recognition Act 2005 was enacted to formally acknowledge that carers have rights.

The Act is supported by:

- the SA Carers Policy, which was developed through consultation with carers and other interested parties. It draws on research specific to South Australian carers; interstate and overseas experiences; and background papers on children and young people as carers and Aboriginal and Torres Strait Islander carers; and
- the Carers Charter, which includes in its principles that Aboriginal and Torres Strait Islander carers:
    - need specific consideration;
    - should be specifically identified and supported within and outside of their Communities;
    - should be supported by business and community organisations, public institutions and all levels of government; and

- should be provided with culturally appropriate support services that take into account the history, health and wellbeing of their extended families.

Under the tjulngula framework, the Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council (NPYWC) provides services to approximately 105 people. Approximately nine people with high support needs whose carers are in need of a well earned break receive two weeks respite care every three to four months.

BUSINESS CONFIDENCE INDEX

In reply to the **Hon. J.S. LEE** (14 September 2011) (First Session).

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women): The Minister for Small Business has advised:

1. Despite the 'perfect storm of adverse conditions', South Australian small and medium enterprises (SME's) recorded the strongest improvement in confidence levels of any state and territory, with confidence increasing by 16 percentage points during the August to October 2011 quarter. The confidence of South Australia's regional SME's increased by nine percentage points—only South Australia and the Northern Territory's regional areas recorded increases over the quarter.

Furthermore comments made by Liberal Party members about ceasing support for key sectors of the economy, such as the manufacturing sector, may also be affecting business confidence in the state.

2. The Government is committed to reducing regulatory red-tape and has a program which requires agencies to meet annual targets to reduce red-tape. The Government established The Competitiveness Council in 2006 as a sub-committee of the Economic Development Board to recommend practical ways in which the State Government can make South Australia the most competitive place to do business in Australia and New Zealand.

The Competitiveness Council has to date focused on red tape reduction and the achievement of the Government's two $150 million savings targets, as areas where it can add value. The Council has delivered $168 million in net annual savings to business from the first phase of its Red Tape Reduction (RTR) Program, well ahead of the $150 target set by Government in 2006.

Despite the best efforts of the Liberal Party, the Government recently passed legislation to establish a Small Business Commissioner in South Australia. The Commissioner will provide a range of functions with a central purpose of a low cost mediation service for business-to-business disputes or business to state and/or local government disputes. The other key functions are to:

- Provide education and guidance to help inform decision making to minimise disputes occurring;
- Monitor and investigate unfair market practices and non compliance with industry codes and report to the Minister;
- Offer other alternative dispute resolution mechanisms where appropriate;
- Work proactively with key groups to encourage better business conduct and the principles of fair dealing and good faith; and
- Advise the Minster on matters affecting small business.

I find it somewhat hypocritical that your question asks: 'what measures will the Government introduce to address the challenges facing business?' and yet the Liberal Party did not support the establishment of the Small Business Commissioner in the Parliament.

I trust that these answers to your questions will allow you to reflect upon the excellent work that the Government is doing to assist small business.

DESALINATION PLANT

In reply to the **Hon. M. PARNELL** (19 October 2011) (First Session).

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers): The Minister for Water and the River Murray has been advised:

1. At the commencement of the desalination project, the South Australian Government made a genuine commitment for the 50 GL per annum desalination plant to be carbon neutral.

In simple terms, this means that all of the energy used (or carbon equivalent of that energy) in the construction and operation of the desalination plant would be offset by an equivalent amount of energy generated from a source that does not add carbon to the atmosphere. Our aim was to ultimately achieve no additional carbon to the atmosphere as a result of this project.

Following the Government announcement, a range of products that were available in the market to achieve carbon neutrality were investigated by SA Water. Questions were raised by SA Water and the market itself on the so called 'carbon neutral' claims within those products. All of the products lacked a transparent auditable process to ensure true carbon neutrality. This resulted in SA Water seeking a review by the Government on the use of the term carbon neutral.

In September 2009, following a competitive bid process and a review of the valid products available to provide energy for the desalination plant, the Government endorsed an Energy Procurement Strategy that involved purchase of 100 per cent renewable electricity to cover the operational energy needs of the desalination plant at Port Stanvac. The Government also extended the requirement to the purchase of accredited renewable energy for the 100 GL per annum expansion works. A formal media release was issued by the Government on 8 September 2009, which clarified this matter.

2. The Government formally announced its strategy to purchase 100 per cent renewable energy to off-set the operating energy used by the desalination plant in September 2009.

3. This matter has been addressed in the response to question one.

4. In the Environmental Impact Statement (EIS), SA Water made a commitment that 'strategies are being developed to manage the greenhouse gas emissions associated with the construction and operations of the proposed desalination plant'. These EIS commitments have not been abandoned.

5. The Government is leading the nation in the area of renewable energy and has a strong commitment to ensure that any products purchased are reliable, accredited and adds significant value to the South Australian economy.

SA WATER

In reply to the **Hon. J.A. DARLEY** (24 November 2011) (First Session).

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers): The Minister for Water and the River Murray is advised:

1. At the peak of level 3 restrictions (over the summer period) SA Water employed 11 Full Time Equivalent's (FTE) to specifically enforce restrictions across the State. Other gazetted SA Water officers provided assistance when necessary.

2. 11 FTE were employed specifically for this role, however, they did perform other water use minimisation activities including water efficiency plans and high water use audits, when time permitted between non-compliance reports.

3. Three FTE were already SA Water employees who were seconded into the water restrictions area, eight were externally recruited.

4. Five restriction inspectors are now employed in other positions within the Customer Service Group of SA Water, while six positions were no longer required and those staff have left SA Water.

FAMILIES SA

In reply to the **Hon. A. BRESSINGTON** (24 November 2011) (First Session).

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers): The Minister for Education and Child Development been has advised:

The Department for Education and Child Development sought legal advice on what can and cannot be said publicly on this matter. The Minister for Education and Child Development has been advised that while the matter is being investigated comments are not able to be made on the case without the risk of interfering in the due process of the legal system. The worst outcome would be for comments to be made publicly which may jeopardise the case surrounding the tragic death of the baby.

With respect to policies and procedures regarding infants I can advise the Department for Education and Child Development take seriously all child protection reports regarding children. In recognition of the particular vulnerability of children under the age of 1 year, Families SA has an Infant at Risk Policy, Procedures, and Practice Standards to provide a framework for assessment and intervention with those families where infants (aged 0-1 year) have been harmed or are considered to be 'at risk' of harm.

RIVERBANK PRECINCT

In reply to the **Hon. T.A. FRANKS** (1 March 2012).

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women): I am advised:

1. Waste minimisation is a priority for the Adelaide Convention Centre who aim to reuse and recycle at least 90 per cent of event waste. The Centre was the first Australian convention centre to implement the following initiatives:

- Donations to FoodBank SA and OzHarvest—By the end of the last financial year, the ACC had donated 31,550 individual meals to FoodBank SA (a not for profit organisation which coordinates the donation of food and groceries to welfare organisations around the State). In addition to this, since March 2011, the Centre donated 2,393kg of food or 7,896 meals to OzHarvest to feed people in the community experiencing disadvantage. Both of these initiatives are continuing this financial year.
- Worm Farm—since mid 2008, the ACC's worms have consumed over 14.552 tonnes of organic waste and produced 1,283 litres of worm juice and 3,599 kg of casting which has been used as fertiliser on the Centre's gardens.

I am advised by the ACC that as the event in question (the official opening of the new Regattas Bistro + Bar and the Panorama Suite) was a stand up event with limited finger food served, very little food was left over. Health regulations require that only food that has been prepared for an event, and has not been delivered to the guests, can be reconstituted provided to FoodBank SA and OzHarvest. Any food left on plates or food byproducts left over from the preparation of meals from within the kitchen are segregated from other waste and are directed to the worm farm.

For the Regattas opening, the minimal leftovers were directed to the worm farm.

STATUTES AMENDMENT (SHOP TRADING AND HOLIDAYS) BILL

Adjourned debate on second reading.

(Continued from 15 March 2012.)

The Hon. R.I. LUCAS (15:32): I rise to speak to the second reading of the bill on behalf of Liberal members in this chamber. First, in relation to this particular debate and all that has gone around it, I indicate that it will demonstrate the enormous power of the shoppies union and its operatives here in South Australia and in the South Australian parliament.

One only has to look at the donations to the Australian Labor Party from the shoppies union in South Australia to see the enormous financial clout that the shoppies union and its operatives have over the Australian Labor Party and the Labor government in South Australia. A minimum of $1.2 million has been donated by the shoppies union to the Australian Labor Party since it was elected in the 2001-02 financial year. That clearly buys a significant amount of influence on a party such as the Labor Party and a government such as this—and that is only what

is declared under the provisions of the disclosure requirements of electoral legislation in South Australia.

One is also aware of the enormous influence and support that the shoppies union provides in a range of other ways, through the provision of staff for campaigns in particular. One only has to look at the maiden speeches of newly elected members from the right in South Australia to see a litany of acknowledgements of paid officers of the SDA (or the shoppies union in South Australia), being acknowledged for their tremendous amount of work, and the financial assistance obviously being provided by the union, its members, and supporters to those members of the right who are elected to the caucus.

When one looks at the register of interests, one can see that just under 50 per cent of members of the government are members of one union: the shoppies union in South Australia. Given the potential complications of unnamed members and others, I will not actually list the members of the shoppies union and their dual membership of the Labor Party because of potential legal complications, but nevertheless when one goes through the register of interests, without putting a precise number on it, it is quite clear that just under half the members of caucus are members of the shoppies union.

The only reason some ministers, such as the member for Bright, become ministers in the end is by transference of union allegiance from the former union the member was a member of which, in essence, was an arts industry alliance—I am not sure of the exact title of it, the MEAA, I think—and eventually in the recent past she converted to the shoppies union and, miraculously, having done that, become a minister last year.

When one controls the purse, when one controls the numbers, one has significant influence. We saw that last year when the head of the shoppies union in South Australia, Mr Malinauskas, of the Malinauskas dynasty I have spoken on before (and I will not delay proceedings by referring again in detail to those), together with the Treasurer, Jack Snelling, had the power and influence to go to the former premier, tap him on the shoulder and say, 'You're time's up; we're going to install a creature of the left on the nomination of the right as premier.'

That is the tremendous power the shoppies union has in South Australia. So, when the shoppies union finalises a deal on behalf of its members, completely separate from the government of the day, with the head of Business SA here in South Australia (and I note without the going to the board of Business SA for approval or endorsement, but that is an issue for that organisation to resolve in terms of it is own governance), and at that stage presents the deal to the supposedly duly-elected, democratically-appointed Premier and leader of the state, Mr Weatherill, for his approval.

The deal is done, negotiated, finalised: this is the arrogance of the shoppies union in South Australia, the arrogance of its operatives, that it negotiates and concludes the deal, and only at that stage goes to the Premier of the state. Forget about the minister of the Holidays Act or minister for shop trading—he is an insignificant part of this, as we have seen over the last weeks and months when the Premier has had to take control of this debate and deal—and poor old the Hon. Mr Wortley; they took just about everything out of his portfolio and left that in there and then they realised well, hell, he can't handle this either, we'd better handle it ourselves, so the Premier has been handling the deal in relation to the issue.

So the Hon. Mr Wortley, as the minister responsible, was ignored. The deal then went to the Premier. Even during the negotiations and what we are evidently going to see in terms of the final deal that has been negotiated with a number of members in this chamber, that was a deal that had to be approved by Mr Malinauskas and the shoppies union; that is, the Premier was not allowed to, was not in a position or authorised to, was not able to negotiate the compromise, unless Mr Malinauskas and the shoppies union said to Mr Weatherill, 'We will now let you go ahead with this particular deal.'

That is the state of this government in South Australia, that is the state of the Labor Party in South Australia. If you have the dollars, if you give them money, if you control the preselections, if you control the appointment of premiers, if you control the appointment of ministers and if you control the appointment of ministerial staff into ministers' offices, then ultimately you are running the government of the state on issues that are of importance to you. Shop trading is clearly an issue of importance to the shoppies union, and one can understand that.

What this parliament is being asked to do with this whole deal, even with its negotiated compromises, in essence is to sanction the takeover of decision-making in this state on this issue

by Mr Malinauskas and the shoppies union. The government cannot do anything, is not given approval to do anything, to agree to any changes, unless Mr Malinauskas and his union allow it. It is as simple as that; and, when we come to debate the government's amendments and the other amendments during the committee stage of the bill, we will see the sticky fingerprints of Mr Malinauskas and his colleagues from the shoppies union all over not only the original bill but also the amendments that the government and the Premier have been allowed to negotiate. That is the essential background to the legislation that we have before us.

I want now to look at the history of shopping hours deregulation in South Australia. It has been such a minefield that I do not propose to go through every aspect of the changes, but suffice to say that since the 1970s we have seen referenda, we have seen royal commissions and we have seen committees of inquiry to make changes to shopping hours in South Australia. The brutal reality is that, irrespective of government (and I say that advisedly, Liberal or Labor), the trend has been over each of the last decades—the seventies, the eighties, the nineties, the noughties and whatever we are up to now—for further liberalisation of shopping hours within South Australia. As I said, that is irrespective of the government of the day. It has occurred under Liberal governments and under Labor governments.

When I was first elected to this chamber in the early 1980s, believe it or not the issue in relation to shop trading hours—which was the most thorny issue of the day, a controversial issue which was opposed by the Labor Party for years and years—was in relation to red meat sales in South Australia. The then leader of the opposition in this chamber, the Hon. Martin Cameron, led the charge in relation to liberalising shopping hours in relation to red meat.

In 1984 and prior to that he moved a number of private member's bills. The situation, believe it or not, as ludicrous as it sounds, not that many years ago was that red meat could be sold in butcher shops either on late shopping nights, which was either a Thursday or Friday night, or on Saturday mornings, but it was not allowed to be sold on both those occasions. You had to make a choice as to whether you were going to sell red meat in a butcher shop on Saturday morning or on the one night of late night shopping—Thursday or Friday night—during that period.

There were three private members' bills controversially argued through that particular period in terms of liberalising access for working families and families to buy red meat at hours which best suited them. All the arguments of a similar nature that we are hearing now we heard during the 80s in relation to that bill. There were various things, including royal commissions, commissions of inquiry and a referendum in 1970, etc.

Then, again, in the early 1990s the Labor government made moves in relation to liberalising shopping hours and then in 1995, with the election of the Liberal government. In 1993 the former Labor government gave ministerial certificates of exemption to allow supermarkets to trade until 9pm on weekdays. That was a controversial issue at that time, that is, late-night trading until 9 o'clock on weekdays for supermarkets.

With the election of the Liberal government eventually, after a number of things occurred, in 1995 there was a bill which again further liberalised shopping hours in South Australia so that what we saw was an opening up of trading in the CBD on Sundays. That was the first occasion, in mid-1995, when we moved to Sunday trading. When one goes back to that particular debate now, everyone said at the end that this was going to be the beginning of the end—depending on which side you were on, I should say. There were those who supported it and those who opposed it said it was going to be the beginning of the end for a number of businesses.

In 1995 everyone (Labor and Liberal) said, 'That's it. We're not going to allow a further extension of trading hours,' because that was a special deal done for the CBD for Sunday trading in 1995. Everyone said at that stage, 'We're not going to allow Sunday trading in the suburbs.' Of course, what happened? In 2003, with the election of a Labor government this time, the government introduced a bill for Sunday trading in the suburbs, and the arguments used were on equity grounds.

There were competition principles which asked: how do you justify allowing a Coles to operate in the CBD on a Sunday and not allow the same Coles supermarket in Unley, Burnside, Norwood or Plympton to open to trade on a Sunday? This was a Labor government arguing that you had, on competition principles, to extend the trading options into the suburbs after both Labor and Liberal in 1995 saying, 'That's it; we've opened up the trading in the city; we're not going to extend it to the suburbs at all.'

The reality was that almost a decade later a Labor government came in and introduced those changes at that stage. It had a financial gun at its head in that the National Competition Council (or commission at the time, with Graeme Samuel) was saying that there would be financial penalties on the basis of competition if we continued to persist with a situation which penalised businesses in Burnside, Norwood or Plympton from opening at a time when we were allowing those same businesses or equivalent businesses to operate in the CBD.

Now we have this situation where we are going to have public holiday trading in this bill in the CBD. I know the argument that is being used: it is being used publicly. We had the most unusual situation of having the two Peters lobby the Leader of the Opposition Isobel Redmond and myself—the two Peters being Messrs Malinauskas and Vaughan, up until now the most unlikely duo of joint lobbyists that I could have contemplated. There they were, in the Leader of the Opposition's office, almost holding hands and hugging each other, supporting the deal and urging the Liberal Party.

Mr Malinauskas, to his credit, was quite frank as to why he was supporting this particular change. He was saying—and the argument he has been using to members of parliament as well, I know, because he has put it to us—that by doing this we will forever and a day prevent any further liberalisation of shopping hours in South Australia. This will be the end of it, because Peter Malinauskas said it will be. He will defy the tidal wave of evidence that we have seen over the last 30 or 40 years in relation to shopping hours under Labor and Liberal governments; he, Peter Malinauskas, so decrees, he has said that this will be the end of it.

I know he has put that to members of parliament. He has said, 'This is it; there will be no more.' He says that the reason he supported this was that he believed Business SA was an advocate for further liberalisation of shopping hours in South Australia, and in this way he would stymie Business SA. He would lock them into a position of achieving this. Indeed, whilst Peter Vaughan said, on behalf of Business SA, that their position would remain the same, he nevertheless, arm in arm and hand in hand, happily chimed in and said that this is the last chance for liberalisation of shopping hours; that it is either this or it's nothing, there will be nothing in the future.

As deluded as Mr Malinauskas is, whilst he has tremendous power now he will not have that power forever and a day. At some stage he will be promoted to state or federal parliament through the shoppies union, and he will become an operative within the state or federal parliamentary party. He is not in a position to bind future parliaments—or, indeed, future governments, Labor or Liberal.

As I have traced the history of shopping hours deregulation and liberalisation, it has been Labor and Liberal governments that have inevitably moved to further liberalise shopping hours in South Australia for all the obvious reasons at the time. Mark my words, whether it is in 10 years' time (it seems to happen about every 10 years) or 15 years, at some stage in the future a future parliament will be debating—as they did in 2003 under a Labor government—the issue of the inequity between a business in the CBD such as a supermarket being able to open, while less than a couple of kilometres away, in Unley or Burnside or Norwood or Plympton, exactly the same supermarket is not able to open.

That is the reality. Those who believe Mr Malinauskas' story that this is the end of it, that nothing more will ever happen, are flying in the face of history and in the face of the facts and what has occurred over the years. The reason it is inexorable—painful, but inevitable and inexorable—is that when one looks at this shop trading act it is a farce. Look at the regional areas of South Australia. With the exception of a small number of about five or six limited shopping districts, every area in regional South Australia can open any day of the week for the whole year. In my home town of Mount Gambier, every store can open on Christmas Day, Good Friday, ANZAC Day or any other day of the year.

For good reasons, many of them, or most of them, do not, but the shopping hours act that we are supporting here says that in regional areas they can open. And regional areas are not the far-flung areas from Adelaide. Mount Barker is in the regional areas—one of the growth areas of Adelaide, of which there has been much debate, is completely deregulated. The supermarkets and shops in Mount Barker can open on Christmas Day, Good Friday and ANZAC Day. They can do whatever they like. Just south of Aldinga, it is exactly the same; just north of Gawler, the interesting debate is going to be in relation to Roseworthy when the huge development potentially occurs there as part of the—whatever it is called, the greater Adelaide CBD—I forget the technical description. That area is totally deregulated in terms of shop trading hours.

So, that is the brutal reality. We are not talking about something which applies across the state; in terms of trading, we are talking about only that bit of the state within the areas of Mount Barker, Gawler, and Aldinga. And now we are talking about the central business district as defined by the terraces and the Torrens. In addition to that, any shop under 200 square metres can open whenever it likes. I know we have had views from the IGA group and others, but my local IGA in my suburb opens on Christmas Day, and that is terrific for all of us around the suburb that I live in, because we can go to the IGA on Christmas morning—it is generally open until 1pm on Christmas morning—and do all of our shopping on Christmas Day.

The Hon. R.L. Brokenshire: Couldn't you have done it before Christmas Day?

The Hon. R.I. LUCAS: Well, I could have done it. But the reality is that it is there, and they are opening and trading. We have not forced them. The reality is the act that we are supporting allows IGA—I think for supermarkets it might be under 400 square metres—but the local IGA in our suburb, and in many other suburbs, trades every day of the year, and certainly on Christmas Day. All of those smaller stores can open whenever they like—cafes, restaurants, delis, whatever—can choose to open whenever they wish. That is the situation that we have.

Then you have the exemptions for hardware stores, and heaven knows what else. I am not going to delay the chamber by going through all of them, but have a look at them. Basically, anyone who sells food can open whenever they want to—Christmas Day, Good Friday, ANZAC Day—whatever you intend to do. That is the state of the law that we have at the moment, and that is because it is a product of members like us over the years wrestling and agonising with the sorts of changes that we have made on this particular occasion, and that is inevitable, I accept that.

There are pressure groups, and it is not just the shoppies union, there are others who are advantaged by the current laws who will seek to maximise their advantage. There are those who are disadvantaged who will seek to get rid of the disadvantages in the law. The law that we have at the moment is a product of decades and decades of decisions taken by members like us responding to those particular pressures over the years.

The point I make in relation to this is that those people like Mr Malinauskas, who have said to members, 'This is it, vote for this because that finishes it, there will be no more,' are deluding themselves. The only issue is when, and under what government—Liberal or Labor—at some stage in the future. I know the Hon. Mr Brokenshire has flagged some potential amendments in the media in relation to that, but the reality is that you can amend whatever you want to amend but a future parliament and a future government can just amend the amendments away.

The Hon. R.L. Brokenshire: At least it has to come through the parliament.

The Hon. R.I. LUCAS: Well, they can all come through parliament.

The Hon. R.L. Brokenshire: This is not really through the parliament. This was done outside.

The Hon. R.I. LUCAS: Well, I don't know how you're going to stop that either. The shoppies union will always have the power with a Labor government in South Australia. They will not with a Liberal government, I can assure you. Mr Malinauskas will not be walking in and tapping Liberal leaders on the shoulder saying, 'Don't come Monday.' That is something for the province of the Labor Party.

That is the brutal reality of shop trading hours regulation in South Australia. I know what Mr Malinauskas and others have been saying, that this will be the end of it. All I am saying is, for those of us who can live long enough, in 10 or 15 years have a look at the parliament of the day debating it, and they will be debating the next step in relation to this. Mark my words: just as Labor came back in 2003 to say, 'We must extend Sunday trading to the suburbs on competition grounds,' the same arguments will develop over the next 10 years in relation to public holiday trading.

How do you say to the Competition Council, the competition commissioners, or whatever it will be at the national level under national governments, that you can say to one business in the CBD, 'You can trade and take all the business from everyone else on public holidays, but if you happen to be located two kilometres away we are not going to allow you, on geographic grounds, to trade, to protect your business and your employees and the jobs within your industry'? That is why Labor came back in 2003 with the changes to extend Sunday trading to the suburbs. As I said,

in 10 years or so, at some stage a Labor or a Liberal government, on competition and other grounds, will inevitably need to respond to those sorts of pressures.

This issue has obviously been controversial, with two key groups of people both supporting and opposing the bill, or aspects of the legislation. The Liberal Party's position, as enunciated by Isobel Redmond, myself and others, is that we do support the liberalisation of trading hours in South Australia, and we support this particular step towards liberalising trading hours. However, we do not support the bribe, the payout or the buy-out to Mr Malinauskas's shoppies union in South Australia with penalty rates of 250 per cent for any of the hours to be worked on these two part-day public holidays on Christmas Eve and New Year's Eve.

There are many, many groups that I will read onto the record because they have been active as part of the SA Business Coalition, but indeed there have been others as well: the Australian Hotels Association, Clubs SA, the South Australian Wine Industry Association, the Restaurant and Catering Association, the ACAA, the Caravan and Camping Association, the Motor Trade Association, the South Australian Tourism Industry Council, the SA Liquor Stores Association, the Baking Associations of Australia, the Australian Automobile Dealers Association (AADA), Tourism Accommodation Australia, the YHA, Hosted Accommodation Australia Ltd., Service Station Division SA, the Boating Industry Association, the Shopping Centre Council of Australia, the Australian Newsagents Federation, the South Australian Dairyfarmers Association, the Supported Accommodation and Care Services group, and the South Australian independent liquor outlets, Sip'n Save.

Separately, we have received lobbies from the Aged Care Association, the Printing Industries Association of Australia, one of the national retailer groups whose exact acronym and name escapes me at the moment, and there are many, many others. I have listed just a number of them to indicate the diversity of the groups that are opposing this particular aspect of the legislation in relation to the 250 per cent penalty rates for Christmas Eve and New Year's Eve.

I am sure other members will go into some detail, but let me touch on some of the aspects, because they have been well canvassed in the media. The Business Coalition has highlighted, in the main, the essential unfairness of the legislation, that is, that small businesses from Ceduna to Mount Gambier, right across the State of South Australia, will have to bear the financial penalty, or cost, to allow a small group of retailers to open in the central business district for trading on public holidays. Their position is understandable. They say, 'Why should we, as a small business, struggling as we are in this state economy with the lowest growth prospects and growth performance of any state in the nation, be lumbered with the additional costs of two extra public holidays which do not exist anywhere else in Australia?'

I have heard members in this chamber say the economy is struggling, there are problems for businesses with our tax impost on businesses, our WorkCover premiums are the highest in the nation, our tax regime is the highest and toughest in the nation, our threshold for payroll tax is terrible compared to the other states, and our land tax provisions in this state (particularly above $1 million for commercial operators) are the worst in the nation. All of those costs are being imposed on families and, in particular, small businesses in South Australia. We bemoan those costs in South Australia yet this parliament, potentially, is going to be voting to add to those costs for small businesses in South Australia.

We are saying: let us be the nation's leaders not in anything else such as economic growth, job growth, retail sales growth or anything like that, but let us lead the nation in the number of public holidays we can dream up to increase the cost base of businesses in South Australia. If we cannot lead on the indicators that everyone would like to lead on, let us lead on the number of holidays we can think up—and we will not even think about a real holiday for a real day: we will think about a part-day public holiday that starts at 7 o'clock at night. The original plan was 5 o'clock at night and now it is 7 o'clock at night. We will have public holidays starting at 7 o'clock to midnight for two extra days in the year.

At least this Labor government and its supporters will be able to say we are leading the nation in the provision of public holidays for our workers. I can see why Mr Malinauskas, the shoppies union and the other unions that have supported this campaign would jump up and down and say that is a wonderful thing but, for the life of me, I cannot understand why Mr Vaughan and Business SA would be holding hands with Mr Malinauskas and jumping up and down in unison on increasing the cost base in South Australia, again, on the quite erroneous basis that they claim, that this is the last chance for any change in relation to shopping hours regulation in South Australia.

It is for Mr Vaughan and Business SA to argue their case with businesses in South Australia but, certainly on the information available to me, not only have members of Business SA resigned but they have also taken action in lobbying the board of Business SA in relation to not only this issue but how on earth that organisation managed to get itself into this predicament.

One would imagine, with the imminent passing (in a position sense) of Mr Vaughan from the position of chief executive of Business SA in June of this year, there will be the opportunity, one would hope, for possibly a newly elected or re-elected board of Business SA to look at its own governance arrangements and perhaps make the necessary changes to ensure that such a situation cannot occur in the future where a deal can be done without consultation with everyone else that will be implicated and affected in South Australia, in the way that this particular deal has been done.

There is much evidence—because there are a number of other major issues I need to address today—I will leave to my colleagues to address, in particular those who represent regional communities. We know the evidence of the motor traders and others who have indicated their views, and the pressure will be on regional communities, as opposed to big population areas such as the suburbs of Adelaide. In the regional communities, where, in terms of population or travellers, it is a marginal thing for a business to open between 7 o'clock and midnight on Christmas Eve or New Year's Eve—and, in particular, we are talking about service stations and businesses like that—in the view of those business associations it is likely that a number of those services and businesses will make the decision not to trade on those nights.

I am sure that in other areas where the populations are bigger and they can justify it some will continue to trade. It will just mean that the rest of us end up having to pay significantly increased costs for whatever service is being provided in those establishments on those nights. Again, it impacts the cost base of working South Australian families, and those who seek entertainment, hospitality or other services on Christmas Eve or New Year's Eve, which, because of the 250 per cent penalty rate, will be significantly higher.

Another group has raised its head, and they are not the small businesses: they are the associations, the non-government organisations, that provide 24-hour services that will be impacted—Mr Paul Carberry from the Aged Care Association and a number of others, such as the disability services sector—and I know there has been contact from those within the sector that provides women's shelters, men's shelters or youth shelters. I understand that my colleague the Hon. Michelle Lensink, who has some background in this area, will be able to put on the record in some greater detail the concerns that have been raised in that area.

We understand that as part of the final deal (and I have some questions to put to the minister at the closure of my contribution) there have evidently been some undertakings given in relation to state-funded, non-government organisations. It is obviously going to be important that we are aware of what those deals are before debate concludes on the legislation because I would not trust this government, or this Premier as far as I could drop-kick him—and that is not very far at all.

My advice to any other members who are flirting with the idea of trusting him is that they do not. If you are going to do a deal, do the deal whilst you have the leverage and can see the colour of their eyes and the pile of money they are going to promise in relation to supposedly additional moneys to cover the increased costs because, once the bill is through, there is no leverage. Once the bill is through, they can say what they wish in terms of what they are prepared to offer.

I think that is important as another reason the minister needs to come to this house before the bill is concluded and passed in this house to provide the precise details of what is going to be done for the non-government organisations. It does not suffice to say, 'We are going to negotiate a package.'

What we need to know is who is being included and what groups are being included within this negotiated package. The press release says 'state funded' (again, my colleague the Hon. Michelle Lensink will understand the funding arrangements better than I), but if the aged-care sector is a federally-funded sector, what is being done, or proposed to be done, in relation to compensating those organisations that inevitably have increased costs because they have to provide care and staffing 24 hours a day, 365 days a year, and therefore a 250 per cent penalty rate for this number of hours inevitably increases their costs?

What we need to know is: what are the groups that are being considered in terms of the government funding? Do they include the aged-care sector and, if they do not, what is being done

for them? In the disability sector, which particular groups are being looked at? Are the shelters being looked at? What are the other 24-hour care organisations or facilities that will have increased costs, and are they being considered? What we need to know is the precise nature of the deal the government is going to offer to members in this chamber to get them to support the bill, and that is something which obviously needs to be done.

In relation to that, I will address some comments a bit later in my contribution. The Hon. Mr Brokenshire has tabled amendments. He provided copies of those amendments late yesterday afternoon to the Liberal Party and I assume to some other members as well. We immediately last evening sent those amendments out to interested parties to seek their urgent comment. We will not be in a position to debate those amendments until the next sitting week, which will be next week, because, as I have said, the amendments were not received until yesterday afternoon.

Already, in the initial stages of feedback from some groups, they have raised significant concerns about the drafting of the Hon. Mr Brokenshire's amendments. I am not blaming it on the Hon. Mr Brokenshire because, obviously, the drafting instructions are given to parliamentary counsel, but one particular group has raised the complication that the amendments by the Hon. Mr Brokenshire appear to be predicated on the basis of 5 o'clock continuing to operate as opposed to 7 o'clock.

One group has raised potential unforeseen circumstances in relation to what will occur in terms of current trading regulations for certain stores on Christmas Eve and New Year's Eve; that is, that Mr Brokenshire's amendments will actually cut back on trading hours in certain circumstances for some existing stores if his amendments are approved. I suspect that is not what Mr Brokenshire's is intending, but it is proof of the point I am making; that is, we received the amendments yesterday. We sent them out last evening to some stakeholders, and we are awaiting their response. The normal course of events in this chamber is that we would certainly have at least the sitting week to be able to consult and then to form a view as a party, and other members to form a view, based on the consultation in relation to the amendments the Hon. Mr Brokenshire is proposing to move.

To that end, the government is playing a game at the moment. The game is, 'We're not going to proclaim holiday trading in the CBD over this coming Easter, just over 10 days away, until you lot in the parliament do what we tell you to do and pass the legislation within the time we stipulate.' It is for other members to respond to that sort of bluff and bluster by the Premier, the minister and the government. The reality is that it is not essential. The government says that it has the numbers in this chamber when it ultimately comes to a vote, whether it is this week or next week, to put its deal through the parliament. If that is the case, there is no plausible reason the government, on the basis that it has the numbers next week, cannot do what it has done for the three public holidays already, and that is to proclaim the additional shopping hours, if that is its intention, in the CBD over the coming Easter.

The traders were saying, two weeks ago and again last week, 'You have to give us a reasonable amount of time to organise shifts, workers, advertising, and all those sorts of things. We need to know when we are going to be open.' It is intolerable to leave it until late this week at the very earliest—or, in more likelihood, sometime next week—before they make a decision and say, 'Okay, the legislation has now passed.'

Clearly the reality will be that, if the legislation passes, it is unlikely to be proclaimed and receive royal assent, etc., so the government is probably going to have to proclaim trading in the CBD over Easter under the existing act anyway, rather than rely on the passage and royal assent of this bill. It is certainly my strong view that those who have influence over the government at the moment ought to be telling them they should get on with it. They have the numbers; put the retailers in the CBD out of their misery in terms of what is happening over the coming Easter period, and then this parliament can appropriately consider the amendments from the Hon. Mr Brokenshire next week, after there has been appropriate consultation.

These were the provisions in relation to the original bill, and they dominated the debate for quite a number of weeks. It has only been in the last week to 10 days that a whole new complication has arisen, as a result of legal advice from Minter Ellison that has been commissioned by some members of the Business Coalition, in relation to the implications of the legislation. I intend to put on the record significant amounts of that legal advice, and I will be seeking, through the committee stages of the debate, detailed responses from the minister to the issues that have been raised.

Contrary to what the Premier and the minister have been saying, it is not just those businesses that choose to open after five or seven on Christmas Eve and New Year's Eve that might have increased costs as a result of this bill; hundreds—and possibly thousands—of other businesses and organisations which do not actually open after five or seven on Christmas Eve and New Year's Eve might potentially have increased costs as a result of the deal that has been done between the shoppies union, Business SA and the government.

Just before I go through the advice from Minter Ellison, I will give just one example of this. I received a letter from the General Manager (SA and NT) of the Printing Industry Association of Australia, Peter Mansfield, who has raised this particular issue in the legislation. One of my colleagues, Mr Griffiths (member for Goyder), was contacted by his local newspapers as a result of the Printing Industry Association's concerns.

Mr Griffiths, who has asked me to raise this issue, says that he was contacted by the editors of two regional newspapers operating in his electorate who were concerned with this proposal—this bill that we are talking about—for two additional part-day public holidays. The editors were concerned that they would be required to provide time off in lieu for all their employees. Mr Griffiths says these concerns were directed to the two regional editors by Mr Mansfield. Mr Mansfield's letter to me states:

> The bill adds two new part-day public holidays for South Australia, being 5pm to midnight on 24 and 31 December. We understand that these new public holidays are being introduced as a reward for retail and hospitality employees who may be required to work at such times in return for allowing additional opening hours for businesses in the Adelaide CBD. We also understand that the additional public holidays are not quarantined to employees in the Adelaide Central Business area, but will apply across the State.
>
> A number of our member printing businesses have staff who work regular shifts covering the 5pm to midnight hours. If this Bill becomes law it appears that these staff will have the choice as to whether or not they work the critical production shifts on Christmas & New Year's Eve. If they do choose to work they will be entitled to public holiday penalty rates.
>
> In addition, if this Bill becomes law it appears that all other staff, whether they usually work these hours or not, will be entitled to paid time off in lieu for these additional public holidays, consistent with every other public holiday.
>
> South Australia is already the highest taxed State in Australia according to the Commonwealth Grants Commission, making it a difficult place to do business. The addition of two more public holidays will further increase the competitive challenge and financial burden on our members and all of South Australia, for no benefit to members and minimal to the state.

I ask the minister, in his response, to provide a detailed response to the concerns of the Printing Industries Association. In raising that issue, I use that as where this is already going; that is, these groups are raising issues that costs might increase for businesses (and this is a newspaper) and organisations like theirs where workers do not work from 5 o'clock (or 7 o'clock) to 12 o'clock on Christmas Eve or New Year's Eve.

If his concerns and the concerns that Minter Ellison has raised in its legal advice are correct, then we are talking about hundreds, if not thousands, of other businesses and/or organisations that might potentially see increased costs, depending on the enterprise bargaining arrangements and award provisions that apply to them and their workers. The letter from Minter Ellison is addressed to a member of the Business Coalition, Mr John Chapman, Executive Director, Motor Trade Association of South Australia. The executive summary states:

> 1.1 If passed, the Bill has the potential to impact SA employees and employers, irrespective of their hours of operation on 24 December and 31 December. That potential will not be done away with by reducing the length of the part holiday.
>
> 1.2 In many instances, the interplay between the part-day public holidays and provisions of modern awards and enterprise agreements will either provide an additional cost to employers, uncertainty for employers in how to correctly pay employees or create a direct conflict between the State law and particular industrial instruments.
>
> 1.3 The Bill will potentially affect businesses which usually close between 5.00pm on 24 December and reopen the working day after 1 January and require employees to take annual leave for that period. Such businesses may be required to recredit annual leave taken by those employees over the shutdown period.

There are further details which I will put on the record in a moment, but what Minter Ellison is saying is that for all those businesses and organisations that close down on Christmas Eve and come back to work the day after New Year's Day and whose employees are required to take annual leave during that period, depending on enterprise bargaining arrangements and award provisions there is the potential for those employees to be given additional pay or additional annual leave, but those businesses with those employees to incur the additional costs.

We can all think of any number of organisations like that. Indeed, Parliament House closes down from Christmas Eve (generally at 3pm) and work recommences the day after New Year's Day. Whatever the enterprise bargaining arrangements are for this chamber and the staff who work for members, the staff of Parliament House are required to take annual leave during that particular period. So, a question that will go to you and/or the Clerk will be: what are the implications in relation to the award provisions and enterprise bargaining arrangements for staff in Parliament House, should this particular bill pass, in light of the evidence provided from Minter Ellison? The Minter Ellison advice states:

> 2.4 The NES provide that:
>
> (a) employees are entitled to be absent from work on a public holiday;
>
> (b) if an employee is absent from work, they are to be paid their base rate of pay for their ordinary hours of work on the public holiday;
>
> (c) employees may reasonably refuse to work on a public holiday; and
>
> (d) employees are not required to take annual leave while on a public holiday.

Under section 4 of this advice—'Which employees will be entitled to the benefit of part-day public holidays?—it states in part:

> 4.2 It would seem to be the case that employees who do not normally work their ordinary hours of work between 5.00pm and midnight, will not receive the benefit of the part-day public holidays. However, due to the novelty of a part-day public holiday and its timing, we are unable to be certain about this position.
>
> 4.3 This uncertainty is exacerbated in the context of the NES provisions concerning taking annual leave in a period during public holidays:
>
> 89 Employee not taken to be on paid leave at certain times
>
> Public holidays
>
> (1) If the period during which an employee takes paid annual leave includes a day or part day that is a public holiday in the place where the employee is based for work purposes, the employee is taken not to be on paid annual leave on that public holiday.
>
> 4.4. If an employee took annual leave between 24 December and 31 December inclusive, then that period would include the following days or part days of public holidays in 2012:
>
> (a) 24 December
>
> (b) 25 December
>
> (c) 26 December
>
> (d) 31 December
>
> It follows that, applying s 89, that the employee is taken not to be on paid annual leave for those days and would receive the benefit of the public holiday.
>
> 4.5 The Explanatory Memorandum to the Fair Work Bill 2008 states:
>
> Clause 89—Employee not taken to be on paid annual leave at certain times
>
> Under clause 89, an employee will not be taken to be on paid annual leave:
>
> during a day or part day that is a public holiday which falls during the period of their absence from work on annual leave
>
> ...The effect of this clause is that, if a public holiday falls during a period when an employee is absent from work...then the employee's annual leave accrual will not be reduced by that day or period.
>
> 4.6. Accordingly, it is possible that claims for additional payment or recrediting of annual leave may be made by any employee who has been required to take annual leave over the Christmas shutdown period, regardless of when the employee usually works ordinary hours.

That is the critical part of the advice. What it is saying is that, regardless of whether you normally work after 5pm or after 7pm on Christmas Eve and New Year's Eve, if you have taken leave between 24 December and 31 December inclusive, under these particular provisions and the National Employment Standards, it is entirely possible that as a worker you would be entitled to an additional payment or a re-crediting of the annual leave you took during the Christmas shutdown period. So, you will get the benefit of the break and then an additional break with the additional costs clearly being borne by small businesses and small organisations that might be structured in this particular way.

The Premier and the minister claim that this relates only to those businesses or workers who work on Christmas Eve or New Year's Eve, but the advice from Minter Ellison makes it quite clear that that is probably not correct. Certainly, the government and the minister need to respond to the specific legal advice that Minter Ellison has given the business coalition and which I have put on the record on its behalf during this debate. Section 6 of the Minter Ellison advice states:

> Implications of part-day public holidays under modern awards.
>
> ...Modern awards and enterprise agreements which we have reviewed and which raise issues of conflicts and additional costs for employers are:
>
> (a) Manufacturing and Associated Industries and Occupations Award 2010
>
> (b) Hospitality Industry (General) Award 2010
>
> (c) Registered and Licensed Clubs Award 2010
>
> (d) Clerks—Private Sector Award 2010
>
> (e) Vehicle Manufacturing, Repair, Services and Retail Award 2010
>
> (f) Coca-Cola Amatil (Aust) Pty Ltd South Australian Manufacturing Employees Enterprise Agreement 2010-13
>
> (g) Premium Wine Brands Pty Ltd Production (Barossa Valley) Enterprise Agreement 2010.
>
> Section 6.2: employees on rostered days off. An example of provisions is the clause taken from the Manufacturing Associated Industries and Occupations Award 2010.

That is clause 44.3 (I will not read all that), but Minter Ellison then advise, on the basis of that particular award provision:

> Accordingly, an employee who usually works past 5 pm and who has a rostered day off on 24 December or 31 December would receive an extra day of pay, day off or day of annual leave at the employer's discretion. This would be the case if any of the employee's ordinary hours of work were normally worked between 5 pm and 12 o'clock midnight. In some industries, such as licensed clubs and hospitality, the obligation for employers to pay an extra day's pay or a day of annual leave in respect of an RDO, rostered on a part-day public holiday, may be incurred regardless of whether an employee usually works any of the hours between 5 pm and 12 o'clock midnight. This entitlement was set out in modern awards such as the Hospitality Industry General Award 2010.

Then there is a reference to 37.1 national employment standards and a reference to the particular award provision. Minter then concludes:

> With the definition of an RDO as being a 24-hour period, there is a risk that full-time employees who have an RDO rostered on 24 December or 31 December, and who do not normally work after 5 pm, will receive both the RDO as a paid day off in addition to an extra day's pay, alternative day off or day of annual leave. The same issue is raised under the Registered and Licensed Club Award 2010.

Again, I ask the minister in his response to give us an answer to that. What Minter is saying here is that, in some award provisions and enterprise agreements, workers who have rostered days off on 24 December or 31 December—so you are working your arrangements; you have got an RDO so you are not actually working on those particular days and you actually have that day off—because of this bill, your employer will have to pay you another day annual leave in lieu thereof. How good is that? Where can we get an award or enterprise agreement that does that for us?

You have the day off, but because of this bill that will be passed, Minter Ellison is saying that you will have the day off and then you will get another day off later on. How will members in this chamber—the minister in particular—defend on Leon Byner or on Bevan and Abraham why that ought to be the case in South Australia, why employers in small businesses should have to support that sort of provision in the bill? How do you justify that? When we have a cost base in South Australia already leading the nation, how do you justify those sorts of arrangements, and not just that one but the others that Minter Ellison has highlighted?

The minister must come back with detailed responses. He has access to this sort of advice. He has to come back to the detailed provisions and responses to the issues that Minter Ellison has raised. I am the first to acknowledge that at this stage Minter is saying, 'Hey, there are hundreds of awards and enterprise agreements; we haven't been able to go through all of them—we've only gone through less than a dozen of these particular awards and raised the issues that you as legislators need to be aware of before you vote on it.'

At least with these dozen or so the minister needs to stand up and say, 'Okay; yes this is a possibility, but we support it.' What we are saying is, 'If that is eventually what happens, so be it, it's a bonus for the workers; too bad it is a cost for the employer, for the industry organisation, the NGO or whatever else it is—stuff them, too bad; Peter Malinauskas is happy, so we're happy;

you're just going to have to lump it.' That is fine for someone like the Hon. Mr Wortley who does what Peter Malinauskas wants him to do, but it is for each of us as members in this chamber to address seriously the legal advice Minter Ellison has raised and to demand answers from the minister and the government and, if need be, put in protections.

Otherwise, let me just say (as, I am sure, will others in the Business Coalition) to those who are going to support this, the government in particular, that it is beyond me how you justify the next judgement which comes down in the tribunal or whatever it is which says, 'Oh, sorry, parliament passed this bill and there was an RDO. Your enterprise agreement says this, and you not only give you them the RDO, the day off, but you also have to give them another day off at your cost sometime later on, or pay them cash in lieu of that.' The next issue which Minter's raises is 6.3, employees on annualised salary arrangements. They state:

> (a) In many workplaces, employees work 'annualised salary arrangements', where a higher annual salary is paid to an employee instead of paying penalty rates, overtime or other award-based entitlements.
>
> (b) Under the Hospitality Industry (General) Award 2010, such employees who work any hours of the part-day public holiday will be entitled to a day off in lieu or a day added to their annual leave entitlement.

I interpose to say that that means for any hours of the part-day public holiday they will be entitled to a day off. The annualised salary arrangement provision in that award states:

> An employee being paid according to this clause will be entitled to a minimum of eight days off per four-week cycle. If such an employee is required to work on a public holiday, they are entitled to a day off in lieu or a day added to their annual leave entitlement.

Minter's states:

> (c) In this situation, an eligible employee who was rostered until, say, 6.00pm—

and this is when it was going to be 5 o'clock, so one hour into the part-day public holiday—

> on a part-day public holiday, would receive the entitlement to a whole day off in lieu or a full day of annual leave, (usually 7.6 hours). It is not necessary for an employee to work the entire public holiday or (part-day public holiday) to accrue this entitlement.

Well, how great is that? That's terrific! You just happen to work one extra hour beyond what was the 5 o'clock start of the holiday but, under the new arrangements we are told is 7 o'clock, so you work one hour extra to 8 o'clock and then you are going to get the entitlement to a whole day off in lieu or a full day of annual leave (7.6 hours) for having to work one hour under that hospitality award arrangement. That's terrific! No wonder Peter Malinauskas is jumping up and down with glee. Stuff the small business employers in the hospitality industry; they can pay the additional full day cost on the basis of having the additional hour worked during this part-time public holiday.

Of course, there are a number of businesses we can all think of on Christmas Eve and New Year's Eve that do not trade through until midnight; they trade through until 8 o'clock or 9 o'clock and they do just go into that particular hour. A number of prominent groups lobbying for the government deal are groups that trade until 8 o'clock or 9 o'clock. I am reminded that the IGAs and some others trade until 8 o'clock or 9 o'clock.

Depending on the award arrangements and the enterprise agreement arrangements, Minter's is saying that in some industries there are potential additional costs for those sort of annualised salary arrangements in those particular industries. At 6.4, Minter's raises the issue of employees rostered on shifts commencing late at night. I will not quote it all, but part of it states:

> Other provisions will mean that employees who start shifts outside the part-day public holiday will receive penalties for all the time worked if the shift continues into the part-day public holiday.
>
> (b) As an example of such a provision, the following clause is taken from the Clerks—Private Sector Award 2010:
>
> 28.4 Hours, shift allowances, special rates, meal interval
>
> (e) Where ordinary shift hours commence between 11.00 pm and midnight on a Sunday or public holiday, the ordinary time so worked before midnight does not entitle the shiftworker to the Sunday or public holiday rate. Provided that the ordinary time worked by a shiftworker on a shift commencing before midnight on the day preceding a Sunday or public holiday and extending into a Sunday or public holiday is regarded as ordinary time worked on such Sunday or public holiday.

There is a similar provision, though applying at a different time of day, in the Vehicle Manufacturing, Repair, Services and Retail Award 2010. I will not read out all of that particular award provision, but Minter's conclusion is:

> As stated above, employees who work on public holidays usually receive penalty rates for doing so. However, the particular timing of the part-day public holidays will lead to some employees in some industries not receiving penalties for those hours, depending on the start time of their shift.

Their conclusion earlier was that employees who start shifts outside the part-day public holiday will receive penalties for all the time worked if the shift continues into the part-day public holiday. So, how good is that going to be? You start your shift, under those particular awards, outside the public holiday but it continues into the public holiday so you will get paid at the public holiday rate for all of the hours that you work—a 250 per cent penalty rate. That is terrific, but not if you are a small business or a non-government organisation trying to provide a list of services.

Minter's go on to say that there are 122 modern awards but they just have not had the time, obviously, to review all of the modern awards in relation to their particular provisions. They then move on to the next heading, Implication of the Part-day Public Holiday under Enterprise Agreements, and they state in 7.3:

> An example of where the part-day public holidays will come into conflict with an enterprise agreement is the following clause, taken from the Coca-Cola Amatil (Aust.) Pty Ltd South Australian Manufacturing Employees Enterprise Agreement 2010-2013.

I will not read all of that clause onto the record but Minter's conclusion under 7.4 is as follows:

> For Coca-Cola Amatil (Aust.) Pty Ltd, the part-day public holidays will conflict with its enterprise agreement in the following ways:
>
> (a) The part-day public holiday, while only seven hours in duration—

that was the original proposal—

> will be treated as 12 hours of ordinary time;
>
> (b) The part-day public holiday, while commencing at 5.00pm, will be treated as commencing at 6.00am on the day and finishing at 6.00am the following day; and
>
> (c) The enterprise agreement has already made provision for employees to take the evening of 24 December as annual leave.

I interpose there that the clause which I did not read said that all shift workers on night shift for the night prior to Christmas Day will be required to take an annual leave day. I continue with Minter's advice:

> (c) The enterprise agreement has already made provision for employees to take the evening of 24 December as annual leave. This will come into conflict with the [National Employment Standards] requirement that employees are not required to take annual leave on a public holiday.

Then section 7.5 says:

> A further example of a South Australian workplace enterprise agreement which will come into conflict with the part-day public holidays is taken from the Premium Wine Brands Pty Ltd Production (Barossa Valley) Enterprise Agreement 2010.

Again, I will not read all of the provisions of that clause. I quote Minter's advice:

> For Premium Wine Brands Pty Ltd, the part-day public holidays will conflict with its enterprise agreement in the following ways:
>
> (a) The part-day public holiday, while commencing at 5.00pm, will be treated as commencing at 12.00am on the day and finishing 24 hours later;
>
> (b) The enterprise agreement has already made provision for employees to take the evening of 24 December as annual leave. This will come into conflict with the [National Employment Standard] requirement that employees are not required to take annual leave on a public holiday.
>
> The examples above are not exhaustive.

They have not gone through all of the enterprise agreements, the hundreds that obviously apply in South Australian workplaces. The next section of Minter's advice, section 8, asks: How might the part-day public holiday affect rostering? I quote:

> Under the [National Employment Standards], employees have an ability to refuse to work on public holidays if the request to work is not reasonable or if their refusal is reasonable.

In deciding whether a request or refusal is reasonable, the following matters are to be taken into account (s.114(4) of the [Fair Work] Act)—

and I will not read all 10 or so provisions of that section. Minter's then go on to say:

This raises the question of whether an employee could reasonably refuse to work that part of their shift past 5.00pm on the day. If an employee is entitled to receive penalty rates for the work, has been given notice of the shift in advance and then refuses to work past 5.00pm on the day, these are all matters which would go towards the employee being unreasonable by refusing to work part way through a shift.

What Minter's is doing there is raising the issue of the interplay between this bill and that requirement of the Fair Work Act and the National Employment Standards. Finally, Minter Ellison's advice under point 10, under the heading 'Legal exposure for employers', states:

The additional costs provide great pressure on employers to require their usual workforce to work on the public holiday. There is a risk of employers falling foul of the NES—if an employer 'unreasonably' requires an employee to work on a public holiday, this will contravene the NES with potential penalties of $33,000 per breach and the risk of legal action by the affected employee.

Further on, in 10.3 and following, it states:

In Pietraszek v Transpacific...Fair Work Australia found that the applicant had been unfairly dismissed when his employer terminated his employment after he failed to attend work on Christmas day and Boxing day. The decision considered the NES public holiday provisions.

Fair Work Australia found that there was no valid reason for the termination based on the evidence given at the hearing. It did note that, based on the limited information given by the applicant to the respondent at the time he refused to work, the respondent was entitled to dismiss the applicant. It was only at the hearing that the applicant went into detail as to why he refused the request to work, including evidence of his wife's medical condition and that he had understood that he no longer needed to work any public holidays due to roster changes.

This decision illustrates the scope for employers in managing roster arrangements around public holidays. At the time of terminating the employment, the employer did not know the employee's personal circumstances and yet the decision to terminate was still found to be unfair.

That is lengthy legal advice from Minter Ellison, and I have put not all but the bulk of it on the public record. It is imperative, in the interests of good legislation, for the minister to respond to the detailed questions Minter Ellison has raised in relation to this because we do not want to be in a position months or years down the track where a decision is taken by an industrial court, tribunal or jurisdiction and members of parliament say, 'We weren't warned about that particular implication of the legislation.'

I know Mr Malinauskas's views about these issues—too bad, they are not his concern. He is concerned about the shoppies union. He has made that known to journalists who have put some of these issues to him. He is there to represent the shoppies union and his members; that is fair enough, that is his responsibility, but it is not an excuse that the Premier or the minister in this chamber can use. Mr Malinauskas can say, 'Stuff the rest of the world, the employers, the NGOs and anybody else.' That is his entitlement. That is the arrogance we have become used to from the shoppies union and those who control this government. The minister, for all his feeble inadequacies, needs to take legal advice and stand up in this chamber and read that advice to the chamber in relation to the issues that Minter's and the Business Coalition have raised.

This chamber needs to vote on the bill and its amendments with the full knowledge of what it is voting for. I am the first to acknowledge, and I think Minter's would as well, that with some of the issues they have raised there will be valid and quite possibly other legal interpretations of the legislation. Ultimately, it will be determined by tribunals, courts or others. Given that the issues have been raised, we need to hear the legal advice and the position from the government and the minister in relation to each and every one of those concerns Minter Ellison has raised in relation to the interplay between the awards, the modern awards, the enterprise agreements, the Fair Work Act, the National Employment Standards and this bill and its implications not only for workers but also for businesses and non-government organisations in South Australia.

Coming back to the second reading, we seek from the minister a breakdown of the cost that has been estimated in the budget of $5 million for this deal in terms of public sector costs. I note that this was prior to the recent potential extension of costs to cover some other non-government organisations. Will the minister be able to bring back to the chamber and have tabled a breakdown of the $5 million costs: as to how it has been calculated, and what are the individual costs for each of the departments? My understanding is that each department and Treasury have been asked to put together this $5 million cost which went into the forward estimates, so there is

clearly a breakdown that Treasury has in terms of the costs for each of the agencies, and we seek information on that.

We seek also information on the proposed deal with non-government organisations. As I said earlier, for those members who do have the power in relation to this issue, it is my strong view that we should get the precise details of the deal that is going to be offered to the non-government organisations before the bill is passed. What we are seeking from the government is: what is the nature of that proposed additional cost, and what is the cost to the state budget from the proposed extension of the deal and, as I highlighted earlier, which particular groups are being covered by the government's further negotiated offer in relation to them?

In relation to four particular groups of workers in the public sector, namely, police, nurses, fire officers and medical officers (doctors) within the public sector, I ask a series of questions. First, what are the proposed additional costs for each of those groups, that is, police, nurses, fire officers and doctors? Obviously, they will all be a component part of the $5 million estimated cost. In particular, for any one of those categories of workers, if they are rostered on a shift on Christmas Eve or New Year's Eve from 2pm on that day to 10pm (that is, they will be working from 2 o'clock until 7 o'clock), the 7 o'clock to 10 o'clock part of the shift will be in the part-time public holiday component.

For each of those four categories of workers, under the current either enterprise agreement or award arrangements for police, nurses, fire officers and doctors or medical officers, what will be the payment arrangements for those officers during that particular shift? That is, are they paid at ordinary rates from 2 o'clock until 7 o'clock and then paid from 7 until 10 o'clock at the 250 per cent penalty rate, or is there some different arrangement under the current agreements with those four groups of public sector employees?

With that, I indicate the Liberal Party's support for the second reading of the bill. Our position remains the same as we indicated at the outset. We will be trenchantly opposing, and moving amendments to remove, the provisions in relation to part-time public holidays. In relation to the amendments of the Hon. Mr Brokenshire, which I have not been able to address, our position is that we will not be ready to debate those until next week, after we have had the opportunity to receive advice from the stakeholders we consulted last evening in relation to the impact of those amendments.

The Hon. K.L. VINCENT (16:59): Today, I speak in favour of the amended shop trading and holidays bill. By amended, I mean the recently announced government change that will see the public holidays commence at 7pm rather than 5pm. This bill seeks to halt the never-ending debates surrounding shop trading hours and public holidays in this state. The discussion on this has been going on since before I was born (I am sorry to put it in that harsh context), and we hope that this clarifies the situation for all sectors and settles the matter once and for all.

The bill will see the retail sector open in the city on most public holidays and it will also create public holidays after 7pm on Christmas Eve and New Year's Eve. As all crossbenchers would have found since the opposition declared its opposing intent, lobbying and correspondence surrounding this bill has been intense from both sides of the debate. There have been some in the business community predicting that the sky will fall in following the introduction of part-day public holidays; however, I do not think that an extra 12 hours a year of public holiday will see the collapse of business. We already have one less public holiday than New South Wales and the Australian Capital Territory, and I do not believe that the extra evening public holidays will cause the collapse of businesses.

I have had many, many letters and emails on this issue, but the largest quantity of correspondence has come from retail workers who stand to benefit from the additional public holidays. My office has received about 5,000 postcards to date, campaigning for the creation of these extra public holidays. Many restaurants and pubs already pay extra wages, or offer a non-cash incentive, to entice people to work on these two special evenings. All this legislation does is enshrine the extra pay for workers in law by creating the public holidays.

Many restaurants and venues already charge extra to consumers for special events on these evenings to cover these extra costs. If businesses choose to close at this time of year, then that will be their prerogative. If I go out to a restaurant, an evening show, or to the pub on Christmas Eve or New Year's Eve, I expect that I should pay extra to have someone cook food for me, perform for me or serve drinks to me. If I cannot afford the extra cost, then I can stay at home with my family and friends.

I do believe that the already low-paid workers in these sectors deserve to receive penalty rates on these two evenings. In many eastern European cultures, Christmas Eve in fact has more cultural significance than Christmas Day itself; codifying this in legislation recognises this fact. New Year's Eve is a much bigger party event than New Year's Day and also making it a public holiday acknowledges this.

The existence of these new public holidays did create some other issues. I was very concerned when I heard that it may reduce or remove the services provided to people with disability and those in aged care. As with ambos, salaried doctors, nurses and police officers, I believe that disability support workers and aged-care workers deserve to be paid extra on public holidays for the very important work that they do in servicing the community.

When I learned that these additional public holidays could jeopardise the care and support the disability and aged-care sectors could provide clients, I approached the Premier with my concerns. I would not want people to be left without care at their bedtime shift, or overnight personal care, because of this legislation.

I appreciate the consideration the Premier has given me on this and, given the state controls funding for disability, he was able to commit to all government-funded services being extended to ensure no services are lost on either Christmas or New Year's Eve. My support for this bill was, of course, conditional on this reassurance being given, and I am grateful that the Premier did this—as he properly should.

Aged care is not a state-funded sector, as we all know; it is almost entirely federally funded. I was approached by this sector to consider removing aged care from the provisions that would see workers paid penalty rates; however, I do not believe this could ever be workable—to have just one part of the health and caring sector excluded—as workers would surely walk off the job, and excluding one group could lead to others seeking exemptions. It is either a public holiday for all, or it is not.

I do appreciate the significant cost pressure on aged care, particularly those in the not-for-profit sector, and I am grateful for the interactions I have had, particularly with Alan Graham and Paul Carberry, on this matter. Given the arrangements for funding of this sector are currently being debated with the federal government, I think those within the South Australian sector need to explain the extra costs they will bear as a consequence and ensure they broker a better deal for their sector with the government.

I also think the Premier needs to continue investigating the costs that he can alleviate from a state perspective, whether this be council rates, water costs, or something similar. Given that aged care is unintended collateral damage, if you like, in this bill, I think it is the Premier's duty to continue to consider this. To be realistic, an extra 12 hours of public holiday in the context of 365 days, or 8,760 hours of labour costs, will not break this sector. I think the benefit of recognising the undervalued endeavours of aged care workers outweighs the cost that sector will bear.

I, as much as anyone, am concerned about Adelaide's reputation as a vibrant, modern city that can cater for the needs of tourists, residents and South Australians in general. I want Adelaide's heart to be a place that people with disabilities, cyclists, tourists, visitors, students, the elderly, families, children and young people can all access on public holidays and have a role to play in making our city a place that people want to be in. Whether that be shopping in the CBD, having coffee in Rundle Street, visiting free attractions like the art gallery or the museum, studying at the library, wheeling down Rundle Mall to check out the buskers or meeting at the mall's balls, all of us have a valuable role to play in making the city centre somewhere that we want to be.

I do not want Adelaide to be seen as a mothball city, where people need to turn out the lights when everyone leaves at Easter or ahead of a long weekend. I look forward to being able to enjoy our city centre on public holidays, and if I do go out on Christmas and New Year's Eve, as I already stated, I will happily pay more in the knowledge that the extra dollars will reward those sacrificing special time to serve me. I am also relieved that all of this can be achieved whilst ensuring that the most vulnerable in our community do not lose any essential services which are essential to their human rights provision. I commend this bill to the chamber.

The Hon. R.L. BROKENSHIRE (17:07): This is a bill that I will be speaking on for some time. Sometimes you can speak for a few minutes and get your point across, other times you need to spend quite a bit of time trying to articulate the reasons why you are supporting, or not supporting, a bill. That is the democratic process of this parliament.

Family First supports the second reading, and in fact made a commitment to the government that if there was a problem with respect to getting this bill underway today with debate in the Legislative Council we would certainly vote with the government on that. Clearly, that was not needed, everyone has agreed to start debating this bill today.

I would also support the initiative of addressing the public holiday scenarios over Easter as a matter of urgency for the government. I see no reason at all why the government could not be putting in place (under existing law) arrangements for this Easter, just as it has for Easters long gone when it had the opportunity for making those decisions. The issue of putting pressure on members of parliament to get legislation through prior to Easter so they can make a decision on Easter Sunday, frankly, is not a valid argument, in my opinion.

First, I want to talk about parliament and process. In my 17th year in this place, like all members, I am passionate about the fact that at least until now we had a situation where the parliament had an opportunity of debating, through both houses, including being able to debate and foreshadow amendments to a bill of the government. Unfortunately, on this occasion the democratic processes of the parliament have been undermined. I put on the public record that that is a very serious issue.

I believe that when governments start to do deals in back rooms and do not allow full and open transparency and opportunity through the parliament, to the point where we have an announcement before the bill is even debated in this council, that that is a sad day for the democracy of this parliament and I, for one, would argue undermines the Westminster system. As a legislator, I will continue to try to ensure that we do have due process and that we do have the intent of the Westminster system being carried out in this chamber.

With respect to the deal, I have known Mr Malinauskas for some time, and I respect the man. He has certainly done a very good job in getting an outcome for his workers, and I am sure that those workers will congratulate him for that. I am sure that Mr Malinauskas will go a very long way in his career. As a young man, he has a lot to offer. I think he has more capacity and gets better outcomes than most of the ministers in the government. I am certain that he will end up in parliament at some time in the future, probably not in this council, because things such as industrial relations and the like are better in the commonwealth today than they are in this council and in this parliament, where we have an announce and defend approach when dealing with industrial relations.

I want to come back to the issue of announce and defend. There are two key issues that we need to split up. One is that the Premier has said that, as part of his different track and direction to the previous premier, he wants to focus on making Adelaide a vibrant city. In fact, even yesterday, further announcements were made on initiatives to try to fast track development in city.

The Hon. G.A. Kandelaars: And shop trading hours will.

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): Interjections are out of order, Hon. Mr Kandelaars.

The Hon. R.L. BROKENSHIRE: Having talked to a lot of colleagues in both houses, the Premier did not have a problem in getting that through. I can say that the absolute majority of members, if not all, supported the deregulation of the CBD. If the Premier had gone through a democratic process, possibly initially with a ministerial statement or even, in fact, by introducing legislation to deregulate the CBD and the surrounding precincts—as long as it did not include, from Family First's point of view, the half ANZAC Day arrangement with the retail sector and certainly not Christmas Day and Good Friday and, I would argue, Easter Sunday—we would have actually signed off straight away and supported the Premier.

It makes good sense to deregulate the CBD, particularly when another deal is putting this state further into debt, namely, the Adelaide Oval redevelopment, a deal where the AFL CEO on that occasion allegedly got $100,000 for forcing the government into that, and we, the taxpayers, have had to pick up a tab of over half a billion dollars that we do not have. We have to make sure that we see some capitalisation of those opportunities in the CBD. So, I want to actually put to bed the myth that there had to be an interlocking between the CBD and the deregulation of the CBD and the two half public holidays.

I will put this on the public record, because every now and again I think it is fair to put things that you do not agree with on the public record. However, before I do that, I want to congratulate not only Mr Malinauskas for what he has got for his members but also all the unions—

United Voice—that got together. If I were running one of those union organisations and I saw an opportunity to get something for workers through the back door, I would do the same thing. So, I do not have any problems at all with anything that the unions have done.

In fact, our door will certainly be open to all those unions whenever we can help them. There are issues on which we are working with them at the moment, and I am sure that there will be lots of other issues in the future. I know of some already coming up, where the union will need help to defend itself against the government, and Family First will be there for the union. However, on principle, we cannot support the way this arrangement has occurred.

I actually have an oral version of the transcript, where it actually slipped out in a debate that the whole purpose of the interlocking of this—and I will get to that in a moment—the purpose of giving the two half-day public holidays was—and I underline what I am about to say—a mechanism for a union being able to get a deal for its workers outside of the Industrial Relations Commission, general award schemes, etc. I know that the unions have worked very hard for a long period of time against successive governments to try to get a fair and reasonable industrial relations structure in South Australia and, more recently, in Australia.

I also know that governments have worked hard to work through enterprise bargaining agreements, and on many occasions I was involved in them myself. They are tough, hard and exhaustive. In fact, on one occasion I recall that both the union head and the head of the government who was engaged on behalf of my portfolios to negotiate an enterprise agreement were so exhausted that, as soon as it was signed off, they both went on leave. It is pretty intense stuff, but they got good democratic outcomes for the workers and for the government, and they did it through due process. That is the problem we have with the way this has been handled.

Whilst it has been put to me, 'Well, you know, Robert, there's a deal here, there's a deal, you got to support the deal,' well, I am sorry, sir: you do not have to support deals done outside this chamber, outside this parliament, particularly when those deals are not through full and proper process and consultation. That is the truth of the matter. No-one in this house or outside this house can stand up and say that there has been proper, open consultation and consideration of the impact of this deal about which we, effectively, were told, 'Well, it's been done, Robert, the deal's been done—back it!' 'My way or the highway' was basically the pressure put on us.

I am sorry, sir, I do not work for the government: I work for the community of South Australia. I work for the whole of the South Australian community because the Legislative Council's boundaries, as we all know, are from border to border—north, south, east and west. This is where the ramifications and unintended consequences are about to come in. We have talked often about unintended consequences when legislation comes up, and that is what we are here for: to deliberate and amend unintended consequences. I foreshadow that the unintended consequences of what we are debating here this afternoon and tonight are not known but will be horrendous.

I want to say and leave it at this (but want to put on the public record) that it was said to me that Family First will put families last by not supporting these two half public holidays. I do not accept that at all. In fact, had we had an opportunity to actually debate this properly, I believe Family First (and probably quite a few of our other colleagues in this house) would have had amendments that could have addressed the issue because the bottom line is that these workers in the retail sector do not actually want to work on Christmas Eve, on New Year's Eve or, I might add, on the eve of Good Friday, Maundy Thursday, in particular because sometimes that is the only chance they have to get a four-day break.

When you drill into it, you find an interesting scenario and someone is making a lot of money out of this. This is the second time lately when computers have been almost in meltdown because there is a structure now in place where through the databases people are given a prototype of what is the debate and the argument and they just hammer that through into your computer. I took notice and looked at those, and I took notice of the postcards as well. I also took notice of the people who did not opt for the postcards or the prototype email but who actually put pen to paper or sent in their own emails.

When you actually divide up all that, for most of the people the key penalty rates and additional pay on this occasion were secondary to the fact that they actually do not want to work. I do not blame them for that at all. If I was in a situation working in retail, I would not want to work on those evenings either. We could have fixed that because, in giving the business sector what it wanted with a vibrant CBD, we could have said that there is a caveat, a condition, that is, that on those three nights you will close up at 7 o'clock. Shut up the retail sector.

I am not talking about the entertainment sector and other sectors that have been caught up in this. Why could we not have an amendment to shut the shops at 7 o'clock on Christmas Eve, New Year's Eve and Good Friday eve? That would accommodate what most people want. They want to be able to go home and prepare a meal and spend some family time, or socialise a little bit with their friends or perhaps go to church on Christmas Eve, or cook the meal so that they can go to church or have family over—whatever they want—on Christmas morning.

We could have talked about the merits of that, but we have not even had a chance to do that in this chamber, because a deal was done. If parliament is going to start rubberstamping deals done in back rooms then, in my personal opinion, we are on a slippery slope to a very bad legislative framework in the future. That is why we cannot support the situation as it stands.

Also, we are putting families first, and we will always put families first. However, there are families that own small businesses that will not be able to pay for this. There will be implications for families in the country in getting to Adelaide and families in Adelaide that want to get to the country for Christmas and there will be implications and impacts that have not even been thought about properly. I also put it that, from the point of putting families first, the first thing people want and need is a job for themselves and for their children.

We live in most difficult times at the moment. I do not want to talk this state down, and I have come in here, as I am sure all members have, to make this state better but the reality is that, at the moment, this state is in diabolical trouble. There is $8 million to $9 billion worth of core debt, ballooning out unfunded recurrent deficit issues, and a business sector that, by and large, is bleeding. At the moment I find that very few businesses have much of a profit margin.

In retail that is especially so. Just in the last week or two the facts show that across Australia it is estimated that 100,000 retail jobs are at risk. If there are 100,000 retail jobs at risk—and I would assume that, on average based on our 8 per cent, 8 per cent of those are at risk in South Australia, and that worries me immensely—why would we put an impost on small business now that is only going to put those jobs even more at risk?

On top of that, we have coming at us like a juggernaut, a situation with online purchasing that we have not even started to think about yet. Young people in particular are becoming very quickly initiated to online shopping. We have a lot of threats and a lot of risk, particularly in retail at the moment, and more so in retail than anywhere else. On top of that, we have a duopoly (namely, Coles and Woolworths) employing a lot of people, but they are only interested in two things: paying their executives ridiculous amounts of money and returning great dividends to shareholders.

I do not believe they have their heart in the general retail workforce. They are already starting to explore IT and how they can downsize jobs in the retail sector through IT. Just the other day I saw a program about this. It is all there now: people will not even have to go into shops. They will be able to go to certain coffee shops or things like that and have it all there. They can use their electronic card to order there and it will be delivered.

The only job opportunities for growth there that I see are for TOLL and other express couriers. On top of that, we can already see in those shops where people use their cards to pay the money and move past a lot of cash registers and the people operating them. We live in a nation and in particular in a state at the moment where jobs are an issue that I think we should be very careful about protecting and ensuring that we can at least protect what we have now.

Of course, I have heard the line—even from the most senior members of government—that there are two things: No. 1, that business can absorb the cost, is one throwaway line that government has been putting forward; and No. 2 is that business can add on a cover charge just as they do in the hotel and entertainment industries on those nights.

That might be all right for those executive members of government who said that and who are on $200,000 or more a year, but, do you know what, Mr Acting President? Most South Australians would not earn $200,000 in four years. The average pay is under that, and they would work four years for that. They actually save to go out on occasions around Christmas and New Year, and they will not be able to afford these built-in cover charge costs; maybe some in Adelaide will still go, but we do not govern just around Adelaide, surely.

I want to ask the minister to explain, and I will put it on notice for him so he has plenty of time to consult his advisers, why this deal is interlocked. No-one has been able to explain—in fact, they have dodged it. I have read pretty much all the transcripts I could get hold of and, when the specific questions have been put to the executive of this government, 'Why are these two deals

interlocked?' do you know what the answer is? There is no answer. Now, as we come into the committee stage, I look toward forward to the Minister for Industrial Relations articulating why these two arrangements are interlocked, because I do not think he can.

I have been a witness to leadership spills in the past myself. They are never nice—in fact, they rip your gut apart when they happen. Some people win and some people lose but, in the couple of leadership spills I have seen, the arrangements or the deals have always been about, 'You go and crunch those numbers for me,' or, 'You go out in the media, take them head on, coffee the media, unnerve the Premier, and we will take notice of that down the track.' The reward for that has been positions in the parliament or positions in the party.

They are things that are out of the control of the parliament. They are things that are done between the factions and people who are prepared to help with the spill. On this occasion, I can only say that this is reward for effort that has been done to ensure a smooth transition in the change of premier. That is all I can assume because I have no evidence to the contrary. However, we may get that from the Hon. Mr Wortley when he starts to answer our questions on clause 1 in committee.

I will use my own industry as an example because this is just a classic example of unintended consequences. The dairy industry is an industry that has a perishable product and people work 24/7. It is not an industry that you can close down. Cows have to be milked at least twice a day. There is not a lot of profit in the dairy industry when you have Coles and Woolworths pushing price down through the supply chain. We do not have time to go into that tonight—you have heard me talk about it before—but all the facts are there. From the paddock to the plate, you have Coles and Woolworths pushing back to the farm gate, and you also have the high dollar.

What this implicates (and I am sure there was no scoping done on this) is all these other sectors. With the dairy industry, those workers who are not on a share or permanent casual, will be subjected to public holiday rates when they are working now, and a lot of those workers will be still working when this new arrangement comes through. But, even if they are not working, there is a tanker driver who comes around and picks up the milk, and 2½ times the hourly rate will be required to pay that tanker driver. When the milk gets to the factory, it has to be processed, so there will be people there paid at 2½ times. And it goes on. That is just one industry sector, and I would suggest that there are a lot more that will be impacted; and I can tell you, sir, that the margins are not there to absorb this.

I do not know, sir, if you ever played the game when you were a kid and playing with someone else where you had a camel with two saddlebags with very fine little holes. It was called Straws. You would push those straws through and, at some stage, no matter how clever you were, the last straw broke the camel's back. This government is being very flippant when it says, 'Don't exaggerate, Robert, this won't break the camel's back.' Well, sir, it is another nail in the coffin and I suggest to you that there are quite a lot of camels in business, if I can use that analogy, that are close to breaking their backs. Look at how hard it is to get money for product that people have provided within the normal trading terms and that will give you a pretty good litmus test on how tight business is today.

The Hon. G.A. Kandelaars: So Business SA has got it all wrong?

The Hon. R.L. BROKENSHIRE: There is a great intervention from the Hon. Gerry Kandelaars, a man who I respect—one of the brighter new members in this place, on the government side.

The Hon. R.I. Lucas: So it's a very low threshold you are working on!

The Hon. R.L. BROKENSHIRE: He is one of the brighter ones. What the Hon. Gerry Kandelaars said was, 'So Business SA has got it all wrong?' I think they have. I am sure they have. Fair enough to the CEO, Mr Vaughan, on this occasion: he had a passion for wanting to get vibrancy into the CBD. As I have said, that could have happened without what is now occurring.

I think Business SA has got it wrong a fair bit in the last 10 or 15 years, because I have not seen them represent the core people who they should represent for a very long time. In fact, I have seen Business SA more often than not in bed with the Labor government, which is unusual because I would have thought that they were diametrically opposed.

Of course you see the unions working with the Labor government—that is the way it has always been—but I do not think Business SA has done businesses much of a favour for a very long time, generally speaking, in this state. I certainly have not seen the benefits that they have

supposedly been delivering to their members. I assume one thing that will happen as a result of this is that there will be a major shake-up of Business SA, or possibly Business SA may not be here anymore; maybe there will be a new structure. Certainly there are some issues that need to be addressed when it comes to representing business.

A few years ago the Fair Work (Commonwealth Powers) Bill was brought into the parliament. It was debated in this house on Tuesday 17 November 2009. The Fair Work (Commonwealth Powers) Bill was brought into this house because the government wanted to push industrial relations across to Fair Work Australia and the commonwealth; send it to Canberra. They wanted to do that. It dared not actually interfere with the public sector because it had problems with that, so the then premier said, 'Okay, we will leave the Public Service as the responsibility of the South Australian Industrial Relations Commission but we will push all of the private sector across to the Commonwealth.'

Some of us in this house did not agree with that. I note when the vote was taken it was similar to what we are going to see with this bill. With two paired off it was 9:10 and it did get just passed to go to Canberra. The reason that some of us were opposed to it was because we thought we were better positioned to look after workers if they actually capitalised on the knowledge of the local industrial relations commissioners and the knowledge of the South Australian parliament. Clearly, the intent of going to Canberra was because the private sector thought that they could do better for their workers.

So far on this issue with the retail sector it appears that they have not been able to get what they want so they have seen this as a back door way of getting something for their workers. I do not believe that the parliament is an industrial relations commission, particularly when it comes to the private sector where we have no legislation to deliberate for the private sector; it is all in Canberra.

I want to place on the public record that the issues the public sector brought up were things that I thought we could and needed to address, and we were going to move amendments, particularly because the government had miraculously found $5 million. They must have plenty of lazy piles of $5 million lying around because they found this one pretty quick.

We would have moved amendments to honour our obligations as being responsible for the public sector industrial relations and supported them, particularly on things like cross-shifts where I was not really aware, even when I was minister, of what was happening for a long time with respect to New Year's Eve. On a cross-shift, the police organised it, allegedly, so that the rank and file of police worked the majority, by half an hour, of their shift before the public holiday, and therefore SAPOL did not have to pay those workers a penalty rate. That sort of thing needed to be addressed.

The Hon. R.P. Wortley: How much longer have you got to go?

The Hon. R.L. BROKENSHIRE: Quite a while, actually.

The Hon. R.P. Wortley: I'm just worried about blindness. That's all I'm worried about.

The Hon. R.L. BROKENSHIRE: I beg your pardon?

The Hon. R.P. Wortley interjecting:

The Hon. R.L. BROKENSHIRE: I will go blind? Would you like to say why, minister? Would you like to say why I would go blind because I am democratically debating—

The Hon. R.P. Wortley interjecting:

The Hon. R.L. BROKENSHIRE: Beg your pardon, minister?

The Hon. R.P. Wortley: It is a nonsense.

The Hon. R.L. BROKENSHIRE: A nonsense?

The Hon. R.P. Wortley: I'm worried about you, that's all.

The PRESIDENT: Order!

The Hon. R.L. BROKENSHIRE: You worry about yourself, minister, because you have a lot of things to worry about, believe you me. I would be getting my head around the committee stage for a start.

The PRESIDENT: Order! We might all go back to worrying about the workers.

The Hon. R.L. BROKENSHIRE: Thank you, Mr President. We have seen other arrangements occur where, to get a member into Port Adelaide, on the last week, a preference deal occurred, and something that was apparently a big government commitment with respect to industrial development on an island that is part of that electorate was, all of a sudden, no longer important economically. I put that on the public record, too, because I think it is time that a bit of a picture was painted of this government and how it is more prepared to do deals than it is to show good governance as a government.

On the issue of announce and defend, I thought we were going to be looking at consult and decide. I put it to this house that the legislation we are debating now is a classic announce and defend. I read on the weekend, 'No, no. It's not an announce and defend. It's actually a debate and decide.' Where is the debate and decide? We are having a debate here now, but it is already decided. We certainly do not have what I thought we were going to have, that is, 'consult and decide'. Had the government consulted widely and then decided and come into this house, we probably would have been able to support this differently from the way in which we are going to be able to support it now.

We have foreshadowed a number of amendments. I am not going to go into great detail in relation to those amendments now because I will have time to talk to them when we get to the committee stage. One of the words the government has used many times is 'forever'. The government has said that, once this goes through, forever that will be it. 'There will be no more deregulation. This is it. Take my word for it: this is forever. This fixes it forever.' That is the exact wording, I recall, of the government's argument on this.

It is interesting that only about two years ago, when the Hon. Paul Caica was the minister for industrial relations and there was some tweaking of industrial relations with respect to deregulation, Mr Caica said that the balance was right, that there was no need to go any further. Yet now, not that long after that, we have more issues on deregulation.

When we had a look at the bill, we saw that, if the government wanted to have this 'forever', it could have removed a couple of clauses from this bill that would have then meant that any further deregulation at all would have to come before the parliament. How can you trust the government when it says that forever there will be no further deregulation when it has left two clauses in the bill that will allow indefinitely, I might add (and I will talk more about that during the committee stage), further deregulation at the minister's discretion?

So, we will be moving amendments because one thing I do know is that the SDA will be pleased to see enshrined in law the 'forever' so that there is no deregulation unless it comes through both houses. We know the Liberals have been open and honest on their policy but, by having this enshrined in this house, if the Liberals win government they will actually have to move amendments through this house, so it gives us a chance for a democratic process.

There are also other amendments, including one relating to the issue of carers and Adelaide Cup Day. I have moved an amendment that states we should consider relocating Adelaide Cup Day back to where it was. I note with interest that Michael Wright, former minister for racing and a former senior minister in this government, on the weekend came out publicly and said that we should be moving the Adelaide Cup Day back to May.

Given that the government actually has what is now the Queen's Birthday and Volunteers Day public holiday on the June long weekend, I think it would be fantastic to consider moving the public holiday from Adelaide Cup Day (where it was shifted into 'mad March') back into May. The heads of SAJC and Thoroughbred Racing have flagged that they would like to hold the Adelaide Cup on the second Monday in May.

The second Sunday in May happens to be Mother's Day—no-one cares for anyone any more than a mother, in my opinion—and there are, of course, other carers to acknowledge. We could have a specific focus on that weekend. Economically, it would be good; it would free up 'mad March' a little and spread the economic opportunity.

We also have some amendments regarding the right to refuse to work, which I will talk about in more detail during the committee stage. As I said before, most of the retail workers expressed concerns about being forced to work, and those amendments will hopefully come some way to assist with those concerns.

Just on political correctness, I believe that Christmas Day is called 'Christmas Day', not 'the 25th of December' and that ANZAC Day is called 'ANZAC Day', not 'the 25th of April', and I will be moving an amendment to be considered by colleagues in this chamber that we actually refer to these days by their significant names and not as dates.

I just want to finish with a few last points, some of which have already been raised. There is potential impact on employers and employees irrespective of the hours they may work on Christmas Eve and New Year's Eve. One of the things I asked the minister to explain to the house refers to TOIL, where people take time off in lieu on a public holiday; certainly the police, as I understand it, are entitled to two days for that.

I would like the minister to check and tell us what the situation would be if people decide to take TOIL. The advice given to us all by the opposition, as received from Minter Ellison—I will not go through it all, because the Hon. Rob Lucas has already done so—was that, clearly depending on your awards and agreements, there are huge unintended consequences in this area.

I want to put on the record a few other things, but I first want to read a letter I got from Senator Chris Evans. I wrote to Senator Chris Evans in November 2010 regarding public holiday arrangements for Christmas Day, and the minister replied:

> The current arrangements in relation to public holidays reflect long standing practices. Public holidays form part of the National Employment Standards (NES), which provide employees in the national workplace relations system with an entitlement to be absent from work (with pay) for a range of nationally significant public holidays. The NES, however, leave the declaration of public to state and territory governments.
>
> Similarly, consistent with long standing practice, the NES leave the payment of penalty rates for working on public holidays, and indeed for weekend work more generally, to be determined by modern awards and enterprise agreements. This follows the approach set by the Australian Industrial Relations Commission in the Public Holidays Test Case of 2005. A modern award or enterprise agreement may also include provisions for an employer and employee to agree to substitute a day or part-day for the public holiday.

The point I put that into the debate on is that there are processes hard fought for and pushed across from this place by this government to the federal arena. I think it is pretty clear there that Senator Chris Evans articulates in one page the processes when it comes to how you go about benefits in awards.

In the country, there are some unintended consequences for what has occurred today. Having been in Mount Gambier recently, which traditionally is a pretty vibrant city, I went to do a bit of doorknocking in the main street. In the few months since I was last down there, I noted that, unfortunately, there were a number of shops shut. By the look of it, one of those had only recently opened and was already closed—I had been in there and bought stuff the time before.

When you pick up *The Murray Pioneer* of Friday 23 March, the headline is, 'Adelaide CBD deal another headache for Riverland businesses. Public holiday pain'. The article talks about the imposts that are going to be a real struggle for businesses in that district.

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

The Hon. R.L. BROKENSHIRE: It does. It states, 'Riverland MP Tim Whetstone criticised those behind the decision', and he goes on to name them, because he says 'there was "no consultation with regions".' That is part of my point: there was no consultation with the regions. Rural and regional South Australia will have bigger imposts on this than probably any other sector of the community when it comes to business. The article goes on to state:

> 'It is another impost on small business owners (and) just makes it tougher for people to keep operating.'...'It makes it less enticing for someone to enter small business.' Berri District Business Association president and secretary Barry Phillips said the need to pay penalty rates would force some traders to close on the new part-public holidays.

That is my point. In walking down the main street of Mount Gambier and talking to one business owner, we discussed what the impact of this would be. He started to tell me about what online shopping was already doing to his business. He told me that he could not work out why one product that he was selling, and selling quite well, all of a sudden was not selling. The wholesaler came in to see him and said, 'What's going on? You're not getting the stock through.' He did some research and discovered that the product he was selling was cheaper online, direct from the USA, than the wholesaler could wholesale it to him for his shop.

So, those are the sorts of impacts we are already seeing on small businesses. I understand that to try to overcome this (legally) some small businesses are buying parcels (to the threshold)

online, with no GST, and bringing them back into Australia to their shops just to try to survive. I said to him, 'What are you going to do on Christmas Eve?'

For those of you who do not live in the country, Christmas Eve coincides with what, for most, is the pretty busy harvest period. Families find it difficult to shop or even get together in the lead-up to Christmas Eve. So, often in a place like Mount Gambier, and many other country towns, the family will come into that town on Christmas Eve, knowing, up until now, that they could buy some presents, have a meal at a reasonable price and do some socialising.

I said to him, 'What are you going to be doing?' He said to me, 'When I have to pay two and half times the hourly rate, Robert, I will close. I will close at 5 o'clock. It's not worth it to actually open after 5.' If those retail workers were like many and wanted to go home, then that would be fine because it would not be an impost on them, but if they did want to work they will not be working at all that night.

In answer to the government saying that it could pass the cost on, there are little country towns with little taverns where traditionally a lot of people (especially our young people) go to celebrate Christmas Eve and have a meal with their friends before they have their family day. They will not be able to pay an additional cover charge. I can tell you that for a fact because I know those young people. They do not have that much spare money to pay another $10 for their meal. You can say, 'Well, that's flippant. Forget it. That's just an excuse'. It is not. It is the truth and it is reality. Those smaller places will not be able to pay two and a half times.

The first argument was that it was only 14 hours but, like I said, one more straw can break the camel's back. Sunday closure is a reality, retailers say. We have seen retailers now coming out publicly saying that this could have ramifications for other retail opportunities. We also saw a good article from Lainie Anderson, who highlighted some of the anomalies that I raised earlier. In amongst the emails that we received, there were some from businesses. One email from a small business in the Adelaide Hills states:

> The new public holidays will not help our family business whatsoever. We will not be able to afford to open our restaurant due to hefty pay increases. There are plenty of other times for these people to spend time with families. If people work in these industries, they are aware that those times of the year are the busiest.

Yes, that is true but, as I said, an option for those people who did not want to work was to actually give them a choice to leave work at 7pm.

Retirement villages and aged-care facilities are other examples of unintended consequences. I received letters and information from some of those aged-care facilities, and they are struggling. In fact, they are struggling to the point where they now acknowledge that workers need more base rate salary, and I, for one, can see why, because when you look at their schedules, they are fairly low-paid workers.

However, they are trying to put a case to the commonwealth government for $3 billion, and they are doing it through due process and they do not have any slack to pick up. One of them wrote to me and said that their WorkCover costs alone had gone from $100,000 to $200,000 a year. I can tell you that a worker on an average wage will now cost an employer $370 a month for WorkCover alone.

When you see all these other costs and charges, we can see that we now actually live in the highest taxed and highest charged state in Australia. It is not hard to see how decisions that are not worked through properly can be very damaging to jobs, and to families being able to meet their commitments if they do not have jobs.

I will ask the minister a couple of questions on notice. Can the minister assure the council that, when we debate clause 1, superannuation, leave loading and WorkCover, which are all additional costs, will be considered, bearing in mind that the commonwealth government has just passed legislation whereby, over the next few years, an employer will have to pay not 9 per cent as it is now but up to 12 per cent?

Factoring in the forward estimates, I want to know whether the government is actually going to include in this $5 million not only the base rate for all workers in the public sector but also the topping up of all the other add-on costs. Can the minister assure this council of that, because I would not want to see a situation where we have fewer police on the beat. We already see a situation where the police budget faces $34 million in cuts in the forward years. This government, with sleight of hand, gives a rough ballpark figure of $5 million, but we actually then discover that that does not include WorkCover, any leave loading or the potential impact on police.

The police already rightly have six weeks' annual leave. If this actually gives them six weeks and two days or possibly six weeks and four days—I am not sure, but I want an explanation from the minister—is the Police Commissioner going to get all of that in his budget? So, I am not talking nonsense; I am talking about issues that are very relevant to this debate, and I expect not a nonsense argument from you for a change, minister; I expect to have facts tabled in this house for all to see, because no way can we pass legislation if the Police Commissioner is then going to hit police harder. I do not want to see that happen.

I also question the government's decision with respect to aged care. I congratulate Kelly Vincent on getting some top-up for the carers; they are important people and they actually do not get a lot of money either. As well as people with a disability the other most vulnerable people who should be cared for and supported are the aged, yet we have not heard anything from the government about the aged. Will the minister explain in clause 1 why there was no consideration by this government to assist with the deficit that will be there for the workers in aged care on clause 1?

Will the minister further assure this house that, if indeed there is a net cost increase that will not be supported by the government to the aged care sector, people who have paid their taxes all their life and often are in there on a pension where most of the pension is already gone—just a little bit of spending money and the rest goes and families still come in to top up the care support—there will not be an increase in the ratio of aged care residents to carers, as these things have an impact as well?

There are other questions I will ask the minister in committee as I move amendments. I know this has taken a little while to explain. As I said in summarising, there is no doubt that issues like cross-shift needed to be addressed. There is no doubt that every worker in this state needs more money. In our own industry, at 3.30 on Christmas morning there will be hundreds and hundreds of people in agriculture up trying to feed their animals, milk their cows and do all that work, and they do not have an opportunity either for any increase. In fact, ABARE shows that farm gate prices for many commodities will go backwards.

There are a lot of issues where people have to work outside the normal hours, and they do not always get compensated for that, but I am not complaining, because those in agriculture, like my own family, put up our hand to do it and we love it. But to get back to the final point: yes, the government should be looking after issues like police, ambulance, fire services and nurses, irrespective. A vibrant city, yes, but if there is to be a deal done it should have been done on principle in this house in a democratic process rather than in a back room.

There is a place in Canberra where the state has shifted all the responsibility and where it would have been due consideration of the unintended consequences that we are yet to have explained. With those words, I look forward to a vigorous committee stage where we can get all the answers that I think many of us want from the minister on behalf of his government.

Debate adjourned on motion of Hon. C. Zollo.

STATUTES AMENDMENT (NATIONAL ENERGY RETAIL LAW IMPLEMENTATION) BILL

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

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (18:00): I move:

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

Leave granted.

This Bill forms part of the Government's package of legislation to implement a national framework for regulating retailers and distributors who sell and supply electricity and gas to customers. The National Energy Customer Framework is an important component of the national energy reforms to which this Government is committed.

The purpose of this Bill is to amend the *Electricity Act 1996*, the *Gas Act 1997* and other Acts as a consequence of the implementation of the National Energy Customer Framework in South Australia. It has been agreed that jurisdictions will aim for a start date of 1 July 2012 for the new Customer Framework.

Honourable Members will be aware that the National Energy Retail Law (South Australia) (Implementation) Amendment Bill 2012 will replace significant parts of existing jurisdictional energy legislation as South Australia transitions to the Customer Framework. This Bill therefore seeks to remove from South Australian energy legislation areas of duplication or inconsistency with the new national Framework.

Further, certain provisions of the National Energy Customer Framework rely upon jurisdictional energy legislation for their full effect. For example, the operation of energy ombudsman schemes, guaranteed service level schemes, and social policy initiatives such as community service obligations. Therefore, the Customer Framework is intended to operate in parallel with jurisdictional energy legislation, and this Bill provides for those jurisdictional arrangements to work with South Australia's application of the Framework.

The Customer Framework will also work alongside existing national electricity and gas regulatory frameworks covering wholesale markets and network access regulation. This Bill will make limited consequential amendments to South Australia's application Acts for the National Electricity and Gas Laws to ensure the National Energy Retail Law operates effectively within the broader energy regulatory environment. These amendments are necessary to ensure the important preparatory work being undertaken by the Australian Energy Regulator ahead of the commencement of the Customer Framework is valid. These are uniform provisions that each participating jurisdiction will include as part of its legislative reforms to implement the Customer Framework. The Commonwealth passed the *Australian Energy Market Amendment (National Energy Retail Law) Bill 2011*, which contained the same validation provisions, in September last year.

Honourable Members will be aware that energy retailers operating in South Australia are currently subject to a range of obligations contained in the *Electricity Act 1996* and the *Gas Act 1997*, their Regulations, and in Codes made by the Essential Services Commission of South Australia. The requirement to comply with these obligations is established by conditions attached to the retail licence.

At the commencement of Customer Framework, South Australian licensing of on-grid electricity and natural gas retailers will cease and will be replaced by a national regime of retailer authorisation under the Framework. For the avoidance of doubt, licensing arrangements for the retail of off-grid electricity, the retail of reticulated liquefied petroleum gas, and for electricity distribution remain unchanged.

While most of South Australia's retail obligations will be replaced by similar obligations under the Customer Framework, some existing obligations are not covered and yet remain important features of the retail environment in South Australia. Existing retailer obligations which are not covered by the Customer Framework include South Australia's Residential Energy Efficiency Scheme, the customer concessions scheme, gas safety awareness plans, and the electricity feed-in mechanism.

Accordingly, these features will be preserved and continue to apply to retailers operating under the national retailer authorisation. For this purpose, the Bill provides for these retail obligations to continue as direct statutory obligations under the *Electricity Act 1996* or the *Gas Act 1997*. The Bill creates new Parts in each of these Acts that will set out the continuing obligations that are to apply to a NERL retailer when operating in South Australia. The new Parts will enable certain existing retail obligations to be prescribed in regulations, such as specific Codes or Code provisions made by the Essential Services Commission.

These new Parts will apply to NERL retailers despite the fact that those retailers are not required to hold a licence in South Australia. Just as exemptions may be granted from South Australia's existing retail licensing regime, this Bill also provides that, with the approval of the Minister, the Essential Services Commission of South Australia may provide exemptions from the requirements set out in these new Parts.

The new Parts contain appropriate compliance and enforcement provisions, which are based on the existing provisions that apply with respect to a breach of a licence condition. For the majority of these direct obligations, the relevant regulator will continue to be the Essential Services Commission. Where a direct obligation relates to a technical or safety matter, the Technical Regulator will be the relevant regulatory body. Consequential amendments will be made to the existing provisions of each Act that govern the issuing of warning notices and assurances to enable these to work in relation to the obligations contained in the new Parts.

The Essential Services Commission also retains responsibility for South Australia's retail price regulation arrangements. The application of the Framework in South Australia will be modified by the National Energy Retail Law (South Australia) (Implementation) Amendment Bill 2012 to enable price regulation by the Commission to continue. This Bill makes minor amendments to the price fixing provisions of the *Electricity Act 1996* and the *Gas Act 1997* to ensure the Commission is able to continue to regulate the retail prices of a NERL retailer that is prescribed under the *National Energy Retail Law (South Australia) Act 2011* as having the obligation to offer to sell energy.

To ensure consumers retain the ability to advise the Commission in relation to their remaining retail functions, the Bill provides for the role of the consumer advisory committee to continue to encompass the Commission's retail functions under the *Electricity Act 1996* and the *Gas Act 1997*.

To ensure the Essential Services Commission and the Technical Regulator have the appropriate functions and powers in relation to retained obligations, amendments are proposed to the corresponding provisions in each of the *Electricity Act 1996* or the *Gas Act 1997*. Furthermore, it is also necessary to amend the *Essential Services Commission Act 2002* to ensure that the Commission is able to regulate NERL retailers, including by requiring a retailer to conduct an audit and report the audit results to the Commission.

Honourable Members will be aware that South Australia currently provides for an industry-funded model for the regulation of the energy retail sector in South Australia. South Australian retailers currently pay a licence fee that represents a contribution to the costs incurred to administer the regulatory framework for energy retailing.

The Bill provides for retailers operating under the Customer Framework to continue to be obliged to pay a fee that represents a reasonable contribution towards the administration costs that relate to those retailers. Administrative costs which can be recovered have been defined and will be further prescribed by Regulation.

The new administration fee is modelled on the existing retail licence fee arrangements, with an important difference. The amount of the new annual administration fee will be calculated in accordance with requirements to be prescribed in the regulations. This will improve transparency about the licence fee and enable businesses to better plan their business costs.

South Australia's arrangements for contestable network services will continue via a new provision to be inserted in the Electricity Act. The current arrangements are achieved via a transitional derogation under the National Electricity Rules, which will fall away with the commencement of the Customer Framework. Continuing to provide consumers with the ability to choose their service provider for certain types of network services such as network extensions will ensure competition and more efficient costs over the longer term.

Honourable Members will also note that the Bill removes the current Retailer of Last Resort (or 'RoLR') arrangements that apply to ETSA Utilities, as the Customer Framework establishes a comprehensive RoLR regime that will apply to both the electricity and gas sectors. Accordingly, the provisions contained in the *Electricity Act 1996* are no longer required.

Minor amendments will also ensure the *Electricity Act 1996* and the *Gas Act 1997* make appropriate reference to the national energy laws, including the National Energy Retail Law, Regulations and Rules.

Subject to the passage of this Bill, supporting regulations will be required to specify the detail of the continuing obligations.

I commend the Statutes Amendment (National Energy Retail Law Implementation) Amendment Bill 2012 to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Electricity Act 1996*

4—Amendment of section 4—Interpretation

5—Amendment of section 6A—Functions and powers of Commission

6—Amendment of section 14A—Consumer advisory committee

These amendments are consequential.

7—Insertion of Part 3 Division A2

This clause inserts proposed new Division A2 in Part 3.

Division A2—Application of provisions

14E—Application of provisions

Proposed section 14E relates to the application of provisions in Part 3 to NERL retailers.

8—Amendment of section 23—Licences authorising operation of transmission or distribution network

These amendments repeal the provisions relating to the retailer of last resort requirements and remove the requirement that the Commission make a licence authorising the operation of a distribution network subject to a condition for the purposes of those requirements.

9—Amendment of section 24—Licences authorising retailing

This amendment relates to the repeal of retailer of last resort requirements.

10—Amendment of section 24B—Licence conditions and national energy laws

11—Amendment of section 35A—Price regulation by Commission

12—Amendment of section 35B—Initial electricity pricing order

These amendments are consequential.

13—Amendment of section 36AA—Provision for standing contract with small customers

These amendments relate to the implementation of the National Energy Retail Law.

14—Insertion of Part 3 Division 3AC

This clause inserts proposed new Division 3AC in Part 3.

Division 3AC—Contestable services

36AF—Contestable services

Proposed section 36AF relates to the provision of services on a contestable or competitive basis.

15—Amendment of section 54—Emergency legislation not affected

This amendment is consequential.

16—Insertion of Part 6A

This clause inserts proposed new Part 6A.

Part 6A—Regulation of NERL retailers

63AA—Application of Part

The Part applies to NERL retailers.

63AB—Compliance with certain code provisions under *Essential Services Commission Act 2002* and requirements of regulations

Proposed section 63AB requires a NERL retailer to comply with certain requirements under codes published by the Commission and the regulations.

63AC—Participation in ombudsman scheme

Proposed section 63AC requires a NERL retailer to participate in an ombudsman scheme.

63AD—Compliance with customer concessions scheme and performance of community service obligations

Proposed section 63AD requires a NERL retailer to comply with any scheme for customer concessions or the performance of community service obligations.

63AE—NERL retailers annual administration fee

Proposed section 63AE provides for the imposition of an annual administrative fee on NERL retailers.

17—Amendment of section 63A—Warning notices and assurances

18—Amendment of section 80—Power of exemption

19—Amendment of section 94B—Energy efficiency shortfalls

These amendments are consequential.

20—Amendment of section 98—Regulations

This amendment relates to the implementation of the National Energy Retail Law.

Part 3—Amendment of *Essential Services Commission Act 2002*

21—Amendment of section 29—Commission's power to require information

This amendment provides that the Commission may require a NERL retailer required to comply with Part 6A of the *Electricity Act 1996* or Part 5A of the *Gas Act 1997* to conduct an audit of its compliance with the relevant Part and report the results of the audit to the Commission.

Part 4—Amendment of *Gas Act 1997*

22—Amendment of section 4—Interpretation

23—Amendment of section 6A—Functions and powers of Commission

24—Amendment of section 15—Consumer advisory committee

These amendments are consequential.

25—Insertion of Part 3 Division A2

This clause inserts proposed new Division A2 in Part 3.

Division A2—Application of provisions

18C—Application of provisions

Proposed section 18C relates to the application of provisions in Part 3 to NERL retailers.

26—Amendment of section 26A—Licences authorising retailing

This amendment relates to the implementation of the National Energy Retail Law.

27—Insertion of section 26B

This clause inserts proposed new section 26B.

26B—Licence conditions and national energy laws

This amendment relates to the implementation of the National Energy Retail Law and achieving consistency with the *Electricity Act 1996*.

28—Amendment of section 34A—Standing contracts

These amendments relate to the implementation of the National Energy Retail Law.

29—Repeal of Part 3 Division 3B

This amendment repeals the retailer of last resort scheme.

30—Amendment of section 54—Emergency legislation not affected

This amendment is consequential.

31—Insertion of Part 5A

This clause inserts proposed new Part 5A.

Part 5A—Regulation of NERL retailers

61AC—Application of Part

The Part applies to NERL retailers.

61AD—Compliance with certain code provisions under *Essential Services Commission Act 2002* and requirements of regulations

Proposed section 61AD requires a NERL retailer to comply with certain requirements under codes published by the Commission and the regulations.

61AE—Participation in ombudsman scheme

Proposed section 61AE requires a NERL retailer to participate in an ombudsman scheme.

61AF—Compliance with customer concessions scheme and performance of community service obligations

Proposed section 61AF requires a NERL retailer to comply with any scheme for customer concessions or the performance of community service obligations.

61AG—NERL retailers to match available gas to customers' estimated aggregate demand

Proposed section 61AG provides that a NERL retailer must ensure that at all times the quantity of gas available to it for delivery to its customers from a distribution system is sufficient to meet reasonable forecasts of its customers' aggregate demand for gas from the distribution system.

61AH—NERL retailers annual administration fee

Proposed section 61AH provides for the imposition of an annual administrative fee on NERL retailers.

32—Amendment of section 61A—Warning notices and assurances

33—Amendment of section 77—Power of exemption

34—Amendment of section 91A—Energy efficiency shortfalls

These amendments are consequential.

Part 5—Amendment of *National Electricity (South Australia) Act 1996*

35—Insertion of section 15A

This clause inserts proposed section 15A.

15A—Regulation-making power for the purposes of the *National Electricity (South Australia) Law*

Proposed section 15A inserts a regulation making power for the purposes of the *National Electricity (South Australia) Law*.

36—Insertion of Part 8

This clause inserts proposed new Part 8.

Part 8—Validation of instruments and decisions of AER

20—Validation of instruments and decisions made by AER

Proposed section 20 relates to the validation of instruments and decisions made by the AER.

21—AER—authorisation of preparatory steps

Proposed section 21 relates to the authorisation of certain steps required of the AER before making a decision or an instrument.

Part 6—Amendment of *National Gas (South Australia) Act 2008*

37—Insertion of section 24

This clause inserts proposed section 24.

24—Regulation-making power for the purposes of the *National Gas (South Australia) Law*

Proposed section 24 inserts a regulation making power for the purposes of the *National Gas (South Australia) Law*.

38—Insertion of Part 6

This clause inserts proposed new Part 6.

Part 6—Validation of instruments and decisions of AER

25—Validation of instruments and decisions made by AER

Proposed section 25 relates to the validation of instruments and decisions made by the AER.

26—AER—authorisation of preparatory steps

Proposed section 26 relates to the authorisation of certain steps required of the AER before making a decision or an instrument.

Debate adjourned on motion of Hon. D.W. Ridgway.

NATIONAL ENERGY RETAIL LAW (SOUTH AUSTRALIA) (IMPLEMENTATION) AMENDMENT BILL

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

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (18:01): I move:

That this bill be now read a second time.

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

Leave granted.

This Bill delivers on the Government's commitment to a national framework for regulating retailers and distributors who sell and supply electricity and gas to customers.

In June 2006 the Council of Australian Governments amended the Australian Energy Market Agreement to provide for (among other things), the national framework for energy access; and the national framework for distribution and retail services. This final component is known as the National Energy Customer Framework, here referred to as the Customer Framework, and consists of a package of Laws, Rules and Regulations.

A key component of this package of Laws includes the National Energy Retail Law, which as Honourable Members will be aware, passed South Australian Parliament as lead legislator for national gas and electricity legislation without amendment and received Royal Assent on 17 March 2011.

The purpose of this Bill is to apply the Customer Framework in South Australia. This framework provides national consistency for the sale and supply of energy to retail customers and therefore simplifies the regulatory regime for energy retailers and distributors. Further, the Customer Framework contains a wide-ranging suite of energy-specific consumer protections.

As a result, this Bill will see the regulation of non-price retail and non-economic distribution functions shift from South Australia's independent energy regulator, the Essential Services Commission of South Australia (here referred to as the Commission) to the Australian Energy Regulator.

Other jurisdictions which are part of the National Electricity Market, namely, Victoria, New South Wales, the Australian Capital Territory, Tasmania, Queensland and the Commonwealth will also introduce application Acts which apply the Customer Framework for the purposes of those jurisdictions.

Under the terms of the Australian Energy Market Agreement, it is a requirement that Ministerial Council on Energy unanimously agree each jurisdiction's Implementing Legislation, which includes this Bill to apply the Customer Framework in South Australia, and supporting Regulations, as well as any future amendments or additional Regulations made for the purposes of applying or modifying the Customer Framework in South Australia.

The Ministerial Council on Energy has agreed that relevant jurisdictions will introduce the Customer Framework progressively, noting that some transitional legislative arrangements will be required to appropriately manage the transition process. Furthermore, it has been agreed that jurisdictions will aim for a start date of 1 July 2012 for the Customer Framework.

A jurisdiction's application Act may, for transitional or other reasons, modify the application of various provisions of the National Energy Customer Framework for the jurisdiction. Further, certain provisions of the National Energy Customer Framework rely upon jurisdictional energy legislation for their full effect, for example, the operation of energy ombudsman schemes, guaranteed service level schemes, and social policy initiatives such as community service obligations. Therefore, the Customer Framework is intended to operate in parallel with jurisdictional energy legislation.

In most cases, South Australia will apply the Customer Framework provisions in full from the start date but there will be a small number of modifications to certain provisions that allow South Australia to continue certain existing arrangements.

Honourable Members will be aware that currently South Australia provides for retail price regulation. This Bill will allow for retail prices to continue to be regulated under jurisdictional energy legislation administered by the Commission.

Consistent with current legislation, the Bill will impose the obligation to offer to sell energy to small customers at a regulated price on prescribed retailers. It is intended that the current retailers with an obligation to offer to sell energy will be prescribed in the regulations.

In the circumstances of a deemed customer arrangement, such as a customer move in or carry over, or where a retailer is acting as the retailer of last resort, the Bill does not require the prescribed retailers to charge a regulated price. It is important to note that the Customer Framework only intends for customers to remain in a deemed customer arrangement until such time as the customer enters into a market contract with a retailer or elects to be subject to the regulated price.

To provide small business customers with similar protections to those that currently apply, the Bill provides for the prescription of a higher upper threshold than included in the Customer Framework for the purpose of defining a small electricity customer. It is intended that the current upper threshold of 160 MWh per annum will be prescribed. This provides continued access to the full suite of protections offered by the terms and conditions of a standard retail contract and regulated retail price to all small customers including small business.

The Customer Framework provides for the Australian Energy Regulator to establish a price comparison service to assist customers to compare, free of charge, energy retail offers. Customers of all participating jurisdictions will be able to use this service to compare offers.

While the Australian Energy Regulator has commenced development of the price comparator, the project is highly complex and there is a risk that a delay in its development could result in no price comparison service, or an incomplete service, being available to South Australian customers at the commencement of the Customer Framework.

Honourable Members will be aware that the Commission currently offers a price comparison service in this State. Accordingly, the Bill provides for the retention of this service. It is intended, however, that once the Australian Energy Regulator's service is complete, fully operational and meet South Australia's requirements, the Commission's service will expire and the national price comparison service will commence by local instrument. This will ensure that customers continue to benefit from the service and that there is no gap during the transition period.

The Bill provides for all existing energy customers to be transitioned to the new Customer Framework with minimal interruption to the customer, and ensures that customers and retailers will not be required to re-establish payment plans, security deposits or direct debit arrangements.

Therefore, the Bill provides that standing contracts and market contracts will continue and be transitioned to the Customer Framework without requiring customers to enter new retail contracts. The provisions of the Bill ensure that a customer currently subject to a regulated price continues to be subject to a regulated price under the new framework.

For South Australian customers currently on a default contract, the Bill provides that they will transition to a deemed customer retail arrangement under the Customer Framework, which, unlike the default contract, is a temporary arrangement that does not constitute an appropriate contract for sale. Retailers will therefore be required to contact these customers once the Customer framework commences to assist them to move to a standing contract or a market contract.

Equally, a contract between a distributor of electricity and a customer will be deemed to be replaced by the standard connection contract provided under the Customer Framework. For gas, this will mean that a new contract will be deemed to exist between distributors of gas and customers.

South Australian consumers will continue to have access to dispute resolution procedures, including the services of the Energy Industry Ombudsman of South Australia, under the Customer Framework. This Bill provides that any complaints involving a matter arising before the Framework comes into operation, and any disputes referred to the Energy Industry Ombudsman before the Framework starts, can proceed under the Customer Framework. To avoid doubt, the intention of these provisions is to ensure the Customer Framework's procedures for handling disputes and complaints can apply to these matters. The Bill does not intend that the Australian Energy Regulator will have a dispute resolution role in relation to these matters.

Honourable Members will be aware, that South Australian energy legislation provides a number of consumer protections applicable to small customers. In order to ensure that customers receive the same or enhanced benefits under the Customer Framework, the Bill provides for the retention of a number of these protections including South Australia's minimum standards of service for small customers in relation to written and telephone enquiries.

The Bill also includes additional limitations regarding the imposition of a fee for late payment of a bill in regard to a retail service received. While the Customer Framework already provides that a retailer cannot impose such a fee on a hardship customer, this Bill extends this prohibition on imposing a late payment fee to situations where a customer has lodged a complaint in relation to a bill. Furthermore, the Bill retains South Australia's current limitation that where a late fee is imposed, it must not exceed the reasonable costs a retailer incurs recovering the overdue amount.

The Government has not proposed, however, to modify or commence provisions in the Customer Framework where evidence suggests that current South Australian practice is meeting the needs of customers. This is the case of the small compensation claims regime which is currently offered by ETSA Utilities on a voluntary basis and compensation for wrongful disconnection which is currently managed by the South Australian energy ombudsman.

Whilst the Bill provides for the commencement of the Customer Framework small compensation claims regime, it is not the intention of the Government to proclaim the application of this provision unless the current voluntary scheme administered by ETSA Utilities ceases to meet the needs of South Australian consumers.

Honourable Members will also note that the Bill does not provide for the payment of compensation for wrongful disconnection. After extensive analysis of the area of wrongful disconnection, it was found that the current scheme of payment of compensation by South Australia's energy ombudsman provided sufficient incentive for systems to be in place to ensure the cases of wrongful disconnection were minimised in South Australia and where such cases did occur, that the impacted customer was provided appropriate compensation that was reflective of their loss.

The Government has also been conscious of the impact of the new Customer Framework on energy businesses. At the time of the sale of the electricity distribution business, arrangements were put in place that provided that the distributor could enter into an agreement with a small customer to limit the liability of the distributor associated with a failure to supply electricity done or made in bad faith or through negligence. Accordingly, it has been necessary to modify the Customer Framework to retain this provision.

I advise the Honourable Members that the Bill also provides some transitional provisions to assist energy businesses to transition to the Customer framework. In particular, the Government recognises that the creation of a Retailer of Last Resort scheme for gas requires the development of extensive automated systems for seamless operation of the scheme. The scheme to be established under the Bill therefore provides for a relaxed approach to timeframes associated with the scheme until June 2013 when it is expected all relevant parties will have undertaken the work necessary to automate all relevant systems.

The Bill also provides the State electricity distributor with transitional support in relation to the requirement to notify customers of planned interruptions. Currently, the distributor is not required to provide prior notification of a planned interruption of less than 15 minutes to the customer and it is the intention under the Bill to continue this provision until the electricity distributor's next regulated revenue period commencing in 2015.

Honourable Members will also note that the Bill includes amendments to the National Energy Retail Law. A small number of important amendments have been identified as necessary to clarify the operation of the National Energy Retail Law or to correct or clarify minor drafting issues. The need for and form of these amendments have been agreed by all participating jurisdictions and are included with this Bill in South Australia's capacity as lead legislator. The Bill will make these nationally agreed amendments prior to the commencement of the Customer Framework, and the amendments will apply to all participating jurisdictions.

The Bill amends the National Energy Retail Law to clarify the way in which a partnership should be dealt with under the retailer authorisation framework. The amendments include provisions to allow applications to be made by two or more persons jointly, to enable a retailer authorisation to be held jointly by two or more persons, and to clarify that a change to a person constituting a partnership is taken to be a transfer of the retailer authorisation requiring approval of the Australian Energy Regulator.

The Bill also clarifies that where a distributor has a standard connection contract for large customers approved by the Australian Energy Regulator, the distributor may move existing large customers from the old deemed standard connection contract to the new contract and must give notice to those customers.

The Bill clarifies the relationship between retailer authorisation and market registration, and makes clear that registration with the Australian Energy Market Operator is only required if it is required under the relevant national electricity and gas regimes.

The Bill provides the Australian Energy Regulator with a limited discretion in its decision to issue a Retailer of Last Resort notice.

The Australian Energy Regulator's power to obtain information will be extended to any powers that the national regulator takes under the National Energy Retail Regulations or under participating jurisdictions' application Acts. Other amendments are also set out in the Bill to correct or clarify minor matters to improve the clarity of the National Energy Retail Law.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause provides for the short tile of the Act.

2—Commencement

The measure will be brought into operation by proclamation.

3—Amendment provisions

Part 2 of this measure will amend the *National Energy Retail Law (South Australia) Act 2011*. Part 3 will amend the *National Energy Retail Law* (which is set out in the Schedule to the Act).

Part 2—Amendment of *National Energy Retail Law (South Australia) Act 2011*

4—Insertion of Parts 5, 6 and 7

This clause sets out a series of provisions that are to apply in connection with the operation of the *National Energy Retail Law* (the *NERL*) in relation to this jurisdiction. In particular, the following provisions will be included in the *National Energy Retail Law (South Australia) Act 2011*.

Part 5—Implementation of national law in South Australia

Division 1—Preliminary

15—Preliminary

Section 15 makes it clear that the application of the *National Energy Retail Law* in this jurisdiction is subject to the operation of these new provisions.

Division 2—Application of law—electricity

16—Application of law—electricity

Section 16 will ensure that the NERL will, in relation to electricity, only apply to electricity supplied via the interconnected national electricity system within the meaning of the National Electricity Law. It will also be possible to exclude a particular area of the State from the operation of the NERL in South Australia.

Division 3—South Australian arrangements

17—Consumption thresholds

Section 17 will allow the Governor to prescribe consumption thresholds for business customers (rather than relying on thresholds prescribed by the National Regulations).

18—Standing offer prices

Section 18 will allow the Governor to prescribe an entity or entities that will be taken to be designated retailers for the purposes of the NERL (SA). The requirement to make a standing offer to small customers will only apply in relation to an entity prescribed under this section. The standing offer price that will apply under this scheme will be a price fixed by the Commission under section 36AA(4a) of the *Electricity Act 1996* (in the case of electricity) or section 34A(4a) of the *Gas Act 1997* (in the case of gas) so that such a price will continue to be regulated under jurisdictional energy legislation.

19—Small market offer customers

It has been decided not to apply section 31 of the NERL in South Australia.

20—Price comparator

Section 20 is relevant to the operation of section 62 of the NERL. This provision will require the Commission to maintain a price comparator on a website. The purpose of the price comparator is to allow a small customer to compare the standing offer price available to the customer and market offer prices that are generally available to classes of small customers in South Australia. It will be possible, by regulation, to bring this scheme to an end and instead apply section 62 of the NERL (SA), under which the price comparator is established by the AER.

21—Retailer of last resort scheme

Section 21 sets the standing offer price for a retailer of last resort.

22—Small compensation claims regime

Part 7 of the NERL will apply from a date to be fixed by proclamation.

23—Minimum standards of service for customers

Section 23 will allow the regulations to prescribe minimum standards of services for customers or customers of a prescribed class.

24—Late payment fees

Section 24 relates to late payment of fees.

25—Immunity in relation to failure to supply electricity

Section 25 will allow a distributor of electricity to enter into an agreement with a small customer to vary or exclude the operation of section 316 of the NERL (SA), subject to the provisions of the regulations.

Division 4—Miscellaneous

26—Application of *Essential Services Commission Act 2002*

27—Delegation by Minister

28—Extension of AER functions and powers

Sections 26, 27 and 28 set out provisions that relate to various matters of administration of the scheme.

29—Regulations

Section 29 is a regulation-making power for the purposes of this Part.

Part 6—Validation of instruments and decisions of AER—energy retail laws

30—Validation of instruments and decisions made by AER

31—AER—authorisation of preparatory steps

Sections 30 and 31 ensure that certain acts or steps undertaken by the AER for the purposes associated with bringing the NERL into operation since the enactment of the *National Energy Retail Law (South Australia) Act 2011* are valid in all respects.

Part 7—Transitional provisions

32—Interpretation

33—Conditions—exempt entities

34—Customer contracts—electricity

35—Customer connection contracts—electricity

36—Customer contracts—gas

37—Customer connection contracts—gas

38—Complaints and dispute resolution

39—Provision of information and assistance by Commission

40—Transitional regulation-making power

Sections 32 to 40 (inclusive) relate to various transitional matters.

Part 3—Amendment of *National Energy Retail Law*

5—Amendment of section 76—Formation of deemed AER approved standard connection contract

This clause amends section 76 of the NERL. The amendment will address the situation where the AER approves a new AER approved standard connection contract for a particular class of large customers where those customers are already on a deemed standard connection contract. In such a situation, the provision will provide that the relevant customers will be taken to have been moved from one contract to the other.

6—Substitution of section 88

This amendment will clarify the need to apply for a retailer authorisation or status as an exempt seller under the NERL independently of any requirement under the NEL or the NGL.

7—Amendment of section 89—Applications

8—Insertion of section 96A

9—Insertion of section 104A

These amendments will expressly allow a retailer authorisation under the NERL to be held jointly by 2 or more persons and allow the AER to regulate any charge in the membership of a relevant partnership or joint venture.

10—Amendment of section 107—Power to revoke retailer authorisation

This is a consequential amendment.

11—Amendment of section 132—Designation of registered RoLR for RoLR event

12—Amendment of section 136—Issue of RoLR notice

13—Amendment of section 139—Publication requirements for RoLR events

Currently, the NERL does not allow the AER a discretion as to whether or not to issue a RoLR notice on the occurrence of a RoLR event. In certain circumstances, it would be appropriate not to issue a notice due to the nature of the event. A series of amendments establish a scheme under which the AER will have such a discretion.

14—Amendment of section 187—Making of claims

This amendment corrects a minor error in the drafting of the NERL.

15—Amendment of section 204—Functions and powers of AER (including delegations)

16—Amendment of section 206—Power to obtain information and documents

These amendments clarify the ability of the AER to act under the National Regulations and, in appropriate cases, the Rules or an application Act.

Debate adjourned on motion of Hon. D.W. Ridgway.

[Sitting suspended from 18:01 to 19:45]

STATUTES AMENDMENT (SHOP TRADING AND HOLIDAYS) BILL

Adjourned debate on second reading (resumed on motion).

The Hon. J.A. DARLEY (19:49): I rise briefly to speak on the Statutes Amendment (Shop Trading and Holidays) Bill. My primary concern throughout this debate has predominantly come down to the following factors:

- the cost of living and the impact that this is having on families;
- the effect that any additional trading could have on small business and the associated cost implications for businesses overall;
- the impact that any additional public holidays would have on the aged care sector, in particular;
- the need to have the CBD open for trade on public holidays; and
- the need to appropriately award those employees, especially low-paid employees, who are working on Christmas Eve and New Year's Eve.

My decision to support the bill has not been made lightly and I certainly have not been dismissive of the concerns raised by those opposite opposed to the proposed measures. I have given careful consideration to both sides of the debate and tried to strike a balance between the opposing views. Do I think that this matter could have been handled differently? Certainly, it could have. However, I have made my decision to support the bill in an amended form against the background of what I see as the alternatives.

If these measures are not adopted, the next conceivable offer on the table may very well be extending the scope of public holiday trading beyond the CBD or a complete deregulation of shopping hours. We have already seen a strong push along these lines throughout this debate. I am strongly opposed to both of these options and I am not willing to leave them to chance at this time.

There is already widespread concern over the fact that Coles, through the parent company Wesfarmers, and Woolworths hold the lion's share of the supermarket industry and are increasing their share of the liquor and petrol industries across Australia. They hold stakes in the hotel industry, the home improvement sector, in electrical stores, hardware stores, and variety stores, among others.

Already, 23¢ in every dollar or over $100 billion in sales across Australia go to Coles and Woolworths. Extending the scope of public holidays to the suburbs or moving towards complete deregulation will inevitably make the situation worse. It will be the demise of small business across Australia. In South Australia we are fortunate enough to have a relatively strong independent base in terms of our supermarket industry.

Stores falling under the banner of the Independent Grocers of Australia, including Foodlands, IGAs and Friendly Grocers, are all 100 per cent independently owned and very much part of the local community. These stores are committed to promoting local produce and supporting local suppliers, manufacturers and growers, as well as local community. I for one would like to see it stay that way.

In relation to the additional part-day public holidays specifically, my preferred position would have been to have them start at 9pm on Christmas Eve and New Year's Eve. I chose 9pm because that is the time that shops are ordinarily allowed to trade until if they so choose. I can

understand why for many sectors, and in particular many public servants, including police officers and nurses, 9pm presented a challenge.

It would not have overcome many of the rostering issues that I am told that exist within these sectors that result in staff being paid ordinary rates as opposed to penalty rates because the majority of the hours they work fall within a non-public holiday. I am told that a 7pm starting time would alleviate that problem.

I might add that Christmas Eve and New Year's Eve have been highlighted to me as particularly difficult moments for employees working in these fields. I do not think anybody would question how gruelling it must be to work as a nurse, ambulance, emergency care worker or police officer on what are undoubtedly two of the busiest nights of the year, especially where party revellers are concerned.

With respect to the aged care sector, I have expressed to the Premier concerns specific to that sector, including charges for council rates and sewerage rates. For the benefit of all members, the Local Government Act provides that rates on land predominantly used for service delivery, or administration, or both, by a community service organisation will be rebated at 75 per cent or at the discretion of the council at a higher rate.

A community services organisation is defined as a body that is incorporated on a not-for-profit basis for the benefit of the public and provides community services without charge or for a charge that is below the cost of the body of providing the services and does not restrict its services to persons who are members of the body.

The act further provides that a council may at its discretion grant a rebate of rates or service charges in a number of cases including where the land is used to provide accommodation for the aged or disabled. The aged care sector facilities that do not fall within the definition of a community service organisation do not automatically get the benefit of the minimum 75 per cent rate rebate.

Whether or not they do in fact receive a rebate is at the discretion of the council. In addition, as I understand it, all aged care facilities incur sewerage supply charges based on the capital value of their property as determined by the Valuer-General. The same facilities are already exempt from land tax.

Alleviating aged care facilities' need to pay a sewerage supply charge and ensuring that they all receive a rebate for their rates will go a long way to assisting them financially. The Premier has indicated that consideration will be given to these issues. My support for the bill is not contingent on the outcome of those considerations. However, I will continue to advocate for those concessions.

My colleague the Hon. Kelly Vincent has also expressed concerns regarding the disability sector. The Premier has also undertaken to address some of those issues. There is no question that part-day public holidays are a new concept in South Australia and that there may be ramifications in relation to the modern award process. It is not the first time and it certainly will not be the last time that new concepts will spring up. It also will not be the first time that we are faced with challenges as a result of change.

It does not follow that we should sit back and do nothing in fear of creating change. These issues will need to be addressed through the appropriate channels if and when they arise. It is important not to lose sight of the fact that the majority of workers most impacted by these changes are some of the lowest-paid workers in the state.

My office has been inundated with postcards and letters of support from people in support of the part-day public holidays, as I am sure all members' offices have been. Many employees working on Christmas Eve and New Year's Eve sacrifice the opportunity to spend time with family and loved ones. In many instances they provide a community service by working on these nights for the benefit of the rest of us. It is only fair that they be appropriately remunerated for their work in return.

In closing, there is no doubt that South Australia needs the CBD to be open for trade on public holidays. As I have said on numerous occasions throughout this debate, the alternative would be to have Australia's only cemetery with lights. I have tried to find a balance between the opposing views, and I think that balance has been achieved. I would like to thank the Premier and all the stakeholders with an interest in this matter for making themselves available to discuss this

issue with me at such length. I can assure all of them that their concerns have not fallen on deaf ears.

The Hon. T.A. FRANKS (19:57): I rise on behalf of the Greens to put our parliamentary party position on the Statutes Amendment (Shop Trading and Holidays) Bill 2012. From the outset I would like to acknowledge, as have some other members, that we have received more lobbying on this issue than certainly than any other issue in my experience, and that includes the issue of voluntary euthanasia. In discussions about this people joked with me that perhaps people care about shopping more than they care about death. I hope that is not the case, but certainly it has sparked a very fierce public debate.

We have met with a range of people. I will briefly outline some of them to give an indication of how widely we have consulted on this. We have received submissions from the Chapley Group; Globalize; Adelaide Central Plaza; SA Unions; Southern Cross Arcade; Food Court; the Rail, Tram and Bus Union; Shades; the Maras Group (I met with Theo Maras and other members of the Rundle Mall Management Authority); the Australian Nursing and Midwifery Federation; Romeo's Retail Group; Uniquely Rundle Mall; the TWU; the ASU; the Police Association; United Voice; SA Unions; Drakes Supermarkets; Adelaide City Council; Business SA and Peter Vaughan, representing Business SA; the SDA Secretary Peter Malinauskas; the AHA; the SA Business Coalition; Clubs SA; SA Wine Industry Association; Restaurant & Catering SA; the Aged Care Association of Australia; Caravan and Camping; Motor Trade Association; the Tourism Industry Council; the Liquor Stores Association; the Baking Associations of Australia (SA branch); the Australian Automobile Dealers Association; Tourism Accommodation Australia; the Youth Hostels Association; Hostels Accommodation Australia; Service Station Division SA; the Boating Industry Association; the Shopping Centre Council of Australia; and there were more.

Two members of parliament also put particular perspectives and I would like to thank them for their time, and they are the member for Mount Gambier and the member for Adelaide. I actually think that is not an exhaustive list. I also thank both minister Wortley and his staff and the Premier and his staff for their briefings and information.

Given that amount of lobbying, I think we would all acknowledge that this is a vexed issue. I have certainly heard at times in the debate that there is no need for a deal on this issue as it would gain support. I am here to clarify that this issue before us of increased retail trading hours is not one that the Greens would support of and by itself. The issue of trading hours in retail is one which has been particularly vexed in the community. Certainly, the views of those in the community who do not support increased trading hours have not been strongly heard loud and clear. We have had a particular mind to listening to those views as well.

One of the charges made in this debate is that Adelaide will be a backwater if we do not embrace the idea of increased trading hours in our retail sector. One place that could certainly never be called a backwater is London, and London is currently grappling with the issue of increased Sunday trading hours for the Olympics. For those of you who are unfamiliar with the trading hours debate there, Britain's Treasury chief is planning to loosen restrictions on Sunday trading during, in that hemisphere, this summer's London Olympics. By law, large stores in England and Wales can only open for six hours on a Sunday, but the Chancellor of the Exchequer, George Osborne, says these restrictions will be lifted during the Olympic and Paralympic Games.

So, we are hardly alone in debating these issues. Certainly, the opposition Labour Party Treasury spokesman there (who has the wonderful name of Ed Balls) says that he would not want to see this change become permanent. I caught the end of a media story on this, where there is a really huge groundswell campaign from the community, under the flagship of 'Sundays are special'. They certainly do not want to see the restrictions that will be lifted for the Olympics in London continue beyond that period. I would point to that when we hear charges that somehow Adelaide is different and unusual in grappling with this idea of unrestricted trading hours.

A little closer to home, in Australia we know that there have been many moves to deregulate retail trading over the years. Certainly, one state that is in a similar position in many ways to our own is WA, where the issue has actually been well tested in terms of community opinion. In that state, the Greens have certainly been part of the strong campaign that has been mounted by smaller retailers to highlight significant and valid concerns about the structure of ownership within the retail trading sector and the influence upon the market of the large players, as other members have mentioned, particularly the Coles and the Woolworths of this world. Certainly, in South Australia, we are in a fortunate position of not having those two big players in the supermarket sector having quite as large a share as they do interstate.

The issue was actually taken to a referendum in that state, and I think you cannot get anymore contentious a community issue than one which necessitates a referendum. The result indicated that the majority of the community in WA is certainly not seeking to extend the opportunities to consume. There is a bigger philosophical question here: whether or not we want to be a community that wants everybody to be able to shop every hour of the day and night, every day of the week, and what would that do to us as a community and as a society? Of course, the reality is we actually already have that ability now. The online shopping and shopping TV revolution has well and truly happened. It is not on its way: it is here. I personally find that sad, but it is the reality.

I guess the question that must be asked is: why do we need retail trading hours regulation? A quick glance at the recent Productivity Commission report into retail trading in Australia certainly has some particularly strong views that there should be deregulation. It points out that restrictions on shop trading hours, including the opportunity for some small businesses to trade without competition from larger retailers and reduce the need for retail employees to work outside traditional working hours, have certainly been supported in the past.

It uses some interesting language, saying that 'restrictions on trading hours impinge on consumer choice regarding when (and where) to shop' and that they cause inconvenience. They say that for retailers there are efficiency costs and administration costs in complying with what are termed 'restrictive' state trading regimes. They believe that changes in social patterns have contributed to decisions by state and territory governments to liberalise trading hours regimes over time. But for all states, some trading restrictions still remain, and they continue, in the words of the Productivity Commission, 'to discriminate between retailers on the basis of products sold, size and location'. I am not sure that that is the sort of discrimination that gets me excited, but for some people, including this particular Productivity Commission report, I can see where they are coming from.

Beyond the deregulated ACT and Northern Territory regions, the Productivity Commission report particularly notes that Western Australia, South Australia and Queensland are what it terms the most 'restrictive states'. I have a different word for it. I would perhaps say that we are the most family-friendly or that we have a mind to having a social fabric. There are two sides to any coin. I can see that there are benefits to having the so-called restrictive trading hours and practices and limitations as being of benefit to the social fabric of our state.

Some of the regulated states have also established geographic shopping districts, or regional trading precincts. So, we are not alone in that as well. They have created what are called 'boundary anomalies'. To put it in South Australian terms, they are what we are familiar with, and that is the Jetty Road, Glenelg tourism precinct and, of course, the Harbour Town precinct.

I note that we are not alone as a state in having a Harbour Town. It has always seemed odd to me that we have a Harbour Town that is nowhere near a harbour, until you realise that these Harbour Towns are unrestricted shopping malls in the middle of nowhere, usually on federal land or similar, with unrestricted hours. One of them must have been near a harbour once is all that I can figure. They are called Harbour Town, and they are all usually clearance shoppers' heaven, with massive warehouse housing for people who wish to consume and who have that retail therapy to do so, with longer hours than their more local shops perhaps.

The Productivity Commission report contends that there are good reasons why trading hours should be fully deregulated. It talks about what it called 'consumer welfare benefits' that would be associated with greater convenience and product choice. I find the term 'consumer welfare' a little odd. I do acknowledge, of course, that there is a role for retail therapy in many people's life, but I am not sure that the Greens are going to go in to bat for consumer welfare. I acknowledge that we live in a global community. The corner shop may be great to grab a litre of milk and a loaf of bread, but you can jump online and get those things delivered almost as quickly and, for my purposes, even better, you do not have to get out of your pyjamas to do so.

An honourable member: Hear, hear!

The Hon. T.A. FRANKS: 'Hear, hear!', I say. I am a big fan of online shopping, not that I am a big fan of shopping in general. I do not see, as I have said, the rise of online shopping necessarily leading to the demise of retail. Many industries evolve and adapt over time, and retail is no different from other industries in that way, but the online shopping industry has certainly made a substantial impact in opening up our retail market. Our retail competitors are now not just down the street or in the next suburb; they are now national and, of course, international. Combine that with

our high dollar and the ease of postage in Australia and the reasonably good postage system we enjoy, many segments of Australian retail are no longer protected by our so-called tyranny of distance.

A member previously noted that he found it challenging that the online environment existed and that, in fact, a small retailer was battling to compete with the prices that could be offered in that retail environment, but that is the nature of retail and the market environment. As I have said, that can have both positives and negatives. The internet has given enhanced transparency for consumers. It is really easy to get online to check products and pricing, and you can compare really quickly between retailers, and that is a welcome thing for most consumers.

On the weekend, I went to an event called the 'Bowerbird Bazaar', which is an Adelaide craft market, with handmade and handcrafted wares. It was everything you might think the Greens would attend.

The Hon. J.M.A. Lensink: Lots of hessian.

The Hon. T.A. FRANKS: There was a lot of hessian. There was a lot of organic, fair trade, free range, slightly overpriced beautiful crafts. It was a wonderful environment and there were a lot of things I would have loved to have bought then and there. I was handed a small book as I entered, and it was not until I got home that I realised every single one of those craft stalls had an online presence as well. Each and every one of them had a website. No doubt, I will be consuming some of those products at a later date, and many of the people who attended that craft market will do so as well.

That area, which you would think would be an area that would rely on the physical ability to see the products, to touch them and see the quality, also harnesses the values and benefits of the online retail sector. Many can and will be able to respond effectively to this new environment. Indeed, rural and remote communities are in a wonderful position to be able to take on this industry with the click of a mouse, meaning that they can have a transaction with a consumer rather than requiring foot traffic just outside their front door. If their front door is 100 kilometres from the nearest neighbour, that is a wonderful thing.

There is an onus on retailers to adjust to this, but from a public policy perspective government can enhance our competitiveness by ensuring retailer flexibility through changes to the regulatory environment in which they operate, and these include planning and zoning shopping hours and workplace practices. It has been put to us in this bill that Rundle Mall and the City of Adelaide as our capital city holds a special place and, in that, I think we can all see that there is a value in having our capital city of our state being open, diverse and vibrant.

On that note, Splash Adelaide gets a tick from me and, aside from the unfortunate disabled parking issue which I gather was reasonably quickly addressed, there has been a wonderful buzz to the city in the past few months. I would hope to see the vibe (not wanting to quote *The Castle*) and the feeling in the city over the past few months replicated and I imagine that increased shopping hours on public holidays is one of the ways we will see that more often in our city.

There was some consternation from some of the traders that their turf was under threat if a temporary burger van, a popcorn stall or little sidewalk coffee shop opened up near their regular store. Many other traders saw that as an opportunity to create critical masses, if you like, to get people to stay longer in the city and to spend their time there. I saw lots of people enjoying the Splash Adelaide venues that popped up and then disappeared; that feeling that there was a moment there to be taken advantage of was a very special part of that over summer.

Much conjecture has been made about this bill that we should be wary that a deal has been done. Well, that is pretty obvious. It was announced in October and it was talked about well before that. Far from being sinister and hidden—I certainly have copies of the agreement—all parties of Business SA and the SDA have been very forthcoming with information about the background of how they came to strike this deal.

From the lobbying and conversations that have happened, there was not one solution that was going to be easily reached here. As I have indicated, the Greens would not have been happy with extending shopping hours in the city on public holidays in and of itself. I note that previously the member for Adelaide's private member's bill very recently put that as a standalone issue. That bill failed to secure the numbers in the House of Assembly. It certainly never reached debate in this chamber. Had it done, of course, there would not have been any trade-off by the conflicting

interests. I certainly think that some trade-off here is warranted and indicate that should this bill be decoupled we will not be supporting the deregulation of shopping hours in the city.

As I say, far from being sinister or covert, I have copies of the shop trading hours agreement of October 2011 that was signed by both the CEO of Business SA, Peter Vaughan, and the secretary of the SDA (SA Branch), Peter Malinauskas. It is quite transparent, and I imagine that it is reasonably easy to get a copy of that particular deal. I also had some reservations, because the Greens are not necessarily used to dealing with the SDA. I was certainly very eager to check with other unions, in particular United Voice, that they were supportive of the deal. Not only are they supportive, but they have campaigned strongly across the union movement because they see this as a great win for workers, and certainly the Greens agree with them on that.

The other reservation that we had was that it was indicated that Peter Vaughan, as CEO of Business SA, was somehow acting beyond his brief. My meetings with him, the paperwork that he provided me, and certainly a media statement from the board reiterate their support. I will read some of that for the *Hansard*. The president, Vincent Tremaine, stated on 9 February 2012:

> As President of Business SA, I unequivocally state that the agreement reached was a Board decision and therefore is a policy of Business SA. We agreed on this deal as being the best outcome for the people of South Australia and in particular the Adelaide CBD.
>
> Business SA has a long standing policy of full deregulation of local shop trading hours. This historic agreement has already been massively supported by the people of South Australia, as evidenced by the recent public holiday shopping in the CBD on 27 December, 2 January and on Australia Day.
>
> This was the best available agreement that could be reached in order to achieve a breakthrough of public holiday shop trading hours in this State. Not implementing these changes would mean that the current archaic shop trading hours would remain in place, subjecting the State to further ridicule from the rest of the country.

I would disagree that we would be further ridiculed by the rest of the country, but I certainly take on board that both parties made concessions on this and that there was no easy solution without some concessions being made. That said, not everyone who opposes this bill actually wants to see the shops open for longer, and in fact there are some who are quite to the contrary. I certainly had representations from a few of them, but in particular Peter Shearer Menswear wrote to us stating:

> In summary, we oppose any further changes to trading hours. We feel that trade on Public Holidays is not financially viable and is a significant imposition on family life. Accepting trade on Public Holidays and extended trading hours, in our opinion is a push towards total deregulation of trading hours. The impact that this decision will have on retail in general is significantly negative as independent retailers leave the market.
>
> With the wisdom of hindsight, it is important to note that since the introduction of extended trading our industry has had numerous independent menswear stores close down. We don't have to look far to see other retail industries suffer the same fate. Our own figures show that the increase in trading hours has not brought the same rate of increase in turnover as it has in costs, and we are a successful retailer. When will the decision-makers learn?

As I say, not everyone who opposed the bill did so because they wanted more shopping hours. There was a wide cross-section of beliefs and positions that have come to bring this bill before this chamber tonight. Indeed, I have to shake my head at the assertions that all the political parties were looking to extend trading hours. Certainly, the Greens were not. If we had all agreed on that, we would all be sitting here singing *Kumbaya* and holding hands and not debating; but we are actually quite vigorously debating this bill tonight.

Having a consensus has dogged this issue for decades. There has been no consensus, and we have an incredibly broad range of opinions on this issue. Two of the major players, being Business SA and the SDA, have made an agreement and they have taken it to government. The government has agreed and then of course public debate has erupted. Other major players have had quite valid opinions, and certainly the Business Coalition and SA Unions have lobbied us strongly and effectively, and I guess the diversity in the chamber is testament to the power of the lobbies on all sides.

The lobbying has, of course, been taken up to the government, the opposition, the crossbenchers and through the media. I point out that *The Advertiser* has had some really interesting and unexpected positions on this. Certainly, *The Advertiser* has been a big winner out of this debate in the amount of advertising revenue it has received from all sides. It must be hoping that there will be some other controversial issue that is so well lobbied and advocated for some time soon to build up its coffers.

If *The Advertiser*'s editorials are anything to go by, the debate also rages among those who work for the paper itself. On 8 November 2011, there was an editorial, 'Business votes for progress', which stated:

The argument about people needing to spend time with their families and to protect the idea of public holidays is good in theory. For years, working conditions have been changing and large sections of the work force have been working odd hours and on public holidays.

While these changes might not meet the aims of total deregulation, it is a significant step towards returning a vibrancy to the central business district which has been lacking for so many years.

Certainly, reasonably positive, and finishing with the sentence:

This is a smart move by all involved—the union, business and the Government—and once the changes become law early next year will add a new dynamism to the CBD.

Then, on 21 November, the editorial headline read, 'Shopping hours need a review'. It was stated in that editorial that allowing public holiday shopping in the CBD was an overdue but welcome move from the state government, and polling showing public desire for an extension to the suburbs shows that that too should be considered. On 22 February, there was an editorial with the headline, 'Unfair penalty in holiday trading deal'. Clearly, *The Advertiser* had had some second thoughts from its two previous editorials. The editorial reads:

The deal on shop trading hours struck between the shop workers' union and Business SA and then adopted by the State Government needs to be revisited.

Finally, and I am sure we have not seen the last of editorials on this issue from *The Advertiser*, on 22 March the headline reads, 'A sensible deal for shoppers', and it states:

South Australia's public holiday trading debate has been messy but ultimately fruitful.

As I say, I think *The Advertiser* was the big winner with the enormous amount of advertising it gained through this campaign. At first, *The Advertiser* did not seem to appreciate the public holidays aspect of this bill. Perhaps that was more to do with the journalist who wrote the initial editorials than anything inherent in the bill or the government's presentation of the bill to this parliament.

We have heard the claims that nowhere else in the world do we see part-day public holidays. That is a claim that just does not stand up to scrutiny. A brief library search pulls up a whole range of part-day public holidays. Sweden has quite a few. My favourites were the ones in China, which actually has four different half-day public holidays: Women's Day, where women get half a day off; Youth Day, where if you are between 14 and 18 you get a half day off; if you are under 13 there is Children's Day; and if you are in the army you get a half day off on Army Day.

We have seen public holidays for all sorts of unusual reasons. I would contend that a public holiday for a horse race that stops the whole nation, being the Melbourne Cup, and most states stop for at least an hour or so if not the whole afternoon, is a very Australian tradition. Somebody who has never lived here and did not understand that that was part of our culture would probably find it a little odd that in this country we have public holidays for horse races, but that is part of our culture, and culture is, of course, something that constantly evolves and adapts to reflect the realities of our lives.

There is the Devonport Cup, the Launceston Cup, and in Brisbane there is a CBD-only holiday for the Ekka, which is like our royal show. I grew up in Sydney where we always had a school day off—rotating across the city—for the royal show, and most workers also somehow found time to be rostered off. They did it for area so that not every school went out at the same time.

Across Australia we see public holidays for all sorts of reasons, and, as the Hon. Kelly Vincent noted, we are certainly not the state with the most public holidays—New South Wales takes the honours there, is the way I would term it. Our public holidays this year will not include the one that is going to happen in Queensland, where clearly they take the title of their state quite seriously because they will not only be having the Queen's Birthday when everyone else does (on that second Monday in June) but they will also be celebrating the Queen's Diamond Jubilee on 2 June this year.

As we can see public holidays are not set in stone. Some points of interest in a search on public holidays also pulled up that Ireland does not actually have a public holiday for Good Friday. Certainly that was something that I would have assumed would be the case. In Australia we do not all have a public holiday for Easter Sunday; in fact, New South Wales is the one state that has that most enshrined, if you like.

I understand that some honourable members will be moving amendments to this bill with regard to shifting public holidays, and certainly the Adelaide Cup current public holiday in March

has been flagged as the subject of an amendment. I noted with interest the moving of that particular public holiday to suit the racing industry in the past. Certainly it now being placed in March has been good for events such as the Future Music Festival, WOMADelaide, the Fringe and the Festival.

I have always liked the fact that it is right near International Women's Day, and in fact in 2010 it was on 8 March which was International Women's Day. Certainly I would think that that would be a fitting date to commemorate as the March long weekend public holiday. Many countries around the world do have in fact an International Women's Day public holiday. Some of them have a half day for that particular public holiday.

Certainly in Sweden, as I mentioned, a lot of people who have those half-day public holidays, I understand, usually throw in a bit of their annual leave and take the whole day off with their annual leave combined there. To summarise, the Greens do not believe that the impost on retail and associated workers who will be required to work additional times—let's not fool ourselves here—should be taken lightly.

We also believe that long-suffering parts of the workforce who have for many, many years been required to work on New Year's Eve and Christmas Eve—and their families—should actually get appropriate recompense for the loss of those times from their social lives. A recognition that for many Saturdays, Sundays and public holidays are not standard work hours—and certainly for many the evenings are not standard work hours—has been part of the long-fought gains achieved by the union movement, so it should be little surprise that, given some thought and seeking a lateral solution where there were warring forces in a stand-off, the SDA—and, yes, it was led by Peter Malinauskas—would throw this issue onto the bargaining table.

It should also come as little surprise that Peter Vaughan and Business SA accepted the deal. They stood to gain from a campaign that he and Business SA had long fought. The board has stood by the decision. I have met with Mr Vaughan in recent weeks and, as a representative of Business SA, he continues, I understand, to have the full support of his board in advocating for this bill.

I would like to conclude with some mention of the Police Association of South Australia, which, of course, like the nurses who I also met with and who are thrilled with this bill, will be working more than likely most New Year's eves and Christmas eves of their working lives in the police force. They really welcome this bill because the part of the bill which establishes part-day public holidays between 5pm (then)—now it will be 7pm if the amendment from the Hon. John Darley is successful—and midnight on Christmas Eve and New Year's Eve is of significant benefit to police officers, particularly that New Year's Eve date.

I would like to note that that was a particular date of significance for the nurses as well because that is in fact one of their hardest shifts of the year to fill and one of the most difficult shifts of the year to work. The Police Association wrote to me and said that they had attempted through many enterprise agreement negotiations to address their members' concerns in respect of payment on New Year's Eve. SA Police roster a large contingent of police officers who work on New Year's Eve to start between 7pm and 7.30pm currently. Owing to this rostered start time, those members are not entitled to any payment at public holiday rates for work they perform after midnight, that is, on the public holiday of either New Year's Day or, of course, Christmas Day. This is because they work the majority of their rostered shift on the non-public holiday, New Year's Eve, which is why they are rostered on so early.

They work these 12-hour shifts in reality and they don't get the benefit of the fact that they are working on one of the hardest days of the year on a public holiday while everyone else is, typically, having their family time, their social time or their down time. The police suffer because this creative rostering, as they quite kindly refer to it, results in on-duty police officers being deprived of the public holiday penalty rate. Many of them are compelled to work overtime and might ultimately work up to a 12-hour shift.

Successive governments have failed to act on the strong need to address this issue because of the requirement to amend the Holidays Act, which brings the obvious flow-on effect. It is therefore of great interest to Police Association of South Australia members that the successful passage of this bill occur to eliminate the great injustice that they have endured for many years. The need for large numbers of police, and indeed all emergency services workers, to work on New Year's Eve is indisputable, as is the benefits that this will bring and the recognition this will

bring in South Australia that we actually value our social fabric and not just our shopping hours. With that I commend the bill.

The PRESIDENT: The honourable minister, to wrap up.

Members interjecting:

The Hon. J.S.L. DAWKINS: I move:

That the debate be adjourned.

The Hon. R.P. Wortley: We have clearly on the sheet that it goes into committee.

The Hon. J.M.A. Lensink: This week.

The Hon. R.P. Wortley: No, today.

The Hon. J.S.L. DAWKINS: Our sheet clearly says that we wanted to adjourn it and the Whip knows that, and I spoke to the leader about that earlier.

The Hon. R.P. Wortley: This is a stalling tactic.

Members interjecting:

The PRESIDENT: Order! It has been moved that the debate be adjourned—is that seconded?

The Hon. R.I. Lucas: Seconded.

The council divided on the motion:

AYES (9)

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

NOES (10)

Darley, J.A.	Finnigan, B.V.	Franks, T.A.
Gago, G.E.	Gazzola, J.M.	Hunter, I.K.
Kandelaars, G.A.	Parnell, M.	Wortley, R.P. (teller)
Zollo, C.		

Majority of 1 for the noes.

Motion thus negatived.

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (20:36): I would like to thank all members for their contributions, and I will make a few comments regarding that at the end of these closing remarks. The regulation of South Australia's shop trading hours has been debated in the community over many decades and this debate has intensified over recent months with the introduction of the Statutes Amendment (Shop Trading and Holidays) Bill 2012.

The passage of this bill will mean that as a community we have resolved decades of debate with respect to shop trading hours while at the same time retaining the balance between the interests of small retailers, larger retailers, workers and the broader community. What is more exceptional about this compromise is that it will have been achieved with agreement between South Australia's peak business group, Business SA, and the relevant union, the Shop Distributive and Allied Employees Association, which have been at loggerheads over this issue for some time. I congratulate these two organisations for putting aside their ideological differences on this issue in the interests of the South Australian community.

The proposed changes contained in this bill will bring our shop trading laws into the 21st century in a way that supports the creation of a vibrant Adelaide city centre while at the same time providing some new protection for South Australians who are required to work on Christmas Eve and New Year's Eve. These are special nights of the year when the rest of us have the opportunity to be with friends and family.

I thank honourable members for their contributions during the second reading debate and will now address the specific questions and issues which have been raised. As there has been much discussion in this chamber about a wide range of issues, many of which do not actually relate to this bill, I would like to remind members what this bill is about. The Statutes Amendment (Shop Trading and Holidays) Bill 2012 will allow retailers in the central business district tourist precinct to open on most public holidays from 11am to 5pm. This will bring life into the heart of Adelaide on days during which the city would once have been deserted.

Members will be aware that, following recent mature and constructive discussions with many of my colleagues in this chamber, I will move amendments to the bill which will ensure that employees in the national system of industrial relations who are requested to work after 7pm on Christmas Eve and New Year's Eve will have the right to reasonably refuse to work or receive appropriate penalty rates of pay under the appropriate industrial instrument.

Shop trading and public holiday laws have also been criticised for being overly complex and difficult to understand. The bill provides for a significant reduction in red tape as outdated procedures for receiving shop trading exemptions are streamlined. Significant benefits for South Australia will flow on from these changes, including the economic and cultural benefits of increased shop trading hours in the newly defined central business district tourist precinct.

The bill will allow non-exempt shops in the CBD tourist precinct to open from 11am until 5pm on most public holidays. Retailers will have the benefit of additional trade, surrounding restaurants and other establishments will experience a resulting increase in sales, and the community will enjoy an injection of new life into Adelaide.

However, this government also recognises the special significance of 25 December (Christmas Day), Good Friday and ANZAC Day. This bill balances our desire for economic growth and vibrancy in the city centre with a recognition of South Australian community values and expectations by ensuring that shops remain closed on these days.

Once enacted, these amendments will ensure that South Australians, as well as tourists, will view the CBD tourist precinct as a central meeting place in South Australia; a meeting place which will be bustling with vitality and activity. By identifying the city centre as a tourist precinct for the purposes of shop trading laws, this government is further signalling its ongoing commitment to making Adelaide a tourist destination for the 21st century. The combination of cultural attractions, great food and fine wine and a unique shopping experience will make Adelaide a 'must visit' city on the Australian tourist map.

In an overwhelming confirmation of the community's support for enhancing the experience of visiting the Adelaide CBD on public holidays, I can provide the following statistics regarding recent public holiday trading provided by the Rundle Mall Management Authority: on Tuesday 27 December 2011, 125,000 people filled Rundle Mall, with approximately $12 million in sales; on Monday 2 January 2012, 70,000 people visited Rundle Mall, with approximately $6 million in sales; on Thursday 26 January 2012, 70,000 people visited Rundle Mall, with approximately $7.5 million in sales; and on Monday 12 March, there were 80,000 visitors to Rundle Mall, with approximately $7.5 million in sales.

The community is clearly talking with its feet. It is apparent from these figures that the City of Adelaide is one of South Australia's greatest economic assets. Ensuring our capital city's vibrancy into the future is a key priority for this government. The reforms proposed in this bill are only one piece in the puzzle of creating a vibrant, modern and world-class Adelaide cosmopolitan centre. This goal is supported by the government's proposed upgrade of the Adelaide Oval, the development of the Riverbank Precinct and the construction of the new Royal Adelaide Hospital.

The bill does not propose to change shop trading provisions applying to the suburbs in Adelaide. This fits with South Australians' expectations of both a vibrant, open city heart and the preservation of the best aspects of our quieter, family-friendly neighbourhoods. It also protects local businesses, independent supermarkets, and convenience stores.

Suppliers and local producers will also be protected from the increasing domination in the market of the big supermarket chains that we see having such negative effects interstate. There is no doubt that one of the reasons we have the strongest independent supermarket sector in Australia and a strong local fresh produce sector is that the government has stood strongly against the total deregulation of shop trading for which some, particularly in our business community, have lobbied.

Total deregulation of shop trading hours will put at risk many small producers and businesses across South Australia, particularly in the independent grocer sector. There have been claims that the government does not need to legislate these types of changes to shop trading hours. It is true that the Shop Trading Hours Act 1977 allows exemptions to be granted to allow shops to trade outside normal shop trading hours, but exemptions are not the way to make permanent exceptions to the law.

This government has decided on a policy of reform to shop trading hours, and it intends to ensure that this policy is delivered in a clear and transparent way and in the appropriate way to make changes—and that is through the parliamentary process. To change shop trading hours on a permanent basis, the legislation regulating shop trading hours must change.

The opportunity for shops to increase trading hours is balanced in this bill by protecting the evenings of Christmas Eve and New Year's Eve for those who make economic growth possible—South Australia's workers. While recognising these two days as part-day public holidays from 7pm until 12 midnight will only constitute an increase of 10 hours out of 8,760 hours in a year, the importance of these nights to individuals for community celebration and family gatherings cannot be underestimated.

The provisions creating the part-day public holidays acknowledge the fact that, while most of us are at home or out enjoying ourselves at those very special times of the year, there are others who are protecting us and serving us. I refer, of course, to our nurses, police, firefighters and hospitality workers. The part-day public holidays will allow workers to access any applicable public holiday protections and penalty rates if they work on these special nights.

Prescribing part-day public holidays also gives private sector workers the right to reasonably refuse to work on Christmas Eve and New Year's Eve pursuant to the National Employment Standards in the commonwealth Fair Work Act 2009, providing them with the opportunity to spend that time with family, friends and loved ones or be compensated appropriately should they choose to work.

The creation of these part-day public holidays also recognises this government's commitment to the family, religious and cultural values that are very important to most South Australians at these special times of the year. These South Australian values are reflected in a recent Newspoll survey; an overwhelming 80.6 per cent of whom supported higher rates of pay for those in our community who work on Christmas Eve and New Year's Eve. These numbers cannot be dismissed. The people of South Australia have voiced their opinion, and they support these reforms.

The opposition has argued that South Australia should not adopt part-day public holidays because they are not observed in other states. Pertinently, this argument fails to acknowledge that public holidays are about recognising the values, traditions and the particular needs of local communities. That is why the framework for the national industrial relations system, the commonwealth Fair Work Act 2009, clearly dictates that each state and territory has the ability to create and observe its own public holidays and part-day public holidays. That is why each Australian jurisdiction, including South Australia, currently celebrates public holidays that are unique to the state, territory or region.

I would like to bring members' attention to the fact that New South Wales regularly has half-day public holidays in regional areas, with 13 half-day public holidays in 2012, such as the Albury Gold Cup, Parkes Show, and Jacaranda Thursday. Various members have raised concerns about the introduction of the proposed part-day public holidays on business in regional areas. Firstly, most businesses (regional and otherwise) will not be impacted by the additional 10 hours a year of public holidays. Most of them—both regional and metropolitan—recognise the importance of Christmas Eve and New Year's Eve evenings by not trading on those days.

Secondly, any proposition that the proposed part-day public holidays would apply only to city workers is absurd. This government believes in equity for all workers, irrespective of the location in which they work. An argument in favour of paying public holiday penalty rates only in metropolitan areas on the part-day public holiday essentially amounts to an argument in favour of placing greater value on the work of city workers as compared to rural and suburban workers. That is why the bill proposes that the part-day public holiday will apply across the whole state.

Members may be aware of the advice provided by Minter Ellison Lawyers to Mr John Chapman, Executive Director of the Motor Trade Association of South Australia, and spokesperson for the SA Business Coalition. I am advised that SafeWork SA has assessed the Minter Ellison

advice, and I can provide members with the following critical information in response to that legal advice. For most employers, the industrial implications of the new part-day public holidays from 7pm until midnight on Christmas Eve and New Year's Eve will be the same as the industrial implications of any public holiday. The general principle for managing a public holiday is that a worker may reasonably refuse to work on a public holiday. If a worker does work on a public holiday, he or she is compensated with the appropriate penalty rates. If a worker would normally work on a day of the week that is a public holiday but, because it is a public holiday, the employer is closed, the worker will not suffer any reduction in pay.

If a worker would not normally work on the day of the week that is a public holiday, he or she is not entitled to be paid for that time. For example, a full-time worker who works a five-day, 30-hour week from Tuesday to Saturday does not gain any benefit from the several public holidays that fall on a Monday. Likewise, there are many part-time workers who do not work every day of the week and gain no benefit from a public holiday that occurs on a day on which they would not have ordinarily worked. Then there are those part-time workers who only work three or four hours a day. If their three or four hours happen to fall on a public holiday and the business closes for the public holiday, they only get paid for the three or four hours that they would have normally worked on that day.

These principles should be no different for part-day public holidays, with the only difference being the observance of a five-hour period as the public holiday, rather than a 24-hour period. The first 19 hours of Christmas Eve and New Year's Eve should be treated like any other normal working day. Recently, through the media and other sources, I have also heard all sorts of scaremongering about the unattended consequences that could be created by part-day public holidays. This has now been extended to how many annual leave entitlements may be affected.

An honourable member: How many what?

The Hon. R.P. WORTLEY: Annual leave entitlements may be affected. The commonwealth Fair Work Act clearly contemplates part-day public holidays under the state and territory public holiday laws. The supposed loopholes being raised are mischievous. I am very confident that South Australia's new part-day public holidays will be treated in the same way as public holidays are currently.

Section 115 of the Fair Work Act lists certain days that are recognised nationally as public holidays and any other day or part day declared or prescribed under a state or territory law. Section 114 provides a reasonable right to refuse work on a day or part day that is a public holiday. There has been no dispute to date that this will mean these rights will be available to workers between the hours of 7pm and 12 midnight on Christmas Eve and New Year's Eve.

As I stated earlier, this year alone, New South Wales has 13 regional part-day public holidays declared pursuant to its Holidays Act. Most of these part-day public holidays have been observed for many years, and I have been advised that there have not been dire industrial consequences arising in New South Wales before or since the introduction of the current national industrial relations system.

The question has been raised about annual leave when these part-day public holidays occur. Section 89 of the commonwealth Fair Work Act states that when an employee takes paid annual leave and this leave includes a day or part day that is a public holiday, the employee is taken not to be on paid annual leave on that public holiday.

The term 'that public holiday' can surely only mean between the hours of 7pm and 12 midnight on Christmas Eve and New Year's Eve. It should have the effect of not being annual leave for those workers who would have ordinarily been required to work after 7pm on Christmas Eve and New Year's Eve. This is no different to how other public holidays are treated when a worker is on annual leave.

Questions have also been raised about public holiday provisions in several modern awards and enterprise agreements. Of the examples regarding the potential conflict between state law and industrial instruments, again I direct members to the fact that the national industrial relations system, within which modern awards and enterprise agreements sit, clearly contemplates that some public holidays will be part-day public holidays.

I am advised that workers will be paid in accordance with the relevant industrial instruments. Most modern awards prescribe a public holiday penalty rate of double time and a half.

This will generally not equate to a full 150 per cent more than what employers are paying now because working after 7pm on a weeknight usually attracts an additional penalty in any event.

In some years, Christmas Eve and New Year's Eve will fall on a weekend. Saturday and Sunday rates can be anywhere between time and a half and double time, therefore the increased rates of pay when the public holiday starts at 7pm will be less again.

The Australian Hotels Association has been one of the loudest opponents of the proposed part-day public holidays, yet its South Australian members remain subject to special provisions until 1 January 2015 that allow them to continue to pay casual staff a flat rate for all hours worked, including on public holidays.

I do not think it is too presumptuous to suggest that for many years the local hotel industry has predominately engaged casual employees on weekends and public holidays for this very reason, and we can presume they will continue to do so until 2015.

From 2015, our hotels will fully go on to the Hospitality Modern Award, and casuals will receive a similar penalty rate structure to full-time and part-time workers. However, the casual rate of pay will be reduced from a 50 per cent loading down to a 25 per cent loading, so this will not automatically mean extra wage costs.

I would also like to remind members that this bill will considerably reduce administrative processes for businesses seeking exemptions to shop trading hours by amending the Shop Trading Hours Act to extend the maximum extension period from 14 days to 30 days. The 14-day limitation has led to excessive amounts of paperwork over extended holiday periods, such as the Christmas/New Year/Australia Day period, during which sometimes up to four exemption certificates are required to be issued to cover the entire period.

Over the 2011 December public holiday period, over 300 retail premises were granted exemptions from the Shop Trading Hours Act. This government recognises that the current exemption processes can be a hindrance to businesses. By streamlining the extension process and removing time-consuming and repetitive administrative processes, this bill will allow retailers to focus their resources on their core business requirements during busy trading periods.

The bill will also allow the Minister for Industrial Relations to grant a single exemption to all or a majority of shops in a proclaimed shopping district. This will remove the requirement for non-exempt shops to individually apply for exemptions and allows the minister to grant blanket exemptions across proclaimed shopping districts at special times of the year, such as Christmas, for a maximum period of 30 days, again, reducing red tape for both retailers and administrators. These administrative amendments were developed to address the Productivity Commission's and the Competition Council's recommendations to improve South Australia's shop trading hours legislation by significantly reducing the time and resources that non-exempt shops invest in applying for exemptions.

Finally, I would like to address the criticism that this bill is a package. This bill is, indeed, an essential part of a package—a reform package to revitalise Adelaide by maintaining the values that are most important to South Australians. The bill does this in a very basic way:

- It deregulates shop trading hours in the CBD tourist precinct on most public holidays.
- It provides workers with protection entitlements who are requested to work after 7pm on Christmas Eve and New Year's Eve.
- It reduces red tape for retailers.

This bill is part of a package to regenerate the City of Adelaide. It balances the desire for increased economic activity with maintaining our community values and the expectations we share about acknowledging the days that are important to South Australians.

I give particular thanks and acknowledgment to the Hon. John Darley, the Hon. Kelly Vincent and the Hon. Tammy Franks of the Greens for their preparedness to discuss their concerns about this bill and to negotiate with the government in the best interests of the State of South Australia to reach a compromise to enable the successful passage of this bill through the council. I also particularly acknowledge the Hon. John Darley, who negotiated with the government over a considerable amount of time which resulted in the amendment from 5pm to 7pm. I thank all those members for their contribution. I reinforce again that this bill seeks to create a modern, vibrant and competitive South Australia, and I commend it to members.

Bill read a second time.

LIVESTOCK (MISCELLANEOUS) AMENDMENT BILL

In committee.

(Continued from 13 March 2012.)

New clause 29A.

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

After clause 29, page 9, line 35—Insert:

Part 9A—Administration of Animal Welfare Act in relation to livestock

73A—Administration of Animal Welfare Act in relation to livestock

(1) The Minister responsible for the administration of this Act is responsible for the administration of the *Animal Welfare Act 1985* insofar as it applies to livestock (other than pets) to the exclusion of the Minister who is otherwise responsible for the administration of the Act.

(2) An inspector appointed by the Minister under this act will be taken to also have been appointed by the Minister as an inspector under the *Animal Welfare Act 1985,* subject to any conditions imposed by the Minister by instrument in writing.

I move this amendment after a great deal of deliberation with what I believe is a significant cross-section of key stakeholders in South Australia regarding which minister and which agency should have the primary role—and I underline the words primary role—for animal welfare matters dealing with livestock. For the purposes of this debate 'livestock' is deemed to be all agricultural animals, which are defined within the act, and also horses.

Whilst there has been quite a lot of comment on this, I put on the public record, in moving this amendment, that contrary to what some people are saying this is not a specific attack on the RSPCA at all. Also, contrary to what was said by the CEO of the RSPCA in the media last week, I have actually met with the RSPCA. In fact, I met the president of the RSPCA sometime last year, and I noted that she has a real passion and commitment to her role as the president of the RSPCA in South Australia.

However, in those discussions it also became clear to me that the RSPCA has a lot on its plate. It also has cost pressure issues, albeit that the government has, I understand, funded about $200,000 to the RSPCA for some of its work. I would say that that is still walking away from the responsibilities of what the government, through the primary industries department (PIRSA), should be doing for South Australians.

I place on the public record that it is not our intent to see that $200,000 removed from the RSPCA at all. In fact, from my understanding, the RSPCA needs that money and needs the resources that it has simply to work on all of the issues that it has to deal with in all other sectors of animal welfare. I refer to the broad definition of pets and also wildlife.

With respect to policy—and this has been discussed—I respect, acknowledge and, indeed, support the fact that when it comes to policy the RSPCA has a right to argue and advocate policy. It has done that all of my life. As someone who has been with animals all of my life—one kind or another, large animals in agriculture and small, domestic animals—I was encouraged to always be a member of the RSPCA by my family. Out of your pocket money each year you would buy that certificate proudly.

This is not an issue about trying to take away policy development and direction from the RSPCA at all. It has an important and independent role to develop policy and argue case, and we are seeing that at the moment. We are seeing the RSPCA, as one example, arguing that in horse racing whips should be banned. It is a democratic and legitimate right for the RSPCA to raise that policy. Whether all Australians agree with that, that is for further debate. By moving this amendment, I am not trying to weaken any of that whatsoever.

Likewise with Animals Australia, which I have been asked about in the media, there are some issues that I have real concern about, and I am sure that a lot of people do. Notwithstanding that, to look at the other side of the policy debate, the fact is that it is a democratic country and Animals Australia has a democratic right to push and move initiatives that it wants to move. I have been told by industry sectors that have met with certain people from Animals Australia that one of

the things that Animals Australia would like to do is get rid of any intensive animal husbandry in Australia.

I, for one, would argue against that, as I am sure a lot of other people would. Having said that, again I acknowledge and accept the democratic rights of Animals Australia, and we will have to agree to disagree. I also respect the fact that a good number of the people there have absolutely legitimate concerns about animal welfare. Again, that is about a policy issue, that is about debate and that is totally different from the reason I am moving this.

This amendment is being moved because it gets back to who has the primary responsibility for the actual policing of the Animal Welfare Act. I am quite happy to say, in moving this amendment, that the very broad range of key stakeholder groups I have consulted with are strongly of the opinion that animal welfare for agriculture should be primarily under the policing powers of PIRSA, with PIRSA taking primary responsibility. I remind colleagues that SAPOL also has a role in this and that is not being changed or removed.

The government says it has problems with funding for PIRSA, and we have seen significant cuts in PIRSA in recent years. I get around to the sale yards a fair bit, and I see PIRSA inspectors there on a regular basis doing their work; in fact, those inspectors are very well qualified and specialised. It is pretty difficult for a general inspector of the RSPCA (which I understand in the state number about eight) to have the capacity to analyse all the reports, and what may follow from investigation on those reports, into all animals across the state. I think it is a huge ask for a charity, and the right place to have the policing powers is within PIRSA, under government responsibility.

I want to highlight a couple of other things in moving my amendment, and then I am happy to listen to the debate and take the opportunity of summing up based on what members say in their comments. The chief veterinarian of South Australia is working for and with the primary industries department of South Australia. The chief inspector responsible for the management of livestock is working for and is therefore an employee of PIRSA, so the people with the qualifications for livestock are there.

I will leave you with this final point: once veterinarians have done their degree, they specialise in a range of postgraduate areas. Some vets prefer to specialise in what we call small animals, such as birds, dogs, cats and the like; other vets—not many, but a few—specialise in wildlife fauna; other vets specialise in livestock, and within the livestock area there are speciality vets; and even within the group of large animals, such as cattle and horses, there are speciality vets. Within their practices, vets employ other vets specifically qualified in large animals, in sheep and in a cross-section of animals.

In the horse industry, I know some vets who have spent enormous amounts of postgraduate time specifically on horses. It is a speciality area that, with the greatest of respect, I do not believe general inspectors within the RSPCA have the capacity to work in. This is all about animal welfare and policing. Whilst in recent years there has been a move to give the RSPCA more responsibility, there has not been the money to go with it, and the RSPCA is in a difficult situation regarding trying to deliver on its commitment. I finish with the point that it is a charity organisation with a small amount of money now being expected to do pretty well all the work for the department.

I did an FOI, which I alert colleagues to, just having a look at the referrals between PIRSA and the RSPCA. I will not spend time tonight because the hour is late, but I would say that there has been a lot of documentation between PIRSA and the RSPCA and quite a bit of that, as I understand, is to do with PIRSA trying to explain and assist the RSPCA with investigations. With those words, I look forward to contributions from honourable members.

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

Delete inserted Part 9A and substitute:

Part 9A—Cross-authorisation of inspectors under Animal Welfare Act

73A—Cross-authorisation of inspectors under Animal Welfare Act

An inspector will be taken to have been appointed as an inspector under the *Animal Welfare Act 1985*, subject to any conditions imposed by the Minister by instrument in writing in consultation with the Minister responsible for the administration of that Act.

My amendment seeks to amend the Hon. Robert Brokenshire's amendment. The effect of it is to delete subsection (1) of his amendment but leave subsection (2) in place with the added provision of consulting with the Minister for Environment who is responsible for animal welfare.

I will start speaking about why we oppose the amendment as it stands as is, with subsection (1) in it, and that is because animal welfare is a very significant issue which this government obviously takes very seriously, as does the public of South Australia. The amendment, I think, would create the perception of Primary Industries taking over animal welfare with, I think, potentially negative connotations. I think it will have quite negative connotations with parts of the public. I think that members of the public will perceive subsection (1) as watering and selling out animal welfare in the livestock industry.

Although agricultural businesses are necessarily profit making or profit seeking enterprises, I believe that, overwhelmingly, farmers are very conscious of the welfare of their livestock. Obviously, healthy and contented animals are productive animals. However, some farmers or farming groups can be seen by the public as being more interested in making money than animal welfare.

Generally, the public is increasingly sensitive to animal welfare issues, as can be seen by the extremely strong reaction to issues such as the ritual slaughter and recent footage of some Indonesian abattoirs. Unfortunately, the good news of healthy livestock on our farms does not tend to be portrayed in the media. Instead, it is the few instances of mistreatment of animals that are brought to the public's attention. These types of matters have increased the expectation that welfare issues will be considered as part of commercial activities.

The reality is that the Hon. Robert Brokenshire's amendment could be seen by the public, as I said, as a watering down of animal rights and welfare standards, and this is not in the interests of agricultural industries. In fact, there are many livestock operators, particularly those involved in intensive farming, who are very pleased with the current arrangements because they believe that having the RSPCA, through its association with the Department of Environment, at arm's distance from their business, gives greater credibility to the vigilance of welfare over their businesses and, therefore, increases the public's confidence in their product; that is, their product is not only safe and healthy to eat and meets all of those health and safety standards but their livestock is also looked after with high standards of animal welfare.

There are many operators. I know that there are some who do support the Hon. Robert Brokenshire's point of view, but there are many who do not. They, in fact, believe that their interests are better served by maintaining the arrangements as they currently exist. The reality is that the Hon. Robert Brokenshire's amendment could be seen, as I said, as a watering down. Therefore, any proposal to change the current livestock animal welfare system or legislation needs to be fully considered and supported by the community.

I am advised that the RSPCA has undertaken an important role in animal welfare for a very long time. Indeed, I am advised that the SPCA South Australia was founded in 1875, before gaining royal assent to be named the Royal Society for the Prevention of Cruelty to Animals in 1937.

The organisation has always enforced animal welfare legislation, under the Prevention of Cruelty to Animals Act 1985, the Prevention of Cruelty to Animals Act 1936 and the Prevention of Cruelty to Animals Act 1908. When reviewed in 2008, the Prevention of Cruelty to Animals Act 1985 was renamed the Animal Welfare Act 1985, as we currently know it. So, it has a very long and established history.

The RSPCA in South Australia has been responsible for the enforcement of livestock welfare laws since animal welfare legislation was first introduced in South Australia. So, there is a long history and connection with animal welfare and the RSPCA's responsibility for enforcement. I am advised that general RSPCA inspectors can investigate any allegations of ill-treatment no matter what species of animal, including fish and invertebrate, as they are covered by the act.

I find it really quite ironic, really, that the Hon. Robert Brokenshire has said that he does not want to take any of the livestock moneys from the RSPCA to hand over to PIRSA for its increased role, function and responsibilities. He is happy to leave those moneys with the RSPCA, yet he is happy to see the increased role expansion and increased responsibilities of PIRSA officers, without any associated additional income.

The honourable member knows that we are in a current position of very tight fiscal constraint. One of the honourable member's amendments is to insist that no livestock levies can be introduced. He does not support the capacity to even cost recover the increased financial burdens that would be incurred. He doesn't support that and does not want those moneys handed over. I find that quite amazing.

I also put on record that there are very few complaints from livestock operators. In fact, to the best of my knowledge, I do not think that my office has received any complaints concerning the conduct of the RSPCA in its dealings with the livestock industry. Yet we know that the RSPCA regularly prosecutes livestock operators, and it regularly applies fines and other penalties in relation to breaches. So, it is active in the area, yet we see very few complaints. So, livestock operators appear to be quite content with the way in which the current arrangements operate.

As I have said, these are longstanding arrangements, and any re-arrangement of responsibilities can and would be much better dealt with through administrative arrangements. The Administrative Arrangements Act allows for conferral and delegation of ministerial functions and powers under the act if that was believed to be the direction taken. However, it is not desirable to make appointments on an automatic result because that may not always be appropriate, depending on the training, knowledge and intended functions of the inspector.

The only other thing I really need to put on the record is that PIRSA already provides a great deal of expertise and support around the development of industry standards. So, PIRSA is already the key driver of the standards around livestock operations. For instances, all the standards covering pigs and transport for cattle and such like are set in a way that PIRSA has significant input into.

As I said, their current role and function is complementary. The PIRSA inspectors and the RSPCA inspectors work side by side. They have complementary functions. The current arrangements have served us very well, and I think to make changes to that in the way that the Hon. Robert Brokenshire's amendment does would adversely impact on the livestock industry.

The Hon. J.S.L. DAWKINS: The opposition has considered at some length the original amendment in the name of the Hon. Mr Brokenshire and the subsequent government amendment. In that consideration there were some concerns about some of the experiences of various members and their constituents in relation to inspections by RSPCA officials. I have vivid personal memories of situations where the RSPCA on two occasions on my former property made judgements that I think were way out of reality. I will not go into the details here tonight. One of them related to a suggestion that a 29 year old horse on my property was in a state of neglect. That was just a very old, skinny horse. Unfortunately, I was threatened with some action if I did not do something about that horse. We will not go into that.

I think the minister has made a case about the experience of PIRSA inspectors and so has the Hon. Mr Brokenshire. We know that the inspectors are very experienced across sale yards and also in relation to the on-property sales. As I did in my second reading speech, I refer to a letter that the minister provided to me in response to the very good activities that PIRSA undertake in relation to biosecurity, disease control and generally implementing the standards that we need in our livestock industry.

We know that the RSPCA officers who are out in the field get their training from PIRSA officers. That needs to be commended. I do not see—and my colleagues would support me—that this is a watering down of the act, as the minister has described. We think that PIRSA are the people who are well placed. I agree with the Hon. Mr Brokenshire that the RSPCA have a role in these matters, but it should be more to do with their policies in relation to animal husbandry. I go back to the fact that PIRSA officers—and we talked about this today in question time—have a very good feel for seasonal conditions, the age of animals and other aspects that some people without that considerable background do not have. The opposition will be supporting the Hon. Mr Brokenshire's amendment and not supporting the government's amendment to it.

The Hon. M. PARNELL: The Hon. Robert Brokenshire's amendment invites us to consider the question of which is the most appropriate body to undertake the regulatory functions under the Animal Welfare Act. Is it the Department of Primary Industries or is it the RSPCA? As members would know, I have been very critical over the years of the RSPCA and the role that it played, or did not play, in enforcing animal welfare laws, in particular in relation to piggeries. I am thinking of a range of motions, questions and amendments that we moved four or five years ago in this place.

What I am very encouraged by are the some of the changes that have been made within the RSPCA in recent years. Certainly the old guard, if I can call it that, has moved on and there is a new regime running the RSPCA. I think that it is now taking the subject of the enforcement of animal welfare laws in relation to farm animals far more seriously than it used to. There are still

issues, I think, with having what is effectively a private charity undertaking what is effectively police work.

We have discussed this at great length over the years in this place and certainly it is a convenient arrangement for the government, where it does not need to fully fund the inspection and the investigations because a private charity effectively fundraises to undertake that role. Whilst that is an odd arrangement, and I would have trouble with it being an exclusive arrangement, the point is that there are other authorised inspectors, including the police. I for one would advocate for the government to provide more resources to the RSPCA so it does not need to fundraise for what is effectively essential police work.

Despite those concerns I have had, and issues around the RSPCA doing its job, we have to contrast it with what the honourable member is putting forward as the alternative, which is for effectively the department to be the police agency, if you like, the regulatory agency. There is a concept that usually raises hackles whenever you mention it, but I am going to anyway, and it is called regulatory capture. It is the issue where you have agencies that are very close to an industry that find it very difficult to then step out of the role of encouragement, education and support into the role of enforcement.

We have seen that in a range of areas, not just in terms of agriculture, but certainly in terms of mining and aquaculture. In relation to mining, I can still remember one of the very first public inquiries that I participated in. It was probably 15 or 16 years ago and it was to do with the ability of the mining department to regulate the environmental impacts of mines. When you had a look at the qualifications of an environmental officer with the mining department, they needed a blasting licence but they did not need to know a bilby from a mulga bush. It was quite remarkable.

I mentioned aquaculture. People get sick of me telling old war stories in this place, but I am going to anyway. In 1998 I challenged the processes that the government followed for the approval of aquaculture. I challenged them because they were absolutely corrupt. I say corrupt with a small 'c', not a big 'c'. I am not talking about money in brown paper bags, but it was a corrupt process. The people making the decisions sat at the desk next to the people whose job it was to promote, succour and support industry, and they were completely incapable of regulating that industry; they were too close. I think a similar situation applies with primary industries, and it is unfair on those officers to be often wearing two hats.

People will say, 'We will have firewalls. They might not be sitting at adjoining desks; they might be on adjoining floors', but the point is it can be very difficult for people in an agency whose job is to support, encourage and foster industry to also be the regulators. There are enough examples across a range of sectors as to why that is inappropriate. It is not all black and white. As I understand the government's proposed amendment to the Hon. Bob Brokenshire's amendment, it does acknowledge that there are people whom it is appropriate to authorise as officers, but they should not have exclusive jurisdiction over that area.

It would make no sense for a primary industries officer to come across ill treatment that was deserving of investigation and maybe prosecution and to have to say, 'Actually, I can't do any more about this now. I will have to ring up someone in the RSPCA and they will have to drive several hundred kilometres to come and deal with this because I can't, because I am not authorised.' That would make no sense. That is somewhat of a compromise position. It makes sure that the people who are on the spot and able to exercise some of these powers have the authority to do so. I would be very nervous about giving exclusive power to the primary industries inspectors, rather than the current arrangement where you have primary responsibility with the RSPCA but other agencies, such as the police and, under this amendment, primary industries officers, would have a secondary (or support) role. For those reasons, the Greens will be supporting the minister's amendment to the Hon. Rob Brokenshire's amendment.

The Hon. J.M.A. LENSINK: I would like to make some comments in support of our lead speaker, the Hon. John Dawkins, in support of the Hon. Mr Brokenshire's position in unamended form. I would say at the outset that I am a member of the RSPCA and a very big fan, I think it does wonderful work, as most people in this chamber would. However, there is an elephant in the room, and that is not meant to be any sort of joke; that is, the Brinkworth case. The Brinkworth case has highlighted flaws in the current arrangement, in that a botched investigation led to a grazier, who was to be the defendant in a case of animal cruelty, receiving an undisclosed settlement from the RSPCA.

This is an issue that a lot of members have taken an interest in over the past few years. For those who are not familiar with it, the operations manager was sacked, the CEO resigned, as did several board members. The Hon. Mark Parnell alluded to the fact that the RSPCA had a change of regime, and I would like to acknowledge the new president, Sheree Sellick, and CEO Neale Sutton, whom I have met with on other animal welfare issues, and I would like to reassure them that in no way should they consider that anybody wishes to undermine their role. We commend them for their commitment to caring for unwanted and abused animals.

This case took place some time in 2009-10, so prior to the last election. The minister at the time was minister Jay Weatherill, who commissioned a report from the Solicitor-General in January 2010 into how this occurred, including, and I presume, whether the arrangements should be reviewed. In February 2010, president Sheree Sellick, in response to a lot of bad press, put the RSPCA's side of the story in her regular column to the membership, and I would like to refer to that now. She stated:

Several weeks ago, the RSPCA's Operations Manager, who was in charge of all inspectors, investigations and preparation for prosecutions, confessed to CEO Steve Lawrie that he had altered an application for a warrant to enter and search one of the Brinkworth properties. On preparing the case for prosecution, he had discovered that the property name on the warrant application was incorrect. Although the—

The CHAIR: Order! We have an amendment here; can we stick to the amendment, not make a second reading speech at this time.

The Hon. J.M.A. LENSINK: Well, I would have made a second reading speech. I was denied a second reading speech earlier this evening. Perhaps—

The Hon. G.E. Gago interjecting:

The Hon. J.M.A. LENSINK: No; on the other bill that got guillotined.

The CHAIR: You are not really being relevant to the amendment.

The Hon. J.M.A. LENSINK: I am being completely relevant to the amendment, Mr Chair.

The CHAIR: Not in my opinion, the Hon. Ms Lensink.

The Hon. J.M.A. LENSINK: This goes to the core of whether the—

The CHAIR: Moving right along.

The Hon. J.M.A. LENSINK: —RSPCA should continue.

The CHAIR: Moving right along. Wind it up.

The Hon. T.A. Franks interjecting:

The Hon. J.M.A. LENSINK: Thank you. I welcome the support of the Greens on this occasion.

The CHAIR: The Hon. Ms Franks will speak when she gets the call.

The Hon. J.M.A. LENSINK: I might have to move a motion and detain you all on some other evening.

The CHAIR: You can move whatever you like.

The Hon. J.M.A. LENSINK: I am glad to hear that, Mr Chair.

The CHAIR: That is your prerogative.

The Hon. J.M.A. LENSINK: I apologise to Sheree Sellick that I will not be able to put the RSPCA's side of the story, because the Chair is not interested. Where this particular review is at—

The CHAIR: Do a grievance tomorrow.

The Hon. J.M.A. LENSINK: —is a continuous mystery, which is being delayed. The farmers from the South-East who brought this issue to the attention of the RSPCA are none the wiser, particularly James Darling, who has complained in public. A survey by the *Stock Journal* showed that 70 per cent of its readership believe the government should be responsible for the prosecution of animal cruelty cases. The Chair of the Animal Law Welfare Committee of the Law Society, Joanna Fuller, when interviewed about this issue said that prosecution cases should be handled by the Crown Solicitor's Office as it has a staff of lawyers experienced in prosecution cases under other acts such as native vegetation and fisheries.

My question on notice, June 2010 was, 'When will the review be completed?' The reply (returned 10 months later) was that it was anticipated that the Solicitor-General's review was likely to be finished in May 2011. My FOIs have been obfuscated but I did receive a reply from the Solicitor-General who, as well as telling me that he is exempt from the FOI Act, said that it was ongoing, and this is dated July 2011, so we are now some 18 months down the track.

The most recent information that I have received on this case is via a letter to me from the environment minister dated 29 February 2012—so pretty new information. His response as to when the case will be made public was that he has not yet received the report prepared by the Solicitor-General. We are very much in the dark about the review which goes to the core of what this amendment is about, and, in the meantime, all those farmers who are the ones who originally brought that particular case to the attention of the RSPCA are not happy, as are a number of other people who, I think, do not have confidence in the process.

I would state that it is not the RSPCA as an organisation, it just a governance issue, and this is a classic case of a structure which hinders the process. The RSPCA is a charity, and the role of investigation and prosecution, I think, has been shown to be flawed through that particular case, which is very regrettable, but I think it does need to be referred to because it is germane to what we are discussing.

The Hon. J.A. DARLEY: I have been around the place long enough to remember the days when the administration of the Animal Welfare Act was held by neither the Minister for Agriculture nor the Minister for Environment, and therefore on this occasion I will be supporting the amendment of the Hon. Robert Brokenshire and opposing the government's amendment.

The CHAIR: Someone get to the point. We have had longwinded speeches. The Hon. Mr Brokenshire.

The Hon. R.L. BROKENSHIRE: Thank you, sir. I thank all honourable members for their contribution, and I just wish to wind up and summarise on some of the input from them with respect to their contributions. Just with respect to the Hon. Michelle Lensink and the issue she raised about the Brinkworth case, I think that is a good case in point because, irrespective of the outcomes of that, I am advised that the RSPCA ended up having to pay $750,000 with respect to the court costs and legal costs when officers went out there after investigating a report from fellow farmers in that area.

That is a case in point for me because I do not believe that charity organisations should have these responsibilities. Most of the time where the possibility of an expensive prosecution is going to occur will probably be with livestock rather than budgies and cats and dogs, and I think that is an example of that. The minister has admitted tonight that one of the key reasons why the government is opposing this is—and I quote—'financial restraints on PIRSA'.

I am sorry that there are financial restraints on PIRSA and, like many of our colleagues here, I argue continually that PIRSA should be properly funded. However, if there are financial restraints on PIRSA, then that is the job of the minister to get in there during the budget bilaterals and bat—as hard as it is I acknowledge for the minister with the way that state debt is—for more money for PIRSA.

To simply walk away from your responsibilities because PIRSA has had budget cuts and put it on to a charity organisation, to me, is not acceptable. I understand that one of the financial problems that the RSPCA has now is directly associated just to that one case. The government has responsibility for many other prosecutions, and that is why we have a DPP, that is why we have a Solicitor-General's department, and there are lots of other areas where the government has to have the primary role in policing.

Also, the minister says that there is some sort of perception that we would be watering down the issue of animal welfare. I argue completely the opposite to that. This is not about watering down at all: this is actually about putting more pressure on agriculture for animal welfare practices to be second to none. I also must say in response that farmers and agriculturalists, through levies and through their own initiatives, have been doing everything they possibly can to improve animal welfare nationally and in South Australia. It is not about watering down at all, but about starting to put some of the responsibility back where it should be with respect to the government's responsibility of taking on these cases.

I will finish with a couple of other points. I note with interest and appreciate what my colleague the Hon. Mark Parnell had to say. It was interesting that back on 14 March 2007 the

Hon. Mark Parnell was actually moving that this council calls on the minister for environment and conservation to commission an independent investigation into the conduct of the RSPCA. He went on with the motion:

> Last year in this place I called for a select committee to inquire into the administration and enforcement of the Prevention of Cruelty to Animals Act 1985. My call for an inquiry focused on the appropriateness of using a private charity, namely, the RSPCA, as a principal law enforcement body under that act.

The Hon. M. Parnell: That was five years ago Rob—they're better than that now.

The Hon. R.L. BROKENSHIRE: I acknowledge that the honourable member has said that they are better than that, but the principal point still remains as to who has the principal policing responsibility: a charity that has lots of other responsibilities and is grossly underfunded, or the government with a $15 billion budget and has the primary responsibility for the Animal Welfare Act and, I suggest, the policing relevant to that.

Back not so long ago, on 28 February 2008, the Hon. Mark Parnell, speaking on the Prevention of Cruelty to Animals (Animal Welfare) Amendment Bill again raised his concerns about a private charity doing police work.

The CHAIR: I point out to the honourable member that it's not a second reading debate.

The Hon. R.L. BROKENSHIRE: I am summing up. I could go on.

The CHAIR: People have indicated how they are going to vote.

The Hon. R.L. BROKENSHIRE: Thank you, Sir. With those words, I thank colleagues for their contribution. However, I have to say that we will not be supporting the minister's amendment—I have a right to advise you of that. The reason for that is that it completely destroys the intent of this amendment. It is a matter of administrative convenience on approvals only to support the government's amendment. They have taken the minor consequential aspect of my amendment and moved it as their own and ignored altogether the key amendment.

The committee divided on the Hon. G.E. Gago's amendment:

AYES (8)

Finnigan, B.V.	Franks, T.A.	Gago, G.E. (teller)
Gazzola, J.M.	Hunter, I.K.	Kandelaars, G.A.
Parnell, M.	Wortley, R.P.	

NOES (10)

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

PAIRS (2)

Zollo, C.	Bressington, A.

Majority of 2 for the noes.

Amendment thus negatived; new clause inserted.

Clause 30 passed.

New clause 30A.

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

After clause 30, page 10, line 5—Insert:

30A—Insertion of section 87A

After section 87 insert:

87A—Nonrecovery of cost of biosecurity measures

> Fees for registration or allocation or renewal of identification codes or other fees imposed under this act must not be used to recover the cost of biosecurity measures relating to livestock implemented by the administrative unit that is, under the minister, responsible for the administration of this act.

I advise the committee that I have had some discussions with the minister on this, and I believe that the minister would like to make some comment on this amendment. I have moved this amendment but, having had discussions with the minister, I will withdraw the amendment based on the fact that the minister is looking at doing some more work on this whole issue.

Also, the opposition has moved that the committee have a look at this in a standing committee. I reserve my right to reintroduce this if I do not see a satisfactory response from the committee and from the minister. However, in fairness to the minister, who is a new minister, she has said that she will have a look at this. I support her word and I will leave it at that at this point.

The Hon. G.E. GAGO: I will, for the purposes of the record, state that indeed the original bill included a levy, and I removed that section regarding a biosecurity levy from the bill, because I was not satisfied with that particular model. I have set up a process that is being overseen by Mr Dennis Mutton to engage with the industry again to see if we cannot come to an agreement on a suitable biosecurity model. That process is under way, and I believe that it will require time to complete that, and to insert this particular clause would completely undermine that process. I appreciate that the Hon. Robert Brokenshire has seen fit to withdraw this amendment.

The Hon. J.S.L. DAWKINS: Just for the record, I think the mover and the government had the opportunity to say what their position was on this amendment, and we know that it is going to be withdrawn. The opposition did not support this amendment, certainly at this stage, because we believed that in good faith the minister withdrew the biosecurity measure from the livestock bill, and I was advised of that before the bill was introduced.

Certainly, at that same stage, we had the motion that I put to this house to refer the matter to the committee, and that is under way. The opposition and I look forward to the outcomes, not only of the ERD Committee's deliberations but also the examination process that the minister outlined a few moments ago. We would be in opposition to this if it was being put now, but we appreciate the fact that the honourable member has decided to withdraw it.

The Hon. R.L. BROKENSHIRE: I seek leave to withdraw the amendment.

Leave granted; amendment withdrawn.

Clause 31.

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

Page 10, after line 7—

> After the present contents of the clause (now to be designated as subclause (1)) insert:
>
> (2) Section 88(2)(h)—delete $315 and substitute:
>
> $500

This is an amendment to the regulation-making power in relation to possession and use of diagnostic reagents or assays with the intention to make it an offence to possess or use a test kit for an exotic notifiable disease.

This is a response to the greater opportunity for individuals to access crush-side disease test kits from overseas, especially via the internet. Crush-side tests are simple kits that are cheaper and easier to use in the field and provide an indication of the disease status of animals. However, they have a higher rate of false positive and false negative test results than lab-based test kits.

All lab tests are approved through national protocols, but overseas kits obtained by individuals do not have those controls. There is the potential for significant damage and disruption to international trade where false or misleading test results suggest the presence of a significant animal disease, particularly exotic diseases. For example, if a false positive foot and mouth disease was publicly reported there is a strong possibility that countries such as Japan and the USA would immediately ban all Australian meat imports. It is for these reasons that the government is putting forward this amendment.

The Hon. J.S.L. DAWKINS: The opposition supports the amendment.

The Hon. R.L. BROKENSHIRE: Family First supports the amendment.

Amendment carried; clause as amended passed.

Schedule and title passed.

Bill reported with amendment.

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (21:55): I move:

That this bill now be read a third time.

Bill read a third time and passed.

ZERO WASTE SA (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 14 March 2012.)

The Hon. J.M.A. LENSINK (21:56): Honourable members will be pleased to know that I will be brief—not just because of the hour but because this is a small technical bill which really just updates provisions.

The Hon. G.E. Gago: I think you should sum up.

The Hon. J.M.A. LENSINK: The minister would like me to sum up. There are two clauses in this bill. New clause 7A brings Zero Waste SA into having the application of the Public Finance and Audit Act applied to it; in particular, the Waste to Resources Fund, which will no doubt be an interesting read for those officers. I note the comments of the member for Norwood (shadow minister for the environment) in his contribution on 13 March, in which he analysed the Zero Waste fund, which I endorse.

I encourage honourable members to have a look at that because what is taking place is quite disgraceful and actually hampering the so-called stated aim, which is to reduce the amount of waste going to landfill. New clause 13A allows some delegation functions, which are consistent with other statutes that apply to public agencies. The Liberal Party supports this bill, and I commend the bill to the house.

Debate adjourned on motion of Hon. Carmel Zollo.

GRAFFITI CONTROL (MISCELLANEOUS) AMENDMENT BILL

Second reading.

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (21:58): I move:

That this bill be now read a second time.

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

Leave granted.

The *Graffiti Control (Miscellaneous) (No 2) Amendment Bill 2011* was first introduced into the Parliament on 9 November, 2011. Further consultation on the Bill after its introduction with Members in the other place, SAPOL and the Department of Planning, Transport and Infrastructure, identified some issues with the operation of new sections 10A and 10B in clause 13 of the Bill.

These concerns have been addressed in the Bill now before the House. The driver's licence sanctions have been amended so that a court may, for second and subsequent offences, order the suspension of an offender's driver's licence, including a learner's permit. A duty to produce a driver's licence at court if required by the court, a police officer or the Registrar has also been imposed.

Finally, the new police power to seize a prescribed graffiti implement has been amended so that the procedures relating to the seizure of a graffiti implement, and the circumstances in which the graffiti implement may be returned or forfeited to the Crown, are prescribed in the regulations.

Report

Graffiti vandalism is a significant issue not only because of the economic costs to State and local government, as well as individuals and businesses, but also because of the social costs. It is damaging and unsightly and can significantly impact on the amenity of an area and community perceptions of safety.

The South Australian Government is committed to ensuring that those who engage in destructive behaviour face serious consequences. As part of its election platform, the Government pledged to strengthen existing graffiti legislation to reduce the incidence and impact of graffiti vandalism. This Bill amends the *Graffiti Control Act 2001* to ensure that our laws act as a strong deterrent to offending and effectively deal with the perpetrators of graffiti vandalism.

Consultation

The Bill is the culmination of a six week public consultation on the Graffiti Prevention Discussion Paper.

During consultation, comment was received from over 45 interested parties, including retailer associations, government agencies, SAPOL, local government, the Law Society, the SA Graffiti Network, the Youth Affairs Council of South Australia, the Hon. Bob Such and members of the community. All of the submissions received were considered by the Government and were taken into account in the drafting of the Bill.

What emerged from the public consultation was that there is broad support for tougher legislative measures to minimise graffiti vandalism and to deter potential offenders. Respondents also supported the use of non-legislative measures such as the education of young people and rapid removal strategies.

The Government recognises that graffiti prevention is not just about law reform. The Government is therefore committed to crime prevention through other measures, including the Crime Prevention and Community Grants program.

This program funds innovative and grassroots crime prevention and community safety projects and offers grants from $10,000 to $50,000 for community projects. The total of funding on offer through the grants program is up to $800,000 per year, with $200,000 set aside in the 2011-12 specifically for projects aimed at combating graffiti. This is double the amount allocated for anti-graffiti projects last year.

Detail of the Bill

Preventative and educative strategies, although important tools in managing graffiti, need to be supported by criminal offences with adequate penalties in order to deter potential graffiti vandals.

Accordingly, the Bill will aid in the prevention and minimisation of graffiti vandalism by increasing penalties for existing offences, further restricting the sale and display of graffiti implements, giving the courts new penalty options and giving police the power to confiscate graffiti implements.

A major feature of the Bill is the increased range of sentencing options available to a court when sentencing graffiti offenders.

First, the Bill amends section 9(3)(a) of the Act to provide courts with an alternative to the requirement that a court must order that an offender remove the graffiti.

At present, a court that convicts an offender of the offence of marking graffiti must either order that the offender take action to remove the graffiti that was the subject of the offence or, if that is not reasonably practicable, order that the offender pay such compensation as the court thinks fit.

Effectively, this means that where the graffiti that was the subject of the offence has already been removed, the court must order that the offender pay compensation. Depending on the offender's financial circumstances, such an order may be nominal and therefore not reflective of the actual cost of rectifying the damage.

Where an offender is a minor, or an adult with limited financial means, participation in graffiti removal generally may be a more appropriate penalty in some instances than a compensation order. Under the changes to the Act the court will be able to order that an offender remove graffiti on any property, including the graffiti that was the subject of the offence.

This power will still be qualified by a requirement that an order should only be made if it is reasonably practicable to do so as in some cases removal of the graffiti or participation in a graffiti removal program may not be possible, either because the offender is physically incapable of performing the work or because there are no places available on a supervised program.

Whether an order is reasonably practicable will be left to the courts to determine based on the offender's circumstances and information given to the court about the availability of suitably supervised graffiti removal programs.

Second, the Bill creates a new penalty option in the form of a cost recovery provision.

Although an offender can be ordered to remove the graffiti that was the subject of the offence, the graffiti is often removed from the property prior to the offender being sentenced. For example, if the graffiti is on private property it may have already been removed by the owner or occupier of the property or by the council exercising its removal powers under section 12 of the Act.

Graffiti removal from public and private property within a council area can cost councils upwards of hundreds of thousands of dollars a year. For the most part, these costs cannot be recouped. To address this, the Bill empowers a court to order that an offender pay to the person who removed or obliterated the graffiti a reasonable amount for the removal or obliteration.

This new penalty option was supported by the majority of respondents. However, there were concerns that an offender's capacity to pay would not be able to be taken into consideration by the court. The power to make such

an order is therefore discretionary so that the financial circumstances of the offender can be taken into account in sentencing.

Third, a new section 10A of the Bill empowers a court to impose restrictions on a driver's licence for graffiti offences committed under Part 3 of the Act.

At present, the *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007* allows an offender's vehicle to be clamped or impounded for up to 28 days (or up to 90 days with a court order) or forfeited for a range of offences, including graffiti offences.

As a complement to these existing powers, the new section 10A provides that a court may order the suspension of an offenders licence for up to six months where the offender has been convicted of an offence of marking graffiti or carrying a graffiti implement. The possibility of a licence suspension should act as a deterrent to repeat offenders.

A driver's licence is a privilege not a right and one that should be reserved for responsible members of the community. A person who engages in graffiti vandalism is not acting responsibly and should not be not be entitled to the same rights that are afforded law-abiding members of the community.

Another feature of the Bill is the new restrictions on the sale and display of graffiti implements.

It is currently an offence under the Act to sell a spray paint can to a minor. The Act also restricts the storage and display of spray paint cans by retailers as the effectiveness of a ban on sale is reduced where the items in question can simply be stolen. Retailers are therefore required to store spray paint cans either in a locked cabinet or in an area of the store to which the public is not permitted access.

In line with the Government's election commitment to strengthen existing legislation, the Bill imposes similar restrictions on the sale and display of other implements that are commonly used for unlawful graffiti.

A ban on the sale of other graffiti implements was supported by a majority of respondents to the public consultation. There were concerns, however, that the imposition of similar restrictions on the storage and display of such items would impose an unreasonable burden on retailers, particularly given the diverse range of items that could be considered graffiti implements.

It is not the Government's intention to require retailers to lockup every possible implement that could be used for unlawful graffiti, particularly when so many of them are commonly used as school or office supplies.

However, bans on sale are more effective if they are supported by display restrictions to prevent the theft of such items. The Government therefore intends to only capture those implements that are frequently used for graffiti vandalism, such as wide-tip marker pens.

The current ban on the sale of spray paint cans to minors will also be extended to include a ban on supply to deter those over 18 from purchasing spray paint cans for the express purpose of supplying them to younger associates to use for an illegal purpose.

Of course the Government acknowledges that there will be instances when it is perfectly appropriate for a minor to be supplied with a spray paint can. For example, for the purposes of participating in an art class, in the course of lawful employment or to assist a parent in a renovation or other project around the home.

To address this issue, a defence will be available where the supplier believes on reasonable grounds that the minor intended to use the spray can for a lawful purpose.

The Bill also creates a new offence to advertise a graffiti implement for sale in a way that is likely to encourage or promote unlawful graffiti and a new offence of marking graffiti on memorials, cemeteries or places of worship or religious significance.

It is intended that the advertising offence will have extraterritorial application such that it will apply to advertising conducted in this State whether it is produced here or it is produced elsewhere and transferred here. In other words, it doesn't matter where the advertisement was made, it matters where it is displayed. For example, an advertisement made in New South Wales and displayed here would be caught by the offence.

The potential for the unlawful use of spray paint cans and other graffiti implements such as wide tip marker pens, is an ongoing problem. Advertising a product by promoting it as being suitable for graffiti vandalism is inappropriate and irresponsible as it encourages unlawful behaviour.

Retailers and manufacturers who choose to market a product in this manner glamorise an activity that is destructive and illegal and sends a message to impressionable people that this kind of behaviour is acceptable. Requiring retailers to advertise graffiti implements in a responsible manner will assist in the fight against graffiti vandalism.

The new offence of marking graffiti on memorials, cemeteries or places of worship or religious significance will attract a penalty of $7,500 or imprisonment for 18 months. This was supported by many of the respondents to the public consultation who agreed that vandalising these places constituted a more serious offence than marking graffiti on other public places.

Finally, the Bill gives police the power to seize a graffiti vandal's 'tools' thereby preventing graffiti vandalism from occurring in the first place.

New section 10B empowers police to seize a graffiti implement of a prescribed class from a person in a public place if the officer suspects on reasonable grounds that the implement has been, is being, or may be used in contravention of the Act.

This new provision helps to prevent graffiti vandalism from occurring in the first place by giving police the power to confiscate a graffiti vandal's tools of trade. This can be done without resorting to an arrest or charges which is currently necessary in order to seize a graffiti implement from a person.

Graffiti is not a trivial offence. The economic and social costs associated with graffiti are considerable. Graffiti undermines community perceptions of safety and is seen by many as a visible sign of social decline and anti-social behaviour.

This Bill sends a message to all potential offenders that participation in graffiti vandalism will not be tolerated by the Government or the community and that such destructive behaviour will attract serious consequences.

This Bill is an important piece of legislation and I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Graffiti Control Act 2001*

4—Amendment of section 3—Interpretation

This clause substitutes the definition of graffiti implement for the purposes of the measure and inserts a definition of driver's licence.

5—Insertion of section 3A

This clause inserts proposed section 3A.

3A—Extra-territorial operation

Proposed section 3A states that it is the intention of the Parliament that the measure apply within the State and outside the State to the full extent of the extra-territorial legislative capacity of the Parliament.

6—Substitution of heading to Part 2

This clause substitutes the heading to Part 2.

7—Amendment of section 4—Graffiti implements to be secured

(1) Subclauses (1) to (3) and (5) substitute references to cans of spray paint with references to graffiti implements.

(2) Subclause (4) increases the maximum penalty and the expiation fee.

8—Substitution of section 5

This clause deletes and substitutes section 5.

5—Sale or supply of graffiti implements to minors

Proposed section 5 prohibits the sale of a graffiti implement to a minor and the supply of a graffiti implement of a class prescribed for the purposes of proposed subsection (2) to a minor.

9—Amendment of section 6—Notice to be displayed

The changes to section 6 made by this clause are consequential to the replacement of the term 'cans of spray paint' with 'graffiti implement' throughout the measure.

10—Insertion of section 6A

This clause inserts new section 6A

6A—Advertising graffiti implements for sale

Proposed section 6A makes it an offence to advertise a graffiti implement for sale in a way that is likely to encourage or promote unlawful graffiti.

11—Amendment of section 9—Marking graffiti

(1) The amendment to subsection (1) increases the maximum penalty for marking graffiti to $5,000 or imprisonment for 12 months.

(2) Proposed subsection (1a) creates an additional, more serious offence for marking graffiti within a cemetery, on or within a public memorial or on or within a place of public worship or religious practice.

(3) Proposed subsections (3) and (3a) give a court the power to make certain orders when finding a person guilty of a prescribed graffiti offence.

12—Amendment of section 10—Carrying graffiti implement

This clause increases the maximum penalty for an offence of carrying a graffiti implement to $5,000 or imprisonment for 12 months.

13—Insertion of sections 10A to 10C

This clause inserts new sections 10A, 10B and 10C

10A—Court may make orders in relation to driver's licences

Proposed section 10A provides that a court finding a person guilty of a prescribed graffiti offence that is not a first offence may, in addition to making any other order under Part 3, order that the person be disqualified from holding or obtaining a driver's licence for a period (of whole months only) being not less than 1 month but not exceeding 6 months.

10B—Duty to produce driver's licence at court

Proposed section 10B ensures that, if required, a person who holds a driver's licence and is charged with a prescribed graffiti offence that is not a first offence must produce his or her driver's licence to the court at the time of the hearing of the charge.

10C—Seizure of prescribed graffiti implement

Proposed section 10C gives a police officer the power to seize a graffiti implement of a class prescribed for the purpose of the proposed section that is in the possession of a person in a public place, if the police officer suspects on reasonable grounds that the implement has been or may be used in contravention of the Act.

Debate adjourned on motion of Hon. D.W. Ridgway.

At 21:59 the council adjourned until Wednesday 28 March 2012 at 11:00.