# LEGISLATIVE COUNCIL

## Tuesday 27 November 2012

**The PRESIDENT (Hon. J.M. Gazzola)** took the chair at 14:18 and read prayers.

### WORK HEALTH AND SAFETY BILL

His Excellency the Governor assented to the bill.

### CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) (R18+ COMPUTER GAMES) AMENDMENT BILL

His Excellency the Governor assented to the bill.

### MOTOR VEHICLES (DISQUALIFICATION) AMENDMENT BILL

His Excellency the Governor assented to the bill.

### STATUTES AMENDMENT (COURTS EFFICIENCY REFORMS) BILL

His Excellency the Governor assented to the bill.

### EVIDENCE (REPORTING ON SEXUAL OFFENCES) AMENDMENT BILL

His Excellency the Governor assented to the bill.

### TRUSTEE COMPANIES (TRANSFERS) AMENDMENT BILL

His Excellency the Governor assented to the bill.

### WILLS (INTERNATIONAL WILLS) AMENDMENT BILL

His Excellency the Governor assented to the bill.

### FIRST HOME OWNER GRANT (HOUSING GRANT REFORMS) AMENDMENT BILL

His Excellency the Governor assented to the bill.

### STATUTES AMENDMENT (NATIONAL ENERGY RETAIL LAW IMPLEMENTATION) 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) (14:22):** I have to report that the managers for the two houses conferred together and it was agreed that we should recommend to our respective houses:

As to Amendment No. 1—

That the House of Assembly no longer insist on its disagreement.

As to Amendment No. 2—

That the Legislative Council no longer insist on its amendment but makes the following amendment in lieu thereof:

New clause, page 6, before line 23—Insert:

13B—Amendment of section 36AE—Feeding electricity into networks—requirements on holder of licence authorising operation of distribution network

(1) Section 36AE(6)(a)—before 'altered' insert:

subject to subsection (6a),

(2) Section 36AE—after subsection (6) insert:

(6a) If an alteration under subsection (6)(a)—

(a) was approved before 1 October 2011 by the holder of the licence authorising the operation of a distribution network to which the generator is connected; and

(b) is completed on or after 1 October 2011 and before 1 October 2013,

the qualifying customer in relation to the generator will be taken to be a Category 2 qualifying customer for the purposes of this section.

and that the House of Assembly agrees thereto.

Consideration in committee of the recommendations of the conference.

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

That the recommendations of the conference be agreed to.

I would like to begin by thanking the representatives of this house who participated in the conferences for their constructive involvement. Honourable members would be aware that the resolution of these amendments paves the way for the commencement of the National Energy Customer Framework of South Australia. The framework introduces a robust national law to protect consumers' access to electricity and gas and will improve the energy market for the benefit of energy consumers and suppliers.

Honourable members may recall that the government initially opposed the amendments put forward in this place by the opposition as they will have an impact on increasing power prices for ordinary South Australians. We are, however, strongly committed to providing South Australian customers early access to the benefits of the national energy customer framework and have, therefore, decided to support the amendments put forward by the opposition in the interests of moving this legislation forward.

Once the framework commences, all retailers in the national market will be able to offer South Australian customers competitive offers. Customers' participation in this competitive market will be assisted by the introduction of national protections to ensure that they have continued access to essential energy services on reasonable terms. The government is also committed to ensuring that vulnerable customers have the ability to access the hardship regime introduced in the national energy customer framework as soon as possible.

It is from this context that I can report that the conference representatives agreed to amend amendment No. 1 from the Legislative Council, which seeks to alter the definition of an 'excluded generator' in the Electricity Act 1996. This amendment requires that, where there are two or more meters measuring consumption on a site, SA Power Networks must take into account the electricity consumption of the site as a whole when enforcing the provision excluding solar systems.

Information supplied to the conference participants by SA Power Networks indicated that there are less than 107 customers which have been excluded from the feed-in scheme which may, as a result of this amendment, have the ability to redeem their eligibility for the 44¢ per kilowatt hour feed-in tariff. In relation to amendment No. 2 from the Legislative Council, I can advise that the conference representatives have agreed to a compromise.

Amendment No. 2 sought to permit solar customers who received approval from SA Power Networks for an upgrade prior to 1 October 2011 to carry out the upgrade at any time and retain eligibility for the 44¢ per kilowatt hour feed-in tariff. The compromise amendment which I lay on the table today provides that solar customers who received approval from SA Power Networks for an upgrade prior to 1 October 2011 and who choose to complete the upgrade by 1 October 2013 will be eligible to receive the 16¢ per kilowatt hour feed-in tariff for the whole of their solar system until 30 September 2016.

The compromise ensures that customers with an approval for an upgrade are able to make an assessment as to whether it is worthwhile to complete the upgrade and receive a feed-in tariff as a category 2 customer, compared with retaining their category 1 status on a smaller system and represents a significantly lower cost option to the amendment from the Legislative Council. Conference representatives were also concerned that nine customers with eligibility for the 44¢ per kilowatt hour feed-in tariff sought in good faith to upgrade their solar system but, due to matters outside of their control, completed their upgrade a short time after the cut-off date of 30 September 2011.

The government has committed to ensure that SA Power Networks implements an administrative solution to ensure that these nine customers retain eligibility for the 44¢ per kilowatt hour feed-in tariff for the whole of their solar system. Thank you to all members who contributed to the debate, and I look forward to seeing the benefits that this legislation will have on household energy consumers.

**The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:29):** I indicate that the opposition will be supporting the amendments and I will just make a few brief comments in relation to the conference and comment on a couple of comments that the minister made. The conference was quite lengthy and took some months to complete, and I think that it was conducted in a good spirit of trying to find compromise wherever that could be found and to find a solution to some of

the problems. It is interesting that the minister indicated that the amendment put forward by the opposition would increase power prices. Further on in her contribution, the minister did talk about one of the comprises being a lower-cost option; I think that was about $90 million saving.

In the whole scheme of things, 107 customers had solar panels installed in good faith, often on the advice of the installer, often on a property where they had a second meter on a shed not shaded by trees in order to get better access to solar energy. As I am sure you would appreciate, Mr Chairman, 107 people—a very small number of people across the state—installed these solar panels in good faith, and it was the committee's view, and certainly the opposition's view, but also the conference's view that those people should not be disadvantaged by their having entered into that arrangement in good faith. With those few comments, I indicate that the opposition will be supporting these amendments.

**The Hon. M. PARNELL:** The Greens are pleased to support this motion as well. I will not go into any great length, as the Leader of the Government and the Leader of the Opposition have explained the purpose of the compromise that has been reached, but I will say that it was a lengthy conference for the relatively small number of people who we were ultimately talking about at the end of the day—some 107 customers, mostly farmers, who, in good faith put solar panels on their separately-metered shed, who will now have a greater opportunity to be eligible for the feed-in tariff, provided they have electricity being used elsewhere on the property, most likely through their homestead. I think that is a good amendment to make sure that those people stay eligible.

In relation to the second amendment, I think it does make eminent sense to treat people who are upgrading their systems exactly the same as those who are putting in brand-new systems. So, there is a great deal of equity in this compromise. I do accept that work was needed in the deadlock conference because there were some unintended consequences of the amendment as originally passed through the Legislative Council, and that was resolved, and that, I think, shows us the value of these conferences.

Thirdly, what we affectionately came to call 'the gang of nine'—these people who, through no fault of their own, missed out narrowly on being eligible for a feed-in tariff—the minister's undertaking to deal with them administratively, I think, is an appropriate response.

The final thing I will say, lest the energy minister in another place see fit to go onto the airways again to talk about the impost on electricity consumers via the changes made in the Legislative Council, is that I remind members one more time that the mother of all savings was made in this place when we sensibly agreed to keep the feed-in tariff at 44¢, rather than allow it to blow out to 54¢. The saving we achieved in the Legislative Council, I think, is in the order of $90 million. I think that the Legislative Council has done well in this matter, and I congratulate the government on its compromise.

Motion carried.

### STATUTES AMENDMENT AND REPEAL (TAFE SA CONSEQUENTIAL PROVISIONS) 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) (14:34):** I move:

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

Motion carried.

### GRAFFITI CONTROL (MISCELLANEOUS) 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) (14:34):** I move:

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

Motion carried.

## ANSWERS TO QUESTIONS

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

**MINISTERIAL TRAVEL**

**2 The Hon. R.I. LUCAS** (11 May 2010) (First Session). Can the Premier state:

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

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

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

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

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

(b) What was the purpose of each visit?

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

The information requested by the honourable member has already been provided to you through a number of Freedom of Information enquiries.

**DEPARTMENTAL EXPENDITURE**

**32 The Hon. R.I. LUCAS** (30 June 2010) (First Session). What was the actual level for 2009-10 of both capital and recurrent expenditure underspending (or overspending) for all departments and agencies (which were not classified in the general government sector) then reporting to the Premier?

**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 Premier has been advised of the following:

All agencies reporting to the Premier in 2009-10 were classified within the general government sector.

**DEPARTMENTAL EXPENDITURE**

**40 The Hon. R.I. LUCAS** (30 June 2010) (First Session). What was the actual level for 2009-10 of both capital and recurrent expenditure underspending (or overspending) for all departments and agencies (which were not classified in the general government sector) then reporting to the Minister for Health?

**The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations):** The Minister for Health and Ageing has provided the following information:

In 2009-10 there were no departments or agencies outside of the general government sector that had budgets that the Minister for Health was responsible for monitoring actual results against.

**MINISTERIAL TRAVEL**

**69 The Hon. R.I. LUCAS** (30 June 2010) (First Session).

1. How many frequent flyer points has the minister accumulated from any taxpayer-funded travel?

2. Has the minister used frequent flyer points accumulated from any taxpayer-funded travel for travel by the minister or any other person; and if so—

(a) Will the minister provide details of any such travel undertaken by the minister; and

(b) Will the minister provide details of any such travel undertaken by any other person?

**The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations):** I have been provided the following information:

1. Frequent flyer points are derived from both business and personal travel and it is ensured that, over time, only privately-earned points are used for private purposes.

**MINISTERIAL TRAVEL**

**70 The Hon. R.I. LUCAS** (30 June 2010) (First Session).

1. How many frequent flyer points has the minister accumulated from any taxpayer-funded travel?

2. Has the minister used frequent flyer points accumulated from any taxpayer-funded travel for travel by the minister or any other person; and if so—

(a) Will the minister provide details of any such travel undertaken by the minister; and

(b) Will the minister provide details of any such travel undertaken by any other person?

**The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations):** The Minister for Health and Ageing has provided the following information, which relates to the portfolios for Health and Mental Health and Substance Abuse:

1. & 2. Frequent flyer points are derived from both business and personal travel and it is ensured that, over time, only privately-earned points are used for private purposes.

**FREQUENT FLYER POINTS**

**71 The Hon. R.I. LUCAS** (30 June 2010) (First Session). Since July 2009, can the Minister for Education advise—

1. How many frequent flyer points has the minister accumulated from any taxpayer-funded travel?

2. Has the minister used frequent flyer points accumulated from any taxpayer-funded travel for travel by the minister or any other person; and if so—

(a) Will the minister provide details of any such travel undertaken by the minister; and

(b) Will the minister provide details of any such travel undertaken by any other person?

**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 has been advised:

The former Minister for Education accumulated frequent flyer points from both business and private sources.

The Minister for Education used some points for business travel. No points have been used for private travel by either the minister or any other person.

**GOVERNMENT CAPITAL PAYMENTS**

**100 The Hon. R.I. LUCAS** (30 June 2010) (First Session). What was the actual level of capital payments made in the month of June 2010 for each department or agency then reporting to the Minister for Health—

1. That is within the general government sector; and

2. That is not within the general government sector?

**The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations):** For the portfolios of Health and Mental Health and Substance Abuse the following advice is provided:

1. Within the general government sector:

Capital payments of $82 million were made for major projects and annual programs. This represents payments by the Department of Health to the Department for Transport, Energy and Infrastructure and to the Health Regions.

2. Not within the general government sector:

Capital payments of $11.6 million were made outside of the general government sector in June 2010 primarily for Information and Communication technology projects and the purchase of equipment in public hospitals from own sourced revenue (Special Purpose Funds).

**CONSULTANTS AND CONTRACTORS**

**115 The Hon. R.I. LUCAS** (30 June 2010) (First Session). For the year 2009-10—

1. Were any persons employed or otherwise engaged as a consultant or contractor, in any department or agency reporting to the Minister for Health, who had previously received a separation package from the state government; and

2. If so—

(a) What number of persons were employed;

(b) What number were engaged as a consultant; and

(c) What number engaged as a contractor?

**The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations):** The Minister for Health and Ageing has been advised:

1. & 2. All SA Government employees who accept a separation package have this clause included in the offer:

I agree not to seek, accept, engage in or remain in, any employment in either the South Australian public sector or a third party providing services to the South Australian public sector, remunerated or otherwise, whether temporary, casual, ongoing or by appointment, for a period of three years from the date on which my resignation takes effect.

Each officer who accepts a separation package is also listed on a database by the relevant agency as having accepted a separation package. This database is administered by the Sustainable Workplace Unit within the Department for Premier and Cabinet.

Prior to commencement in the Department, new employees must complete an employment declaration that includes details of any previous voluntary separation packages from the SA Government. These details are checked prior to commencement to ensure eligibility for employment.

All tender documentation released by SA Health includes as a condition of tender a statement advising potential respondents that SA Health will not accept as contractors or consultants, former employees who have accepted a separation package within the previous three years. Specifically, section 17.1 of the standard Bid Rules state:

The Principal will not accept the services of any former public sector employee, either directly or through a third party, who has, within the last three years, received a separation package from the Government, where such engagement may breach the conditions under which the separation package was paid to the former public sector employee.

**DEPARTMENTAL EXPENDITURE**

**222 The Hon. R.I. LUCAS** (7 July 2011) (First Session). What was the actual level for 2010-11 of both capital and recurrent expenditure underspending (or overspending) for all departments and agencies (which were not classified in the general government sector) then reporting to the minister?

**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 have been advised:

Primary Industries and Regions SA

There were no programs within the Department of Primary Industries and Regions SA, relating to my ministerial responsibility that was not classified in the general government sector.

ForestrySA

ForestrySA is a public non-financial corporation. As a 'for profit' trading enterprise the concept of underspending or overspending a recurrent expenditure budget is not applicable. In

terms of impact on the State's cash position, the most relevant measures are the variation between actual and original budget for the following items:

- Dividends paid in FY11: Budget $29,237k, Actual $26,516k;
- Income Tax Equivalent payments in FY11: Budget $13,503k, Actual $13,155k; and
- Total: Budget $42,740k, Actual $39,671k, Shortfall $3,069k.

As regards capital expenditure:

- Capital Expenditure payments in FY11: Budget $16,834k, Actual $12,614k, Underspend $4,220k.

South Australian Tourism Commission

The actual level for 2010-11 of net recurrent expenditure underspending for the South Australian Tourism Commission (SATC) was $118,000 (Government Finance Statistics based).

The actual level for 2010-11 of capital overspending for the SATC was $52,000. The variance can be attributed to additional capitalisation of expenditure on Christmas Pageant floats.

Office for Women

The Office for Women is classified as general government sector and so this question does not apply.

**MINISTERIAL TRAVEL**

**275 The Hon. R.I. LUCAS** (7 July 2011) (First Session). Since July 2010—

1. How many frequent flyer points has the minister accumulated from any taxpayer-funded travel?

2. Has the minister used frequent flyer points accumulated from any taxpayer-funded travel for travel by the minister or any other person; and if so—

(a) Will the minister provide details of any such travel undertaken by the minister; and

(b) Will the minister provide details of any such travel undertaken by any other person?

**The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations):** I have been provided the following information:

1. & 2. Frequent flyer points are derived from both business and personal travel and it is ensured that, over time, only privately-earned points are used for private purposes.

**MINISTERIAL TRAVEL**

**276 The Hon. R.I. LUCAS** (7 July 2011) (First Session). Since July 2010 can he Minister for Health advise—

1. How many frequent flyer points has the minister accumulated from any taxpayer-funded travel?

2. Has the minister used frequent flyer points accumulated from any taxpayer-funded travel for travel by the minister or any other person; and if so—

(a) Will the minister provide details of any such travel undertaken by the minister; and

(b) Will the minister provide details of any such travel undertaken by any other person?

**The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations):** The Minister for Health and Ageing has provided the following information, which relates to the portfolios for Health and Mental Health and Substance Abuse:

1. & 2. Frequent flyer points are derived from both business and personal travel and it is ensured that, over time, only privately-earned points are used for private purposes.

## MINISTERIAL TRAVEL

**277 The Hon. R.I. LUCAS** (7 July 2011) (First Session). Since July 2010 can the Minister for Education advise—

1. How many frequent flyer points has the minister accumulated from any taxpayer-funded travel?

2. Has the minister used frequent flyer points accumulated from any taxpayer-funded travel for travel by the minister or any other person; and if so—

(a) Will the minister provide details of any such travel undertaken by the minister; and

(b) Will the minister provide details of any such travel undertaken by any other person?

**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 has advised:

The former Minister for Education accumulated frequent flyer points from both business and private sources.

The Minister for Education used some points for business travel. No points have been used for private travel by either the minister or any other person.

## PUBLIC SERVICE EMPLOYEES

**283 The Hon. R.I. LUCAS** (7 July 2011) (First Session). For the period between 1 July 2010 and 30 June 2011, will the Premier list—

1. Job title and total employment cost of each position with a total estimated cost of $100,000 or more, which has been abolished; and

2. Each new position with a total cost of $100,000 or more, which has been created?

**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 Premier has advised:

The following response provides information in relation to the Premier's Portfolios as they were at 30 June 2011.

Between 30 June 2010 and 30 June 2011—Premier's Portfolios

(a) Positions Abolished—TEC of $100,000 or more:

| DPC Division/Area | Position Title | TEC Cost |
|---|---|---|
| Art Gallery | General Manager, Art Gallery | $144,031 |
| Social Inclusion Unit | Director, Participation Policy | $141,362 |
| Cabinet | Director, Community Engagement | $118,895 |

(b) Positions Created—TEC of $100,000 or more:

| DPC Division/Area | Position Title | TEC Cost |
|---|---|---|
| Art Gallery of SA | Associate Director Corporate Services | $118,895 |
| Art Gallery of SA | Head of Marketing and Development | $110,308 |
| Culture Development | Executive Producer, Adelaide Festival of Ideas | $133,873 |
| Integrated Design Commission | Commissioner, Integrated Design | $222,018 |
| Integrated Design Commission | Government Architect | $208,500 |
| Integrated Design Commission | Director, Integrated Design | $116,772 |
| Integrated Design Commission | Architect/Research Specialist | $145,200 |
| Public Library Services | Change Manager, LMS Project | $105,095 |

## CONSULTANTS AND CONTRACTORS

**306 The Hon. R.I. LUCAS** (7 July 2011) (First Session).

1. Were any persons employed or otherwise engaged as a consultant or contractor, in any department or agency reporting to the Minister for Health, who had previously received a separation package from the state government; and

2. If so—

(a) What number of persons were employed;

(b) What number were engaged as a consultant; and

(c) What number engaged as a contractor?

**The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations):** The Minister for Health and Ageing has been advised:

1. & 2. All SA Government employees who accept a separation package have this clause included in the offer:

I agree not to seek, accept, engage in or remain in, any employment in either the South Australian public sector or a third party providing services to the South Australian public sector, remunerated or otherwise, whether temporary, casual, ongoing or by appointment, for a period of three years from the date on which my resignation takes effect.

Each officer who accepts a separation package is also listed on a database by the relevant agency as having accepted a separation package. This database is administered by the Sustainable Workplace Unit within the Department for Premier and Cabinet.

Prior to commencement in the Department, new employees must complete an employment declaration that includes details of any previous voluntary separation packages from the SA Government. These details are checked prior to commencement to ensure eligibility for employment.

All tender documentation released by SA Health includes as a condition of tender a statement advising potential respondents that SA Health will not accept as contractors or consultants, former employees who have accepted a separation package within the previous three years. Specifically, section 17.1 of the standard Bid Rules state:

The Principal will not accept the services of any former public sector employee, either directly or through a third party, who has, within the last three years, received a separation package from the Government, where such engagement may breach the conditions under which the separation package was paid to the former public sector employee.

## CLIPSAL

**330 The Hon. D.G.E. HOOD** (14 September 2011) (First Session).

1. Will the Minister for Infrastructure confirm that although the government paid $52.5 million for the Clipsal site at Bowden, the current value has dropped substantially?

2. When has or will the site be re-valued?

3. What is the best estimate of current value?

**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 Transport and Infrastructure has been advised:

1. No.

2. The value of the site will be reassessed in 2013 once the project has substantially commenced and rezoning for residential uses has been in place for some time. These changes are likely to enhance the value.

3. The commercial assessment for the project was undertaken based on the most recent formal valuation which valued the Clipsal site at $55 million (exclusive of GST).

## SCHOOL LIBRARIANS

**331 The Hon. T.A. FRANKS** (18 October 2011) (First Session). Can the Minister for Education advise—

1. (a) How many teachers with library training are currently employed in government primary and secondary schools; and

(b) In which schools are they located?

2. How many teachers who are not qualified librarians are currently in charge of school libraries?

3. Which, if any, primary and secondary schools do not have a library on site?

4. How many 'Library Technicians' (i.e. persons who are neither a teacher nor qualified librarian) are currently employed in public primary and secondary school libraries?

5. (a) Has the government a strategy to increase the number of qualified librarians in public and primary schools; and

(b) If so, what are the timelines and milestones for this strategy?

**The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations):** The Minister for Education and Child Development has advised:

1. (a) The deployment of staff within schools into particular roles is managed at the school level. As at June 2011, there were 628 teachers employed in government schools who had listed the subject 'LI—Teacher librarian' as a teaching subject.

(b) Information about the deployment of qualified Teacher Librarians is not held centrally by the Department. Individual schools manage the teaching allocations of their staff.

2. The recruitment and deployment of teachers into particular roles is managed by schools using a merit-based selection process. The Department for Education and Child Development (DECD) does not have a central record of arrangements made at the local level to support school library services.

3. Departmental facilities guidelines provide all schools with a Resource Centre/Library space allocation. I am advised by DECD that Mawson Lakes Primary School is the only known school that has an off-site Resource Centre/Library, which forms part of the Mawson Centre.

4. The recruitment and deployment of School Services Officers into library and other roles is managed by schools, using a merit-based selection process. The department does not have a central record of arrangements made at the local level to support school library services.

5. Teacher-Librarian roles have not been identified as a hard-to-staff subject area and a state-wide strategy to increase the number of qualified librarians is not planned at this time.

Since 2003, DECD has financially supported 12 teachers to undertake post graduate accredited courses in librarian studies. Teachers eligible for support are required to have both Principal and Regional Director endorsement, verifying that there is a need in this area.

## MURRAY-DARLING BASIN PLAN

**2 The Hon. R.L. BROKENSHIRE** (2 May 2012). Can the Minister for Water and the River Murray advise—

1. What amount is budgeted, and actually spent, by the Department for Water for ensuring compliance with the *Irrigation Act 2009* and the *Water Allocation Plan for the River Murray Prescribed Watercourse*, for the current year and the three previous financial years?

2. (a) Is it correct that responsibility for compliance with the *Irrigation Act 2009* and the *Water Allocation Plan for the River Murray Prescribed Watercourse* fall to the Department for Water and not the South Australian Murray Darling Basin Natural Resources Management Board; and

(b) If not, how are the compliance responsibilities divided between the two Departments?

3. Is water allocated under the *Irrigation Act 2009* only able to be used as irrigation water, or can it be converted pursuant to the Act by the licence holder to become a licence for industrial or domestic purposes?

4. How much has the government spent on consultants advising on the previous and current Murray Darling Basin Plans and the previous Guide to the Plan?

**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. The budget and expenditure for the former Department for Water (now the Department of Environment, Water and Natural Resources) for compliance with the *Water Allocation Plan for the River Murray Prescribed Watercourse* (the Water Allocation Plan) and the *Irrigation Act 2009* is listed in the table below.

As the Water Allocation Plan is a plan approved under the *Natural Resources Management Act 2004* any failure to comply with the rules in the Water Allocation Plan is a breach of the Act. For this reason, the budget outlined in the table below includes the budget for the Act.

There is a single budget that covers all aspects of the administration of and compliance with the *Irrigation Act 2009*, the *Natural Resources Management Act 2004* and the Water Allocation Plan for the River Murray Prescribed Watercourse. The compliance and investigations component of the annual budget is embedded within the total budget allocation.

| Year | Budget Allocated | Actual Expenditure * |
|---|---|---|
| 2011-12 | $2,202,600 | $1,708,800 (year to date) |
| 2010-11 | $2,437,600 | $2,633,137 |
| 2009-10 | $3,868,900 | $3,590,663 |
| 2008-09 | $3,701,900 | $3,407,517 |

2. (a) It is correct that the responsibility for compliance with the *Irrigation Act 2009* and the Water Allocation Plan for the River Murray Prescribed Watercourse falls to the Department for Environment, Water and Natural Resources.

3. Water is not allocated under the *Irrigation Act 2009*. Water allocations are determined and issued as entitlement shares to individual Water Licence holders in accordance with the *Natural Resource Management Act 2004*. In the South Australian section of the River Murray, there are different classes of water entitlement, established to reflect the reliability and transferability of water. You can convert from class 3a to 3b or vice versa if you are moving water in or out of the Qualco-Sunlands Groundwater Control Trust Area. You can not convert between other classes. The water allocation, once obtained, can be used for any purpose, provided it is consistent with the site use approval.

4. In 2010-11, the then Department for Water expended $204,774 on contractors to support the development of parts of the State response to the draft Murray-Darling Basin Plan including the Guide to the draft Plan.

In 2011-12 to the end of May, the then Department for Water expended $419,646 on contractors and consultants to assist in the development of the State response to the proposed Basin Plan and for Community Engagement Services.

## PAPERS

The following papers were laid on the table:

By the President—

Register of New Member's Interests, November 2012—Registrar's Statement
Ordered—That the Statement be printed. (Paper No. 134A)

Auditor-General—Supplementary Report, 2011-12, on Agency Audit Reports, November 2012

Ombudsman SA—Report 'In the Public Eye'—An Audit of the Use of Meeting Confidentiality Provisions of the Local Government Act 1999 in South Australian Councils

District Council Reports, 2011-12—
Cleve
Flinders Ranges
Goyder
Lower Eyre Peninsula
Peterborough
Whyalla

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

ANZAC Day Commemoration Council—Report, 2011-12
Regulations under the following Acts—
Liquor Licensing Act 1997—Dry Areas—
Adelaide
Barossa Valley
Coffin Bay Area 1
Cowell Area 1
Glenelg Area 1
Moonta Bay—Port Hughes—Wallaroo
Port Neill Area 1
Primary Industry Funding Schemes Act 1998—Wine Industry Funds
Public Sector Act 2009—TAFE SA—Public Sector Employment
Summary Offences Act 1953—
Tattooing—Body Piercing—Body Modification
Weapons
Rules of Court—
District Court—District Court Act 1991—
Civil—Amendment No. 21
Criminal—General
Magistrates Court—Magistrates Court Act 1991—
Civil—Amendment No. 43
Amendment No. 43
Supreme Court—Supreme Court Act 1935—
Civil—Amendment No. 20

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

South Australian Tourism Commission—Report, 2011-12

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

Reports, 2011-12—
Berri Barmera Health Advisory Council Inc.
Ceduna District Health Services Health Advisory Council Inc.
Central Adelaide Local Health Network Health Advisory Council Inc.
Chief Psychiatrist of South Australia
Controlled Substances Advisory Council
Coorong Health Service Health Advisory Council Inc.
Country Health SA Local Health Network Health Advisory Council Inc. (Governing Council)
Department for Health and Ageing
Education Adelaide
Hawker District Memorial Health Advisory Council
Health Performance Council
Health Services Charitable Gifts Board
Mannum District Health Advisory Council Inc.
Mid North Health Advisory Council Inc.
Millicent and Districts Health Advisory Council Inc.
Northern Adelaide Local Health Network Health Advisory Council Inc.
Occupational Therapy Board of South Australia
Pharmacy Regulation Authority of South Australia
Port Broughton District Hospital and Health Services Health Advisory Council Inc.
Port Pirie Health Service Advisory Council
Quorn Health Services Health Advisory Council
Renmark Paringa District Health Advisory Council Inc.
Southern Adelaide Local Health Network Health Advisory Council Inc.
Tandanya National Aboriginal Cultural Institute Inc.
Women's and Children's Health Network
Women's and Children's Health Network Health Advisory Council Inc.
Regulations under the following Acts—

Passenger Transport Act 1994—Metropolitan Maximum Fares
TAFE SA Act 2012—Interpretation—Prescribed Employee
Tobacco Products Regulation Act 1997—Prescribed Actions

By the Minister for State/Local Government Relations (Hon. R.P. Wortley)—

Adelaide Cemeteries Authority—Report, 2011-12

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

Reports, 2011-12—
Adelaide Dolphin Sanctuary Act 2005 and Adelaide Dolphin Sanctuary Advisory Board
Board of the Botanic Gardens and State Herbarium
Department of Planning, Transport and Infrastructure
Department for Water
General Reserves Trust
HomeStart Finance
Teachers Registration Board of South Australia

## SELECT COMMITTEE ON MARINE PARKS IN SOUTH AUSTRALIA

**The Hon. D.G.E. HOOD (14:40):** I bring up the interim report of the select committee, together with minutes of proceedings and evidence.

Report received and ordered to be published.

## NATURAL RESOURCES COMMITTEE

**The Hon. G.A. KANDELAARS (14:41):** I bring up the report of the committee on its inquiry into the Upper South East Dryland Salinity and Flood Management Act 2002.

Report received.

## PARLIAMENTARY COMMITTEE ON OCCUPATIONAL SAFETY, REHABILITATION AND COMPENSATION

**The Hon. G.A. KANDELAARS (14:41):** I bring up the report of the committee on its inquiry into vocational rehabilitation and return-to-work practices for injured workers in South Australia.

Report received.

## VINING, PROF. ROSS

**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 table a copy of a ministerial statement relating to Professor Ross Vining, Director of Forensic Science SA, made earlier today in another place by my colleague the Attorney-General.

## MURRAY RIVER

**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 table a copy of a ministerial statement relating to the big step forward for the Murray River made earlier today in another place by my colleague the Premier.

## TATTS

**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 table a copy of a ministerial statement relating to the SA Lotteries transaction announcement made earlier today in another place by my colleague the Treasurer.

## COOMUNGA BUSHFIRE

**The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (14:43):** I seek leave to make a ministerial statement on the subject of the Coomunga fire.

Leave granted.

**The Hon. I.K. HUNTER:** In the past two weeks two significant fires have burnt on Lower Eyre Peninsula. The Premier has previously issued a ministerial statement on the first of these fires, which started near Tulka on 11 November 2012 and burnt through almost 2,000 hectares of pastoral land and scrub. The second significant fire began on Tuesday 20 November, the first designated catastrophic day of the 2012-13 fire season. It should be noted that on this day more than 300 fires were reported across the state.

The Coomunga fire came within six kilometres of the Port Lincoln township and, at its peak, five bomber aircraft were in use to contain the fire. In total, it burnt through approximately 2,300 hectares of bush and grasslands.

The Emergency Relief Functional Service opened an Emergency Relief Centre at the Curtin Point Bowling Club at the request of SAPOL on 20 November, operated by Housing SA with the assistance of Red Cross. More than 20 people attended the centre, with all able to return to their homes later in the day.

Back-burning across the weekend has been very successful, and the fire is now deemed controlled. However, resources will be on the ground for the next eight to 10 days to prevent flare-ups. I am pleased to advise that there have been no reports of significant injury or property loss as a result of the Coomunga fire. This is a testament to the hard work and dedication of the staff and volunteers of numerous organisations, including the CFS, SA Police, SA Ambulance, the SES, the Salvation Army, St John Ambulance, Housing SA, Department of Environment, Water and Natural Resources and the Lower Eyre Peninsula Council.

## QUESTION TIME

### TASTING AUSTRALIA

**The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:51):** I seek leave to make a brief explanation before asking the Minister for Tourism a question regarding Tasting Australia.

Leave granted.

**The Hon. D.W. RIDGWAY:** Since 1997, Ian Parmenter's Consuming Passions company has been engaged with the South Australian Tourism Commission to manage and coordinate one of Australia's major food and wine events, called Tasting Australia. The event has brought together some of the best produce and professionals in the gastronomic industry and showcased them to the industry and to the public. This year's event attracted 100 food and wine media from Sweden, France, Hong Kong, China, Singapore, Malaysia, New Zealand, the US, Britain and Australia. However, over a year ago, inexplicably, the minister's commission effectively sacked Mr Parmenter despite his extraordinary record in delivering an astonishingly successful event for so many years.

Instead of renewing with Consuming Passions, the Tourism Commission sent out tender documents for the contract to other companies. The minister had no backup plan, and no other companies have been forthcoming. There is no replacement for Consuming Passions, whose company is now planning to run a similar event in Western Australia. Under this minister, we lose and Western Australia wins.

The industry tells us that without Tasting Australia, South Australia is on its way to losing its status as the nation's premier food and wine state. The minister told parliament in May, seven months ago, that the commission was, and I quote her words, 'well down the track of appointing a new director, and the appointment will be announced soon'. The food and wine sector was confident that an announcement would be made at the Australian Food Bloggers Conference held in Adelaide early this month. Sadly, it was not. My questions are:

1. Can the minister guarantee funding for the 2014 event to at least the same level as was provided this year?

2. How does the uncertainty and the minister's inability to name a director help achieve the Labor Party's own food and wine strategy goal that by 2020 South Australia will be recognised as the world's leading food and wine destination?

3. Is it true that South Australia retains the rights to the name 'Tasting Australia' only on a use-it or lose-it basis; that is, unless we have a Tasting Australia event, we will not only lose the event, as we have already, but we will also lose the right to use the name?

4. If as you said on 1 May the commission is well down the track of appointing a new director, how long is this mythical track you are well on the way down, or are you just leading us up the garden path?

**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):** As per usual, the opposition is way off track. As we see time and time again, it has definitely taken the wrong path. What is more, I have already previously answered this question in significant detail. I cannot believe that we have come into this place after being up for a week and this is the leading question, the cutting political edge question coming from the Leader of the Opposition, a repeat question, just a rehash, the same old same old. It is tragic.

As I have said in this place time and time again, the opposition is not fit to be in opposition let alone in government, they are in such a shambles. As they scramble and fight amongst themselves they clearly do not have time to prepare questions for this place. Clearly, they have run out of time to prepare anything, to do any research or work on questions for this place that have any sort of cutting edge or any political relevance. That is okay. If the honourable member wants to waste the time of this place, then I am happy to. Tasting Australia, as I have already explained in this place before in quite some detail—

*Members interjecting:*

**The PRESIDENT:** The only reason he asks the question again and again is because he is not listening. Minister.

*The Hon. D.W. Ridgway interjecting:*

**The PRESIDENT:** Perhaps if you listen to the answer you will not ask the same question again.

**The Hon. G.E. GAGO:** The SATC, as I have said in this place before, owns Tasting Australia; that is theirs. My understanding is that it is their property to use when and how they like. There will be a continuing Tasting Australia. I have already given that commitment in this place before. I believe the next event is due the year after next, and there are funds for that. The opposition comes into this place with misinformation, misleading this place time and time again. Mr Parmenter was not sacked. That is completely misleading this place.

**The Hon. D.W. Ridgway:** His contract was terminated in 2011.

**The Hon. G.E. GAGO:** His contract was not terminated. Again, misinformation. Time and time again we see the opposition come into this place with, simply, incorrect information misleading this parliament. He was not sacked and his contract was not terminated. What happened was that he did not apply to renew his contract. It was an open contest and he did not apply. As we see, the opposition comes into this place time and time again with incorrect, misleading information.

The only thing the honourable member got right is that Tasting Australia is a major food and wine event for South Australia. We have so much to be proud of. It is an opportunity for us to showcase our food and wine. As usual, the opposition comes into this place knocking South Australia. All they do is talk down and knock. We have some of the best food and wine products in Australia, in the world, and we should be very proud of those and we will continue showcasing those through our Tasting Australia event, which is planned for the year after next and is budgeted for. So, it is completely dishonest for the Hon. David Ridgway, the Leader of the Opposition, to come into this place and suggest otherwise.

We have a change in director and I have indicated that we are looking to make changes. We are now looking at a change in the model of the event. I have said in this place before that it needs refreshing from time to time. The opposition would have us keep doing the same old thing, year in, year out, over and over, like their in-house fighting. That is how they operate. They like to keep re-hashing the same old fights internally and keep re-electing leaders and deputy leaders. The same old fights go on and on, with the same old conflicts over and over. That is how they operate and that is how they think this government is going to operate, but we do not.

We will have a refreshed and renewed Tasting Australia. It is something that I would expect the opposition, if they had any degree of responsibility, would be talking up. An announcement about that will be made in the fullness of time.

## TASTING AUSTRALIA

**The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:59):** I have a supplementary question. I apologise to the chamber for having the minister on her feet again.

**The PRESIDENT:** What is the supplementary?

**The Hon. D.W. RIDGWAY:** Was the minister preparing to make an announcement at the Australian Food Bloggers Conference, held earlier this month, in relation to a working group for the event?

**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) (14:59):** I was not prepared to make any announcement at that date. Again, it is an absolute nonsense. The opposition comes into this place and goodness only knows where they get their information: I think they just make it up. I had no intention of making any announcement that evening—none whatsoever.

## FORESTRYSA

**The Hon. J.M.A. LENSINK (15:00):** I seek leave to make an explanation before asking a question of the Minister for Forests regarding the sale of ForestrySA.

Leave granted.

**The Hon. J.M.A. LENSINK:** The Weatherill Labor government has finalised its privatisation of ForestrySA's timber harvesting rights to OneFortyOne Plantations for the sum of $670 million. Throughout the process, there has been widespread fear that the result will lead to job losses. The government has denied this, and Premier Weatherill said last December:

> ForestrySA jobs will be maintained. They'll be a condition of the sale...they'll be enforceable conditions...we won't enter into any arrangements with a purchaser of the future harvesting rights unless they agree to the conditions we want...so they'll be as secure as they need to be.

Even longer ago, in October 2010, the then forestry minister said:

> ForestrySA would continue to manage the asset and I think we would probably have some proviso that there be no job losses, that people would have the certainty of employment.

We have now learnt that in discussions surrounding enterprise bargaining agreements with ForestrySA staff it has been made known that half of the ForestrySA workforce will lose their jobs because of the sale process between this government and OneFortyOne Plantations. My questions to the minister are:

1. Why did the Premier say ForestrySA jobs will be maintained, when the opposition has been advised that there will be job losses?

2. Is it true that half or close to 100 of those employed by ForestrySA in the South-East will lose their jobs in the next 24 months?

3. What assurances will the minister give to those ForestrySA employees?

**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) (15:02):** Again, I don't know where the opposition dreams up this information. As far as I am aware, there has been no decision about any job cuts to ForestrySA. The board has not informed me of any decision about any job cuts.

Again, we see the opposition coming in here and scaremongering. They make up information. They come in here and repeat information that they don't bother to follow up, that they don't bother to research and they don't confirm. It is just an absolute nonsense. As I said, the board has not informed me of any decision to make any job cuts and, as far as I am aware, there has been no announcement at all about any decisions on job cuts.

## FORESTRYSA

**The Hon. J.M.A. LENSINK (15:03):** I have a supplementary question. Is the minister saying that she is not aware of any job losses in 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) (15:03):** How much clearer can I be? The ForestrySA board has not informed me of any

decision to make any job cuts and, to the best of my knowledge, I am not aware of any announcement by anyone—other than the opposition—that there are going to be job cuts.

## PARKS COMMUNITY CENTRE

**The Hon. S.G. WADE (15:03):** I seek leave to make a brief explanation before asking the Minister for Disability a question relating to the Parks Community Centre.

Leave granted.

**The Hon. S.G. WADE:** On 7 November 2012, the *Weekly Times* Messenger published an article headed 'Parks Community "like family" for Diana Spencer'. Ms Spencer says her 'woodwork group at the Parks Community Centre provides more than just rehabilitation—it is like family'. However, Disability SA's Acquired Brain Injury Group which meets in the Parks woodwork centre is being forced to move. The Parks Community Centre will be razed in April to make way for a smaller Parks Community Centre and almost half the site will be sold for housing and shops. The government has repeatedly stated that it is committed to providing services to support people living with a disability in the community. However, as Ms Spencer highlighted, all these good places that rehabilitate are closing down. Where do all these people with head injuries go now? My questions are:

1. Where will the services provided at the Parks, including the 33 community groups, go after the closure?

2. What steps will the minister take to at least maintain the current level of services operating at the Parks?

**The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (15:05):** I thank the honourable member for his most important question and will direct it to the minister responsible, who is the Minister for Planning in the other place, and seek a response on his behalf.

## PARKS COMMUNITY CENTRE

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

**The Hon. S.G. WADE (15:05):** I suggest to the minister that this is actually about Disability SA's acquired brain injury service, which I understand he is responsible for.

**The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (15:05):** No.

**The Hon. S.G. WADE:** You are not responsible for Disability SA's acquired brain injury service? That is interesting.

**The Hon. I.K. HUNTER:** The honourable member does not even know who is the responsible minister. They come in here and do not do any homework whatsoever—no planning, no policies, no ideas—and they cannot even direct their questions to the right minister. The government took a decision that the Parks was so very important that we will put it under the control of the Minister for Planning. The Minister for Planning is responsible for the Parks Community Centre and the relocation of services there. If the honourable member is serious about getting a response to his question, it will come from the Minister for Planning in another place.

## DOMESTIC VIOLENCE

**The Hon. K.J. MAHER (15:06):** I seek leave to make a brief explanation before asking the Minister for the Status of Women a question about domestic violence and workplaces.

Leave granted.

**The Hon. K.J. MAHER:** White Ribbon Day, Australia's campaign to stop violence against women, was held last weekend, and I want to pay tribute to a lot of the honourable members in this chamber who attended the breakfast, including the Hon. John Dawkins and others who are ambassadors for White Ribbon Day. We know that women who experience domestic violence require a great deal of assistance and support to get themselves out of these terrible situations. Can the minister advise the chamber how public sector workplaces will be assisting women?

**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) (15:07):** I thank the honourable member for his most important question and acknowledge and congratulate those members in this council who are White Ribbon ambassadors. White Ribbon Day was this Sunday, and this question is particularly timely.

I am sure that members would have applauded to hear the recent announcement by my colleague, minister Wortley, regarding the public sector enterprise agreements. Public servants covered by the SA Public Sector Wages Parity Enterprise Agreement and schoolteachers experiencing domestic violence are now able to access leave and other entitlements for reasons of domestic violence, with a clause being inserted into the agreement.

I am delighted to inform the chamber that public sector employees will soon be provided with additional support from their employer through new policies aimed to assist workers experiencing escaping domestic violence. Today I am very pleased to advise that, following the development of the Department of Communities and Social Inclusion's domestic violence workplace policy in March this year, all government agencies will be required to develop their own policies.

I would at this point like to acknowledge the Hon. Ian Hunter in this area, who oversaw the development of this very important policy which was first piloted and introduced into his agency and which has been a very effective model for us to now roll out to the rest of the public service. These policies encourage employees who experience domestic violence to seek support and outline available departmental assistance, including access to leave.

The policy also encourages discussion and recognition of issues related to domestic violence, with the intention of creating and cultivating cultural change within organisations. This could include attending legal or support service appointments, or any other activities that may be necessary to maintain their safety and progress towards a life free of domestic violence.

Many of the women who experience domestic violence in Australia are in paid employment, so this level of support that they will receive through this policy initiative is extremely important to these women in particular. Remaining in paid employment is critical for women to move to a life free of violence and abuse, and supporting victims to maintain their financial independence and security is essential.

It is much harder to make significant life-changing choices when a person is affected significantly economically; it makes it very difficult for women to make other choices. Domestic violence occurs regardless of social standing or occupation, so ensuring our workplaces are safe and supportive environments is an important step in protecting victims of domestic violence.

Domestic violence can have significant and detrimental impacts on the workplace, and just one example is where the workplace can be used as a place for perpetrators to harass women and to locate their whereabouts, and I know we have all heard about tragic events occurring in workplaces.

These policies will not only support women but such policies will also benefit the organisation by assisting to maintain employee productivity and to reduce organisational recruitment and training costs. I am very pleased that domestic violence workplace policies are gaining increasing momentum around the world, with Australia at the forefront of this important work.

**The PRESIDENT:** A supplementary question: the Hon. Ms Vincent.

## DOMESTIC VIOLENCE

**The Hon. K.L. VINCENT (15:11):** Was any special consideration given to employees with disabilities, given that it may be more difficult for them again to leave such situations?

**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) (15:11):** These policy provisions apply to all employees, including those with disabilities.

## BALYANA SWIMMING POOL

**The Hon. M. PARNELL (15:11):** I seek leave to make a brief explanation before asking a question of the Minister for Disabilities about the Balyana swimming pool.

Leave granted.

**The Hon. M. PARNELL:** Last week of sitting, I asked the minister a series of questions about the recently announced closure of the Balyana swimming pool in Clapham and his answers at that time were extremely dismissive. Since then, there has been significant coverage in the media of this issue. The media has focused on the considerable numbers of local residents living with disabilities who rely on the pool for exercise and amenity.

For example, I understand that the Ashford Special School has recently started using the pool, as the hydrotherapy pool at Minda is currently undergoing refurbishment. This school joins Novita and other disability services that regularly use the pool. Also, I understand that the pool is a preferred option for people with autism because of its enclosed and private nature. So, again I ask the minister:

1. Have you had any discussions with Bedford Industries, or any of the social or disability services who use the Balyana pool, over the future of the facility?

2. Are you aware of any discussions between Bedford Industries and the state government over the future of the pool?

3. Since I raised this issue in parliament, have you spoken to your department about it, or have you received any briefings?

4. As Minister for Disabilities, are you willing to help broker a solution to keep the pool open until the long-term shortage of hydro facilities for people with disabilities in the region is addressed and, if not, why not?

**The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (15:13):** The honourable member has asked this question before. Not content with a concise answer, I will give him a little bit more detail. On 27 July 1971, the South Australian Housing Trust sold the Balyana site at Clapham to Bedford Industries Inc. for $51,575, which was 50 per cent of the market value, I am told, at the time.

The South Australian Housing Trust took an encumbrance, restricting the use of the land to accommodation, social and recreational uses for Bedford disabled employees—for Bedford disabled employees. As Minister for Social Housing and Minister for Disabilities, I have no role in determining the specific programs and activities that take place on the site.

*The Hon. K.L. Vincent interjecting:*

**The Hon. I.K. HUNTER:** I have no role. It is a private pool. The Hon. Ms Vincent might not understand this: it is a private pool. Bedford has also canvassed various options—

*Members interjecting:*

**The PRESIDENT:** Order!

**The Hon. I.K. HUNTER:** —to sell or redevelop the land but to date has not provided any plans or proposals to my department for that. The site may not be divided or sold without South Australian Housing Trust consent and offering a first option to purchase. I understand that, on 18 October this year, the CEO of Bedford Group, Ms Sally Powell, sent a letter to the users of the Balyana site to inform them of the decision of the Bedford board to close the pool on 30 April 2013.

I understand that Bedford had made this decision because the pool is in need of significant structural repair, estimated to cost round about $600,000. I am advised that, indeed, there are a large number of people who use the pool each week. The target group for the pool was originally for people with disability who live at Balyana and their residential services. However, these clients, I am advised, no longer use the pool. Bedford management has not attempted to source government funding to keep the Balyana pool open, to the best of my knowledge.

The board of Bedford has recognised that the organisation's primary business is around employment and training for people with disability and disadvantage; funds provided to Bedford are directed to these purposes. The pool is not part of that core business, and this has led to their decision. I am advised that the modern facilities and wheelchair access at the South Australian Aquatic and Leisure Centre at Marion and the Unley swimming pool are anticipated to meet the needs of local residents.

Discussions regarding the future of the swimming pool have taken place, I understand, between Disability SA, Housing SA and the Bedford Group. However, I can confirm that the department did not receive formal notification of the closure of the pool or the reasons for the

closure before the public announcement was made. As I have said, Bedford Group is in the process of considering proposals for the future use of the site but, as yet, my department has not received any formal notification of Bedford's future strategic plans.

**BALYANA SWIMMING POOL**

**The Hon. M. PARNELL (15:16):** How can the minister say that the Unley pool is a suitable alternative when it is closed for six months of the year and is the wrong temperature for the client groups that currently use Balyana pool?

**The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (15:16):** The honourable member clearly does not listen to answers that are given in this place. I did not say that the Unley pool is the only resource available. I said that there were two pools that are available: SA Aquatic and Leisure Centre at Marion and the Unley swimming pool. I am sure that they will serve their different clients very well.

**PASSPORT TO SAFETY PROGRAM**

**The Hon. CARMEL ZOLLO (15:17):** My question is to the Minister for Industrial Relations. Can the minister advise the chamber on the progress of South Australia's Passport to Safety program?

**The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (15:17):** I thank the honourable member for her very important question. The Passport to Safety program is an international web-based self-paced learning and test program aimed at young people, in particular, year 10 students who are preparing to enter the workforce for the first time, including work experience, work placement and part-time or full-time work.

Evidence shows that young, inexperienced workers are being injured at up to twice the rate of other age groups, as confirmed in a Safe Work Australia report released in July 2012. According to this report, 41 per cent of 15 to 24 year olds are in casual work and have the highest injury frequency rate across all age and employment groups. With so many young people represented in casual work, it is imperative that programs such as the Passport to Safety program are completed by as many young South Australians as possible before they enter the workforce.

This government, through SafeWork SA and its advisory committee, is committed to supporting the Passport to Safety program in South Australia. SafeWork SA provides resources, as well as playing a leadership role, in generating sponsorship funds to ensure that the program is cost free for our schools. To date, more than 17,000 students from 115 public, independent and Catholic schools across South Australia have registered to complete the 2012 program.

This could not be achieved without the support of sponsors, in particular, the long-term commitment of diamond sponsor, the Mining and Quarrying Occupational Health and Safety Committee, as well as the ongoing support of Employers Mutual, Self Insurers of South Australia, Uranium SA, Flinders University, City of West of Torrens and Nyrstar.

SafeWork SA and industry support has also enabled the development of a number of industry-specific modules, which will be made available in 2013. One example is the Hair2Heart project, which was funded by the SafeWork SA Small Grants program in 2011 and which included a hairdresser module for the Passport to Safety program. A hospitality module will also be available.

For the construction and manufacturing industry, students will be linked to existing programs, such as the White Card and the Safer Manufacturing Working Group's safer workplaces video and induction program. A retail module is also nearing completion. I am pleased to advise that we have already had a commitment of $84,750 in sponsorship from nine organisations in 2012-13.

I would encourage any organisation interested in participating in this worthwhile program, either as a sponsor or in supporting the development of an industry module, to contact SafeWork SA. Reaching and raising the work health and safety awareness of all young people before they enter the workforce will go a long way to ensuring that South Australia's youngest workers lead safe, fair and productive working lives.

## DISABILITY HOUSING

**The Hon. D.G.E. HOOD (15:20):** I seek leave to make a brief explanation before asking a question of the Minister for Disabilities concerning budget allocations for the purchase of houses for people with intellectual disabilities.

Leave granted.

**The Hon. D.G.E. HOOD:** Media reports from this year and as recently as the last few weeks have indicated that some $13.5 million was allocated for the purchase of homes through Housing SA for use by people with an intellectual disability. My questions for the minister are:

1. How many houses is it proposed to build or purchase for that $13.5 million?

2. Will this funding result in additional government funded houses becoming available or will there simply be a transfer of homes from existing stock of Housing SA houses for use by Disability SA and its clients?

3. What is the estimated amount that is likely to be realised from the sale of the Strathmont Centre land as currently proposed?

**The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (15:21):** I thank the honourable member for his very important question. The 2012-13 state budget provided the single largest investment by a South Australian government into disability ever. The Weatherill government allocated $212.5 million in new funding over five years. This much-needed funding is now being rolled out across the sector, and I am happy to provide details on how we are using this funding to make real changes in the sector right now and how we are using this funding to make a difference in the lives of people with a disability in South Australia.

In terms of the housing issue which the honourable member raised, increasing the supply of appropriate supported accommodation for people with a disability is the high priority for this state government. The 2012 state budget provided additional funding of about $61.5 million over four years for the construction and support of people into supported accommodation. These funds will be applied in a variety of ways that will further increase and improve the available housing supply for people with a disability, providing over 250 people, possibly, depending on the configuration of the houses, with a disability with appropriate housing.

This is in addition to the budget funds allocated for more appropriate community-based accommodation for residents of the Strathmont Centre and closing the centre as a residential site for people with disabilities. My department is currently developing a housing plan that will outline the best use of this capital funding over the next four years in order to provide the maximum number of people with quality and appropriate accommodation. The priority for this funding is to provide accommodation for those people in emergency placements at the moment that are either high cost or so-called blocking respite beds. The housing plan will consider a range of building and ownership options, including working with the non-government sector.

The first and only property to be bought using Disability Housing capital funding to 27 August was for a property at 22 Nepean Avenue, Kingscote. This property is a house that will be used by existing respite services which could not find an appropriate cost-effective rental house. The purchase price was approximately $342,000, with an additional amount to be allocated for fit-out and minor modification. It is expected to be used for the provision of disability services later in 2012 following those modifications.

In regard to the question about Strathmont and the future sale of that land, of course I cannot provide any estimate at this stage of when that land might be sold and what the value of that land may be at any point in time into the future, but the value of that land has already, if you like, been drawn down for the disability budget in terms of housing, and when it is finally sold the value of that money will be returned to the pot from which we are already spending money for disability housing.

**The PRESIDENT:** Supplementary: the Hon. Ms Vincent.

## DISABILITY HOUSING

**The Hon. K.L. VINCENT (15:24):** I appreciate that the minister has already talked about not being able to give figures and so on about the sale of the Strathmont land, but in his answer to

the question he talked about closing the Strathmont Centre as a residential site. Do the words 'as a residential site' mean that there is some specific other purpose in mind?

**The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (15:24):** No: what that is about is that there are other functions that are performed on site. There is domiciliary care, I think, and other HACC providers. So we do not plan to be closing down those service provisions that are housed on the site. What we will be closing down is the residential facility.

## RIVERLAND SUSTAINABLE FUTURES FUND

**The Hon. T.J. STEPHENS (15:25):** I seek leave to make a brief explanation before directing a question to the Minister for Regional Development about the Riverland Sustainable Futures Fund.

Leave granted.

**The Hon. T.J. STEPHENS:** Recently, the Waikerie newspaper, *The River News*, reported the board of the Waikerie Hotel Motel, which is a community-owned hotel motel, would proceed with the redevelopment of the hotel without assistance from the Riverland Sustainable Futures Fund. Board chairman Graeme Thompson is quoted as saying:

> We have been waiting now for more than six months, which is ridiculous because had we known this would happen that building would have been two thirds rebuilt by now. Ms Gago's office hasn't made any decisions and hasn't provided any certain dates, so we feel it is not in the interests of our business to wait.

My questions to the minister are:

1. When will the minister announce the recipients of funding from the Riverland Sustainable Futures Fund?

2. Will all applicants who were shortlisted from the expressions of interest process, which closed on 30 April, be informed as soon as assessment of their application is complete?

3. When will assessment of applications be completed?

4. Does the minister anticipate reopening the fund to further applications?

5. Are there any dollars still in the fund, and is this why there have not been any announcements?

**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) (15:26):** The honourable member's question was almost incoherent. Nevertheless, it was again a rehash—

**The Hon. D.W. Ridgway:** That is the pot calling the kettle black, I would have thought.

**The Hon. G.E. GAGO:** I couldn't understand the latter part of his question at all, but that's alright, because they are often incoherent or incorrect. Again, we have seen a really incredibly lazy opposition come in here this week, and all we have had is basically rehashed old questions, questions that have been answered in this place in significant detail before. A great deal of detail has been given around those answers, yet the honourable members clearly have not bothered to listen and they come back with the same old questions dusted off and run them over and over.

I have outlined the process in detail before, and I am not going to waste this chamber's time outlining it again. Around about half the fund has been spent and there is a process that has been set up to look at further grant proposals. Expressions of interest went out, a short list has been developed and work has been done on those applications on that short list. Some of the applications have been incredibly complex. There are significant business and other probity details. It has taken time.

What is the opposition saying? That we should cut corners and rush through this process and put up public money—taxpayers' money this is, hardworking taxpayers' money—and just fling it out the door without doing the due process? Due process will be done and we are not going to be rushed into this. We will make responsible and sound decisions when we use taxpayers' money, and I do not apologise for that.

I know that the Waikerie community hotel has had some hardships in terms of the fire, and I know that they are keen to rebuild. If their grant proposal is successful, it is not going to be jeopardised just because they have commenced building. The due process will be completed, and I will make an announcement as soon as I am able.

## HOUSING SA

**The Hon. G.A. KANDELAARS (15:29):** My question is to the Minister for Social Housing. Will the minister inform the council about the striking success which Housing SA has had recently in relation to state and national awards presented for their building design?

**The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (15:30):** I thank the honourable member for his most striking question.

*The Hon. D.W. Ridgway interjecting:*

**The PRESIDENT:** The Hon. Mr Ridgway, you're not helping.

**The Hon. I.K. HUNTER:** A lot of finesse there, David. You would do well to emulate me in that one. On Friday 2 November—

*The Hon. D.W. Ridgway interjecting:*

**The PRESIDENT:** Minister, you have the call.

**The Hon. I.K. HUNTER:** Mr President, I don't pick on people who are chewing gum in the chamber and I never will. On Friday 2 November, the Urban Development Institute of Australia (UDIA) held its 2012 SA awards for excellence. The awards celebrate and reward innovation and technical achievement, and the recently completed UNO apartments at 102 Waymouth Street in the Adelaide CBD won two awards. UNO began by winning the best high density housing award and, due to that success, went on to take out the prestigious President's Award. This means that it will now be nominated for the national awards.

While it is a great building, its success can be measured by what it achieves in terms of place making and place management. UNO is the largest example of its type in Australia as far as tenant integration is concerned. It is South Australia's first example of place management and high density housing. UNO contains a mixture of tenures, home ownership from general market sales, affordable ownership and rentals, public housing and youth crisis accommodation.

I would like to acknowledge at this stage the very important role of the former housing minister, the Hon. Jennifer Rankine, and her foresight in shepherding through this project. I also acknowledge my chief executive, Jos Mazel; the commercial project manager, Bob Boorman; and the architect, Neil de la Coeur, for their support of this exciting concept.

The staff of Housing SA and the newly formed Renewal SA were crucial in seeing this project achieve what it was intended to do: build a vertical community. The place management contract for the building was won by Urban Communities, and as part of that contract the chief executive of Urban Communities, Mr George Housakos, has agreed to provide advice in extending place management advice across other areas of Housing SA's business.

The previous night, in Brisbane, Housing SA staff won two national awards and received two commendations at the Australian Housing Institute Awards. This national recognition is an outstanding effort by Housing SA and evidence of the quality and importance of the work we do throughout the state. Aboriginal programs manager, Ms Jude Allen, won the Outstanding Achievement Award, and teams from both the Office of Social Housing Coordinator and from the Community Partnerships and Growth won the Leading Practice Award. Jude's award was for an employment and workforce development strategy in the remote Indigenous communities. She designed and implemented the strategy, which delivers jobs and nationally accredited training on housing construction sites for remote communities.

The teams from Office of the Social Housing Coordinator and Community Partnerships and Growth Strategic Projects were awarded for their work in coordinating and managing the allocation of the Nation Building—Economic Stimulus Plan properties to vulnerable consumers through government and non-government providers. They were also recognised for their outstanding customer service and the transfer of the properties to the not-for-profit providers.

Commendations were awarded to policy and operations manager, Ms Jane Fletcher, for her work in the Inspirational Colleague Award, while the quality and technical services team was

commended for its work in the Leading Innovation Award. Jane has shown exceptional commitment to social justice for more than 25 years in operational policy and management roles within the public and community housing sectors.

The quality and technical services team received its commendation for its initiative in developing a deed to allow Housing SA tenants to install solar PV systems on their rental properties, which supports environmental benefits and reduces the cost of energy for tenants. I understand that South Australia is still the only state or territory which currently has the deed to protect all parties in relation to the installation of solar electricity systems. While other states allow the installations with no legal agreement between the parties concerned, there is always the potential for problems if the tenant passes on, leaves the property or other unforseen problems might occur.

UNO was again to the fore recently when the Civic Trust of South Australia handed out its annual awards for 2012. UNO was nominated for and won the prestigious Hugh Stretton Award for innovation in residential development, and was a joint winner of the Urban Award in the people's choice category where the public get the opportunity to go online and vote for their favourites. The Director of Assets, Mr Paul Reardon, accepted the award on behalf of Housing SA at Parliament House last Wednesday. The Civic Trust's judges praised the development on several fronts, stating:

> Social and price point diversity has been used as part of the economic funding and socialisation model of the UNO apartments and once fully occupied it will become an exemplar for city centre revitalisation, especially on the basis of cost benefit.

In spite of the scale and boldness of the project, there has been special attention to detail and fine-grain planning, and the interconnection of the building and its occupants with the public domain is exemplary, especially with the surfeit of balconies.

These latest accolades for the UNO apartments mean that the development has won four awards this month and it is still in the running for a further national award. I again congratulate those winners of both state and national awards for Housing SA, and I hope their future endeavours will continue to bring these types of successes to South Australia.

## FIRE ACCESS TRACKS

**The Hon. A. BRESSINGTON (15:35):** I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations questions about maintaining fire access tracks.

Leave granted.

**The Hon. A. BRESSINGTON:** Mr President, as you no doubt recall, last Tuesday some 31,591 lightning strikes hit our state, causing numerous fires of varying intensity from Port Lincoln to the South-East. Several of these were in the Adelaide Hills where, as I have previously raised in this place, fuel levels are high and farmers are being prevented from clearing near-surface fuel considered to be native vegetation because it is claimed to be habitat.

Three fires just outside of Strathalbyn could easily have threatened homes if landowners were not on hand to restrain them until the Country Fire Service arrived. In the subsequent editorial in *The Southern Argus*, one of these farmers is reported as expressing his concerns that the Country Fire Service could have been delayed by the disrepair of the fire access track, called Dog Trap Road, which the CFS used to access these fires. This fire track was so neglected and would be so dangerous in the event of a fire that local residents have suggested a name change to 'Death Trap Road'.

I have taken photos of the track, and it is beyond me how a CFS truck could have navigated the eroded trenches (some over half a metre deep), the boulders blocking creek crossings, the dense overhanging branches—where a person fire-spotting on one of these fire trucks could absolutely sustain serious injury—and also surface fuel assessed by experts to be hot fuel.

Residents had previously reported their concerns to the Alexandrina Council, but these went unheeded. In fact, one resident was reportedly told that the council had made a decision that it would only take responsibility and maintain the first 500 metres of the much longer fire track. One resident reported going to NRM about the issue of clearing near-surface fuel and was told that they were just way too busy.

It was only when the state of Dog Trap Road was published in *The Southern Argus* newspaper that the Alexandrina Council hurriedly attempted to repair the track. However, dense gravel was not used and the soft soil pushed into the trenches will wash away in the next downpour. As yet, the creek crossings and overgrowth is yet to be addressed. My questions to the minister are:

1. Is it the responsibility of local government to maintain fire access tracks like Dog Trap Road and, if so, what minimum standards must local government meet?

2. How does the decision of the Alexandrina Council to maintain only 500 metres of the track sit with these standards?

3. What recourse would residents have if the Country Fire Service was unable to access a fire due to the disrepair of a fire access track?

**The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (15:38):** I would like to thank the member for those three very important questions. They do cut across a number of portfolios, I believe: emergency services, NRM boards and maybe local government, so I will take those questions on notice and find out the answers.

## REGIONAL DEVELOPMENT PRIORITIES

**The Hon. J.S. LEE (15:39):** I seek leave to make a brief explanation before asking the Minister for Regional Development a question about regional priorities.

Leave granted.

**The Hon. J.S. LEE:** On 8 November the Minister for Regional Development went on ABC Radio and spoke about a range of policies and strategies for regional development. The minister said:

> This government is very committed, and I'm very committed as well to ensuring that our regions grow and prosper, we all want to see that...the trick is...you've got to actually have the policies in place, a plan in place to enable that to happen.

During the interview, the minister mentioned one of the key government priorities is the premium food and wine centre. The other priority she mentioned was tourism, where she said it is also a key economic driver for our regions. She also said that she visited China recently and in the Fujian province an MOU was signed with the local government there. My questions to the minister are:

1. When can we expect to see the release of a regional statement or an action plan that spells out exactly how the government is going to deliver its priorities?

2. With all the talk about developing a premium food and wine centre, exactly how and when will that happen, and how much is the government prepared to invest?

3. In relation to the MOU signed with the Fujian province of China, what does it mean in real terms? Can the minister explain the tangible benefits in terms of export revenue, what type of opportunities are available to businesses in the region and how many new jobs will be created in 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) (15:40):** I thank the honourable member for her most important questions. What the honourable member failed to mention in relation to that radio interview is that the opposition spokesperson, Steven Griffiths, had been on before me talking about his commitment to regions and he could not outline one plan or strategy whatsoever, not even a skerrick of a plan or policy, not even a whiff of a policy or strategy, yet alone vision.

**The Hon. J.S.L. Dawkins:** Is that your opinion, Gail, is it?

**The Hon. G.E. GAGO:** It is not opinion, it is fact. If the Hon. John Dawkins listens to the radio transcript he will see that it is actually fact because Steven Griffiths did not outline any particular strategy or policy direction of the opposition for regional development. So, it is absolutely hysterical. Nevertheless, I am very proud of the commitment this government has to regions and, indeed, I am very proud and pleased with the work we have done to progress development in our regions.

I have spoken before about successful tourism in the regions and how for almost all of our regions there has been tourism growth over the last 12 months or so. That is because we have a

plan, we stick to that plan and we work with regions and local operators. Tourism is a key regional economic driver and it is working. So, even with a backdrop of significant economic hardship, we have managed to grow tourism, including in most of our regions. That is a government that has a plan, sticks to its plan and works with the regions and local regional operators to identify their key priorities and then use those key priorities as the building blocks to grow tourism in regions.

Indeed, in terms of premium food and wine, again, it is a key priority plank for this government. It is one of the seven key priority planks for this government and it has wonderful opportunities for our regions. Instead of the opposition coming into this place and congratulating the government on the work it has done to date in progressing initiatives with China, what we find is that they are coming in here, again, talking down, bagging and trying to shake the confidence of businesses.

We see China as one of the most rapidly growing economies. We see that it has a burgeoning middle class, a middle class that is looking for quality products, particularly primary products and food and wine products. They are looking for quality and they are also looking for food safety, and they are two things that we have in abundance in South Australia.

We are not a low-cost commodity primary producing state: we are a quality producing state. We produce premium food and wine and we produce it from a safe environment with strong biosecurity standards and very strong food safety standards in place as well. That is what China is looking for, because it does not have that level of infrastructure.

**The Hon. D.W. Ridgway:** It signed an MOU, a piece of paper.

**The Hon. G.E. GAGO:** It does not have the consistency at all. The Leader of the Opposition scoffs at signing an MOU with the Fujian local government—that is disgraceful. That is a really important first step forward. The opposition did not even get to that step. What did it do? What has the opposition ever done in terms of advancing trade with China in relation to our food and wine? Nothing, absolutely nothing. They did not even get to a MOU stage. I think they should die of shame.

*The Hon. D.W. Ridgway interjecting:*

**The PRESIDENT:** Order! Order, the Hon. Mr Ridgway.

**The Hon. G.E. GAGO:** It is an in-principle commitment and further discussions will continue. It is the first step in a very important relationship; a very important first step in a relationship. It is an in-principle commitment to a partnership that says that the Chinese are willing to engage with us in further discussions and considerations in relation to these matters. That is a really important opportunity for us and one that this government is pursuing aggressively.

## REGIONAL DEVELOPMENT PRIORITIES

**The Hon. D.W. RIDGWAY (Leader of the Opposition) (15:46):** I have a supplementary question about the in-principle agreement. What financial contributions will be required for the presence in the Fujian Province?

**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) (15:46):** These are matters with a level of detail that will need to be discussed and negotiated. They are complex matters and we are in the very early stages. We will get to that stage and, at the moment, we are also working with the Australia China chamber, a very important Chinese and Australian group of investors. They are partnering in this as well and have been party to these discussions. The Chinese government has considered them to be an ambassador for China in these discussions. There is significant private—

**The Hon. D.W. Ridgway:** It's just an open-ended thing.

**The PRESIDENT:** Order, the Hon. Mr Ridgway!

**The Hon. G.E. GAGO:** There is significant potential private sector money—

**The Hon. D.W. Ridgway:** Didn't take the visitor information centre as an example of how to manage—

**The PRESIDENT:** Order! The Hon. Mr Ridgway.

**The Hon. G.E. GAGO:** —significant private sector Chinese money—

**An honourable member:** Chuck him out.

**The Hon. D.W. Ridgway:** Please.

**The PRESIDENT:** That's what he wants. He's going to sit there and take his medicine.

**The Hon. G.E. GAGO:** —that we are including in this partnership, which is more than the opposition ever did when it was in power.

## FOOD INDUSTRY AWARDS

**The Hon. K.J. MAHER (15:47):** I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question about promotions.

Leave granted.

**The Hon. K.J. MAHER:** It seems to be a bit of a theme—through the South Australian government's initiative, premium food and wine from our clean environment. We are proud to support the South Australian food industry, one of the most dynamic and innovative industries in this country. My question—which is not based on made-up assertions, which is not based on anonymous faxes to Liberal Party headquarters, which is not based on overheard conversations while drinking muscat at dawn at the Adelaide Club but which is to the correct minister who has the correct portfolio—is: can the minister provide the chamber with an update about partnerships occurring in the food sector?

**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) (15:48):** And I was very pleased that it was also not information that he put together listening to the radio while he drove in to question time, unlike the opposition. I thank the honourable member for his well thought through and considered question. On Friday the 16th I had great pleasure in attending the 15th South Australian Food Industry Awards hosted for the first time—

**The Hon. D.W. Ridgway:** One Labor member, six Liberals.

**The Hon. G.E. GAGO:** That says a lot, doesn't it? It's a food award: a big feed—a big free feed. What a disgrace!

*Members interjecting:*

**The Hon. G.E. GAGO:** What a disgrace. You can always tell when there is a free feed and some free booze: they are lined up en masse. This year's theme—'What is the secret ingredient? The people!'—focused on celebrating the amazing people who make up the SA food industry. The awards are an important tool in recognising outstanding achievement in the South Australian food industry, rewarding businesses and individuals who demonstrate vision, leadership and excellence in their field. The passion, dedication and integrity, the spirit of the people, are the essence of what makes our industry successful and culturally inspiring.

Twelve food companies from diverse areas of the industry were announced winners, with the highlight of the night being inducting the oldest family-owned chocolate manufacturing retailer in Australia, Haigh's Chocolates, into the San Remo Hall of Fame. There were 11 other deserving winners, each covering this year's revised categories, which included Franz Knoll, director of the Barossa Fine Foods, winning the Leader Award for his leadership in the food industry, in which he has made an outstanding contribution towards best practice, production and innovation with his own company as well as the wider meat and smallgoods industry.

Bickford's, I was really pleased to see, took out the Best Practice and Sustainability categories, demonstrating world standards of production and practice. Beerenberg was also awarded for its exemplary workforce strategy, winning the Workforce Development Award. There were many other winners, including Barossa Valley Cheese, the Australian Carob Co., Mexican Express, Sunfresh Salads, and a number of others.

However, it is not all about winners. The entrants to the SA Food Awards benefit from two hours of free mentoring and coaching in a field of their choosing, such as food production, marketing and packaging design, corporate and legal conversation, or research and development. In addition, feedback is provided to all shortlisted applicants to ensure individual success while supporting the growth of companies and industry as a whole. This in turn contributes to increasing the state's food reputation by creating greater awareness of South Australia's vibrant food industry.

The Awards Gala Dinner provides an opportunity to benchmark, inspire and celebrate a dynamic industry, with guests enjoying an incredible meal, which was a sampler of the fabulous quality food that we produce. This is just one example of the government's recognition of the priority to promote premium food and wine from our clean environment.

## ANSWERS TO QUESTIONS

### LONSDALE RAILWAY STATION

In reply to the **Hon. K.L. VINCENT** (10 November 2011) (First Session).

**The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations):** The minister for Transport Services has advised:

1. Following the incident, the Department of Planning, Transport and Infrastructure (DPTI) had its Chief Engineer inspect the pedestrian crossing at Lonsdale. The crossing was assessed as being in excellent condition, with all signage and markings meeting guidelines and line of sight in both directions being clear and unobstructed for approximately 500 to 600 metres.

Mr Peter Doggett, the then Acting Executive Director, Public Transport Services Division (PTSD), contacted Minda Inc. and offered to help with any rail training resources that might assist members of their community.

Staff from PTSD's Community Engagement, Accessibility and Safety and Risk teams, also met with representatives from Minda and Bedford Industries to make them aware of existing DPTI rail safety awareness resources and to make suggestions for the safety and awareness program which Minda and Bedford Industries are developing collaboratively.

2. The 2012-13 state budget has committed $80,000 for the installation of an automated system at the pedestrian crossing on the Noarlunga rail line at Lonsdale.

DPTI currently is undertaking a detailed investigation, including a full risk analysis of treatments that can provide improved protection.

3. Decisions on priorities for investment, under the Labor government initiated Safer Pedestrian Crossing program, were made by the then TransAdelaide. This followed a full survey of every pedestrian crossing on the network. The survey examined the number and type of users, particulars of each site (e.g. sight lines) and the number and directions of trains.

Expert external consulting advice was then sought on the prioritisation of investment. Under this program a range of interventions were implemented including automated gates, electronic second train warning systems and maze improvements.

The state government has demonstrated its commitment to improving the safety of our rail network through these initiatives and the recent funding allocation in the state budget, and will continue to make safety a priority for those working within and using our rail network.

### APY LANDS, HOUSING

In reply to the **Hon. T.A. FRANKS** (16 May 2012).

**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 Aboriginal Affairs and Reconciliation has been advised:

1. No provision exists under the National Partnership Agreement on Remote Indigenous Housing, for the provision of furniture or whitegoods in new or refurbished houses, apart from the provision of stoves to tenants. This is consistent with public housing arrangements across Australia.

The Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) developed a furniture program through its Emergency Relief Program in 2011.

Under this program FaHCSIA provided funding of $25,000 (excluding GST) to the Playford Community Fund and ParaWork Links to produce flat pack furniture for the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands.

This furniture was shipped in two containers to the APY Lands, one in September and the other in October in 2011. The containers were stored at Umuwa awaiting assembly and distribution.

Families SA and the Aboriginal Affairs and Reconciliation Division (AARD) developed criteria to distribute the furniture, targeting those who were considered vulnerable and in most need. AARD gained APY endorsement of the criteria.

FaHCSIA engaged Bungala Aboriginal Corporation (Bungala) to both assemble and deliver the furniture to 40 identified families across the APY Lands.

The furniture packages consisted of flat packed beds (single and double), mattresses and pillows, wardrobes, tables, chairs and bedside tables.

I am advised that furniture was distributed to identified families in early October 2011 and throughout the month of November 2011 by Families SA and Bungala. Some of the identified families were not present in community when Bungala arrived to deliver the furniture and this necessitated the storing of furniture until the families returned to the community.

In Watarru most families were not in community at the time of delivery. This furniture has since been distributed.

A household of furniture was also stored at Fregon for a family who were attending a funeral in another community. When this family returned to the Fregon Community they were allocated new housing and requested Bungala store the new furniture until they moved into the new house. This is yet to occur.

2. Families SA has advised that they are not aware of any of the Playford Community Fund furniture being lost in transit.

3. The Department of Education and Child Development, through Families SA, do administer a NILS program and advise that:

No Interest Loans (NILS) Program is available to APY Lands community members who have undertaken a financial assessment process conducted by Families SA. These clients have the opportunity to purchase kitchen goods by taking out NILS and repaying them over an agreed time through Centre Pay deductions.

During the period of September to December 2011 no NILS were approved for residents of the APY Lands.

4. I am advised that furniture was distributed to identified families in early October 2011 and throughout the month of November 2011 by Families SA and Bungala. Some of the identified families were not present in community when Bungala arrived to deliver the furniture and this necessitated the storing of furniture until the families returned to the community.

In Watarru most families were not in community at the time of delivery. This furniture has since been distributed. A household of furniture was also stored at Fregon for a family who were attending a funeral in another community. When this family returned to the Fregon Community they were allocated new housing and requested Bungala store the new furniture until they moved into the new house. This is yet to occur.

## AQUACULTURE ZONES

In reply to the **Hon. J.S.L. DAWKINS** (28 June 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:

3. The Draft Aquaculture (Lower Eyre Peninsula) Policy proposes additional area for the off-shore farming of tuna, complementing the already established aquaculture zone areas of the previous version of this zone policy closer to the coast of Port Lincoln. The nearest point of land from the outer boundary of this new farming zone is the shoreline of Spilsby Island, which is 2.3 kilometres and the nearest point to the mainland is 28.6 kilometres in distance.

Primary Industries and Regions SA (PIRSA) Fisheries and Aquaculture conducted public meetings during the consultation phase of policy development to consult with the community. This process allows for areas of high interest and relative importance to recreational fishing to be identified and managed. All lease and licence applications are also referred to the South Australian Recreational Fishing Advisory Council for comment as a standard part of the consultation process.

## CARBON TAX

In reply to the **Hon. J.A. DARLEY** (27 June 2012).

**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 Sustainability, Environment and Conservation has advised:

A landfill operator that is liable under the Commonwealth Government's Carbon Price Mechanism can significantly reduce their liability by capturing and combusting greenhouse gas emissions (i.e. methane) from their landfill site.

The Commonwealth Government will accept up to 85 per cent capture of greenhouse gases from landfill under the Carbon Price Mechanism.

Should a landfill site capture and combust 85 per cent of greenhouse gas emissions, their carbon liability will decrease by the same proportion—that is 85 per cent.

This has been verified by the Australian Government, Department of Climate Change and Energy Efficiency.

## STATUTES AMENDMENT AND REPEAL (BUDGET 2012) (NO. 2) BILL

Adjourned debate on second reading.

(Continued from 14 November 2012.)

**The Hon. R.I. LUCAS (15:53):** I rise on behalf of Liberal members to support the second reading of the Statutes Amendment and Repeal (Budget 2012) (No. 2) Bill. This bill is essentially a reintroduction of a bill the parliament has seen previously. There are a number of important amendments; one is that the biosecurity levy is no longer in this bill. Secondly, the issue in relation to housing grants has been the subject of a separate piece of legislation. There is, however, the ongoing issue in relation to police court costs. I will not address that issue. My colleague the Hon. Mr Wade has carriage of that and will address it in his contribution and during the committee stages of the debate.

There are a number of issues that I want to raise in the second reading, and in raising questions I am quite happy that the passage of the bill is not delayed whilst a considered response is prepared. I am happy for the minister to give an undertaking to get a response from the Treasurer and officers and provide a response to me by way of a letter, sometime between now and the February session of parliament. The first issue is in relation to the changes in relation to RESI corporation which were established back in January 2000 under the Statutes Amendment (Electricity) Act 1999.

The minister's second reading contribution indicates that the litigation process which RESI had oversight of was complex and had been funded through RESI's own resources which had been originally allocated when it was established in 2000 and it had been supplemented, when required, through the budgetary process. I ask the minister if he can provide what the original funding allocation in 2000 was to RESI and what the supplementations have been for RESI since the year 2000, what particular years and what amounts have been provided to RESI as referred to in the second reading contribution.

Further on, the minister indicates that SAFA and an administrative unit of the public service that is primarily responsible for assisting the Treasurer in the performance of his ministerial functions and responsibilities are to take on the residual activities of RESI following its dissolution. Can the minister indicate what is the particular administrative unit of the public service that is going to provide that particular function as referred to in the minister's second reading contribution?

Further on in the second reading contribution there is a reference to the new public sector skills and experience retention entitlement scheme, and the minister says that public sector skills and experience retention entitlement would apply to about 26,000 public sector employees with 15 or more years of effective service. Is the minister able to provide a breakdown of the bands of service that the public sector comprises such that the minister is able to indicate that there are 26,000 with 15 or more years of effective service? I am assuming that the Commissioner for Public Employment or Treasury has compiled a classification of all public sector employees in terms of years of service.

Can the minister provide some sort of breakdown in terms of nought to five years, five to 10 years, 10 to 15 years and any breakdowns of 15 or more years of effective service. The minister also says an employee can only be entitled to one form of retention leave. Can the minister provide detail of what that actually means? What other forms of retention leave are available to public

servants which, if they were entitled to them, would mean that they are not entitled to this new retention entitlement?

Also, specifically, some officers are paid what is known as a retention allowance, not retention leave. That is, they are paid an additional salary increment up to 40 or 45 per cent of their base salary as a form of retention allowance. Can the minister indicate whether this statement in his second reading contribution indirectly refers to retention allowances as opposed to the specific words that he has used in his contribution which is 'retention leave'? I seek a specific response from the minister in relation to that.

The minister also says that this leave will not apply to SAPOL employees who benefit from retaining police knowledge and experience entitlement established in the South Australian Police Enterprise Agreement 2011. Can the minister outline what are the equivalent entitlements that SAPOL officers will receive underneath that particular enterprise agreement?

I ask specifically about the position of officers, and I give one example: Mr Tony Harrison, who is a SAPOL employee but who has been appointed chief executive officer of SAFECOM, Director-General of Community Safety, but his contract indicates that he remains a SAPOL employee. In the case of persons such as Mr Harrison (I assume there are possibly others) who remain SAPOL employees but who have taken up other Public Service positions somewhere in the broader public sector, what particular retention entitlement will they be entitled to? Will it be the SAPOL entitlement or will it be this new scheme that is applied here? I would assume that it is not both.

The administrative arrangements in relation to this new entitlement scheme make it clear that, at the end of 2012-13, employees will be able to elect to convert their accrued entitlement for both 2011-12 and 2012-13 to a cash payment. I note in the budget papers that the cost for 2012-13 in the budget is estimated to be $20.3 million for 2012-13. I am assuming that is an accrual measure, that is, Treasury's estimate of all of the entitlements that public servants might have in 2012-13, even though they might not avail themselves of either the leave or cash them out. I seek confirmation of that.

In particular, if it is an accrual measure, which I assume it is, what is Treasury's estimate of the cash cost in 2012-13 and for each of the forward estimate years of the new entitlement? I am assuming that Treasury will have estimated across the public sector what the cashing-out ratio might be, that is, what percentage of public servants who get this entitlement might seek to cash it out and therefore individual departments and agencies, in cash terms, will need to pay it out during each financial year.

Of course, if they just take a leave entitlement and, if the agency does not replace that officer during the leave entitlement, broadly, there is no additional cash cost to the agency; somebody else is doing the work of those officers who are on leave in an acting position. If, however, someone has to be appointed in an acting position, there will obviously be an additional cost during the year as well. One can see that there are three or four different potential accounting treatments, depending on the exact nature of the use of the entitlement that an individual public servant might take.

I am interested specifically in the individual cash cost estimates Treasury has made of it. I am also interested to know, if Treasury has undertaken it, what the costs might be where departments believe they may well have to employ additional staff to replace staff who have taken this particular entitlement from 2012-13 and onwards. As I said, I am looking for that for the financial year 2012-13 and also for each of the forward estimate years.

The final issue that I pick up in the second reading explanation is in relation to this provision which will vest existing roads in the Commissioner of Highways. The second reading explanation states:

> Existing roads that will vest in the Commissioner are the South Eastern Freeway, and the Port River, Southern and Northern Expressways...[and] Future roads, to be identified by regulation...

What I am seeking from the minister is this—and if I could just take one example, the South Eastern Freeway, without going through all the others—I am assuming that there is an estimated valuation of the South Eastern Freeway held in the balance sheet aggregates of the state's accounts. If that is correct, what is that sum? Then, once this bill is passed into law, what, if any, are the budget impacts of the decision that has been taken in this particular bill?

That is, are there any budget impacts in terms of either balance sheet or the operating balance of the income and expenditure statements of the state that are impacted by this vesting of major infrastructure in the Commissioner of Highways? I seek a response from the minister on that. Depending on the responses received from the minister, this is potentially an issue that the Budget and Finance Committee may well pursue with the Department of Transport when it next appears before the committee, but I would like some information from the minister.

The second reading also indicates that this bill allows the commissioner to enter into commercial contracts for activities on roads such as the South Eastern Freeway. We are told that the commissioner is going to be given permission to enter into advertising contracts, for example, on major roads such as the South Eastern Freeway, the Northern Expressway or the Southern Expressway, or into service centres, and may well be entering into contracts for the inclusion of mobile phone towers or underground fibre optic services in conduits alongside the Southern Expressway or the Northern Expressway.

What estimate of potential revenue has the Commissioner for Highways or the transport department given to Treasury as to potential revenue opportunities? And, specifically, if the commissioner is to be given the power in this bill to accrue these revenue entitlements, at present, prior to the passage of the bill, who has that entitlement? Is it some other government department? Is it local councils who have the entitlement to accrue revenue for each of those examples that I have highlighted?

I specifically raise the issue of mobile phone towers, underground fibre optic services in conduits alongside the road, the issue of advertising alongside major roads and also the issue of service centres. With that, I seek a commitment from the minister to provide answers to those particular questions. As I said, I do not propose to delay the passage of the bill seeking responses to those questions unless, of course, the bill is delayed because of an inability to resolve the issue in relation to police court costs. If that is the case, I will pursue the issue if the bill is still before the parliament in February when the house resumes.

**The Hon. A. BRESSINGTON (16:08):** Yet again I rise to indicate that I will not be supporting the Budget bill without amendment because, yet again, the government is attempting to curtail our constituents' access to justice by imposing limits on the costs that can be awarded in the Magistrates Court. It was Professor Albert Einstein who quipped that the definition of insanity is to do the same thing over and over again and expect a different outcome.

The history of this proposal clearly demonstrates that this government is destined for padded rooms. In 2011, the government first tried to prevent costs being awarded in summary cases in all but the most exceptional circumstances. This was unsuccessful. Then, earlier this year, the government tried to entirely prevent costs being awarded in relation to indictable offences heard in the Magistrates Court. This, too, was unsuccessful. Clearly failing to learn its lesson, the government is now proposing to limit any costs ordered in the Magistrates Court to $2,000.

It is my hope that this bill will also be unsuccessful. Defendants who successfully defend themselves against criminal charges deserve to have the reasonable costs of defending themselves as determined by the magistrate paid. This is the principle in the Magistrates Court and no compelling argument has been made to now undermine it. The paltry saving of some $500,000, as disclosed by the Treasurer in a meeting we had last week, certainly does not justify this.

That the $2,000 cap will still see the majority of successful defendants paid the majority, if not all, of their costs is irrelevant. Some will not, and this number will increase every year. Having already paid the emotional costs, they will be forced to pay the financial gap of being wrongfully charged. Others who are of limited means or have a particularly complex defence that will likely exceed the cap will find it increasingly difficult to secure representation.

Whilst I accept that the majority of Legal Services Commission clients currently incur costs less than the proposed $2,000 cap and, as such, the concerns expressed in relation to the earlier attempts are no longer as pertinent, I nonetheless fear this measure will still have an adverse impact on the most marginalised in our society who rely on legal aid-funded representation.

Just last week, I met with a constituent who complained that the day before his trial his legal aid lawyer informed him that the Legal Services Commission would only fund his case if he pleaded guilty. He was persuaded to do so on the commitment that a conviction would not be recorded and, as such, he would be able to return to his profession as an armed guard from which he had been suspended—hence, why he was on legal aid.

Whilst no conviction was recorded, the wording of section 23G of the Security and Investigation Agents Act 1995 meant his licence was automatically cancelled, regardless of pleading guilty to a prescribed offence. This constituent remains convinced that he would have been found not guilty if his charge had gone to trial and is understandably bitter at the position the Legal Services Commission put him in.

Whilst this obviously occurred without a gap, as proposed by the government, it does demonstrate the consequences of the Legal Services Commission's tight operating budget and tough choices that already occur. Imposing a cap would only increase the pressure on the Legal Services Commission, through legal aid-funded lawyers, to minimise costs, including by encouraging clients to plead guilty, especially in cases where the costs of proceeding to trial will be in excess of $2,000. In the words of the President of the Law Society, Mr John White, 'We can't have people who may be innocent deciding to accept a conviction because they can't afford to fight a charge.'

This council has previously made itself clear. We did not support placing limitations on the discretion of magistrates to award costs to successful defendants, and we certainly did not support doing so in a budget bill. As I stated earlier this year, it is my hope that, if this clause is again successfully deleted, the government will accept the position of this council and we will not need to have this debate again next year.

**The Hon. S.G. WADE (16:13):** The Treasurer introduced the Statutes Amendment and Repeal (Budget 2012) (No. 2) Bill in the House of Assembly on 1 November 2012. One aspect of the bill related to amendments to the Summary Procedure Act, which is a court procedure statute, and the government wanted to reduce police court costs. Debating this bill is a bit like *Groundhog Day* and, as the Hon. Ann Bressington mentioned, it has been said that the definition of insanity is doing the same thing over and over again and expecting a different outcome. Still, the government insists on persisting with amendments that this council has consistently objected to.

The bill follows the defeat of two similar proposals in the last two years. In 2011 the Legislative Council amended the Statutes Amendment (Budget 2011) Bill 2011 to remove provisions to establish a presumption that costs would not be awarded against police in a summary prosecution. Earlier this year the Legislative Council defeated provisions within the Statutes Amendment and Repeal (Budget 2012) Bill 2012, which would have provided that costs would not be awarded against any party to proceedings for an indictable offence, except in special circumstances. So, what is the justification for this new, third approach? According to a letter from the Treasurer of 2 November 2012, the idea was proposed by Family First. To quote the letter:

> Family First has suggested an amendment to the Summary Procedure Act 1921 to allow capped costs to be awarded for an offence prosecuted by the police and set out criteria magistrates must consider when making a cost order. The new amendment takes into account the capacity of defendants to pay legal costs and will allow defendants to access up to $2,000 in costs indexed to CPI.

I would be interested to know Family First's thinking behind its amendment, for example, why it chose the $2,000 threshold, and I would also be interested to hear what legal stakeholders said to them when they were consulted on the proposal. I know what they are telling us. The Legal Services Commission, the Law Society, the Australian Lawyers Alliance and the Aboriginal Legal Rights Movement have all expressed opposition to the amendments in very strong terms. The Law Society said in its response that:

> It is not appropriate that fundamental rights to successfully defend a prosecution are being threatened. Parliament should protect not undermine core values and principles.

The Legal Services Commission, which I remind honourable members is a statutory authority of this government, said that:

> The threat of adverse costs awards is designed to put a brake on unnecessary or frivolous court applications by both the prosecution and the defence. The highest onus must be on the police to ensure sufficient evidence is available to secure a conviction. It is most inappropriate to ask the public to pay for police inefficiencies this way.

The Aboriginal Legal Rights Movement also expressed its disapproval, saying:

> The ALRM Is completely opposed to this back door approach to making fundamental changes to the access of justice. ALRM urges you to oppose this bill vigorously and with determination.

The Australian Lawyers Alliance said that:

> Putting a cap on the amount that can be awarded is also blatantly expedient. You are rewarding the inefficiency, incompetence and making prosecutions less accountable for their actions.

The criticism of the Family First amendments is based on a number of grounds including, first, that the proposal is not a budget measure. As we argued in 2011 and earlier this year, measures such as these are primarily matters of criminal procedure that should be pursued by normal bills and not through a budget bill. The government's attempt to try to provide cover for a bad idea by sneakily slipping it into a budget bill undermines the integrity of the budget process.

Secondly, citizens defending criminal charges should be protected by cost orders. Citizens are presumed to be innocent until proven guilty; they should be able to recover the costs of defending their innocence. Even when cost orders are allowed under this bill they are capped at $2,000. Preparation of some defence cases may be complex and may well exceed the $2,000 cap. The Legal Services Commission advises that a trial in the Magistrates Court usually costs between $3,500 and $5,000.

The Legal Services Commission suggests that the meaning of 'dismissed' in the context of the amendments is not clear and may include where the trial proceeds to acquittal and the charges are therefore dismissed. In that case the allowable amount of $2,000 will be utterly insufficient to meet the costs of a full trial.

Thirdly, the exceptions in the amendments are not accessible. The bill lays down criteria which are required to be considered before a cost order is made. The Legal Services Commission advises that it would be 'virtually impossible for either the defence or the court to ascertain whether or not the prosecution had breached any of the criteria'. The Law Society considers that it 'would appear to make it difficult for a defendant to get any costs order in their favour'.

The fourth point is that the amendments encourage prosecutions with or without merit. The threat of adverse cost orders is a key driver to ensure that prosecutions are supported by the evidence and court applications are neither unnecessary nor frivolous. If the police are to be immune from a costs order, a greater number of unworthy matters may well be charged and proceeded with.

The fifth point on which these amendments could be criticised is that there are greater prospects of cost savings from efficiencies within police prosecutions. Briefings from police on the bill indicated that over the last six years the proportion of briefs attracting cost orders has increased from 0.7 per cent to 1.84 per cent, and the cost of orders has increased from $747,000 to $3.137 million, a real terms increase of 351 per cent. The Legal Services Commission asserts that cost reduction should be achieved through stricter adjudication of matters brought to trial by the police, thus avoiding cost orders, rather than transferring the cost inefficiency to other parties. The Law Society and the Australian Lawyers Alliance concur.

The sixth point on which these amendments could be criticised is that the net budget savings are overstated. The Legal Services Commission frequently benefits from the Magistrates Court's favourable cost orders. This bill would see the commission lose income in relation to in-house cases and increased expenditure in relation to private practitioner legally-aided cases. Given that the commission is publicly funded, the net savings to the budget is likely to be well under the estimated $2 million per year. I should say that that was the $2 million per year that I was advised of in my briefing, and I will come back to that point later.

The government's response in the second reading was to say that the amount that the Legal Services Commission receives from the government each year runs into millions of dollars. What they lose, it says, is a tiny fraction. That may well be the case, but my concern is that what they lose is a big fraction of what the government says it will save. Even if every commission case that currently gets a cost order continues to get a cost order under the new criteria, the cap kicks in.

In the commission's experience, we are told, a trial in the Magistrates Court usually costs between $3,500 and $5,000. Even if we use the lower figure, the Legal Services Commission could lose $1,500 income per case as the cap kicks in, or, on an annualised basis, a total of almost $72,000. That figure only relates to cost orders where in-house lawyers are involved and the payments are direct income to the commission; however, more than 60 per cent of criminal law legal aid cases are provided by private practitioners on behalf of the commission. Cost orders mean that private practitioners do not charge their costs to the commission. Assuming that cost orders are made in proportion to the caseload, unbilled legal aid cases funded by cost orders would be around $118,000. Therefore, the total loss to the commission budget could, on these assumptions, be estimated to be $190,000.

The original advice to the opposition was that the savings would be approximately $2 million, but the latest advice from Treasury is that the saving will be $455,000. The police will save $455,000 and the Legal Services Commission will conservatively lose $190,000. So we have all this pain and all this impact on people's rights for a net saving of $260,000.

To be fair, Treasurer Snelling did say in the House of Assembly on 13 November, and I quote, 'The savings that this measure will provide to the police budget will be relatively small.' But did we expect them to be so small? In my view there is a real risk that, in addressing the symptoms of rising cost orders without identifying a cause and without addressing that cause and reducing the impact of cost orders and efficiency drivers, we could well see an increase in prosecutions that would not otherwise proceed and legal aid, the Courts Administration Authority and other parts of the legal system being burdened with further costs that may well exceed the $260,000 referred to. This measure may actually cost the state money and increase court delays.

My seventh point of concern in relation to this aspect of the bill is the lack of consultation. The 2011 bill and the 2012 bills were all South Australia Police initiatives and were not subject to consultation with stakeholders. The Legal Services Commission has advised that this is the third time in 18 months that it has had to defend its entitlement to costs and that, 'at no time has the commission been consulted by Treasury on the likely impact of these amendments.'

Senior officers of the commission have also advised that they are not aware of any consultation at officer level regarding the proposed changes and the likely impact on their budget. The Treasurer advised the House of Assembly on 13 November that:

> With regard to consultation, my understanding is that there has been consultation undertaken at an officer level between the police and the Legal Services Commission over the various manifestations of this savings attempt that has been brought.

Is the Treasurer being serious? Since when did the Treasury rely on an agency putting up savings to consult on and assess the countervailing impacts on other agencies' budgets? In the House of Assembly the Treasurer was not able to quantify the impact on the Legal Services Commission but he hoped it would be zero. This proposal has all the hallmarks of shoddy work not properly researched or consulted.

I ask honourable members to support me in the committee stages to delete clauses 37 and 38. I urge the government to accept the amendment, as it did in relation to the 2011 bill. If the government wants to develop a future proposal perhaps it might start by talking to people in the field. If there is a next time, let us consider the merits of non-budget issues outside the budget bill process.

**The Hon. K.L. VINCENT (16:25):** I wish to make a brief second reading contribution on the bill. I refer to one section of the bill that remains a significant stumbling block for the Dignity for Disability Party. This is the third time, as has already been said, that the government has tried to amend the Summary Procedure Act 1921 using what is a rather stealthy method, and I assure you that in this case third time is not a charm.

I will not detain the council for long, as my colleagues and indeed the legal community have already outlined many of the issues, but I will put on the record that, to the mind of the Dignity for Disability Party, this is not an acceptable manner for dealing with this issue and we resent the government trying to remove the rights of innocent people using this method. As the Law Society and Australian Lawyers Alliance have both detailed in correspondence with members of parliament, this is an incursion on basic rights and in stark contrast with what has been an accepted practice for many years now.

I appreciate the government has now amended the bill by placing a cap on costs that can be awarded at $2,000, but it remains an offensive attempt to limit the rights of people to costs that they duly deserve. It is not appropriate for the government to set limits or make decisions on what costs should be awarded, that is a matter for the courts to decide. The bill seems to presume that people are guilty until proven innocent, denying all principles of natural justice.

If the government is so desperate to save money in the state budget that it would suggest this measure, I suggest that instead it perhaps consider looking at the $535 million it is spending on the Adelaide Oval upgrade. In short, I do not and cannot support the second reading of this bill in its current form.

**The Hon. D.G.E. HOOD (16:27):** I want to speak very briefly on how this has come to be. The first thing I think that is worthy of drawing to people's attention is that this is not a Family First

amendment. No-one has said it is, but it has certainly been implied, and I would like to explain how that has come about. We were approached, as were all crossbench members, I assume, by the Treasurer in recent weeks to try to negotiate an outcome to this bill. I indicated that we were prepared to enter into discussion but, as members would recall, the last time it appeared before this chamber I had voted against the bill and, in a strange situation (strange for Family First, that is), the Hon. Robert Brokenshire (my colleague) had actually supported the bill.

So, we found ourselves, as a party, not agreeing on this issue. I think that is the third time that has occurred since I have been a member of this place (approaching seven years now), so it is very infrequent, but from time to time it does happen. We were looking to resolve that, if possible, if we could get to a point where we agreed. The government presented a range of options to us. I cannot recall how many, but there were a substantial number of options.

The main sticking point for me, and one that I struggled to accept, was the issue of not being able to award costs to a particular person who may well be found to be not guilty. It is true that we do not allow that in the District and Supreme courts at the moment, and we have not for some time, as I understand it. Nonetheless, I felt that as we had allowed that in the Magistrates Court that we should maintain that position, and that is why I voted against the bill last time.

The government then proposed a $2,000 cap to be applicable, which is as the bill appears before us today, and I find that acceptable. There are many reasons that I do, and I think we have heard from the Hon. Mr Wade and the Hon. Ms Bressington, who have outlined the case against quite succinctly and well, and I do not dispute the points they raise. I think that they are valid points that are worthy of the chamber's consideration.

However, I would just like to go through some of the specific detail in this that I think for me was persuasive in allowing $2,000 to be a reasonable limit that costs could be claimed—that is, this proposed measure does not take away the right of the courts to award costs, of course. That was the original proposal, but it is not the proposal that is currently before us, so it is important to acknowledge that the magistrate will still have that discretion under this bill.

I think, very importantly, unrepresented defendants—usually the people who are the most vulnerable in these types of situations—in almost all cases, as I understand it, in South Australian legal history (there have been some exceptions) the overwhelming majority of these people run up costs of less than $1,000. It is very unusual to have costs exceed that amount if they are unrepresented, so in virtually all these cases no-one in that situation would be out of pocket.

Furthermore, I understand that between 2010 and 2012 the median costs awarded by the Magistrates Court in South Australia were in the order of $1,650—that is the median figure. Again, that falls beneath the $2,000 cap which the government is proposing and, for that reason, I also find it acceptable from that point of view.

I also believe that the impact on the Legal Services Commission will be very small. In fact, I understand that the government has written a letter to all crossbench members, and perhaps to the opposition as well (I am not sure), that states that the impact on the Legal Services Commission, which received $43 million in revenue last year, will be something in the order of $169,000. So, again, I find that to be an acceptable amount. It is not ideal—clearly, it is not ideal from that perspective, but I think it is a very small amount when compared with the $43 million that it received in other funding.

Another important point that argues in favour of a cap being in place is that it does encourage the defence, if you like, to get on with it—to put it simply. It does not encourage them in any way to prolong proceedings. The truth—and this may not be palatable for some people to hear—is that there is an incentive at the moment for defence lawyers to prolong these things because it increases their fees. I do not know if that happens, but it has been suggested to me that it may and, if that is the case, then I think a cap would certainly help in that situation.

I think another issue that is relevant here is that Queensland, I understand, has very similar legislation in place to what is being proposed here. This may all be academic anyway because Family First will support the bill as it stands now. However, I understand that there are no other changes in position and, for that reason, the bill will fail and so be it. That is the will of the chamber and we accept that, but I just wanted to place on the record the reason for the change in my position.

**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) (16:33):** I understand there are no further second reading contributions to this bill. By way of concluding remarks, the Statutes Amendment and Repeal (Budget 2012) (No. 2) Bill brings into effect important legislative changes around the 2012-13 state budget, including cost of living measures, to ensure tenants receive the water security rebate, the off-the-plan stamp duty concessions for apartments in the Adelaide CBD and the Riverbank Precinct, and the public sector skills and experience retention bonus.

Since the bill was last before this house, three changes have been made; the first is the amendment to the Livestock Act 1997 to establish a fund for the animal health programs has been deleted. Secondly, the amendments to the First Home Owner Grant 2000 have been removed. This matter has been superseded by and incorporated in the First Home Owner Grant (Housing Grant Reforms) Amendment Bill 2012. Thirdly, Family First has suggested an amendment to the Summary Procedure Act 1921 to allow capped costs to be awarded for an offence prosecuted by the police and to set out criteria magistrates must consider when making a cost order. The new amendment takes into account the capacity of defendants to pay legal costs and will allow defendants to access up to $2,000 in costs indexed to CPI.

It is clear that the chief area of concern relates to the proposal to amend the cost provision of the summary procedure act. It is important to note that the process measure does not take away the rights of the courts to award costs. The bill simply asks magistrates to consider all relevant criteria before awarding costs. The discretion of whether or not to award costs still lies with the magistrate under the proposed amendments.

Unrepresented defendants who successfully challenge a prosecution will more than likely receive their out of pocket expenses, as they do now. It is extremely rare for any unrepresented defendant to seek and be awarded more than $1,000 under the current legislation, so the proposed ceiling of $2,000 will not affect these people.

In 2010-11 the median cost awarded was $1,639 and in 2011-12 the median was $1,650, both well below the government's $2,000 proposed cap. I thank honourable members for their second reading contributions and look forward to this being dealt with expeditiously through the committee stage.

Bill read a second time.

In committee.

Clauses 1 to 43 and title passed.

Bill reported without amendment.

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

That the bill be recommitted in respect of clauses 37 and 38.

The committee divided on the motion:

AYES (13)

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

NOES (7)

| | | |
|---|---|---|
| Finnigan, B.V. | Gago, G.E. (teller) | Hunter, I.K. |
| Kandelaars, G.A. | Maher, K.J. | Wortley, R.P. |
| Zollo, C. | | |

Majority of 6 for the ayes.

Motion thus carried; bill recommitted.

Clause 37.

**The Hon. S.G. WADE:** For the reasons that I outlined in my second reading contribution, I would urge the council to oppose clauses 37 and 38 so, when the motion is put, I urge the council to oppose it. These are the clauses that would introduce the police court costs provisions.

**The Hon. G.E. GAGO:** Obviously the government supports these clauses. We believe that this issue around police costs is an important element to the bill. As I said, we have moved to cap the costs to be awarded for an offence prosecuted, and a letter has gone out outlining a range of different impacts that this will have. I will not go through all of it but, in terms of impact on defendants, it is quite obvious that this provision does not take away the rights of courts to award costs. It simply asks magistrates to consider relevant criteria before awarding costs.

The discretion of whether or not to award costs still lies with the magistrate under our proposal, and I have already outlined in my second reading summary that the median costs are well below that of the $2,000 cap. The bill does not prohibit costs to defendants. In relation to the Legal Services Commission, there were issues raised in concern about that. I am advised that the government's proposed measure will have no impact on the budget of the Legal Services Commission or the ability of the commission to provide representation.

In 2011-12, the Legal Services Commission received $43 million in revenue while the costs recovered from the police in the Magistrates Court were a minor $169,000. There were 127 files on which costs were recovered in 2011 and 2012 with an average cost of $1,330 per file while, again, the government's proposed cap is $2,000. I am advised that the majority of matters where the Legal Services Commission provides representation are serious criminal cases where there is a likelihood of imprisonment. The majority of these matters are dealt with in the District and Supreme Courts with, again, very little impact.

In relation to court efficiency and the justice system, capping costs will not place a greater burden on the court system and may, we believe, have the opposite effect. Under the proposed changes there will no longer be an incentive for the defendant to drag out criminal matters by regularly adjourning them, knowing that they will be fully compensated by SAPOL by way of costs. Further capping costs will further prevent the practice of jurisdiction shopping in order to have the case heard before the court that awards costs. Currently, the majority of briefs are heard in the Magistrates Court as opposed to superior courts, so we believe that our proposal offers a more efficient system.

In relation to budgeting impacts, the latest amendment to the police costs measure now allows defendants to access up to $2,000, indexed each year to CPI, allowing costs of up to $2,000 to have a small positive impact on the budget of around $0.5 million. Capping costs will still allow those most in need to access costs while preventing those with the capacity to engage top lawyers from claiming excessive costs in the order of $75,000 against the state.

I draw to members' attention the average costs awarded against SAPOL in the Magistrates Court in the past few years. In 2010-11, there were 1,346 files and over $3.08 million awarded in costs, the average costs being $2,200. In 2011-12, there were fewer files, that is, 1,322, with higher costs awarded at $3.137 million, and that averaged at $2,300. So members can see there are, indeed, efficiencies occurring there. With those words, I urge members to support this clause.

**The Hon. S.G. WADE:** I do not intend to speak at length but just make these points in response to the minister's points. She claims there will be no impact on the Legal Services Commission: that is not the view of the Legal Services Commission. She claims there will be no impact on the justice system: that is not the view of the Law Society, the Australian Lawyers Alliance and the ALRM.

I thank the Hon. Dennis Hood for his contribution during the second reading stage in clarifying the origin of this amendment. I was simply relying on a letter from the Treasurer suggesting that it was Family First's suggestion. In his comments, the Hon. Dennis Hood mentioned that the government had a range of options that it discussed with Family First. I would urge the government to take those options to the legal community and consult.

The fact that the Attorney-General can go on radio and say that this is a police savings measure, and the fact that we have been advised that it was not the subject of consultation with key players such as the Legal Services Commission, in spite of statements to the contrary by the government, is a cause of great concern. We would urge the government to accept the deletion of these clauses if it is the will of the committee to do so and that we not delay the progress of this bill any further.

**The Hon. M. PARNELL:** I rise to put the Greens' position on the record. As other members have, so, too, have we received a great deal of correspondence from various stakeholders on this issue. They include the Law Society and the Australian Lawyers Alliance; but also, I should say, given that I have been known to hang out in legal circles at different times, I have had a number of lawyers ring me personally, and some quite senior practitioners, to urge us to oppose these two clauses in the budget bill. That is what the Greens will be doing. We will be supporting the deletion of these clauses.

I note that in the Law Society's most recent correspondence to us of a week or so ago they point out that the restrictions on the orders of costs will increase the risk of people pleading guilty when they should not. As the Law Society says, this is an issue of justice and access to justice and it is not just a financial measure.

As other members have pointed out, the Law Society has recommended that the government go back to the drawing board on this and undertake detailed consultation with stakeholders, and we would echo that call. The Law Society urges the government to explore other options to reduce costs in the criminal jurisdiction, rather than pass a measure that imposes the costs of unsuccessful prosecutions on to innocent persons. So the Greens will be supporting the deletion of these clauses.

**The CHAIR:** Before I call the Hon. Ann Bressington, there is no motion before me to delete it from the bill. Just so that you are clear how you actually deal with it.

**The Hon. M. PARNELL:** Mr Chairman, with leave I would say if there is no motion to delete the clauses, the Greens will be opposing that the clauses stand as read, if that is the motion that is put.

**The Hon. A. BRESSINGTON:** I am rising to indicate my support if that motion is put to oppose clauses 37 and 38. I made it very clear in my second reading speech this afternoon that I would not be supporting the court costs measures or the cap. I have heard that little that would change my mind.

**The Hon. G.E. GAGO:** Just to set the record straight in relation to a number of issues in relation to the Hon. Stephen Wade saying that the Legal Services Commission was not consulted, that is not so. I am advised that they were consulted by both Treasury and also the police minister's adviser. In fact, the Legal Services Commission was asked to estimate the degree to which the budget measure may have an impact on them, and they were unable to do that.

They were clear that they did not support the measure but could not quantify the likely effect. When asked to elaborate, I am advised that the response was that they would require a manual audit of internal case files to be able to provide an estimate. So, they were in fact consulted. Treasury did some modelling, and their modelling suggested that in 2011-12 the Legal Services Commission received $43 million in revenue, while the costs recovered from police in the magistrate's court were a minor $169,000.

There were 127 files on which costs were recovered in 2011-12, and the average cost of $1,330 per file was obviously well below the proposed $2,000 cap, so most of those people will in fact not be impacted on. In terms of this assertion that more people will plead guilty, our system is already extremely efficient in terms of looking at the figures from 2005-06 through to 2012-13. The percentage of guilty findings is between 80 to 88 per cent, so it is already a really highly efficient system, and there is no reason to believe that that would not continue.

**The Hon. S.G. WADE:** The minister, in commenting on the consideration of this clause, said that Treasury had consulted the Legal Services Commission. I am not going to take that further other than to say that at the highest levels of the Legal Services Commission, as recently as today, they were not aware of having been consulted. I wonder if the consultation occurred at appropriate levels. I am not wanting to go into 'he said, she said', but let's go to the question. The minister asserted that the estimated savings in relation to the $169,000 relate to the income that the Legal Services Commission receives as a result of payments from police in relation to cases run by in-house lawyers.

Can the minister advise what the impact is on the other portion of the work, which is that which is briefed to outside lawyers? My understanding of the Legal Services Commission and the report is that 62 per cent of criminal law matters are actually handled by outside lawyers. The greater impact will not be from income lost to the Legal Services Commission but, rather,

certificates that otherwise would be handed in which will now be used. So, if the minister could give us an estimate of the total cost, not just a portion of it.

**The Hon. G.E. GAGO:** I am advised that the Legal Services Commission does not collect that information, so therefore that information is not available.

The committee divided on the clause:

AYES (8)

| | | |
|---|---|---|
| Brokenshire, R.L. | Finnigan, B.V. | Gago, G.E. (teller) |
| Hood, D.G.E. | Kandelaars, G.A. | Maher, K.J. |
| Wortley, R.P. | Zollo, C. | |

NOES (11)

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

PAIRS (2)

| | |
|---|---|
| Hunter, I.K. | Dawkins, J.S.L. |

Majority of 3 for the noes.

Clause thus negatived.

Clause 38.

**The Hon. S.G. WADE:** I would urge that when the motion is put that this clause stand as printed, we do not support it because, consistent with our decision on clause 37, it is part of the police court costs decision.

**The Hon. G.E. GAGO:** It is consequential.

Clause negatived.

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) (17:06):** I move:

That this bill be now read a third time.

Bill read a third time and passed.

## INDEPENDENT COMMISSIONER AGAINST CORRUPTION BILL

The House of Assembly agreed to amendments Nos 1 and 2, 4 and 5, 7 to 23, 25 to 38, 41, and 44 to 47 made by the Legislative Council without any amendment and disagreed to amendments Nos 3, 6, 24, 39, 40, 42 and 43.

Consideration in committee of the House of Assembly's message.

*Amendment No. 3:*

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

That the Legislative Council insist on its amendment.

Motion carried.

*Amendment No. 6:*

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

That the council do not insist on its amendment No. 6.

**The Hon. S.G. WADE:** I presume this is the appropriate time to suggest to the committee that we should insist upon our amendment. This is the amendment in relation to the Hon. Ann Bressington, which is that the appointment of the commissioner be made on a recommendation made by resolution of both houses of parliament. It is the case that this amendment is unlikely to form part of the bill in its final form. The discussions are moving very much towards a parliamentary confirmation, but clearly the government is wanting us to move to deadlock and the quicker we do that the better. There is a growing awareness of the need for multi-party confirmation of the independence of the commissioner. What we need to do in deadlock conference is to resolve what is the best way to do that.

**The Hon. D.G.E. HOOD:** I will make a few brief comments, if I may. I think everybody in this room wants an ICAC and we have all been involved at varying levels of discussion about what the best model should be. I think that probably, deeply, none of us are completely satisfied with the model we have before us today.

*The Hon. A. Bressington interjecting:*

**The Hon. D.G.E. HOOD:** Indeed. There is the issue of secrecy which has been something that has entertained a good deal of comment, particularly in the media. There was a column written on the weekend that dealt with that issue in particular. There is also, of course, the other primary issue, which we have discussed a lot, that is, the appointment of the commissioner.

Family First has taken the position that we need to get a way through this, we need to find a way that a majority of members of this place can agree with a model that is presented to the chamber. We believe we are not far from that. I would encourage members to consider their positions. It is an opportunity for us to get an ICAC, ideally, sooner rather than later. However, I accept the arguments that if we want one we want it to be right.

I would ask the minister, if I may: are there any budgetary considerations around the two varying models? Is there any information the minister has with respect to those two models, if you like, and what impact it may have in terms of what it might cost?

**The Hon. G.E. GAGO:** In relation to budget impacts, I am advised that this will delay the bill and that there will be budget impacts because of the need for parliament to vote on a proposed commissioner rather than an existing parliamentary committee. That is about the only difference. Is it timely that we speak on—

**The Hon. S.G. WADE:** Sorry, if I could—

**The Hon. G.E. GAGO:** I haven't sat down yet. I have the call.

**The CHAIR:** The honourable minister has the call.

**The Hon. G.E. GAGO:** I am just seeking clarification as to whether I would make my comments on the Hon. Robert Brokenshire's motion now.

**The CHAIR:** He has not moved his yet; he will soon, otherwise I will bring proceedings to a close.

**The Hon. G.E. GAGO:** It is most important that the government makes it clear that it will support the Hon. Robert Brokenshire's amendment on this clause and that the opposition is obviously just absolutely intent on and obsessed with delaying this bill until next year—completely obsessed with delaying it until next year. We have basically given them what they have asked for and now they seek to delay it.

The government commends the Hon. Robert Brokenshire for his continued efforts at brokering a compromise on this bill. The opposition today—just today—stated that it will support a compromise that involves a veto right lying with the committee that is not government controlled. It said that today. The Hon. Robert Brokenshire's amendment involves a veto right lying with the Statutory Officers Committee. The opposition has stated that the Statutory Officers Committee is controlled by the government. This is completely false.

*Members interjecting:*

**The Hon. G.E. GAGO:** It is false.

*Members interjecting:*

**The Hon. G.E. GAGO:** Well, it is false, but nevertheless—

*Members interjecting:*

**The CHAIR:** Order!

**The Hon. G.E. GAGO:** —and without conceding that the current membership of the committee gives control to the government, the Statutory Officers Committee will, from today, comprise two government members, two members of the opposition and two Independents. That commitment has been given today by both the Attorney-General and the Premier. We have given them exactly what they want, and that is a power of veto that is not controlled by the government.

I am advised that Mr Lee Odenwalder MP will tender his resignation from the committee in the other place this afternoon. The government will then support the appointment of an Independent to that committee. I am further advised that the government will seek the opposition's support to appoint an Independent as the presiding member of that committee, rather than a member of either major party. I think the tradition is that it usually rests with the leader of the upper house and I am more than happy for this arrangement to be put in place.

With these changes to the membership of the committee, the independence of the committee is put beyond doubt. The Hon. Robert Brokenshire's amendment is therefore consistent with the compromise sought by the opposition. It is also important to note that the number of Independents on the Statutory Officers Committee is now only one less than the number required by the Hon. Kelly Vincent's amendment which commenced the very useful meetings between the Attorney-General, the opposition and the crossbench last week.

The government now calls on the opposition to support the Hon. Robert Brokenshire's motion. The government has delivered today what the opposition said it wanted: a committee that is not controlled by the government. The key test here is whether the opposition is serious about passing this bill and having an ICAC in South Australia or if the opposition will continue to block this bill out of some misguided belief that if it blocks the bill long enough it can include an ICAC on its list of policies for the next election. Goodness knows, the opposition needs some policies because it certainly is a policy-free zone at the moment. The government commends this compromise to the Legislative Council. The government therefore asks that the Legislative Council amendment not be insisted on.

**The Hon. S.G. WADE:** In response to the minister's comments, I would like to make a few comments. First of all, on the one hand the minister claims that the Statutory Officers Committee is already not a government-controlled committee and then says how gracious she is being in relinquishing the tradition of the Leader of the Government being the chair of the committee. She argues against herself. This has traditionally been a government-controlled committee.

The Brokenshire amendment which the government is now arguing for is not consistent with the Parliamentary Committees Act. The Parliamentary Committees Act requires that committees report to the parliament not to ministers. Secondly, it is not consistent with the Statutory Officers Committee functions in the Parliamentary Committees Act. The Parliamentary Committees Act gives the committee the function to report on appointment resolutions that are going to both houses of parliament.

Of course, both of those matters are matters that could be addressed by an amendment to the Parliamentary Committees Act, but the fact of the matter is that if we passed this amendment today we would not have those other amendments in place, so I urge the council to insist on our amendment. The Hon. Robert Brokenshire's amendment and the other amendments that have been offered by other members can all go to the deadlock conference and be considered.

In relation to the government's action today in asking Mr Odenwalder to resign and for that position to be filled by another member, let me stress that that provides no guarantee. The act still states that the House of Assembly appoints its members. The government still controls the House of Assembly. They can pass another resolution tomorrow in another way.

Let me not be negative, because I do welcome the fact that the government has shifted. The bill it tabled wanted an appointment of cabinet alone. Last week, it wanted a government nomination rubber stamped by a government-controlled committee. At least now, it is willing to talk about the need for an independence guarantee and a committee that is not government controlled. Let's go into a deadlock conference and let's discuss the best way to achieve what is now a shared objective.

**The Hon. G.E. GAGO:** The Hon. Stephen Wade is completely misguided. This misguided belief is his view that parliament cannot amend its own act. He has it completely around the wrong

way. Subsection (1) of section 15I—Functions of Committee states, 'The functions of the Statutory Officers Committee are,' and lists them, and subsection (1)(a)(iii) provides:

> (iii) on any other matter referred to the Committee by the Minister responsible for the administration of any such Act

So, it is an absolute nonsense. What the Hon. Stephen Wade is really saying is, 'Let's not have an ICAC, at least not before next year.' He is really saying let this government not have it at all, but what this amendment is saying is, 'Let's not have an ICAC here in South Australia before next year.' It is a disgrace and it is irresponsible.

**The Hon. M. PARNELL:** The question before us is whether or not we should insist on the amendment passed by this council and originally moved by the Hon. Ann Bressington. At the heart of that amendment is the fact that the Governor, on behalf of the executive, would appoint the ICAC commissioner on a recommendation made by resolution of both houses of parliament. That is the element the Greens have supported from day one and we continue to support. That is the ultimate check and balance on the executive to make an appropriate decision.

The debate, to a certain extent, I will not say hijacked but diverted—and the reason I do not say 'hijacked' is that amendments have been moved by people of great integrity and goodwill trying to find a way through. I think that we have inadvertently diverted the debate away from the fundamental question about both houses of parliament signing off on the commissioner.

The debate is now which parliamentary committee should have the veto: is it the existing Statutory Officers Committee or is it the new committee established under this act? Then there is: who should be on that committee, who should chair it, how many crossbenchers, how many other members? In fact, there is a far simpler method available to us, and that is to stick with the Hon. Ann Bressington's original proposal, which is a recommendation made by resolution of both houses of parliament.

I have tabled an amendment, which we may or may not get to, because our position is to support the Hon. Ann Bressington's original amendment. But we have formed the view, and this is where the Greens have moved over the last little while, that we do not believe that the committee adds a whole lot of extra value to the process. We are happy to dispense with the committee altogether and, once you have dispensed with the committee, you do not have to worry who chairs it, who controls it, who is on it, which house is in charge of it. You can let all of that go by the wayside.

The Greens' preferred model is that the Attorney-General, or his or her representative in the other house, would simply table the name and the power of veto then applies. That would require, not an amendment to the Parliamentary Committees Act, but at least an exemption from the process in that act, which basically says that, if ever either house of parliament has to make the decision, it automatically goes to the Statutory Officers Committee, and I would propose that we do not need to do that. We can avoid the Statutory Officers Committee, take it straight to parliament. That speeds it up, and it makes it a much simpler process.

It may well be that that is one of the options that the deadlock conference will consider, and that is why I thought it was appropriate to at least get an amendment filed, so that it becomes part of the discussion at that conference. But, for now, the Greens believe that the Legislative Council got it right when we originally supported the Hon. Ann Bressington's amendment. For the purpose of getting to the next stage of parliamentary scrutiny of this bill, we will be supporting the amendment as originally passed.

**The Hon. A. BRESSINGTON:** I urge members to continue to support my amendment, as we did during the committee stage of this debate. Like the Hon. Stephen Wade, I do not believe that my amendment will stay unamended. At the end of the day—at the end of these negotiations—I do believe that the best road to take with this is a deadlock conference. What we have seen over the last six weeks is the Attorney-General running from crossbencher to crossbencher playing a wonderful game of divide and conquer to try to divert away from a deadlock conference process.

I believe that we could have had this problem solved some five weeks ago if this had run its course. Nobody was intending to go into the deadlock conference to be immovable on this. We have seen that deadlock conferences produce good outcomes for legislation, instead of all of this amendment after amendment being filed to try to find a solution. Really, we are seeing opinion that is just poles apart.

For example, last week, in one of the meetings the Attorney-General referred to my amendment as 'the ugly amendment', and the other side referred to it as 'an inspiring amendment'. So, there is middle ground there somewhere that a deadlock conference will help us to sort out and to get the best outcome for the people of the state. The fact of the matter is that this ICAC bill is a pig of a bill, it really is. Do we want a bad ICAC? Do we want a bad ICAC bill, or do we want to take the time and sit down like reasonable adults and reasonable members of parliament and produce the best outcome that we can for uncovering crime and corruption in this state?

I will put on the record here and now that for months my view has been that this government never wanted an ICAC. It has been dragged kicking and screaming to an ICAC for 10 years. Now, all of a sudden, almost one year out from an election, we make a populist move and we introduce a bill. There are components of that bill that I believe the government knew would never get past the Legislative Council—not in a fit would this Legislative Council allow a bill like that to go through.

At the end of the day, we all play this game of 'amend and try to find this resolution', and if the bill fails whose fault will it be? Who will the government blame? Not their inability to negotiate, not their inability to draw up reasonable legislation that would prove to be a model ICAC for this country but one of the worst ICAC bills in the country. Whose problem will it be, and whose fault will it be that it does not pass? Of course, the Legislative Council's.

What a great way to shift blame and appear as if you are trying to appease the public! You know what? The public know the plot. They understand this. They do not trust this government to have control of choosing a commissioner, and they certainly do not trust the motivation of this government for putting up this bill in the first place. So, let's move to a deadlock, get down to business, solve the problem, and move on.

**The Hon. G.E. GAGO:** I need to rise to set the record straight. There is just a real distortion of reality here. I do not mind people disagreeing—we will have policy differences, and that is democracy, and I respect those differences—but I cannot abide a distortion of reality. For instance, I have been advised that it was not the Attorney-General who referred to the Hon. Ann Bressington's amendment as 'the ugly amendment': it was, in fact, the Hon. Stephen Wade.

**The Hon. A. Bressington:** Is that it? Is that the entire distortion?

**The Hon. G.E. GAGO:** I have not finished yet; I have only just got started on working through your debate. We need to stick to the facts here, and we need to focus on the facts and figures. The issue of this sudden interest in an ICAC is, again, a complete distortion of history. This was not a sudden decision: this government—the Jay Weatherill government—made an announcement about this ICAC almost 12 months ago, when the Hon. Jay Weatherill first became Premier. He has a view about this, and he announced it at the time—almost straight after he became Premier—and that was almost a year ago. So, it is absolute nonsense that this is some populist response to an election which is still almost a year and a half away.

In terms of, 'We need an ICAC,' well, we could have an ICAC. We could resolve it here today, and I think it is absolutely completely irresponsible and dishonest to suggest that this government is not genuine about wanting an ICAC. The Attorney-General has gone through this exhaustive process of discussing and consulting with the opposition and minor parties and Independents. When ministers put legislation through and do not do that, we hear them howling from the rafters that ministers do not give them the attention and briefings that they need.

Now, when we have the Attorney-General going through this exhaustive process one by one trying to pull together a compromise and a position and ensure that everyone is well briefed, what do we have? We have had the Hon. Ann Bressington roll out her conspiracy theory again: the Attorney-General is somehow wanting to avoid a deadlock conference and divide and conquer Independents and minor parties. What absolute nonsense!

He has been working extremely hard with all members to try to find a compromise, and we have seen that time and time again as he has developed positions to try to land on this and bring everyone along with him. So, to suggest that it is some sort of conspiracy theory of the Attorney-General to divide and conquer is absolute nonsense. The Attorney, like everyone in this place, can do the numbers. He knows there is no balance of power in this place and he has worked hard with the opposition, Independents and minor parties to land on a compromise.

**The Hon. J.A. DARLEY:** I rise to make a brief comment but, perhaps more importantly, to set the record straight on my position regarding the appointment of the commissioner. A lot has

been said, predominantly in the media, about the various positions that have been proposed in relation to the appointment of the commissioner. I would like to emphasise that I did, at a very early stage of the debate, propose an alternative position to that of the government that would provide the Statutory Officers Committee with the power of veto, a method similar to that used in Victoria and New South Wales.

That committee is not government-run. It is made up of one Independent (being me), two Liberal members and three government members. As an independent member, I would vote on the appointment of a commissioner on the merits of the applications before me alone, just as I do on any other issue. Any suggestion that my decision would be tainted by the views of the government or, indeed, based on any other position is, quite frankly, both offensive and blatantly untrue.

At a recent roundtable discussion, I suggested that we go back to the drawing board, starting with the original bill, and attempt to reach a resolution that day. I made some comments about the fact that the current appointment process for police commissioners, judges and the DPP did not appear to be of concern to anybody in particular, at least not publicly. I even raised the point that when in government the Liberal Party followed the same process and they did not raise any concerns about the recent appointment process of the police commissioner and the DPP.

Some chose to interpret my comments as blindly supporting the government and ignored the fact that I previously proposed an amendment to the government's bill on this very issue. They also chose to interpret this as me ignoring all of the amendments that have been proposed to date. They wrongly assumed that I would support any nomination before the Statutory Officers Committee for a commissioner as proposed by the government, irrespective of merit. Since then, there have been several more inferences which I have understood as suggesting again that I would support any government proposal regarding the appointment process.

The mere fact that I proposed an alternative position to that of the government early on in the piece should have allayed such concerns. I am extremely disappointed that minor issues have been blown way out of proportion and into the public arena to the point where many members of the public have lost confidence in the concept of an ICAC due to scaremongering and misinformation. I maintain my position that the establishment of an ICAC is of such importance that a resolution of the bill needs to be reached.

With respect to the amendments proposed by other members, I have been willing to consider them in their various forms but, of course, like other members, I have not been willing to agree to all of the proposals. In recent days, Family First have suggested an amendment very similar to that initially proposed by me, and I understand that this is acceptable to the government.

I support the move to change the composition of the committee and provide for an additional Independent member in lieu of a government member, and I also support the move to appoint that Independent as the chair of the committee if that is what the committee decides and if it will resolve the matter. That being said, if this is not acceptable to other members, I remain willing to consider any other reasonable alternatives that will lead to a resolution on this issue.

**The Hon. B.V. FINNIGAN:** It seems extraordinary to me, given that all honourable members in this chamber support an ICAC, that we have reached an impasse over this particular issue. If you do not trust the government of the day, this government or any government, to appoint the commissioner, I cannot see any parliamentary committee process that will satisfy you.

We have a system now where the Governor is appointed by Her Majesty on advice of the government of the day. The Chief Justice, the Chief Judge, the Chief Magistrate, all the judicial officers, a number of other commissioners, the police commissioner, the Director of Public Prosecutions, the Auditor-General—all are appointed by the Governor on advice of Executive Council. All those officers are appointed by the government of the day, and there has been very little suggestion over many decades in South Australia that those appointments have been tainted or are in any way party political.

It seems extraordinary to me that for this one position, although it has been more of a fashion since the seventies with positions like ombudsman, and so on, for there to be a parliamentary role, it seems extraordinary with this one position that we cannot trust the government of the day to appoint someone. Even under the models that are being proposed, it will still be the government nominating the candidates or nominees to be commissioner. If you really do not trust this government or any government to appoint the commissioner, I am not sure how any of the models proposed will satisfy you.

In particular, once the commissioner is appointed the only way they can be removed will be by parliament, and that is extremely unlikely. As we know, it has happened in relation to other positions like judicial officers extremely rarely, only in the cases of very obvious corruption or misconduct. It puzzles me how this has become such an issue. I respect that the majority of honourable members believes that there needs to be some parliamentary oversight.

I would note that some of the other states have a parliamentary inspector and that the parliamentary committee has a particular role in overseeing the ICAC, which gives the parliament a greater role on an ongoing basis. Certainly, whatever committee has a role in appointing the commissioner, whether it be the Statutory Officers Committee or the Crime and Public Integrity Policy Committee, there will be questions of the membership and representation between the houses. There are no real guarantees of that because, ultimately, it is up to the houses of parliament to appoint who they choose to the committees, and that will always depend on the numbers and various other things at the time.

I understand that the Hon. Ms Vincent has tried to address that with her amendment by being very prescriptive about the make-up of the committee, but I think it is probably too prescriptive because we do not know what will be the make-up of future parliaments and, while there is an allowance for that, I do not think it is a good idea to make a model based on what we think will happen in the relatively short term, given that we want this office to last for a long time.

Similarly, with the Hon. Mr Parnell supporting the Hon. Ms Bressington's amendment that a resolution of both houses simply be the method of appointment, I think that could get particularly messy in the absence of a mechanism to deal with the appointment process. If you want there to be some parliamentary oversight of appointment, it is better to go through a committee process rather than simply make it a resolution of both houses, because then you just do not know where it will go. If there is disagreement over the appointment, you may end up with quite a public spectacle, which I do not think would enhance people's confidence in the commissioner and his or her office and working.

Members have taken into account the notion that the parliamentary oversight should not be, as has sometimes been suggested, some sort of American-style inquisition, hauling in potential candidates and subjecting them to a grilling by all members of parliament (or large numbers of them) and a media spectacle about their past, any of their political affiliations, or what have you. Honourable members have recognised that, ultimately, that will not be in the interests of the efficient, effective working of the commissioner and indeed public confidence in it.

Clearly, a majority of honourable members believes there should be some parliamentary role, so I think it is appropriate that that be done in a way that will maximise the effectiveness of the process and also public confidence in the appointment, which is best achieved by a parliamentary committee. There are a number of other models. Obviously we have those proposed by honourable members here. New South Wales seems to be the main model that was used for previous private members' ICAC bills. There, there is a joint committee, but it is three members of the upper house and eight members of the lower house, but essentially it does have a veto right.

In Queensland, again, there is a parliamentary committee. Rather than simply having an up and down vote, a nominee must have bipartisan support from the parliamentary committee. I am not quite sure how that is defined. I think we know what that means, but I am not sure how that is set out. Obviously, the intent of that is to ensure that both the government and the opposition sign off on any appointment. Of course, Queensland does not have an upper house, and I do not think the honourable members here would like the idea that only the government and opposition be represented on any committee. In Western Australia, it appears to me that the government is obliged to consult with the parliamentary leader of each party, which would include—

**The Hon. T.A. Franks:** The Greens.

**The Hon. B.V. FINNIGAN:** Yes, it will include the Hon. Mr Parnell and the Hon. Mr Hood, but not the other crossbenchers, which does not seem to be a very sensible proposition. No disrespect to any individuals, but I think it would be important if there is going to be parliamentary oversight—

**The Hon. T.A. Franks:** WA would include the WA Greens and the National Party there.

**The Hon. B.V. FINNIGAN:** They do.

*The Hon. T.A. Franks interjecting:*

**The CHAIR:** The Hon. Mr Finnigan has the call.

**The Hon. B.V. FINNIGAN:** Thank you, Mr Chair. So, essentially it appears that this is going to a deadlock by a sort of tacit agreement of all sides. I would suggest that there is no reason in my mind why, with the abilities of the learned honourable members of this council, agreement cannot be reached and put through the parliament by Thursday. I think clearly there is some goodwill on both sides and a commitment on both sides to get this through and acceptance apparently by the government that there can be some parliamentary committee role that is not within the control of the government. I think that is a positive step forward in getting an agreement, and I hope that all parties can do that by Thursday and get this bill through this year.

**The CHAIR:** The Hon. Mr Brokenshire to move your amendment?

**The Hon. R.L. BROKENSHIRE:** Well, I was going to speak to this bit here before speaking to my amendment. I just want to make a few brief comments generally regarding where we are up to now and then I will reserve my right to speak to my amendment in a moment, Mr Chair. It has already been said this afternoon in this house that there is now a shared objective, and that shared objective is that the parliament wants an ICAC and we are in a position where we can now have an ICAC. In fact, we have one clause only to finalise and the ICAC could be gazetted and on its way.

Having met with people again today who gave me information that desperately indicates to me the need for an ICAC, I think it is very, very important that we get on with this job right now. I do not see that we are going to succeed any better by going into deadlock conference. Having said that, I want to put a couple of other things on the public record. We had great deliberations in our little party room on the clauses around the issue of how the commissioner was to be chosen.

At the end of the day, we were at sixes and sevens on whether we supported the Hon. Ann Bressington's amendment or not, but because there was nothing else forthcoming and the Hon. Ann Bressington had shown good intent to ensure that the parliament had some input into this, we actually decided initially that we would support that amendment.

I did say to my colleague at the time that I had some concerns about the broadness of that clause with respect to appointment and, having been involved in appointments of very, very senior positions in this state in the past, I understand and know the sensitivities if you get too many people involved in the process of appointment. The worst-case scenario could be that we end up with absolutely the wrong person for the appointment. Having deliberated all that in detailed discussion, at that point in time we did support the Hon. Ann Bressington's amendment, one of the few amendments put up during the debate.

I then said to people in the major parties that the crossbenchers had played their part and that the parliament now had an opportunity for an ICAC and that it was up to the two major parties to thrash out the appointment process. From memory, that was six to eight weeks ago, so it was a very long period of time. Unfortunately and sadly, we just saw an impasse occur. I have therefore put up an amendment, which I will speak to in a while. However, I want to put that on the public record.

Just to confirm my concerns, I have talked and written to many colleagues—Liberal, Labor and crossbench colleagues. One Liberal member with whom I spoke in the last couple of days informed me that they were aware of two possible appointments—nothing at all to do with the government, but two people whose connections in this town indicated to them that people who may have been interested in this position would no longer be interested. That comes from a Liberal member, who said that people had been scared away. That was always my concern. That confirmed my concern about too many cooks spoiling the broth, if I can put it that way.

In fairness, there has been lobbying from both sides. The Hon. Stephen Wade has contacted me. He has been actively lobbying crossbenchers, the government, and so on, and I appreciate that, and I appreciate his input. Likewise, we have also had exactly the same lobbying and input from the Attorney-General, and I have actually appreciated that.

I have to say that when Rann and Atkinson were at the helm, there was clearly no ICAC forthcoming. However, to be fair, no former government, Liberal or Labor, has put an ICAC up to this parliament, and that is the truth. The fact of the matter is that when I was with the Liberal Party, it was never discussed. Let us just put a few of these facts on the table. It was never, ever discussed as far as I can remember, and for very good reasons.

The reality is that the government of the day does not want an ICAC. That is the reality: it does not want that. The crossbenchers and the dynamics of this place and the fact that five or six years ago the Liberal Party decided to push an ICAC for policy have now created a situation where we will have an ICAC for South Australia, and that is the reality.

The other reality is that, with the change of Premier—from the Hon. Mike Rann to the Hon. Jay Weatherill—to be fair, there is a huge change in the way this Attorney-General (the Hon. John Rau) goes about certain business compared to the former attorney-general. We need to be fair on these things. The former attorney-general may have actually had to dig right in because that was what he was told at the time, but the moment the Hon. John Rau became Attorney-General, he pushed for an ICAC. I know that for a fact. I want to be fair and reasonable about these things. The development of this has actually been going on for two years.

I understand that the budget is now there. It is fair to say that people look at my history and my record. I am not one who comes out and gives accolades very easily to this government. In fact, whenever I can, I am happy to belt it as hard as I possibly can. I enjoy doing it when it is wrong, but it is not wrong on this occasion as I see it, and I just want to put that on the public record.

Regarding amendments, crossbench members moved some amendments, as did the opposition. With respect to privacy, privacy and this model being a bit different was raised in the media. We understand why the media would like to have an open opportunity on all occasions with an ICAC, but we have had to balance out the fairness of all this. The point I am getting at here is that we know some people could be damaged for life if it was open slather for the media at all times. The reality also is, from the crossbenches' point of view, that only the Liberal Party and the Labor Party could actually support total openness and transparency.

They had to get together on this. The fact of the matter, as I understand it, is that neither the Labor Party nor the Liberal Party moved any amendments to open up transparency. In fact, what I understand the Liberals have said is that when they get into government then they will look at addressing the issues around public hearings. That could have actually been fixed now, not when they get into government.

I want to finish off with a couple of things generally. On these senior appointments, and I know that the opposition are really cross about appointments like Mr Kourakis and Ms Handshin and there are opportunities for them, I think, to make a lot of political mileage particularly over the appointment of Ms Handshin. If you actually have a look at these appointments, even if the parliament is not involved in the appointment process, these people when they get to these senior roles are above party politics. I will give you two examples of that to finish off on this particular aspect.

One is, have a look at the current situation in Queensland with a former Labor minister now incarcerated in the Queensland correctional system. That person was incarcerated and the appointment for the independent commissioner was a Labor appointment. At the moment, Premier Barry O'Farrell, I think, would be very happy with the appointment in New South Wales because the allegation is that the Labor-appointed independent commissioner for their ICAC is looking into allegations around a $60 million to $100 million insider trading funding arrangement—and I will leave it at that—with a former Labor minister. My experience is that when you get people into these positions they are above party politics.

I will leave it at that at the moment. I want to speak more about my amendment. There is an opportunity here. I think everybody has gone a fair way to try to get to a situation, but I know that, as long as there is scrutiny, fair, reasonable and democratic scrutiny of this appointment, the role the community wants to see is the role of an ICAC working. We have an opportunity here today to ensure that occurs.

**The CHAIR:** The Hon. Mr Wade. I am mindful of the time.

**The Hon. S.G. WADE:** I am happy to continue my remarks after the dinner break. In terms of responding to the contribution of the Hon. Bernard Finnigan, could I remind him of the assertion of the then attorney-general, Michael Atkinson, in August 2007, when he opposed an ICAC and in doing so asserted that a majority government could stack the composition of an ICAC. Likewise, in 2009, then premier Rann claimed that a national ICAC, like the National Crime Authority, would guarantee independence from any administration. I welcome the fact that the government is now moving towards a parliamentary confirmation process and look forward to the deadlock considerations on how best to achieve that.

The Hon. Bernard Finnigan's comments also reminded me of another aspect of the Brokenshire amendment that we do not support, that is, (3aa), which is that:

> Before a person is appointed to be the Commissioner, the Attorney-General must ensure that the position is advertised in a newspaper or newspapers circulating in each State and Territory.

We, as an opposition, have a consistent position that we do not seek to be involved in the selection process for the ICAC commissioner. We are happy for the executive to make the nomination, but consistent with the checks and balances within the Westminster parliamentary system we believe it is appropriate that parliament confirm the appointment, much as we do with the Ombudsman and the Electoral Commissioner, but we are open in this context to a committee approach.

One of the recurring themes in this debate has been the government's pleas to 'trust us', and we heard the Hon. Bernard Finnigan giving us another version of that tune today. The Leader of the Opposition in the other place has highlighted why we as an opposition find that we cannot do that. The leader recounted the process of the appointment of the late Justice Mullighan, commissioner of the Children in State Care Commission of Inquiry. The government did not need to consult the opposition in the context of that appointment, but it did. It did not need our endorsement but it said it would not make the appointment without it. We did not endorse the appointment but it appointed the commissioner anyway.

The Leader of the Opposition has asked me to read the following statement to clarify events at that time. The note is headed, 'Re appointment of E.P. Mullighan QC as commissioner to inquire into the abuse of children in state care' and states:

> In Debate on ICAC Bill on [18] October 2012 (at *Hansard* p.3344) the Hon. MJ Atkinson claimed that at a meeting between representatives of the Government and the Opposition regarding the proposal to appoint Ted Mullighan as Commissioner to Inquire into Abuse of Children in State Care the then Shadow Attorney-General Hon. RD Lawson had said:
>
> > ...we've had a discussion about this in the Liberal Party Room and some members, not named, have made the point...that Ted Mullighan once shared chambers with Roma Mitchell...

*[Sitting suspended from 18:01 to 19:48]*

**The Hon. S.G. WADE:** To continue my remarks that I started before dinner, the statement continues:

The Hon. MJ Atkinson then claimed:

> ...it all became clear: you could not have someone who had shared chambers with Roma Mitchell be a commissioner for an inquiry into the sexual abuse of wards of the state because someone in the Liberal Party room had raised questions about Roma Mitchell's sexuality.

Atkinson went on to claim:

> That was the principal reason that the Liberal Party would not accept Ted Mullighan as the commissioner of that inquiry.

These claims by the Hon. MJ Atkinson are false. These claims have now been interpreted by Matt Abraham on ABC 891 (on 24 October 2012) to mean that the Liberal Party did not initially support Mr Mullighan's appointment because [to use Mr Abraham's words]:

> ...the Liberal Party had a problem with somebody sharing chambers with a lesbian investigating child sex abuse...

That rather far-fetched interpretation is also misconceived. As I have stated on a number of occasions, the sole reason the Liberal Party did not initially support Mullighan's appointment was the belief that the inquiry should be conducted by someone from outside of the State. The Liberal Party wanted a commissioner who would be seen, especially by the victims, as a person who was completely independent of South Australia. That was our only reason. Our objection was not to Mullighan the man.

The fact that Mr Mullighan had shared chambers with Roma Mitchell was never raised in the Liberal Party room. Nor, contrary to Atkinson's claim, did Lawson ever say that someone in the party room referred to that fact. The claim by Mr Atkinson that the sharing of legal chambers was the 'principal' ground of the party's objection is an invention on his part.

The fact that Mullighan and Mitchell had once shared chambers arose in the meeting attended by Liberal Leader Rob Kerin, myself, Robert Lawson, Minister Jay Weatherill and Attorney-General Atkinson. During the course of the discussion, the Attorney-General said words to the effect that: *'What if someone claims that they were abused by Roma Mitchell'.* Lawson responded by saying words to the effect that *'This is why we need an outside commissioner. Mullighan would have a conflict of interest if such an allegation were made because he has had a*

*long-standing professional and personal relationship with her. They once shared chambers. He was her counsel—assisting in the Salisbury Royal Commission.'*

On 18 October (*Hansard*, p.3345) I said: *'I agree it was said, but it wasn't the principal reason.'* I was agreeing that it had been said at that meeting that Mullighan and Mitchell had shared chambers. I was not agreeing to the proposition that it was said by Lawson or anyone else that you *'couldn't have someone who shared chambers with Roma Mitchell [as] a commissioner...because someone in the Liberal Party room had raised questions about Roma Mitchell's sexuality*'.

I reject the Hon. M. Atkinson's attempt to verbal me by suggesting that my statement *'I agree it was said...'* extended beyond my simple agreement that it had been said that the two people under discussion had shared chambers.

I have had a recent discussion with Robert Lawson about this matter. What I have just said accords with his recollection. He says that he had the highest personal regard for Ted Mullighan and they shared legal chambers before Mullighan was appointed to the Supreme Court. Likewise he enjoyed a good professional relationship with Roma Mitchell. He strongly rejects Hon. Atkinson's allegation that he ever made any insinuation about her personal life or about Mullighan's capacity to undertake the inquiry.

**The Hon. G.E. GAGO:** I want to respond to some of the comments made by the Hon. Stephen Wade. The assertions that the government has been avoiding the referral of the bill to a deadlock conference is absolutely correct. The government much prefers that the negotiations about the appointment method of the commissioner occur with all interested parties rather than the privileged few who are appointed to the conference. The government also prefers that negotiations occur in the public arena rather than behind closed doors in a deadlock conference.

*Members interjecting:*

**The CHAIR:** Order!

**The Hon. G.E. GAGO:** I am advised that—

*Members interjecting:*

**The CHAIR:** Order!

*The Hon. D.W. Ridgway interjecting:*

**The CHAIR:** Order! The Hon. Mr Wade was heard in silence. Let's get on with this.

**The Hon. D.W. Ridgway:** Well, he had something sensible to say, Mr Chair.

**The CHAIR:** And you haven't got anything sensible to say, so your contribution is negated.

**The Hon. G.E. GAGO:** Thank you, Mr Chairman. I am advised that the government has placed on file a further motion in relation to the Legislative Council's amendment No. 6. This motion remedies the one remaining concern of the opposition, namely, that the government would be so stupid as to publicly commit to appoint an Independent to the Statutory Officers Committee and then forcibly remove the Independent from the committee to appoint a government member just in time for the consideration of the proposed commissioner. This is obviously complete nonsense.

The government has once again moved to comply with the opposition's demands in relation to the committee. The motion guarantees two Independent members on the Statutory Officers Committee so long as an Independent member in both places agrees to be appointed to the committee. There is no more hiding for the opposition. The government has addressed every concern thrown at it by the Hon. Stephen Wade, no matter how spurious it was. We are proposing to put forward an amendment that ensures the longevity of the committee members, so we have addressed that matter.

I now challenge the opposition, in terms of what they intend to do, to vote the bill into a deadlock or agree to the amendments that will result in the appointment of an independent commissioner against corruption being scrutinised by an independent parliamentary committee, which is just what the opposition wanted.

**The Hon. S.G. WADE:** Before I respond to the minister's comments, could I seek clarification as to what the government's intention is on amendments Nos 24, 39, 40, 42 and 43? It is basically the remaining amendments.

**The Hon. G.E. GAGO:** Are you asking what we are doing on all of the amendments?

**The Hon. S.G. WADE:** What is your position on the future amendments?

**The CHAIR:** Amendments Nos. 24, 39, 40, 42 and 43 standing in the name of the honourable minister, given that we have not even dealt with amendment No. 6—

**The Hon. G.E. GAGO:** Our position is that the Legislative Council do not insist.

*Members interjecting:*

**The CHAIR:** Hang on, the honourable minister has the call.

**The Hon. G.E. GAGO:** I will correct that: it is that we do insist.

*Members interjecting:*

**The CHAIR:** Order! The only motion that I have that has been moved by the minister is that the council do not insist on its amendment No. 6, and we have been debating that since before the dinner break.

**The Hon. S.G. WADE:** In response to the minister's comments, I would make the point that before dinner I indicated that the opposition welcomed the fact that the opposition and the government are now on the same page, that is, that a non-government controlled committee should confirm the appointment of the ICAC commissioner nominated by the government.

It is incorrect for the minister to say that all of the issues I raised before dinner are addressed in these amendments. If nothing else, it continues to talk about a national advertisement. We as an opposition seek no role in the selection process, and I am surprised the government is wanting the parliament to direct how the Attorney-General would conduct the selection process. There are other aspects of the comments I made before dinner that are not—

**The Hon. R.L. Brokenshire:** They were actually trying to cover some concerns.

**The Hon. S.G. WADE:** Excuse me, Mr Brokenshire.

**The Hon. R.L. Brokenshire:** Well, they were trying to cover some concerns.

**The CHAIR:** Order! The Hon. Mr Wade has the call.

**The Hon. S.G. WADE:** Thanks, Mr Chair.

*The Hon. R.L. Brokenshire interjecting:*

**The CHAIR:** Order! The Hon. Mr Wade has the call.

*Members interjecting:*

**The CHAIR:** Order! The Hon. Mr Wade, I am still listening.

**The Hon. S.G. WADE:** Thanks, Mr Chair. What I was going to say—

*Members interjecting:*

**The CHAIR:** The Hon. Mr Wade, you are going to have to shout louder than I am.

**The Hon. S.G. WADE:** With all due respect, Chair, I would like to be able to think as well as speak. As I reiterate, I believe we have made significant progress today. We had the opposition and the government seeking the same objective, which is a parliamentary committee to provide confirmation of the appointment of an ICAC commissioner. I certainly will be interested to look at the government's amendments. I note that, according to the filing statement these were filed at 7.22, which was about 25 minutes before the house convened. I certainly was not made aware of them by the government until I came into the chamber, and, let's put it this way, I had my phone with me at all times.

The point is that I want time to look at these amendments. I certainly would want to consider other alternatives. The Hon. Ann Bressington, the Hon. Mark Parnell, the Hon. Kelly Vincent, the Hon. John Darley and the Hon. Robert Brokenshire all have amendments on the table. I have withdrawn mine, but the point is that there is a range of options on the table. The government seems to think that I believe that negotiations can only happen at deadlock conferences, and that is clearly not the fact. Last week, I spent a significant amount of time, as did most crossbench MPs, in informal negotiations, and I am happy to have more. What I seek is an outcome, but the outcome cannot be rushed. To make sure we get it right I would suggest to the government and to other members of the council that we should report progress at an appropriate time.

**The CHAIR:** Are you moving that now?

**The Hon. S.G. WADE:** No, I am not moving that now. I am just foreshadowing that it is not unreasonable that the 25 minute filing date was too short—and I certainly did not have 25 minutes. To be honest with you, I have not even had a chance to read them. So the government wants us, with 25 minutes before the house convenes, to vote on amendments. I am giving a solemn undertaking that I will positively look at all the amendments before the committee, including the government's. Now, nobody else is insisting that with 25 minutes notice we have got to sign off on their amendments. Everybody else has tabled them with due respect.

**The CHAIR:** Well, we haven't heard from other honourable members.

**The Hon. S.G. WADE:** I would suggest to the committee that we should have further clarification. It would be an opportunity for the government to explain their amendments and, at an appropriate time, for us to continue these discussions later.

**The Hon. K.L. VINCENT:** If I may, I would just like to give feedback on some comments that were made by the Hon. Mr Finnigan before the dinner break while they are still fresh in my mind, because unfortunately I did not get the call before the dinner break. To my recollection, the Hon. Mr Finnigan said something to the effect of—and I am paraphrasing here so he is welcome to correct me if he feels I have done him wrong—implying that my amendment was based on short-term gain.

With all due respect, I have put this amendment forward in the spirit of compromise, working towards an outcome that achieves an ICAC that is, first and foremost, independent and accountable. There are aspects of my amendment, I will admit, I find to be a great compromise, but I do not think they offer short-term gain. With all due respect, I would suggest that having a first appointment process in the first place is for short-term gain. I would suggest that referring the ICAC to a pre-established committee in order to expedite the process is for short-term gain; and I would especially suggest that attempting to push the legislation through by the end of this week is most certainly for short-term gain.

I wanted to have the chance to make that rebuttal, particularly when the very aim of my amendment, as I hope members can see, was to establish a separate committee under the legislation that had greater representation of members in the numeric sense and also greater representation of Independents and minor parties, which I think is vital for the independence of an independent commission. I would suggest that it is much more evident that it will be for the long-term gain to have a committee. If we have to have a committee, have one that is separate, independent and protected by legislation.

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

That the Legislative Council no longer insist on its amendment but makes the following amendment in lieu thereof:

Clause 7, page 13, after line 15—After subclause (3) insert:

(3aa) Before a person is appointed to be the Commissioner, the Attorney-General must ensure that the position is advertised in a newspaper or newspapers circulating in each State and Territory.

(3aab) A person may only be appointed to be the Commissioner if, following referral by the Attorney-General of the proposed appointment to the Statutory Officers Committee established under the *Parliamentary Committees Act 1991*—

(a) the appointment has been approved by the Committee; or

(b) the Committee has not, within 7 days of the referral, or such longer period as is allowed by the Attorney-General, notified the Attorney-General in writing that it does not approve the appointment.

(3aac) Despite the *Parliamentary Committees Act 1991*, the Statutory Officers Committee must not report on, or publish material in relation to, matters referred to the Committee under subsection (3aab) except to the extent allowed by the Attorney-General (but this subsection does not derogate from section 15I(2) of the *Parliamentary Committees Act 1991*).

I follow on from the Hon. Kelly Vincent, who I acknowledge has actually contributed proactively to try and get an outcome; so have we. It is an unfortunate situation at the moment where there is quite a lot of tension in the chamber. Notwithstanding that, this is a very important piece of legislation. What this actually allows us to do democratically is debate amendments before us now.

This is not the first time in the years I have been here that I have seen situations where amendments are put in to address concerns raised by members of the Legislative Council or, indeed, in my former time in the House of Assembly, members of the House of Assembly during the debate, particularly when they are actually fine tuning at the pointy end. I again remind colleagues that apart from this one—

*An honourable member interjecting:*

**The Hon. R.L. BROKENSHIRE:** I hear some interesting interjection there, but the fact of the matter is that, eight weeks on, we now need to complete the pointy end—and we are at the pointy end. We have every amendment passed other than this particular process. The reason I have moved two amendments (and the first one I withdrew and replaced with an additional amendment) was that members like the Hon. Kelly Vincent made some sense in some of the amendments (in my opinion, and that of Family First) that she put forward.

What I am trying to do now in speaking in favour of this amendment is to encapsulate those—the amendments that we put up in the first instance as Family First, bearing in mind that we waited for eight weeks to see the two major parties come up with a compromise position; and then, finally, to capitalise on the issues that were raised by the shadow attorney-general, that is, that there has to be some independence. I appeal to and plead with the committee. No matter what happens, we can go to a deadlock conference on this, but I am not sure who is going to win from a deadlock conference.

I know for one thing that the South Australian community will not win if we go into a procrastinated deadlock conference. Earlier this evening, we saw a situation where the reality was that it took over three months (I stand to be corrected but I think I am actually conservative in saying three months) to get a basic deadlock conference through on a situation regarding who is entitled to power rebates when farmers (107 of them, from memory) actually connected off a shed roof into the grid rather than off a house roof. That took three months.

We have a situation where the Leader of the Opposition has said on numerous occasions that this government is corrupt. If this government is corrupt, let's nail them, and let's nail them before the next election. Let's not play political games. Nail them before the next election. There is only one way to do that, and that is to have an ICAC up and running. For two months we have lost that opportunity.

If we go to a deadlock conference, who is going to be on the deadlock conference? All of us would like to be on the deadlock conference but the reality is that we cannot all be on the deadlock conference. The reality is that right now, at five past eight in this chamber, we have some serious amendments that address all the concerns, I believe, that have been raised by all members of parliament in this chamber.

So, if we have to sit here for 24 hours, that is better than a deadlock conference, because we can all participate in the future wellbeing of the security and protection of this state. I am not going to apologise for saying that I believe that if we cannot thrash this out in this chamber now we are being caught up in political games rather than what we are put here to do on behalf of the South Australian community.

I want to speak specifically to my amendment. It is fair to say that some people spend more time with some colleagues in this house than others. I found that in the lower house as well, and that is the reality of life. But I try, wherever possible, to negotiate with all of my colleagues, and I know that generally colleagues try to do that as well with the rest of us, and that is what is healthy about democratic debate. But, in listening to that democratic debate and in trying to talk to colleagues about this issue, when the Hon. Kelly Vincent, for one, was considering my amendment, she raised a relevant issue which rang in my mind for four or five days. It was a very good point. My first amendment was, well, you know, the government did not want any scrutiny. The opposition said there had to be scrutiny but the opposition offered nothing. The reality and the truth is that the opposition offered nothing, so for up to eight weeks we sat here. Then, when I went to the Hon. Kelly Vincent and other colleagues, the Hon. Kelly Vincent said to me, 'Well, your amendment says this.' What the former amendment said—and I put it on *Hansard* now—was that if it is a former judge or an existing judge, then the Executive Council appoints, but if it is anyone else, like a magistrate, a former police commissioner or all those other people who could qualify for this, it had to go before the committee.'

The Hon. Kelly Vincent very intelligently said, 'But what's the difference between the group that you are prepared in this amendment to put before the committee and the judge or the former

judge?' I thought about that and I listened to the debate, and the fact of the matter is that technically there is a difference, but for all intents and purposes there is not. Therefore my amendment now says that whoever Executive Council appoints—whoever that may be—has to go before the Statutory Officers Committee for scrutiny, and it can veto it and it can veto it in 14 days initially—I have even tightened up on that—and, after seven days of intense assessment it can go to the Attorney-General and say, 'Sorry, don't like your person, bang, you're gone, you're out!'

But on top of that we now see a situation, and I quote first the shadow attorney-general on behalf of the opposition on FIVEaa this morning:

> The opposition is more than happy to take what time is needed to get it right.

Byner says:

> Alright, let me get this clear. What you're saying of John Rau, 'Give us a committee, a separate committee, not controlled by the government to look at this with all sides on board and you've got us.' Is that what you're saying?

And the answer fairly from the shadow attorney-general is, 'Indeed.' Now, sir, we see a situation where we have come so far from a government that was intransient initially on having any scrutiny to one that has actually agreed—agreed—to have a minority input into a committee, and not only a minority input into a committee but not having a chairing role. Now, I do not see how you can have anything any more independent than that unless you accept the Greens' amendment, which is that we do not—

**The Hon. M. Parnell:** Hear, hear!

**The Hon. R.L. BROKENSHIRE:** The honourable member Mark Parnell says, 'Hear, hear!' But if you accept that amendment, then that amendment says, 'No committee of the parliament at all—69 members.' Well, as someone who is serving his 18th year in this house and who appreciates the privilege—

**The Hon. D.W. Ridgway:** This house?

**The Hon. R.L. BROKENSHIRE:** —sorry, in parliament—I do not think that it is ever going to be workable to have 69 members of parliament having a say. It will be unworkable.

**The Hon. A. Bressington:** It worked for the Ombudsman and the Electoral Commissioner.

**The Hon. R.L. BROKENSHIRE:** No; a different process, because—

*The Hon. S.G. Wade interjecting:*

**The Hon. R.L. BROKENSHIRE:** No, noting. The Statutory Officers Committee looks at the assessment of either the Ombudsman or the Electoral Commissioner and it makes a decision on behalf of the parliament on whether or not that person is fit and proper for the position and then it goes between both houses for noting—a very big difference. I am appealing to colleagues to thrash this out tonight.

The shadow attorney-general says that we need more time. Well, do we actually close the parliament for an hour or two now to give more time or do we go to a deadlock conference? I ask the shadow minister: how can you achieve more than this by going to a deadlock conference; and what guarantee can the shadow minister give this house and, indeed, more importantly give the South Australian people that going to a deadlock conference is going to be about a better outcome? I ask those two questions and I look forward to the answer.

I want to say in conclusion that we have a democratic process here tonight. We have pushed and kicked to get the government to come this far. It has now come this far. It does not have control. We want, surely, the best person up for ICAC. I do not understand the politics where the party that I was a former member of is coming from, and I would love members opposite to actually expose that tonight. I must have been asleep in the party room and in the cabinet—I must have been asleep. Tell me why the proposal you have now is going to be better than what we have before the house.

We have more amendments; we have the amendment I am speaking to and a further amendment, which the government has now tabled and which actually takes on the Hon. Kelly Vincent model, which we are prepared to support because we actually want to see an ICAC, as indeed I believe do the crossbenchers and now the government. I cannot understand what the opposition is stonewalling about now, so I ask for some answers.

I support an outcome tonight, and I think the community of South Australia wants that outcome. Let's stay here for as long as is needed and let's thrash it out, and if we have to report progress come back at 10, two, three, four, six, seven or whatever. We did it when I was in government with the Liberals when it came to issues around WorkCover and/or industrial relations. In fact, we sat until the Sunday, but we got an outcome. We did not go to a deadlock and not come up with an outcome. We are here, let's thrash it out now, let's have some honest debate, but we need an outcome now.

**The Hon. G.E. GAGO:** The government rises to support this amendment. There has been considerable debate previously and the government has outlined its reasons quite clearly and in considerable detail as to why we are supporting this amendment, so I will not repeat that. I am very willing to take whatever time we need this evening to conclude this important legislation.

**The Hon. S.G. WADE:** I will speak briefly because I understand the Hon. Mr Parnell wants to make his first more substantive contribution. The Hon. Robert Brokenshire seems to have misunderstood my earlier comments: I am not insisting we go to a deadlock—I thought I had made that clear earlier. All I was indicating was that the opposition has only just been provided with these amendments. Repeatedly in the couple of years the Hon. Robert Brokenshire has been in the parliament he has sought to adjourn matters so that he can prepare and present amendments. He has sought that the consideration of matters be adjourned so that late-tabled amendments can be considered. That is all the opposition is asking for tonight.

**The Hon. M. PARNELL:** I am grappling, as are we all, with the way this will proceed, and no doubt you will control us in a way that makes sure that everyone gets a chance to put their positions. It seems to me that we have four amendments, all filed today, all of them to clause 7, page 13, after line 15. They all slot into exactly the same spot. My understanding was that they would normally, in that circumstance, be dealt with in the order in which they are filed. On my calculation, the Hon. Mr Brokenshire, who has moved his amendment, is first cab off the rank. I note that his amendment No.6 is identical to the government's—

**The CHAIR:** It's not like that.

**The Hon. M. PARNELL:** It's not right?

**The CHAIR:** No. The Hon. Mr Brokenshire's amendment will not be put first. We will keep control; you make your contribution.

**The Hon. M. PARNELL:** I am more than happy for the pilot to keep his hands on the wheel.

**The CHAIR:** And, as a safeguard, perhaps you should move your amendment.

**The Hon. M. PARNELL:** As a safeguard I will move my amendment now and will not speak to it at any great length. Therefore, I move:

Clause 7, page 13, after line 15—After subclause (3) insert:

(3aa) Despite the *Parliamentary Committees Act 1991*, the Statutory Officers Committee established under that Act is not to inquire into, consider or report on the suitability of a person for appointment to the office of Commissioner (or on any other matters relating to the performance of the functions of that office).

I think the Hon. Rob Brokenshire summed it up. We do not think that a committee of any sort adds any value to the process, so we think it can go straight to parliament. However, I do need to correct the record in relation to the Hon. Rob Brokenshire's analysis of how these things work. The volume of legislation that relates to the Ombudsman is missing from out the back—no doubt people are studying that—but the Electoral Act is out the back. When it comes to the appointment of the Electoral Commissioner, it says:

(1) The Governor may—

(a) on a recommendation made by resolution of both Houses of Parliament, appoint a person to be the Electoral Commissioner;

We then go to the Parliamentary Committees Act, and the function of that act is:

(a) to inquire into, consider and report—

(i) on a suitable person for appointment to an office under an Act vacancies in which are to be filled by appointment on the recommendation of both Houses.

Now, in lay language, that means the parliament—either house—has a veto. That is how it works for the Ombudsman, that is how it works for the Electoral Commissioner, that is how it works under the Hon. Ann Bressington's amendment and that is how it would work under the amendment that I have just moved, with the exception that we do not bother with the committee. We go straight from the Attorney-General to both houses of parliament and there is a veto.

The Hon. Rob Brokenshire talked about how unwieldy it would be for 69 members to have an effective right of veto. You have to remember that it is a majority. It is not a unilateral thing. It is not as if one of the 69 can say, 'We don't like this appointment, you're not in.' If it goes to a vote, it goes to a vote and the majority will prevail as it does in either of the chambers, but I think we do need to have our basic understanding right when we are talking about the potential role of committees and the potential role of parliament. We are talking about a parliamentary veto in the Hon. Ann Bressington's model, as we are in mine.

**The CHAIR:** To assist the committee, the Hon. Ms Vincent, are you prepared to move your amendment as well?

**The Hon. K.L. VINCENT:** I move:

That the Legislative Council no longer insist on its amendment but makes the following amendment in lieu thereof:

Clause 7, page 13, after line 15—After subclause (3) insert:

(3aa) A person may only be appointed to be the Commissioner if, following referral by the Attorney-General of the proposed appointment to the Crime and Public Integrity Policy Committee established under the *Parliamentary Committees Act 1991*—

(a) the appointment has been approved by the Committee; or

(b) the Committee has not, within 14 days of the referral, or such longer period as is allowed by the Attorney-General, notified the Attorney-General in writing that it does not approve the appointment.

(3aab) Matters disclosed to or considered by the Committee in relation to a referral under subsection (3aa) must not be made the subject of public disclosure or comment and, despite the *Parliamentary Committees Act 1991*, the Committee must not report on, or publish material in relation to, such matters except to the extent allowed by the Attorney-General.

**The Hon. R.I. LUCAS:** There seems to be furious and tense agreement about having now, at last, arrived at a position of independent oversight. I am not sure why there is such furious tenseness in the air in relation to that. There are a hundred different ways of achieving it and we have seen four or five different versions being flagged by way of amendments. I am still not entirely clear even on the government's position. The leader said she was supporting the Hon. Mr Brokenshire's amendment, whereas I thought the government had its own amendment.

**The Hon. M. Parnell:** They're the same.

**The Hon. R.I. LUCAS:** The government's actually seems to be a page and a half and the Hon. Mr Brokenshire's seems to be half a page, so there is some difference between the two. Anyway, all I am saying is, there seems to be furious agreement about where we have almost arrived at. I could understand having this sort of exchange six weeks ago, eight weeks ago or 10 weeks ago when we were not on the same page but I think, as the Hon. Mr Wade has indicated, the government has come, perhaps reluctantly, to a position where it is accepting some version of independence in relation to all of this.

The only point I want to make to the Hon. Mr Brokenshire and to others is that the Liberal Party in relation to this and the shadow attorney, who has done a sterling job together with the Leader of the Opposition in representing our interests, are in a position where he represents the party. Those of you who are Independents and in minor parties have a slightly greater flexibility. The Hon. Mr Darley can look in the mirror and consult his party room and make a decision in relation to various amendments. The Hon. Ms Vincent and the Hon. Ms Bressington can do the same thing. The Hon. Mr Parnell has to consult one colleague and the Hon. Mr Brokenshire has to consult one colleague and they can make a party room decision.

Let me assure you that the Hon. Mr Wade has to go through a much more rigorous process in relation to something which is a controversial and difficult issue and which has been the subject of much debate. In relation to all these amendments that have just been flopped on the table, I have only just seen the government's amendment which was tabled at 7.22pm.

I would have thought that the Hon. Mr Brokenshire would have been the most likely person amongst the minor parties and Independents to understand that, whilst he used to be a member of a much larger party, he would want and wish on an issue like this to be able to express a point of view. Certainly from our viewpoint, let me assure you, as I said to the Hon. Mr Wade, 'Well, hold on. How are we going to make a decision on this?' We have not had a chance to speak to the Hon. Isobel Redmond.

I have not had a chance to listen to the arguments for and against and to have a position where, even if we do not have an emergency joint party room meeting in relation to this, at the very least, we have a chance to sit down with the leadership group of the party which involves the Hon. Isobel Redmond, Steven Marshall and the Leader of the Opposition here, together with the shadow attorney and one or two others in terms of coming to a quick decision in relation to the amendments that are before us at the moment.

I think, as the Hon. Mr Brokenshire conceded—and he gave his own example—we the Liberal Party are of the same view, having listened to the various arguments, we have refined our amendments and our views. He was willing enough to concede his original position. He listened to the views of the Hon. Kelly Vincent and has adapted his position. We, too, have been in that position. Whilst our principle remains the same, we have been in a position where we have been prepared to listen to the various versions of the amendments in relation to some degree of independence regarding the appointment of the commissioner.

The position we are adopting is that it is not, as the Hon. Stephen Wade has just indicated, a deadlock conference or nothing position. We are actually sitting this week and we have an optional week next week. Putting aside the fact that the government does not want to sit next week, the optional week, we actually do have two more sitting days.

The WorkCover debate was referred to, in which I was a participant at the time. It was at the end of a session, and we sat on the Thursday through to the Friday and then on the Saturday to get a conclusion. It was the last sitting day in terms of trying to come to a conclusion. We have not arrived at that position. We have commenced this particular debate on a Tuesday afternoon, early evening. New amendments have just been tabled. I would like the opportunity to listen to the debate, put a point of view to the shadow attorney and to the Leader of the Opposition in another place and then come to a position which I can bring back to the Legislative Council tomorrow.

So, all I am urging is that we just take a bit of the heat out of the equation. We are almost there. It is not unreasonable for members of the opposition to be given the opportunity to consult their own leader and, for those who can, attend a small meeting of the joint party room or a committee, or something, to come to a position on the latest amendment before us and then to come back tomorrow and, if need be, on Thursday to resolve our position.

It is easy to say that this has got to be resolved tonight and that the Liberal Party is stalling for time, or whatever else it happens to be. That does not happen to be the case in relation to these amendments that have just arrived. I think it is an eminently reasonable proposition. I am sure that if the honourable member was in his former position as a member of a joint party room, he would like the opportunity for at least some people—in addition to the shadow attorney—to make an instant decision about the matter.

I accept what the Hon. Mr Brokenshire says: there are occasions where we work on the fly in relation to bills in this place, but this is a critical bill and a critical amendment. With the greatest respect, this does not concern regulations in relation to the oversight of dentists, lawyers or real estate agents in South Australia, or whatever it might happen to be. This is a critical issue. It is an issue which has divided the government and the opposition, and we are eventually getting much closer. It is not a miniscule point: it is a significant issue. Yes, it is at the pointy end, but it is a significant issue.

All the shadow attorney is arguing for—and I certainly strongly support it—is the opportunity, having heard the arguments tonight, to report progress and for us to meet with our leader and one or two other key people so that we can arrive at a decision on the amendments and we can be clear as to where everyone is. In terms of being involved in my own party debates, it would be useful for me to know whether the government is just supporting the Hon. Mr Brokenshire's amendment or whether it is supporting its version of the amendments.

The Hon. Mr Parnell has had a greater chance to look at the differences. I have not been able to compare them word for word. I am not sure where the other Independents are in relation to both the Hon. Mr Brokenshire's amendment and the government's amendment, for example. I do

not think it is unreasonable for some of us in the big party, in the alternative government in South Australia, having heard the debate tonight, to at least give a commitment that we are prepared to come back tomorrow with our position.

Ultimately, we cannot determine what that is. We will come back tomorrow with a position on whether we support this or whether we want to move a further amendment or whether you had thought about the fact that you have actually still got a problem with the drafting of your particular amendment. I do not know what happens in relation to the government's amendment if, for example, there are no Independents in the House of Assembly. There are Independents at the moment but, if there are no Independents in the House of Assembly, what does the amendment do? I do not know the answer to that. The Hon. Mr Brokenshire and the government may well know what the position is in relation to that.

It is highly unlikely that we would ever have no Independents in the upper house. Since 1979 we have always had at least one and sometimes up to seven or eight or whatever the number happens to be. As the Hon. Mr Brokenshire knows, at times in the House of Assembly, there are no Independent members. What does that mean to the amendment? It may well be that there is nothing that can be done about that. I do not know, but that is just immediately a quick issue after being told at 7.22pm, 'Here is the amendment, you have to make up your mind now,' when some of us would like to reflect on it overnight, discuss it with our colleagues and come back with a considered position tomorrow and maybe say, 'This is almost a solution, but have you thought what would happen if,' and we might need to move a further amendment to it so that we can do it tomorrow and if need be on Thursday of this week.

My view is that we are getting much closer. It seems that everyone is getting much closer. As I said at the outset, there seems to be furious agreement almost in relation to the general principle. Let's at least listen to the debate tonight without necessarily turning the wick up too much, listen to the debate and the argument, and then I would hope we could report progress to allow us to consult with our leader and others and then come back with a view on behalf of our party tomorrow.

**The Hon. G.E. GAGO:** It is obvious that the opposition are going to stall yet again in relation to this bill and that they are not going to allow us to progress this bill this evening. I will move to report progress in a while and then move later on to come back and sit tomorrow morning to progress this thing as the opposition has indicated they would be willing to do.

In relation to the question the Hon. Robert Lucas asked about the government's position, so that he is clear so that he can sleep on it tonight, the government supports the Hon. Robert Brokenshire's amendment with the addition of the government consequential amendments which the Hon. Mark Parnell was bright enough to work out. It is not rocket science but nevertheless the Hon. Mark Parnell was bright enough, unlike the Hon. Robert Lucas, to see that we support the Hon. Robert Brokenshire's amendment with the government's consequential amendments which make it identical to the Hon. Robert Brokenshire's amendment.

Progress reported; committee to sit again.

## PAYROLL TAX (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 14 November 2012.)

**The Hon. R.I. LUCAS (20:34):** I rise on behalf of the Liberal Party to support the second reading of the Payroll Tax (Miscellaneous) Amendment Bill. This is a relatively straightforward bill, essentially dealing with the principle of harmonising payroll tax legislation between the state and territory jurisdictions. This is an ongoing process, broadly supported by all governments.

The member for Davenport in another place indicated the Liberal Party's support for the bill. In doing so, he read into the *Hansard* some questions from the Law Society (he placed them on the record) and the government has provided some answers. We are going to be a bit out of sequence here because as I understand it at the conclusion of the second reading the minister will read Treasury's responses to the Law Society's initial questions.

The Law Society has now seen these proposed responses and what I am about to do is to read the Law Society's response to the government's response which is about to be read. So, we are a bit out of sequence, but given the fact that the Law Society has actually gone to the trouble of looking at the legislation in some detail I will read in full its response to what the government will

indicate is its response to the Law Society's original questions outlined by the member for Davenport in the House of Assembly debate. This is a letter from the Law Society, dated 26 November, to Iain Evans, signed by John White, the president of the Law Society. It reads:

Dear Mr Evans

I refer to a email of 21 November 2012 from your advisor—

I will not mention the adviser's name—

inviting comment on the responses provided in Parliament to three questions you raised in parliamentary debate, the questions having been posed by the Society in its submission of 25 October 2012.

Thank you for putting the questions before the Parliament. The responses to the three questions have been considered by the Society's Commercial Law Committee. We acknowledge that the provisions are part of a national harmonisation project, with New South Wales provisions for example having commenced on 1 July 2011. We understand that it would be highly unlikely that South Australia would introduce provisions which deviate from the national standard unless there is some major failing in those provisions. We do however consider it is worthwhile to at least consider where those provisions have scope for improvement. That said, our comments are:

1. In respect to clause 6.1 (proposed section 19(2)), we suggest that the approach taken by the Commonwealth in not defining the meaning of 'grant' in the *Income Tax Assessment Act 1997* should be considered. The prescriptive approach taken under the *Income Tax Assessment Act 1936* in itself caused interpretive issues as seen in the McWilliams' case. In our view, being less prescriptive on this issue may be of greater benefit to taxpayers rather than less (as is suggested by the Treasury comments). We agree that McWilliams' case does not in itself mean that section 19(2) requires specific amendment but rather highlights one of the problems with that section as it was used in the *Income Tax Assessment Act 1936.*

2. In relation to clause 6(2) (proposed section 19(3) and (4)), we agree that it is preferable to allow choice between the grant date and the vesting date for the taxing point, but where the vesting date is chosen, we look to the definition of vesting date in proposed sections 19(3) and (4). It would appear to us to be administratively easier for employers to deal with situations where employees leave employment and their shares/options (usually options) lapse at that time where that occurs within seven years of the grant date. Employers could deal with it in the payroll tax return related to the period when the termination occurs rather than attempting to keep track of this information for what may be five or six years after termination to include that transaction in the payroll tax return seven years after the grant date. This would lead to greater administrative burden on taxpayers if there is a failure to give them termination date as an option for the vesting date. We acknowledge that in most situations, there will be no payroll tax payable in these circumstances as there will be no value to those shares/options in those circumstances but at times there may be consideration given for options lapsing under certain 'good leaver' provisions.

3. In relation to clause 7, we have no further comments to make other than those previously provided.

Thank you for the opportunity to consider this matter. I trust these responses are of assistance.

Yours sincerely

John White

In reading the Law Society's comments, I indicate that the Law Society accepts that because it is national legislation the government's position is unlikely to change in relation to this particular debate. I think what the Law Society is saying is, perhaps—not the government, it is more likely to be the government's advisers who go off to the national meetings to discuss—that they at least note the views of the Law Society. I am sure the Law Society, John White and its representatives would be happy to have ongoing dialogue with the officers of the government as they continue with this process of payroll tax harmonisation. I am sure that would be an open-ended offer from the Law Society and others in relation to at least having their views considered.

The accept the fact that, in relation to this bill, there is unlikely to be any change, but I guess they are asking whether or not the government, through its advisers, will at least be prepared to consider the further views of the Law Society and, if they deem it appropriate, engage in ongoing dialogue with the Law Society and anybody else, for that matter, who may well have views on these particular issues.

**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) (20:40):** I believe that there are no further second reading contributions to this bill, so by way of concluding remarks, I will address some of the issues that have been raised. In the debate on the Payroll Tax (Miscellaneous) Amendment Bill in the lower house, the Hon. Iain Evans has asked a number of questions on behalf of the Law Society of South Australia. I am advised that in order to put the answers to these question in context, it is important to note that payroll tax and income tax are very different taxes.

Payroll tax is imposed on the employer, whereas income tax is imposed on the employee. Further, the taxing points differ for these taxes. Payroll tax liability arises on the grant of the share or option to an employee, although the employer can elect to treat the grant date or the vesting date as the taxing point. Income tax liability generally occurs at the grant date, expect in certain circumstances when a deferred taxing point applies.

Notwithstanding the differences in the taxes and taxing points, the payroll tax legislation has been aligned with the income tax legislation where appropriate in order to minimise the administrative burden on employers. Furthermore, the payroll tax provisions relating to employee share schemes have been harmonised across all jurisdictions.

The template amendments were drafted by New South Wales, in consultation with other jurisdictions, and the other jurisdictions have already adopted the changes to their respective payroll tax acts. I will now deal with each of the questions raised by the Law Society of South Australia in turn.

I refer to clause 6.1—When a share or option is granted. The Income Tax Assessment Act 1936 defined the meaning of 'grant' of a share or option. However, the replacement provisions inserted in the Income Tax Assessment Act 1997 (ITAA 1997) did not include an equivalent definition of a grant, but instead left it to be determined under the common law.

When the template legislation was drafted by New South Wales, in consultation with other states and territories, it was agreed that it would be preferable to retain the definition of 'grant' for the benefit of taxpayers and their representatives. There is therefore no reference to the ITAA 1997 in the proposed amendments to section 19(2) because there are no equivalent ITAA 1997 provisions to refer to.

As the full Federal Court decision in Commissioner of Taxation v McWilliam was only handed down in August 2012, this case could not have been taken into account during the drafting of the harmonised employee share scheme provisions. In any event, I am advised that the decision in the McWilliam case does not require the proposed amendments to section 19(2) to be changed. The New South Wales and Victorian revenue offices have advised that they agree that the provisions do not require any amendment as a result of this case.

In relation to clause 6(2)—Vesting date, I am advised that the states and territories considered it to be an unnecessary complication of the existing rules to incorporate the provision relating to termination of employment, referred to by the Law Society of South Australia, because share schemes usually have provisions withdrawing the right to shares or requiring immediate vesting on termination. Further, the states and territories agreed that this taxing point creates a considerable amount of uncertainty for tax administrators and clients alike, and that it would be preferable to retain the payroll tax provisions which allow the taxpayer to choose either the date of the grant or the date of vesting.

I refer to clause 7—Value of shares and options. The words, 'and any other necessary modifications' in section 23(6) were included as a safety net provision, mainly because the commonwealth regulations dealing with the valuation of rights and options had not been made at the time the payroll tax legislation was introduced by New South Wales.

The commonwealth regulations have since been promulgated but there has been no need identified as yet to provide guidance to taxpayers regarding those provisions. If such need were to be identified guidance will be provided by way of harmonised revenue ruling, and legislative amendment can also be considered. With those comments, I thank the opposition for its support for this legislation and look forward to the committee stage being dealt with expeditiously.

Bill read a second time.

In committee.

Clauses 1 to 10 and title passed.

Bill reported without 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) (20:46):** I move:

That this bill be now read a third time.

Bill read a third time and passed.

## CRIMINAL LAW (SENTENCING) (SUPERGRASS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 15 November 2012.)

**The Hon. S.G. WADE (20:47):** I rise on behalf of the Liberal opposition to speak on the Criminal Law (Sentencing) (Supergrass) Amendment Bill 2012 which was tabled in the House of Assembly on 11 July 2012. Similar provisions were first introduced into parliament on 24 March 2011 as part of the Criminal Law (Sentencing) (Sentencing Considerations) Bill 2011. That bill was defeated in the Legislative Council on 29 March 2012 primarily because of concerns with the guilty pleas component.

At that time the opposition indicated its openness to the elements of the legislation in relation to discounts for cooperation with authorities and invited the government to take up those elements by way of amendment to the serious and organised crime legislation where they more appropriately belonged and where they could be dealt with. The serious and organised crime legislation already provided for supergrass and its remissions for prisoners already serving their sentence. That bill was considered by the Legislative Council a week later but the government failed to take up the suggestion to amend the bill.

The opposition passed the SOCA legislation without amendment other than to require parliamentary committee oversight, and it perhaps is salutary to pause and reflect that, by the government indicating that it has accepted amendments 39 to 43 in relation to the Independent Commissioner Against Corruption Bill, that not only finalises that aspect in relation to the ICAC Bill but that committee will also provide oversight of the organised crime legislation pursuant to decisions made by this house earlier this year.

Informants are a well-established part of criminal investigations. It has been said that law enforcement cannot operate effectively without informants and that information from informants is responsible for the detection of the greater part of crime. One article in *The New Yorker* suggested that informants are the foot soldiers in the government's war on drugs. Obviously that is referring to the American context. By some estimates, in that jurisdiction up to 80 per cent of all drug cases involve informants.

This bill is not about everyday people who provide information to law enforcement agencies. By its own title, it purports to deal with supergrass informants. The term 'supergrass' does not carry the weight in this country that it does in the United Kingdom. It is a term which originates from the 1980s. In particular, it is seen to relate to the 1981 arrest of an Irish Republican Army terrorist, Christopher Black.

Black provided information that led to the arrest of 38 provisional IRA members, 22 of whom were subsequently convicted in 1983. On 17 July 1986, 18 of those convictions were overturned on appeal. It was claimed at the time that informers were being offered cash inducements, with politicians, including the secretary of state for Northern Ireland, being involved in arranging the deals. By the mid-1980s, I understand, concerns arose, particularly in the judiciary, in relation to credibility of evidence.

The United Kingdom Serious Organised Crime and Police Act 2005 is similar to this bill in that it provides a range of options for people who cooperate with authorities. Since the act came into force, I understand that more than 158 criminals have had arrangements under the legislation. Seven received full immunity, 11 partial immunity and 140 had their sentences reduced.

Following controversy in April 2012 about a two-year discount to a terrorist, the United Kingdom Crown Prosecution Service has committed to provide updated figures each year on the agreements in a way that the service considers does not put any individual at risk of harm. Another jurisdiction which has aggressively used a supergrass approach is Canada.

A Canadian academic whom I have consulted has advised me that, while there are no laws governing these types of activity, a number of government regulations define under what conditions a supergrass can be awarded a contract, what the contract could include and how the contract is to be managed, the point being that in Canada they quite aggressively use non-sentence incentives.

The management of the contracts is supervised by a control committee with four members, one from the ministry of public safety, one from correctional services, one from the prosecutor's office and one from the police organisation that recruited the informant. An informant may receive a

range of benefits, such as sentence mitigation, canteen money, family payments, witness protection or prisoner transfer. The contracts are very flexible and accommodating.

I understand that the highest publicly known contract for an informant was $2.9 million. I understand that these contracts have been seen to be useful tools to bring outlaw motorcycle gangs to justice, however they have not been without controversy. International experience of supergrass deals, including sentence discounts, highlights the risk of bringing forth false and unreliable information and the contribution that might make to wrongful convictions.

In this context the government's use of the term supergrass in the name of this bill raises the question whether the government is proposing a significant shift in South Australian practice. If that was to be the case we would need to consider what measures we need to protect justice. Briefings with a range of government officers suggest to me that that is not the intention. In particular, I understand that a single Canadian supergrass monetary incentive could fund SA Police's inducements to human sources for some years.

The supergrass bill would provide courts with the power to reduce sentences for offenders involved in organised crime by up to 100 per cent if they cooperate with authorities in exceptional circumstances and that cooperation significantly contributes to the public interest. In his second reading speech and in moving this bill, the Attorney-General overstates the situation in my view:

> The common law provides an existing range of about 20-40, or 50% for cooperation with the authorities. The Bill will allow a court to go beyond this to those offenders who will fall within the category of a true supergrass.

Later in the speech, he says:

> The bill confers the power in a court to grant an 'at large' discount in sentence to an offender in return for the offender's valuable co-operation with authorities.

I stress the words 'allow' and 'confers'. The bill is another example of Labor's hollow laws. Judges already have the power to give 100 per cent discount. This bill basically codifies the common law power. Briefings with the Office of the Director of Public Prosecutions and the police confirmed my view that the bill does not significantly change the common law position.

The bill, though, noteworthily, has no cap. I note that the whole rationale for the government's Criminal Law (Sentencing) (Guilty Pleas) Amendment Bill is that for prospective sentence discounts to have an impact on criminal behaviour, they need to be quantified and reliable. However, the supergrass bill provides an open-ended discount. On FIVEaa radio, on 30 March 2012, DPP Pallaras said:

> It is unlikely under the current system that people will get discounts of beyond 40%, but there's nothing to prevent a judge from doing that now before this law goes through so what this does is quantifies...an amount so that those who are contemplating cooperating with the police have something...to hang their hats on.

In fact, there was not quantification in the original bill, and there is not quantification in this bill either. I am advised that the Office of the Director of Public Prosecutions would be inclined to appeal a sentence discount over 60 per cent on the ground of being manifestly inadequate. Such discounts are available at common law but would be considered to be extremely rare and may well stimulate a challenge. I understand that discounts of one-third are likely to continue to be the norm and that discounts are typically likely to peak at 50 per cent. I also understand that the police are not planning any increase in non-sentence inducements.

The New South Wales Judicial Commission has suggested sentencing guidelines for cooperation with authorities. It suggests that a combined discount, all things considered, should not exceed 50 per cent, except in exceptional circumstances. The commission said that it would be rare for a sentence of more than 60 per cent to not be considered to be manifestly inadequate.

The opposition is concerned to ensure that prosecutors have the information they need to make decisions in relation to the appropriateness of sentence. If a prosecutor knows only that a letter of comfort has been given, they may not have the information they require to assess the adequacy of the sentence. The interests of justice would be best served by ensuring that both the defendant and the prosecutor in a case are aware of the total quantum of the discounts, including for cooperation with authorities. This advice could inform consideration of an appeal on the grounds of a sentence and its adequacy.

I indicate that the opposition is considering amendments to require advice to the defendant and the prosecutor in the case to enhance prosecutorial oversight of such discounts. I would welcome discussing possible amendments with the government and relevant officers before they are filed to increase the prospect of consideration of the bill being finalised before the end of this

week. I have a few questions which I hope might assist that process and which I hope the minister might be able to address at the conclusion of the second reading stage. If the minister does want to sum up tonight, I would appreciate the answers to my questions before the bill is next brought on for consideration.

In discussions with the Attorney-General, I understand that he is of the view that one of the reasons this bill is needed is to ensure that the codification of guilty plea sentence discounts does not impugn sentence discounts for cooperation with authorities. Given that the bill before us deals only with cooperation in exceptional circumstances, I seek clarification about what kind of discounts will now be available for normal cooperation with authorities under the common law and whether the discount is likely to be affected by the codification of other discounts.

I ask: is it anticipated that the changes in the bill will allow greater discounts than currently provided for under the existing sentencing regime, and what is the maximum discount the government anticipates will be awarded under the scheme proposed in the 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) (20:59):** I understand that there are no further second reading contributions, so what I intend to do is to sum up and put this into committee and then deal with the committee stage on the next day of sitting. I will be happy to provide answers to questions at clause 1 or at the appropriate clause number as we proceed through committee. I would like to thank the opposition for their support for this important piece of legislation and look forward to it being dealt with expeditiously through the committee stage.

Bill read a second time.

## DEVELOPMENT (PRIVATE CERTIFICATION) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 15 November 2012.)

**The Hon. D.W. RIDGWAY (Leader of the Opposition) (21:01):** I rise to continue my remarks from when we last sat and indicate that the opposition is supporting the government's move to introduce private certification for planning consent, especially for the residential code and, I guess, a lot of the debate will revolve around that. I think the opposition and most members of the community support private certification, particularly where it responds to the residential code. Although the residential code is not prescribed in the act, it is, if you like, a tick-in-the-box development approval process for single-storey houses, garages, carports and the like.

Of course, the government has provided some information to the parliament this week and it is interesting. I have some information from the LGA that I might speak to shortly, some of the government's comment and also comment from the Australian Institute of Building Surveyors, who are already private certifiers and, I suspect, will be the body that is most likely to, if you like, add this particular string to their bow and take on this role in this particular field of private certification.

The government believes this will deliver economic benefits and that the applications for the residential code will be processed more quickly. They claim it will be processed within two to nine days. While I am sure that that is their intention, I am not sure that the economy under this government is robust enough for the people of this state to have the confidence to go out and purchase new houses.

Notwithstanding the government's intent here—and, as I said, the opposition is happy to support it—we really think that some of the expectations that have been raised by private certification are somewhat ambitious. Maybe once the economy recovers—I suspect it will take a change of government, a change of policy and a change of direction to see a full and sustained recovery—we may see some benefits.

The opposition is prepared to support private certification because we see it as an important step forward in the right direction but, really, the full benefits will not arise until we have an economy that is full of confidence and some sustained economic growth. The government claims that the time saving is a once-only positive economic impact arising from bringing forward constructions estimated in the order of 150 jobs and $17 million to the gross state product arising from additional incomes. Again, I think in this current environment that is somewhat ambitious.

They go on to say that, secondly, more applications will be lodged as residential code development rather than full merit assessments because of these private certifiers. They claim that

this will deliver typical savings of between 12 and 34 calendar days, and that the proportion of assessments being residential code development is expected to increase by at least half. They then go on to claim within this briefing paper which has been provided to us all that the result would benefit in the order of 270 jobs per annum and some $30 million in gross state product each year.

Again, the government says they are conservative estimates and that the actual benefits are expected to be higher. I suspect that they are estimates that are somewhat bold, a bit like the population growth expected in the 30-year plan and some of the population targets in the 30-year plan. Nonetheless, as I said, we have seen this as a sensible move to provide an expeditious approach to development approval.

I will quickly touch on the LGA's comments in relation to the draft regulations that have been circulated—and I do thank the government for circulating the draft regulations. It was like pulling teeth with the Hon. Paul Holloway, when he was planning minister, to get draft regulations just so that we could see them, because when you have a bill with head powers you need to look at the regulations to see what they really mean. The LGA's main concern is still:

> The...regulation provide Private Certifiers with the authority to determine a minor variation from a complying development, consult with other authorities and agencies and to request further information from the applicant and grant permission to vary development plan consent.

The LGA go on:

> These activities are considered to be beyond the scope of assessing Residential Code Development and it is not necessary for a certifier to be authorised to undertake these functions.

I know that was a question that was pursued at length by the Hon. Iain Evans and Steven Griffiths (the member for Davenport and the member for Goyder respectively) in the other place, but I would like the minister, when she responds (whether it is later tonight, or tomorrow during the committee stage, or Thursday) to again give this council a guarantee that even though the regulations provide, from my understanding, the authority to determine minor variations of the complying development, this will be limited to the residential code.

I think that is where some of the concerns lie. I know that the Hon. Mark Parnell has filed one amendment in relation to the residential code, and that is certainly where the concern lies. The LGA has advised me that they do support private certification but are concerned with limiting it to the residential code and not allowing private certification beyond that reasonably narrow field.

I think it is interesting to put on the record the comments of the Australian Institute of Building Surveyors. I forwarded a copy of the regulations to them. I think this sums up the pretty typical response to a lot of things this government has done. I will say at the outset that the Australian Institute of Building Surveyors says it cannot see any issues with the regulations as written. However, they then go on and say:

> We however believe this has been rushed through without any consultation with those who are required to implement this change.

That is, the building surveyors. Hello! It is what we often hear with this government, that is, things are rushed through and they simply do not consult. They go on:

> The feedback we have been getting is that there is not going to be great uptake of these proposed changes as there are implications for the Private Certifier.

Again, this comes back to consultation and working with a group of people, the Australian Institute of Building Surveyors, to address some of these issues. The first one is insurance—the liabilities of the planning system. Secondly, conflict and inconsistency with local government—a question about liabilities—and the skills and experience in terms of planning by certifiers. They then go on to ask:

- How has Section 92(1)(a)—Private Certifier involved in any aspect of the planning been alleviated?

Other comments from the industry have been:

- Why the rush—time frames are too short for proper consideration of the implications.
- Why are the regs structured such that the private certifier is given powers that he doesn't need for residential code development?

A good question, and these are questions I would hope the minister would bring back an answer to. They also ask:

- Where is the demonstrated need for giving private certifiers these powers?

- Where is the evidence that private certifiers will use the powers when given to them?

The next question is:

- What is the government's plan if private certifiers do not take up the planning powers and stick solely to building rules.

They go on:

The government spent a large amount of money training local government planning officers in the residential code—what evidence is there that the private certifiers have sufficient knowledge in the rescode planning requirements to not require further training.

And I guess, if they do require further training, who is going to provide that training? They go on:

- Could the poor uptake in the use of rescode planning in fact be the fact that the rescode requirements are too onerous and far too complicated for small complying developments.
- Has the Government considered whether there should be an increase in the public liability and professional indemnity insurance requirements for private certifiers considering they now have both planning and building for rescode developments.

It appears to me that we should be looking to simplify the planning system, around the rescode (and all of the differences between [development] Plans) so it can be a simpler system. When there are statements in the Development Act such as below then the system is simple.

And it goes on to quote:

'The construction or alteration of, or addition to, an outbuilding, other than where the outbuilding is in a Historic Conservation Zone/Area, the Hills Face Zone, a River Murray Zone, the Golden Grove Residential Zone, the Golden Grove Residential D Zone or the Golden Grove Residential Policy Area in the Residential Zone of the City of Tea Tree Gully, or West Lakes General Policy Area 18 or West Lakes Medium Density Policy Area 19 in the Residential Zone in the City of Charles Sturt'

I think that explains how complicated some of our current planning processes are. I thank the Institute of Building Surveyors. They are more concerned that it appears that the introduction of select committee recommendations (and, of course, the Hon. John Rau, Minister for Planning now, was the chair of that committee), which they understood were to be rolling out and starting by this year with a code of practice, will be delayed. They are quite concerned that, under this model of private certification, this code of practice that was to be in place for the building surveyors now should also be in place for the private certifiers in relation to planning, and they are actually requesting an urgent meeting with minister Rau to try to resolve some of those issues.

The opposition, as I said, supports the implementation of private certification but I think you can tell by some of the comments raised by the Institute of Building Surveyors and the LGA that there are still some concerns, and I hope the minister addresses those concerns, and particularly some of the issues in relation to liability, skills training and the like that I raised on behalf of the Institute of Building Surveyors, because they are the ones who are most likely to take up the private certification role in respect of planning and they need some clarity from the government as to how they will be protected. With those few words, I indicate that the opposition will be supporting the second reading of the bill.

**The Hon. M. PARNELL (21:13):** The Greens will be supporting the second reading of this bill. Before I go into some of the detail of the bill and also outline the amendments that I have put on file, I make the observation that the government has said on a number of occasions, usually in the lead-up to elections, that the age of privatisation is over and they will not be privatising anything else. Whilst this is not privatisation of a scale that might concern most people, if we sit back and reflect, what we are finding is that a job that used to always be done by publicly employed people is now going to be done by private operators.

That regime first came into place with private certifiers being used for building rules consent. In other words, the job of signing off that the foundations were deep enough or the roof trusses were appropriately constructed was always the job of local council building inspectors but, some years ago, it was deemed appropriate to allow qualified private people to certify that the building rules were, in fact, all being complied with.

So now we move onto the next stage of privatisation, which is to allow private certifiers to say whether development plan consent should be granted. Just to remind members, a development approval usually comprises two parts: there is the building approval; and then there is the planning approval. After the passage of this bill, for some forms of development, private operators will be able to make both those decisions.

The key players, key stakeholders, in this debate include the Local Government Association and the planning institute. The Local Government Association is clearly interested because up till now it is local councils that are providing probably more than 90 per cent of development plan consents. The Planning Institute of Australia (PIA) is an interested party because part of its mandate is maintaining appropriate professional standards for people who do, amongst other things, sign off on planning decisions.

The approach of both those organisations is something that I think we need to pay careful attention to, and I will start with the position of the Planning Institute of Australia, and members would probably have all received the letter dated 25 October 2012 signed by the state President, Dr Iris Iwanicki. That letter includes the following:

> The South Australian chapter of PIA is generally supportive of the implementation of private sector certification of planning approvals consistent with PIA policy on this matter. Further, PIA is keen to contribute to the development of a model to streamline planning processes. It is also supportive of planning certification that will allow planning decisions to be made by experienced and capable professionals with clear commitments to ethical conduct, continuing professional development and business and community outcomes.
>
> The PIA considered it an important part of the development assessment system that the community has confidence in the decisions of relevant authorities, and that the introduction of private certifiers into the system will require a mechanism for establishing the relevant individual's suitability to operate as private certifiers and make appropriate decisions.

The Planning Institute of Australia is not opposing the entry of additional private sector players into this field, but it is keen to maintain professional standards. The letter also includes the following:

> It is the view of PIA that the provisions of private certification for approval of minor development applications should enable local government resources to be better prioritised with qualified planners to respond to emerging social, economic and environmental issues of relevance to planning for the development of our towns and cities.

I will just pause there, because amongst the planning profession it has often been noted that with so many big, important issues that they could be working on, a lot of their time was spent on retaining walls, fences and carports. As important as those things might be for the individuals concerned, whether it takes a three year—or longer—university degree to be able to deal with carports, I think is a moot point. The planning institute goes on to say:

> However, in the current legislation, once section 89(3) is deleted as the bill proposes, regulation 89 could be changed to allow full merit assessments to be undertaken by private certifiers.

I will need to explain to members what that means. What the planning institute is concerned about is that once the absolute prohibition on the use of private certifiers in providing development plan consent is lifted, unless it is further constrained, it would be possible for the government by regulation to vastly expand the scope of work that could be done by private certifiers and the scope of decisions that could be made by private certifiers.

I fully believe that that is not the government's intention; and, in fact, the government has circulated draft regulations and it has made it clear that the type of approval that it is comfortable with private certifiers being able to sign off on will be limited to what is known as residential code development, and that is in a nutshell fairly minor forms of development that certainly do not involve neighbour notification and listening to the objections of neighbours or anything that requires, for example, public hearings to be held.

Yet, I think the Planning Institute's concerns are well founded because it is difficult, in the absence of statutory limitation, to be completely confident that a future government will not come along and say, for example, that industrial development in South Australia is taking too long to go through the approval process and that we will allow private certifiers to sign off on all future industrial development. It would be technically possible for that to happen unless we deal with the act.

In conversation with the Hon. David Ridgway, speaking about my amendment, I pointed out to him that a form in which I know he is very interested—that of wind farms—might find itself by regulation on a list of matters that could be dealt with by regulation. Again, I do not pretend for one minute to believe that the government has that in mind at all. The point is that if the prohibition against private certifiers making planning consent decisions is removed without constraint, it would leave that door open to future governments.

I go on now to the submission of the Local Government Association. I will not deal with their whole submission as they raise many of the same concerns as the Planning Institute, but they say in relation to this matter:

> The Bill proposes the deletion of Section 89(3) to remove the existing impediment to a private certifier issuing Development Plan consent. The Minister for Planning has stated that authority for a private certification to issue a Development Plan consent will be limited to applications which satisfy the criteria of the Residential Code outlined in the Development Regulations 2008, Schedule 4, Part 1. However, there is concern that the unfettered removal of this Clause from the Act will allow for future changes to Regulation 89 to allow for full merit assessments to be undertaken by Private Certifiers. As such, it would be preferable to amend Section 89(3) rather than delete it.

That is precisely what I propose in the amendments I have tabled. When the local government talks about 'full merit assessments', they are talking about forms of development that are not necessarily complying. They might not be envisaged in the locality—they might attract public representation rights—and clearly a private certifier is not set up to be able to deal with the range of issues, such as public comment and the conduct of a public hearing that might be required. It is completely out of order to think that a private certifier would be acting as judge and jury and effectively executive rather than executioner.

I do not think it is appropriate that the private certifiers have that role, so the amendment I have put forward is slightly different from what the Planning Institute and Local Government Association have asked for, for the simple reason that it is not possible in an act of parliament to refer to this concept of the residential code because it is a concept in the regulations, which might subsequently change. I have got as close as I can and it does pick up residential code matters.

The amendment I will propose basically says that the regulations may not authorise a private certifier to undertake any form of planning approval for anything other than residential development, that is, complying development, and that also falls within a class of development prescribed by the regulations. In other words, if a future government decided that the private sector was to be responsible for more detailed and contentious planning issues, they would have to come back to the parliament for those changes to be made.

This is a very sensible amendment which does not in any way whatsoever undermine anything that the government has said it wants to achieve through this legislation. It allows the government to implement 100 per cent of its stated agenda, but it does provide that level of protection from a future government that might decide that the private sector is a suitable body to deal with these more contentious issues.

I have tabled a second amendment that relates to the duties of private certifiers, in particular, their duty to provide access to the information that they hold. Members would be aware that, when a local council is dealing with development applications, all of the paperwork has to be included on a public register that is available for members of the public to inspect and, in some instances, to obtain copies.

That I think is an important democratic measure. It does allow people affected by development to actually go to the source material and find out exactly what is proposed. If the paperwork is all going to be lodged with a private certifier, the difficulty we have now is: how do we make that material as accessible to the community as it would have been had the application been lodged with a local council?

The response, I believe, is twofold. The first thing to do is to make sure that, whilst the private certifier has the conduct of the matter, that person be bound by the same disclosure regime as a local council would be subject to. That is the first thing. The second thing is that private certifiers are different from local councils in that they do not have perpetual succession. A private certifier can die, resign or quit the industry, and the question then has to be asked: what happens to all of the paperwork?

I am sure it is assumed in this legislation that the paperwork will be forwarded to the local council. I am sure that is assumed, but I think we need to state that explicitly. Once the private certifier has forwarded the file, as it were, to the local council, then I think that private certifier should be protected and immune from having to deal with requests for access to information.

I think this is quite a neat arrangement whereby the rights of the community are preserved but the obligations on private certifiers are not made open-ended and they are not made too onerous. At the end of the day, the plans, the drawings and the specifications that relate to that planning decision need to be held by the local council where they can be properly archived and held in perpetuity.

They are the two amendments that I have put forward. From talking to members, I understand that there is a great deal of support for at least one, and I am hoping both, of these amendments. I am more than happy to discuss with members whether there is any tweaking that is required to them, but I believe they do the job required of them. On that note, the Greens are pleased to support the second reading of this bill and I look forward to moving these amendments when we get into the committee stage.

**The Hon. J.A. DARLEY (21:27):** I rise to speak briefly on the Development (Private Certification) Amendment Bill 2012. As members know, the bill will enable the same process applicable to building approvals to also apply to residential code development approvals. It will provide applicants with another avenue for approval in that they will have the option of seeking residential development approval either through private certifiers or through the existing council approval process.

I am pleased to see the government taking the initiative to introduce these changes. This is an issue I first raised with the government over a year ago. The Minister for Planning was receptive to the idea and, over the past year, I have met with the department several times to discuss its progress. I understand there were several options under consideration in terms of streamlining the residential code approval process. However, I am pleased that the government has chosen to proceed with what I consider the most logical approach.

My concern about the time it takes to receive development approval was confirmed earlier this year when my son had to wait six months for development approval for his home. It was by no means a contentious application and council did not express any specific concerns about it. Notwithstanding that, it took some six months for his development to be approved. Going back some 15 years, when I waited two years for development approval to extend my own home, we can see that not much has changed in terms of lengthy delays in this area. There is no question that something needs to be done to fast-track the current process.

Private certifiers are already used to approve building rules applications. This has resulted in the streamlining of this process and has saved time and money for homebuilders, the housebuilding industry, councils and ratepayers. I expect that the same will result for development approvals if there is an option to use private certifiers.

The benefits of private certification are well outlined in a paper prepared by Connor Holmes, Heynen Planning Consultants and Hudson Howells, which I understand has been circulated to all honourable members. Perhaps one of the most obvious benefits over the current system is that more applications will be lodged as residential code applications rather than full merit assessments, a process which I understand has become the norm rather than the exception.

In closing, I think this is a good first step in terms of ensuring a simple and effective assessment method, and I look forward to further discussions with the minister concerning other development approval processes which could potentially benefit from similar reforms. With that, I support the second reading of the bill.

Debate adjourned on motion of Hon. Carmel Zollo.

## ADVANCE CARE DIRECTIVES 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) (21:34):** On behalf of my colleague, the Hon. Russell Wortley, 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 seeks to:

- enable competent adults to make decisions and give directions in relation to their future health care, residential and accommodation arrangements and personal affairs;
- provide for the appointment of substitute decision-makers to make such decisions on behalf of the person;
- ensure that health care is delivered to the person in a manner consistent with their wishes and instructions;

- facilitate the resolution of disputes relating to advance care directives;
- provide protections for health practitioners and other persons giving effect to an advance care directive;
- make related amendments to the *Consent to Medical Treatment and Palliative Care Act 1995*, the *Coroners Act 2003*, the *Fair Work Act 1994*, the *Guardianship and Administration Act 1993*, the *Health and Community Services Complaints Act 2004* and the *Wills Act 1936*;
- and for other purposes.

The aim of this Bill is to create a single form of Advance Care Directive to replace the existing Enduring Power of Guardianship, Medical Power of Attorney and the Anticipatory Direction.

The provisions in the Bill aim to make it easier to complete and apply Advance Care Directives and will assist people to express their views and preferences and to have confidence they will be known and respected in the future.

Importantly, the Bill contains protections for those who complete and apply Advance Care Directives, particularly Substitute Decision-Makers and health practitioners.

The Bill sets out a simple dispute resolution process for application in situations of uncertainty or if there is a dispute.

In April 2007, I as Minister for Health, the then Attorney-General and the then Minister for Families and Communities jointly launched the Advance Directives Review with the release of an Issues Paper titled *Planning ahead: Your health, your money, your life* for public comment.

An independent Advance Directives Review Committee was established with former Health Minister, the Hon Martyn Evans, as Chair. The 11 member Review Committee was supported by a panel of experts across a broad range of areas.

Over 120 submissions were received on the Issues Paper from health, aged care and community care professionals, lawyers, community organisations, consumers, Aboriginal communities, government agencies and financial institutions.

After 18 months of deliberations the Advance Directives Review Committee reported to the Attorney General in two stages:

- Stage 1 Report made 36 recommendations for changes to law and policy and
- Stage 2 Report made 31 recommendations for implementation and communication strategies.

I would like to take this opportunity to commend the Review Committee for its work and to thank members of the Expert Advisory Panel for assisting the Review Committee in its deliberations.

I would now like to point out some of the key aspects of the Bill.

The Advance Directives Review found that the current legislation, forms and guidelines can be confusing and intimidating, and recommended that any new laws, forms or guidelines be written in simple, lay persons language. This will also assist those for whom English is a second language and Aboriginal and Torres Strait Islander Peoples.

The Bill has been drafted in simple language and the definitions used are contemporary and reflect current practice.

To ensure consistency between the three relevant Acts, the same definitions have been reflected in the amendments to the *Guardianship and Administration Act 1993* and the *Consent to Medical Treatment and Palliative Care Act 1995*.

The term Substitute Decision-Maker is used in the Bill to distinguish between a person appointed of one's own choosing to make substitute decisions on their behalf, and a Guardian appointed for a person by the Guardianship Board to look after and manage their affairs.

The concepts of competence and capacity are central to the two critical stages, being the completion and the application of Advance Care Directives, which may occur years apart.

The Bill requires that an adult must be competent to make or revoke an Advance Care Directive. As a legal document, an adult completing the form must understand what an Advance Care Directive is and the consequences of completing one. It is presumed that an adult is competent to complete an Advance Care Directive unless there is evidence to the contrary.

An Advance Care Directive takes effect when the person's decision-making capacity is impaired. For the first time in South Australian legislation, the Bill contains a clear description of what is and what is not deemed *impaired decision-making capacity*. Decision making capacity relates to the ability to consider information, weigh up options, make a decision based on the information provided and communicate thoughts about that in some way.

Importantly, it is not necessarily related to a diagnosis or condition. The definition in the Bill accommodates temporary and fluctuating decision-making capacity. In particular, it accommodates the needs of people with a mental illness or dementia whose capacity to make decisions may fluctuate.

The Bill recognises that different decisions require varying levels of decision-making capacity. For example, a person may be able to make many simple health care and personal decisions but may not be able to make higher level decisions such as whether to undergo surgery or not. The Bill seeks to support lower level decisions for as long as a person is able, before requiring others to step in and take over their life and decision-making unnecessarily.

If Substitute Decision-Makers or others are unsure whether a person has the capacity to make a decision, the Office of the Public Advocate can provide advice. Alternatively, a medical assessment can be instituted.

The objects of the Bill provide the framework for the intent of the Act which is to enable competent adults to give directions about their future health care, residential and accommodation arrangements and personal affairs and other matters.

This Bill is underpinned by a set of overarching principles.

The principles in the Bill apply in the administration, operation, and enforcement of the legislation, including in the resolution of disputes. The principles apply to all parties including Substitute Decision-Makers, health practitioners and others who may be making decisions under or in relation to an Advance Care Directive.

The framework is contemporary, aligns with a rights based approach, and is consistent with person-centred care and common law.

The Ethics Health Advisory Council assisted to refine the principles in the Bill. I would like to take this opportunity to thank members for their advice and assistance.

The Bill takes a broad view of health and well-being which extends beyond just medical treatment instructions at the end of life.

Submissions to the Advance Directives Review and subsequent consultations with consumers, in particular mental health consumers and older people, indicated that people want the option to be able to write down their wishes, preferences and instructions for matters beyond medical treatment decisions at the end of life, without appointing Substitute Decision-Makers. Reasons for this included:

- no-one to appoint or could not choose who to appoint
- did not want to burden family/friends with such decisions
- complicated family relationships such as second or third marriages or families
- religious reasons for example Jehovah Witnesses refusing blood transfusions.

The Bill has been drafted to enable as much flexibility as possible for those completing an Advance Care Directive and allows for three options:

- written instructions, preference and wishes and the appointment of one or more Substitute Decision-Makers
- only written instructions and preferences
- the appointment of one or more Substitute Decision-Makers without written preferences.

The Bill makes it clear that a relevant provision or instruction in an Advance Care Directive or the decision of a Substitute Decision-Maker is as effective as if it were the person themselves making such decisions.

Under the Bill, an Advance Care Directive does not have to be legally or medically informed to be valid, merely that they understand the implications of their direction. An Advance Care Directive Do-it-yourself Kit will be developed to support people in making an Advance Care Directive.

To maximise uptake, it will be important that the Kit is designed so that individuals can complete the form without the assistance (and expense) of a lawyer or a doctor.

Having said this, if an individual has strong views or complicated affairs, the accompanying guidelines to the Advance Care Directive form will encourage them to seek medical or legal advice to ensure that their Advance Care Directive will achieve its intended purpose.

To be valid, the Advance Care Directive form approved by the Minister for Health and Ageing will be the only form that may be used and for standing as a legal document, it must be witnessed.

Rather than prescribing the form in legislation, the Do-it-yourself Advance Care Directive Kit will comprise the Advance Care Directive form, accompanied by guidelines. The guidelines will be developed in consultation with stakeholders and tested by focus groups which will include consumers including older people, Aboriginal people and people from culturally and linguistically diverse backgrounds, and health practitioners and others such as aged care staff.

The guidelines will clearly set out, in lay terms, the rights and responsibilities of all parties involved in the completion and application of an Advance Care Directive, including for the person completing the form, Substitute Decision-Makers, witnesses, health practitioners and other prescribed professions. This will ensure that all parties are aware of each others' rights and responsibilities under the Advance Care Directive.

One of the problems and common criticisms associated with the current Medical Power of Attorney and Anticipatory Direction is the legal requirement for people to list medical treatments they do, or do not, consent to in advance of illness.

This requirement has proven difficult for many people and reports suggest that these types of instructions are not helpful to health practitioners having to interpret them at a later stage. Instructions are often either too specific or not specific enough, or crucially do not relate to the current circumstance or condition.

The Advance Care Directive form will be developed to allow people to write down their values and goals of care, what is important to them when decisions are being made for them by others, what levels of functioning would be intolerable, and where and how they wish to be cared for when they are unable to care for themselves.

Growing numbers of South Australians live alone. Being able to include instructions in an Advance Care Directive about health care, residential, accommodation and personal matters such as not being transferred from a care home to hospital to die or who should look after their dog or cat often brings peace of mind.

The Bill does not however prevent people specifying health care they do not wish to receive, including refusals of life-sustaining measures, such as CPR, artificial hydration, nutrition or ventilation (i.e. life support) and the circumstances under which such refusals would apply.

The Bill provides that refusals of health care are binding if the person intended the refusal to apply to the current circumstance—this is consistent with common law.

Instructions and expressed preferences other than refusals of health care, whether related to health care, accommodation, residential and personal matters, must guide decision-making but are not binding on others. For example, an instruction which directs that the person never wants to live in a nursing home may be impossible to comply with, particularly if that is the only option for ensuring the person receives appropriate care and support.

The Bill provides that the following would be void and of no effect if contained in an Advance Care Directive:

- unlawful instructions or instructions which would require an unlawful act to be performed such as voluntary euthanasia or aiding a suicide
- refusals of mandatory treatment such as compulsory mental health treatment under the *Mental Health Act 2009*
- actions which would result in a breach of a professional code or standard, for example a Code or Standard issued by the Medical or Nursing and Midwifery Boards of Australia. It does not mean a hospital code or standard.

If a non valid matter is contained within an Advance Care Directive, this does not void the Advance Care Directive in its entirety.

A person is not able to demand specific healthcare be provided in an Advance Care Directive, consistent with the common law. If a person has indicated in their Advance Care Directive specific healthcare that they consent to, this would be a guide to health practitioners rather than a demand. What is appropriate healthcare to be offered in particular circumstances is to be determined by health practitioners according to their clinical expertise and judgment. This is consistent with a well accepted common law principle of health care that a person can consent to treatment that is offered, and refuse treatment that is offered, but cannot demand treatment that is not offered.

The witnessing provisions in the Bill have been designed to be a protective measure for both those completing an Advance Care Directive, and those having to apply it at a later stage such as Substitute Decision-Makers, health practitioners, aged care workers or paramedics.

To be valid, a suitable witness must sign a statement on the Advance Care Directive form to confirm that they are satisfied, to the best of their knowledge, that the person completing the Advance Care Directive understands the nature and effect of the Advance Care Directive and is completing it free of coercion.

The Bill includes offences for knowingly giving false or misleading statements and for fraud and undue influence, including for inducing another to give an Advance Care Directive.

The guidelines for witnesses will point out that if the person's competence to complete an Advance Care Directive is questionable, the witness should refuse to sign the form or request a medical certificate before they witness the document.

Those relying on a valid Advance Care Directive in good faith and without negligence will be protected from civil or criminal liability.

The categories of persons who can be a witness are expansive and similar to that for witnessing Commonwealth documents.

Importantly, to avoid conflicts of interest or duty, witnesses cannot be:

- Substitute Decision-Makers appointed under the Advance Care Directive
- persons with a direct or indirect interest in the estate of the person giving the Advance Care Directive
- health practitioners responsible for the health care of the person giving the Advance Care Directive
- persons in a position of authority in a hospital, nursing home or other similar facility in which the person resides.

The Bill provides that competent adults can appoint one or more Substitute Decision-Makers of their own choosing who they trust to make decisions for them when they have impaired decision-making capacity.

Subject to any contrary provisions contained in an Advance Care Directive, an appointed Substitute Decision-Maker can make all the health care, residential, accommodation and personal decisions the person could lawfully make if they had decision-making capacity.

Under the Bill, a decision of a Substitute Decision-Maker has the same legal effect as if it were a decision of the person themselves.

The Bill requires that Substitute Decision-Makers must:

- be competent adults
- act in good faith, without negligence and in accordance with the wishes and values of the person for whom they were appointed, and are afforded legal protections for doing so, and
- make decisions using the substituted judgement decision-making standard.

To ensure that appointed Substitute Decision-Makers do not have a conflict of interest or duty, the Bill prevents the following from being Substitute Decision-Makers:

- health practitioners directly or indirectly responsible for the persons health care
- paid carers. The paid carer captured by this clause is a professional carer such as a Director of Nursing, not a close friend or relative in receipt of Carers Allowance
- any other class of persons prescribed by the regulations.

The Bill does not prevent individuals appointing different Substitute Decision-Makers for different decision-making areas. The person could also direct how they want Substitute Decision-Makers to make decisions, for example in consultation with others.

The Bill requires Substitute Decision-Makers to make the decision they believe the person would have made in the current circumstances, if they had access to the same information.

As is currently the case with Medical Power of Attorney, the Bill prevents Substitute Decision-Makers from refusing health care for the relief of pain or distress and the natural provision of food and water.

Substitute Decision-Makers can seek advice from the Office of the Public Advocate if they are unsure of their role.

Upon application, the Guardianship Board can revoke the appointment of a Substitute Decision-Maker if the Guardianship Board is satisfied that the Substitute Decision-Maker:

- is a person who must not be a Substitute Decision-Maker under the Advance Care Directive Act
- is no longer willing to act as a Substitute Decision-Maker
- is no longer appropriate. For example if the appointment was made years ago and the relationship with the Substitute Decision-Maker no longer exists
- has been negligent in the exercise of their powers under the Advance Care Directive. This includes wilfully making decisions which are not consistent with the person's Advance Care Directive.

If a Substitute Decision-Maker is revoked and more than one Substitute Decision-Maker has been appointed, the Advance Care Directive will remain valid and the remaining Substitute Decision-Maker/s can still act under it.

The Bill sets out provisions for the revocation of an Advance Care Directive for both a competent and also an incompetent adult who is, as a result, not able to complete a new Advance Care Directive.

Under the Bill, a competent adult can revoke their Advance Care Directive at any time, in accordance with the Regulations. The Regulations could include provisions whereby a person must sign, date and have witnessed a section on the form to make it clear that they have revoked the Advance Care Directive.

If a competent adult completes a new Advance Care Directive, any previously made instruments including existing Enduring Powers of Guardianship, Medical Powers of Attorney or Anticipatory Directions are automatically revoked. This means that the most recently dated and witnessed Advance Care Directive will be the one in force and can be relied upon in good faith.

In such a case, to ensure that all parties are aware of the revocation, the person must notify others who may have a copy, as soon as is reasonably practicable, of its revocation.

However, those acting on what they consider to be a current and valid Advance Care Directive in good faith will be afforded protection from liability.

The introduction of electronic health records will enable the most recent Advance Care Directive to be scanned and included as part of the person's electronic health record so that it can be accessed when needed.

The Bill sets out a process for the revocation of an Advance Care Directive by the Guardianship Board if a person is not competent to complete a new Advance Care Directive and they indicate a wish to revoke.

When considering the matter the Guardianship Board must:

- apply the principles in the Advance Care Directives Act

- only revoke the Advance Care Directive if the Guardianship Board is satisfied that:
    - the person understands the nature and effect of revoking the Advance Care Directive, and
    - the revocation genuinely reflects the wishes of the person to whom it relates, and
    - it is appropriate to do so in the circumstances.

However, the Guardianship Board should not revoke the Advance Care Directive if the Advance Care Directive contains provisions to the contrary.

The Bill also sets out the rights and responsibilities of health practitioners in relation to Advance Care Directives.

Health practitioners have been defined as persons who practice a registered health profession within the meaning of the Health Practitioner Regulation National Law (South Australia) Act 2010 which includes for example, medical practitioners, nurses and midwives, psychologists and pharmacists.

The Bill also provides for other professions or practice declared by the regulations to be included in the ambit of this definition. It is anticipated that the Regulations could for example include ambulance officers or aged care staff in the definition of health practitioner for the purposes of this Act.

Health practitioners are afforded protections from criminal and civil liability for acting on a valid Advance Care Directive in good faith and without negligence.

The Bill requires that a health practitioner providing health care to a person who is the subject of an Advance Care Directive and who is incapable of making the particular decision:

- must comply with binding refusals of health care
- should as far as is reasonably practicable to do so, comply with non-binding provisions
- must endeavour to seek to avoid an outcome or intervention that the person has indicated that they want avoided, for example being dependent on life support and will not recover, unable to undertake daily tasks of living for themselves or unable to communicate with family/friends
- must act in accordance with the principles set out in the Advance Care Directives legislation.

I will reiterate that a relevant provision in an Advance Care Directive, applicable to the current circumstance, is as effective as if it was the consent/refusal of the person themselves at the present time.

If a binding refusal is ignored and the particular health care is subsequently provided, this may amount to professional misconduct under the *Health Practitioner Regulation National Law (South Australia) 2010*. In these circumstances the relevant National Board would consider and decide the matter.

In addition, a health practitioner overriding a person's refusal of health care may not be afforded the relevant protections under the legislation, and in fact could be faced with a charge of assault and battery for providing health care without consent.

If a health practitioner is unsure of their obligations, they can seek advice from the Office of the Public Advocate.

Disputes or disagreements can sometimes arise about the application and interpretation of an Advance Care Directive.

Currently, under the *Consent to Medical Treatment and Palliative Care Act 1995* the only appeal mechanism is to the Supreme Court. Pursuant to the *Guardianship and Administration Act 1993,* if there is a dispute or disagreement in relation to the Enduring Power of Guardianship, the Guardianship Board can hear and decide the matter.

The Bill confers advisory and mediation functions on the Office of the Public Advocate as a less formal way of resolving a dispute.

Upon application, the Public Advocate (or delegate) can assist to resolve a matter by:

- ensuring that all parties are aware of their rights and obligations
- identifying issues which may be in dispute between the parties
- canvassing options that may obviate the need for further proceedings
- facilitating full and open discussion between the parties.

Mediation is entirely voluntary and would only be undertaken if all parties agree.

The Public Advocate may also give declarations regarding advice or mediation matters, but only in relation to:

- the nature and scope of a person's powers under the Advance Care Directive
- whether or not a particular act or omission is within the scope of the Advance Care Directive or

- whether the person who completed the Advance Care Directive has impaired decision-making capacity in respect of the particular decision.

These declarations are not binding, but may offer some certainty to those acting under an Advance Care Directive.

If a person is not satisfied with the outcome obtained from the Public Advocate's advice or declaration, or requires greater certainty about a matter, they can apply to the Guardianship Board for it to consider the matter.

Upon application, the Guardianship Board can:

- review a matter dealt with by the Public Advocate and the Board can confirm, cancel or revoke any resulting decision or declaration
- give a binding direction or declaration in relation to a matter relating to an Advance Care Directive whether or not it was a matter considered by the Public Advocate. There are penalties for failing to comply with a Guardianship Board direction or declaration.
- refer a matter to the Public Advocate if the Guardianship Board believes it should be resolved through mediation.

Currently, South Australia is one of the only Australian jurisdictions in which Advance Care Directives completed in other jurisdictions are not recognised.

To enable the legal recognition of interstate Advance Care Directives, the Bill sets out a process whereby the Governor can declare by regulation a class of instruments completed in other jurisdictions, as though completed under the Advance Care Directives legislation here in South Australia.

Provisions in an interstate Advance Care Directive considered unlawful in South Australia will be deemed void and of no effect, even if lawful interstate.

To ensure that the new legislation continues to be relevant and meets community needs and expectations into the future, the Bill requires a review of the Act five years after its commencement.

It is recognised that there will still be existing Enduring Powers of Guardianship, Medical Powers of Attorney or Anticipatory Directions which may still need to apply in the future, and will therefore require legal recognition of those prior instruments.

The Bill contains transitional provisions to this effect. The legal protections and dispute resolution process contained in the Advance Care Directives Bill will apply to these instruments.

The Bill contains related amendments to the *Consent to Medical Treatment and Palliative Care Act 1995* (Consent Act) and the *Guardianship and Administration Act 1993* (Guardianship Act) to recognise the new Advance Care Directive, update terminology and to ensure consistency between these three Acts.

Currently, the Guardianship Act sets out who can consent to health care in the case of persons with mental incapacity. The Guardianship Act specifies that, where there is no legally appointed representative such as a guardian, Enduring Guardian or Medical Agent, limited relatives can consent to health care on behalf of an adult with a mental incapacity.

Under the Guardianship Act, medical treatment is defined to include health care which can be provided by a medical practitioner or other health professional such as podiatrist, nurse and midwife, chiropractor, pharmacist, psychologist etc.

It is logical to have all of the consent provisions relating to health care contained in the Consent Act. This would leave the Guardianship Act to deal with the rare or extreme cases where it is appropriate for the state to step in.

The amendments to the Consent Act set out who can consent to health care on behalf of a patient with impaired decision-making capacity if there is no Advance Care Directive.

Under the Bill, the term *person responsible* is used and a hierarchy has been introduced.

The hierarchy is based on whether the person has a close and continuing relationship with the patient and is available and willing to make a decision.

In the absence of an appointed Substitute Decision-Maker or relevant provision under an Advance Care Directive, a person responsible for the patient can consent or refuse to consent to health care on the patient's behalf in the following order:

1. A guardian appointed by the Guardianship Board, provided that the guardian's powers do not exclude making health care decisions
2. If there is no guardian appointed, a prescribed relative of the patient can consent. Under this clause, a prescribed relative means:
    - a a legal spouse or domestic partner
    - b an adult related to the patient by blood, marriage or adoption
    - c an adult of Aboriginal and Torres Straight Islander descent who is related to the patient by Aboriginal or Torres Straight Islander kinship rules or is married to the patient according to Aboriginal tradition.

The key to the hierarchy here is whether a person who fits into the above category has a close and continuing relationship with the patient.

3. If there is no guardian or prescribed relative, an adult friend with a close and continuing relationship can consent provided they are available and willing. A person envisaged by this category is a close friend or unpaid carer who is not a relative, but has been caring for the patient for many years and knows them well.

4. If there is no one who meets the previously mentioned categories of persons responsible, an adult charged with overseeing the ongoing day to day supervision, care and well-being of the patient who is available and willing can make a decision. Except for the Guardianship Board, this is the category of last resort and is included to ensure that residents of care facilities for example receive timely treatment without having to go the Guardianship Board for consent each time simple treatment is proposed.

5. If there is no-one who meets the above criteria and who is available and willing to make a decision, upon application, the Guardianship Board can consent to the proposed treatment.

The provisions relating to prescribed treatment will remain in the Guardianship Act and this treatment is still only permitted with the authority of the Guardianship Board.

The amendments:

- require a person responsible to make a decision they honestly believe the person would have made in the current circumstance
- recognise that the consent or refusal to consent of a person responsible is as legally effective as if it were the consent or refusal of the patient themselves
- make it an offence for a person to knowingly hold themselves out as a person responsible if they are not
- protect health practitioners who rely on the consent/refusal of a person who holds themselves out as a person responsible, but is not.

These amendments seek to modernise and most importantly clarify consent arrangements for health care for people unable to consent themselves, and who do not have an applicable Advance Care Directive.

If an individual does not want the person responsible to be making decisions for them in the future, and they are competent, they should be encouraged to complete an Advance Care Directive.

The amendments to the Consent Act set out a similar dispute resolution process to that contained in the Advance Care Directives legislation, for consistency.

A party to a health care disagreement or dispute can apply to the Office of the Public Advocate for voluntary mediation to assist the parties to reach a mutually agreed decision. Under the Consent Act, the Public Advocate cannot issue declarations in relation to health care disputes, as the Public Advocate can under this Bill.

Alternatively, a person with an interest in the matter can apply directly to the Guardianship Board for a direction or declaration in relation to the health care decision.

In conclusion, the Advance Care Directives Bill 2012 replaces the Enduring Power of Guardianship, Medical Power of Attorney and Anticipatory Direction with one Advance Care Directive under which competent adults will be empowered to:

- express their wishes, preferences and instructions about future health care, residential, accommodation and other personal matters and/or
- appoint one or more substitute decision-makers who will be empowered to make health care, residential, accommodation and personal decisions on their behalf.

The Bill will apply to any period of impaired decision-making capacity whether temporary, fluctuating or permanent, as directed by the person in their Advance Care Directive.

The Bill:

- takes a broad view of health and well-being and is not restricted to medical treatment decisions at the end of life
- includes protections for Substitute Decision-Makers, health practitioners and others who give effect to Advance Care Directives in good faith and without negligence
- sets out clear processes for dispute resolution. Additional powers have been given to the Office of the Public Advocate to conduct voluntary mediation and to the Guardianship Board to hear unresolved disputes, review mediation outcomes, and give orders and directions to resolve matters and
- amends the *Consent to Medical Treatment and Palliative Care Act 1995* to clarify consent arrangements in the absence of an Advance Care Directive for patients unable to consent, and introduces a dispute resolution process, including voluntary mediation.

To realise the benefits of the new legislation, a comprehensive and collaborative approach to the Act's implementation will be critical. This will largely be based on the Advance Directives Review Stage 2 Report: *Recommendations for implementation and communication strategies*.

As a way of increasing public awareness about the benefits of completing an Advance Care Directive, it is intended to execute and launch an annual 'Life in Order Day' or similar to coincide with the Act's commencement.

The aim of this annual event would be to encourage all South Australians to think about putting their affairs in order, including completing or revising their Advance Care Directive and financial and legal affairs (Power of Attorney), as well as their organ donation wishes and their will.

I would encourage non-government organisations to participate and involve their consumers in the day. There is considerable support in the non-government sector for increasing uptake, and raising awareness about the importance of Advance Care Directives so that people can have a say in decisions affecting them before their capacity to do so is impaired or lost.

Advisory services for both the completion and application of Advance Care Directives will support the community and health, community care and aged care sectors with the new scheme.

This Bill, together with the proposed changes to the financial power of attorney being undertaken by the Attorney-General, will form a cohesive package that will reform South Australia's legislation on advance directives and make it easier for the community to plan ahead for future health, medical, residential, personal and financial matters in the event they are unable to make their own decisions, for whatever reason.

A simplified framework for Advance Care Directives and clarifying informal consent arrangements for people with impaired capacity will be welcomed by many South Australians.

I commend the Bill to the House.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal

3—Interpretation

This clause defines key terms used in the measure.

4—References to provision of health care to include withdrawal etc of health care

This clause clarifies that references to providing health care will also include withdrawing or withholding health care.

5—References to particular forms of health care in advance care directives

This clause provides that references in advance care directives to a particular form of health care will extend to other health care that is of substantially the same kind, so that people giving advance care directives are not required to be unduly technical in their descriptions of treatments.

The clause also provides that a reference to a particular illness etc extends to include a reference to any other illness etc that arises in the course of, or out of the treatment of, the original illness etc.

6—Health practitioner cannot be compelled to provide particular health care

This clause makes it clear that an advance care directive, a substitute decision-maker or an order of the Guardianship Board cannot compel doctors and other health practitioners to provide any particular form of treatment—those decisions remain for the doctor to decide.

However, that does not apply in the case of withdrawal or withholding of healthcare which would, because of the operation of clause 4 of the Bill, otherwise be caught by this proposed section.

Should a provision of an advance care directive etc purport to compel a health practitioner to provide particular treatment, the relevant provision will be void and of no effect.

7—Impaired decision-making capacity

This clause sets out when a person will be taken to have impaired decision-making capacity for the purposes of the measure.

8—Application of Act

This clause is formal.

Part 2—Objects and principles

9—Objects

This clause sets out the objects of the Act.

10—Principles

This clause sets out certain principles that must be taken into account in connection with the administration, operation and enforcement of this measure. The principles reflect the underlying values on which the Bill is predicated. Of particular note is the idea that people need to be allowed to make their own decisions about their health care, residential and accommodation arrangements and personal affairs to the extent that they are able, and then be supported to enable them to make such decisions for as long as they can.

Part 3—Advance care directives

Division 1—Advance care directives

11—Giving advance care directives

This clause sets out how an advance care directive must be given in order to be valid.

In particular, it requires that an approved form be completed and witnessed as required by the measure.

An advance care directive can cover the future health care, residential and accommodation matters and personal affairs of the person giving the advance care directive as he or she thinks fit-it is up to the person how detailed he or she wishes their instructions and wishes to be.

Proposed subsection (5) sets out a number of circumstances that may be present in respect of a person's advance care directive, but that will not, of themselves, invalidate the advance care directive. Again, this is intended to make it easier for people to give advance care directives, without being unduly restricted by technicalities.

12—Provisions that cannot be included in advance care directives

This clause sets out provisions that cannot be included in an advance care directive (and if they are, they will be void and of no effect).

In particular, an advance care directive cannot make a provision that is illegal, or requires an illegal act to be performed (for example a provision requiring voluntary euthanasia to be administered). But an advance care directive also cannot be relied on to thwart treatments required by the law, such as treatment orders under the *Mental Health Act 2009*.

13—Advance care directive not to give power of attorney

This clause provides that an advance care directive cannot give a person's power of attorney to another (that is, the power to deal with the legal and property affairs of the person). That can only occur under the *Powers of Attorney and Agency Act 1984*, or some other relevant law.

14—Giving advance care directives where English not first language

This clause sets out how a person can give an advance care directive if English is not his or her first language.

15—Requirements for witnessing advance care directives

This clause sets out the requirements for witnessing an advance care directive. The advance care directive will only be taken to have been witnessed in accordance with the measure if it complies with this proposed section.

The witness is required to certify to certain matters set out in proposed subsection (1)(b).

A person specified by proposed subsection (2) cannot be a witness under an advance care directive.

16—When advance care directives are in force

This clause sets out when an advance care directive takes effect, namely from the time it is witnessed in accordance with the Act (following completion of the advance care directive form and the witness complying with section 15). An advance care directive remains in force (that is, it continues to have effect) until the person who gave the advance care directive dies, it is revoked or it expires in accordance with its terms, whichever happens first.

17—Advance care directive revokes previous advance care directives

This clause provides that if a person gives an advance care directive, all previous advance care directives given by that person are revoked.

18—No variation of advance care directive

This clause clarifies that, subject to the power conferred on the Guardianship Board under Part 7 of the measure to make certain orders in relation to substitute decision-makers, an advance care directive cannot be varied.

19—Binding and non-binding provisions

This clause sets out what is a binding provision of an advance care directive (which must be complied with by health practitioners etc) and what are non-binding provisions (which should be given effect).

20—Advance care directive has effect subject to its terms

This clause provides that an advance care directive has effect according to its terms other than where this measure, or another Act or law, prevents a particular provision of an advance care directive from having effect.

Division 2—Substitute decision-makers

21—Requirements in relation to appointment of substitute decision-makers

This clause provides that a person who gives an advance care directive can appoint 1 or more substitute decision-makers to make decisions for the person.

The clause also sets out who cannot be a substitute decision-maker—basically a person who is either incompetent, or has duties that may conflict with the role of substitute decision-maker.

The regulations may also set out requirements that must be complied with in relation to the appointment of substitute decision-makers.

22—Substitute decision-makers jointly and severally empowered

This clause provides that, unless the person giving the relevant advance care directive specifies otherwise in the advance care directive, any substitute decision-makers appointed under the advance care directive will be able to act jointly or severally, that is any one of them can exercise any power by themself, or collectively with any or all of the others.

The person giving the advance care directive can, however, make provisions setting out how any powers conferred on substitute decision-makers are to be exercised, and those provisions will prevail.

23—Powers of substitute decision-maker

This clause sets out the powers of substitute decision-makers, namely that he or she can make decisions on behalf of the person who gave the relevant advance care directive in the areas listed in subsection (1).

However, the person giving the advance care directive can make provision in his or her advance care directive limiting or otherwise qualifying the powers of any or all of the substitute decision-makers, and those provisions will prevail.

A substitute decision-maker cannot exercise a power that the person who gave the advance care directive has as a trustee or personal representative of another, for example where the person is the guardian of another.

The clause also provides that (unless the advance care directive provides otherwise) the substitute decision-maker cannot refuse the provision of pain relief, or food and liquids by mouth, to the person who gave the advance care directive.

24—Exercise of powers by substitute decision-maker

This clause sets out requirements relating to how a substitute decision-maker can make a decision under an advance care directive. In particular, he or she must produce the advance care directive or a certified copy at the request of the relevant health practitioner.

25—Substitute decision-maker to give notice of decisions

This clause requires a substitute decision-maker to notify each other substitute decision-maker under an advance care directive if he or she makes a decision under the advance care directive.

26—Substitute decision-maker may obtain advice

This clause allows a substitute decision-maker to seek advice—professional or otherwise—in relation to performing his or her functions as substitute decision-maker.

27—Substitute decision-maker may renounce appointment

This clause sets out how a substitute decision-maker can renounce his or her appointment, namely by giving notice in writing to the person who gave the advance care directive. Of particular note is the fact that, if the person who gave the advance care directive is not competent, a substitute decision-maker can only renounce his or her appointment with the permission of the Guardianship Board.

28—Death of substitute decision-maker does not affect validity of advance care directive

This clause clarifies that the death of a substitute decision-maker does not, of itself, affect the validity of the relevant advance care directive. That is not to say that the operation of the advance care directive will not be affected (for example certain decisions may not be able to be made), but the death will not itself automatically invalidate the advance care directive in its entirety.

Division 3—Revoking advance care directives

Subdivision 1—Revoking advance care directive where person competent

29—Revoking advance care directive where person competent

This clause sets out how a competent person who understands the consequences of revoking their advance care directive can revoke it, and sets out requirements to be complied with if they do so.

Subdivision 2—Revoking advance care directive where person not competent

30—Application of Subdivision

This Subdivision applies to people who are not competent, or do not appear to understand the consequences of revoking an advance care directive.

31—Guardianship Board to be advised of wish for revocation

If any person becomes aware that a person in relation to whom this Subdivision applies wishes, or may wish, to revoke an advance care directive they must advise the Guardianship Board.

The Guardianship Board may give any directions to specified persons or bodies that the Guardianship Board thinks necessary or desirable, which must be complied with, with a criminal offence carrying a maximum penalty of 6 months imprisonment applying if they do not. A defence is available and is set out in subsection (4).

32—Revoking advance care directives where person not competent

This clause provides that the advance care directive of a person to whom the Subdivision applies can only be revoked by the Guardianship Board under this proposed section.

The Board should only revoke an advance care directive if it truly reflects the considered wishes of the person who gave it.

Part 4—Recognition of advance care directives from other jurisdictions

33—Advance care directives from other jurisdictions

This clause recognises and gives effect to advance care directives (whatever they may be called) from other jurisdictions within Australia. However, a provision of an interstate advance care directive that could not be made in this jurisdiction, for example a provision requesting the administration of euthanasia, is void and of no effect.

Part 5—Giving effect to advance care directives

34—When things can happen under an advance care directive

This clause sets out when decisions can be made by a substitute decision-maker, or health care provided, under an advance care directive.

Those things can only happen if the person who gave the advance care directive has impaired decision-making capacity in respect of a proposed decision. However, any provision of an advance care directive may be used in determining the wishes of the person who gave it.

35—Substitute decision-maker to give effect to advance care directive

This clause requires a substitute decision-maker to give effect to the matters set out in proposed subsection (1)(a), to make the decision that the substitute decision-maker reasonably believes the person who gave the advance care directive would have made, and to act with due diligence and in good faith.

36—Health practitioners to give effect to advance care directives

This clause requires a health practitioner who is providing, or is to provide, health care to a person who has given an advance care directive to give effect to the matters set out in subsection (1). In particular, he or she *must* comply with a binding provision of the advance care directive (that is, a provision refusing particular health care) and *should*, if it is reasonably practicable, comply with non-binding provisions.

The clause does allow a health practitioner to refuse to comply with a provision (other than a binding provision and a provision comprising instructions in relation to the withdrawal, or withholding, of health care) of an advance care directive if to give effect to the provision is not consistent with any relevant professional standards or does not reflect current standards of health care in the State.

A failure to comply with the proposed section by a health practitioner amounts to unprofessional conduct.

37—Conscientious objection

This clause allows a health practitioner to refuse to comply with a provision of an advance care directive (including a binding provision) on conscientious grounds. If they do so, the health practitioner must comply with the requirements under proposed subsection (2) including identifying, and referring the patient to, a health practitioner who they believe will not refuse.

38—Consent etc taken to be that of person who gave advance care directive

This clause provides that a consent given by a substitute decision-maker, or by a provision of an advance care directive, will be taken to be the consent of the person who gave the advance care directive (as if they were capable of giving such consent).

39—Consent taken to be withdrawn in certain circumstances

This clause provides that a consent granted under an advance care directive will be taken to have been withdrawn if the person who gave the advance care directive expressly or implicitly withdraws the relevant consent.

However, a person giving an advance care directive can override that presumption by express provision in the advance care directive, and the presumption will not apply in circumstances prescribed by regulation.

Despite the deemed withdrawal of consent, anything done in good faith, without negligence and in accordance with an advance care directive before consent was withdrawn under the section will be taken to be valid, and always to have been valid.

Part 6—Validity and limitation of liability

40—Presumption of validity

This clause provides that a person is entitled to presume that an apparently genuine advance care directive is valid and in force unless he or she knew, or ought reasonably to have known, that is was not.

41—Protection from liability

This clause removes criminal and civil liability for an act or omission of a person done or made in good faith, without negligence and in accordance with an advance care directive.

42—Validity of acts etc under revoked or varied advance care directive

This clause provides that things done pursuant to an advance care directive remain valid despite its revocation or variation.

Part 7—Dispute resolution, reviews and appeals

Division 1—Preliminary

43—Interpretation

This clause defines who is an eligible person in respect of an advance care directive, and hence able to access the dispute resolution processes under the proposed Part.

44—Application of Part

This clause sets out the matters to which the proposed Part applies (that is, those disputes and matters that can be resolved under the Part).

Division 2—Resolution of disputes by Public Advocate

45—Resolution of disputes by Public Advocate

This clause sets out the ways in which the Public Advocate can assist in the resolution of matters to which the Part applies.

In particular, the Public Advocate can mediate disputes, and can make declarations of the kind set out in subsection (5).

The clause also makes procedural provisions in relation to proceedings under the section.

46—Public Advocate may refer matter to Guardianship Board

This clause provides that the Public Advocate can refer certain matters to the Guardianship Board if he or she thinks it is more appropriate that the matter be dealt with by the Guardianship Board.

Division 3—Resolution of disputes by Guardianship Board

47—Resolution of disputes by Guardianship Board

This clause sets out the ways in which the Guardianship Board can resolve matters to which the Part applies.

This can occur by way of the Guardianship Board reviewing a matter dealt with by the Public Advocate under proposed section 45, or by the Board making certain declarations or directions in relation to a matter.

The clause also makes procedural provisions in relation to proceedings under the proposed section.

48—Guardianship Board may refer matter to Public Advocate

This clause provides that the Guardianship Board can refer certain applications under section 47(1)(b) to the Public Advocate if the Board is of the opinion that the matter is more appropriately dealt with by the Public Advocate.

49—Failing to comply with direction of Guardianship Board

This clause establishes an offence for a person to fail to comply with a direction of the Guardianship Board under the proposed Division, carrying a maximum penalty of 6 months imprisonment. A defence is available and is set out in subsection (2).

50—Orders of Guardianship Board in relation to substitute decision-makers

This clause allows an eligible person to apply to the Guardianship Board to revoke the appointment of a substitute decision-maker who cannot be a substitute decision-maker, who does not wish to be a substitute decision-maker or who has been negligent or is otherwise an inappropriate person to be a substitute decision-maker.

The clause also allows the Guardianship Board to vary the advance care directive to, amongst other things, appoint a new substitute decision-maker or (in cases where there is only one substitute decision-maker) to revoke the advance care directive.

The clause also provides guidance to the Guardianship Board in relation to the exercise of its powers under the section.

Division 4—Urgent review of decisions

51—Urgent review by Supreme Court

This clause provides for an urgent review in the Supreme Court of a matter specified in proposed subsection (1). The review is limited to ensuring that a substitute decision-maker's decision is in accordance with the relevant advance care directive and the Act.

Division 5—Miscellaneous

52—Question of law may be referred to Supreme Court

This clause allows the Public Advocate or the Guardianship Board to refer a question of law for the opinion of the Supreme Court.

53—Operation of orders pending appeal

This clause provides that a decision, direction or order of the Guardianship Board or a court continues to have effect despite an appeal against the decision being instituted (although the decision, direction or order can be suspended by the body that made it or the appellate court.)

Part 8—Offences

54—False or misleading statements

This clause creates an offence where a person knowingly makes a false or misleading statement in, or in relation to, an advance care directive. The maximum penalty is 2 years imprisonment.

55—Fraud, undue influence etc

This clause creates an offence where a person, by dishonesty or undue influence, induces another to give an advance care directive. The maximum penalty is 10 years imprisonment. A person found guilty of the offence may also forfeit any interest that the person has in the estate of the person who gave the relevant advance care directive.

The clause also allows a sentencing court to make certain orders relating to the disposition of the advance care directive.

Part 9—Miscellaneous

56—Giving notice to substitute decision-makers

This clause sets out how notice can be given to a substitute decision-maker, and further requires a substitute decision-maker given notice to then notify each other substitute decision-maker.

57—Prohibition of publication of reports of proceedings

This clause prevents publication of reports into proceedings under the proposed Act (except with the authorisation of the court or body conducting the proceedings or the consent of the person who gave the relevant advance care directive).

58—Service of documents

This standard clause sets out how documents under the Act can be served on a person.

59—Victimisation

This clause provides for acts of victimisation arising out of the doing of certain things under the measure to be dealt with as a tort, or under the *Equal Opportunity Act 1984* (but not both) and sets out procedural matters accordingly.

60—Confidentiality

This clause creates an offence for a person engaged or formerly engaged in the administration of this Act to divulge or communicate personal information obtained (whether by that person or otherwise) in the course of official duties except in the circumstances set out in proposed subsection (1).

61—Review of Act

This clause requires the Minister to cause a review of the proposed Act to be conducted before the fifth anniversary of its commencement. A report of the review must be prepared and laid before both Houses of Parliament.

62—Regulations

This clause is a standard regulation making power, allowing regulations to be made for the purposes of the Act.

Schedule 1—Related amendments and transitional provisions

Part 1—Preliminary

1—Amendment provisions

This clause is formal.

Part 2—Amendment of *Consent to Medical Treatment and Palliative Care Act 1995*

2—Amendment of section 3—Objects

This clause makes a consequential amendment.

3—Amendment of section 4—Interpretation

This clause makes consequential amendments and defines key terms to be used in the principal Act.

4—Insertion of sections 4A and 4B

This clause inserts new sections 4A and 4B into the principal Act as follows:

4A—References to provision of medical treatment etc to include withdrawal etc of medical treatment

This clause clarifies that where there is a reference in the *Consent to Medical Treatment and Palliative Care Act 1995* to medical treatment, that reference will include the withdrawal or withholding of treatment.

4B—Consent not required for withdrawal etc of medical treatment

This clause clarifies that the *Consent to Medical Treatment and Palliative Care Act 1995* does not operate to require consent to be given before any medical treatment can be withdrawn or withheld.

5—Repeal of section 5

This clause repeals section 5 of the principal Act.

6—Amendment of heading to Part 2

This clause makes a consequential amendment.

7—Repeal of Part 2 Divisions 2 and 3

This clause repeals Divisions 2 and 3 of Part 2 of the principal Act, anticipatory directions and medical agents having been replaced by advance care directives.

8—Amendment of section 13—Emergency medical treatment

This clause makes a consequential amendment.

9—Repeal of Part 2 Division 6

This clause makes a consequential amendment.

10—Insertion of Part 2A

This clause inserts new Part 2A into the principal Act as follows:

Part 2A—Consent to medical treatment if person has impaired decision-making capacity

14—Interpretation

New section 14 defines key terms used in the new Part 2A.

Of particular note is the definition of 'person responsible', which sets out a hierarchy of persons who, in respect of a particular patient, can make certain decisions regarding the patient's medical treatment. However, a person who is lower than another in the hierarchy will only be taken to be a person responsible if no higher person is available and willing to make the relevant decision.

New Part 2A applies to a broader range of health care than the usual limits of medical treatment. The 'medical treatment' contemplated by the new Part includes health care provided by a person practising any health profession (within the meaning of the *Health Practitioner Regulation National Law (South Australia)*, including areas such as optometry, podiatry and physiotherapy.

14A—Application of Part

New section 14A sets out matters or areas to which the new Part will not apply, namely the treatment of children, people who have given certain advance care directives and the provision of prescribed treatment under the *Guardianship and Administration Act 1993* (such as sterilisation of mentally incapacitated persons).

14B—Consent of person responsible for patient effective in certain circumstances

New section 14B enables a person responsible in respect of a patient with impaired decision-making capacity to make certain decisions relating to medical treatment on behalf of the patient. If they do so, any consent given will be taken to have been given by the patient. It is worth noting that a person responsible can refuse to consent to proposed medical treatment.

The new section also provides protection for medical practitioners, insofar as it deems the patient to have consented even where the person responsible was not, in fact, a person responsible for the patient, provided that the medical practitioner did not know and could not reasonably be expected to have known that the person was not, in fact, a person responsible for the patient.

14C—Person responsible for patient to make substituted decision

New section 14C requires a person responsible who is making a decision on behalf of a patient to make the decision that they believe the patient would have made in the circumstances.

14D—Person must not give consent unless authorised to do so

New section 14D creates an offence for a person to purport to make a decision, or represent him or her self, as a person responsible in respect of a patient if he or she is not, in fact, such a person. The maximum penalty is imprisonment for 2 years.

11—Amendment of section 17—The care of people who are dying

This clause substitutes section 17(2) of the principal Act to clarify some confusion about the ability of a patient's representative to demand the continuation of treatment to a dying patient in circumstances where to do so is futile. New subsection (2) makes it clear that medical practitioners and those under their supervision are under no duty to use or continue treatment in such circumstances, regardless of the whether the patient's representative has requested them to do so. However, the medical practitioner etc must withdraw life sustaining measures if directed to do so by the patient's representative.

12—Insertion of Part 3A

This clause inserts new Part 3A as follows:

Part 3A—Dispute resolution

Division 1Preliminary

18A—Interpretation

New section 18A defines key terms used in the new Part.

18B—Application of Part

New section 18B sets out the matters able to be subject to the dispute resolution processes under the new Part.

Division 2—Resolution of disputes by Public Advocate

18C—Resolution of disputes by Public Advocate

New section 18C sets out the Public Advocate's role in the dispute resolution processes of the new Part.

Importantly, the Public Advocate may mediate a dispute that has arisen in relation to a matter without prejudice to the parties' position in later proceedings.

18D—Public Advocate may refer matter to Guardianship Board

New section 18D allows the Public Advocate, if he or she has ended a mediation that would be more appropriately dealt with by the Guardianship Board, to refer the matter to the Board for determination.

It is proposed that the regulations will make the necessary procedural provisions in respect of the referrals.

Division 3—Resolution of disputes by Guardianship Board

18E—Resolution of disputes by Guardianship Board

New section 18E sets out the role of the Guardianship Board in terms of resolving disputes to which the new Part applies.

The Guardianship Board (on the application of an eligible person) can review matters the subject of mediation by the Public Advocate. The Guardianship Board can also make declarations and directions that it considers appropriate in a particular case.

The Guardianship Board can refuse to hear certain matters—those lacking substance, or that are frivolous or vexatious, for example. It can also refuse to hear a matter that it thinks should properly be the subject of legal proceedings.

18F—Guardianship Board may refer matter to Public Advocate

New section 18F enables the Guardianship Board to refer certain matters the subject of an application under new section 18E to the Public Advocate. Such matters would include those that would be open to mediation.

18G—Contravention of direction

New section 18G creates an offence for a person to fail to comply with a direction of the Guardianship Board under new Division 3. The maximum penalty is imprisonment for 6 months.

Division 4—Miscellaneous

18H—Question of law may be referred to Supreme Court

New section 18H allows the Public Advocate and the Guardianship Board to refer questions of law to the Supreme Court for an opinion.

18I—Operation of orders pending appeal

New section 18I provides that a decision, direction or order of the Guardianship Board or a court continues to have effect despite an appeal against the decision being instituted (although the decision, direction or order can be suspended by the body that made it or the appellate court).

13—Substitution of section 19

This clause substitutes section 19 of the principal Act, replacing it with a regulation-making power that reflects current legislative practice.

Part 3—Amendment of *Coroners Act 2003*

14—Amendment of section 3—Interpretation

This clause makes a consequential amendment to the *Coroners Act 2003*.

Part 4—Amendment of *Fair Work Act 1994*

15—Amendment of section 76—Negotiation of enterprise agreement

This clause makes a consequential amendment to the *Fair Work Act 1994*.

Part 5—Amendment of *Guardianship and Administration Act 1993*

16—Amendment of section 3—Interpretation

This clause makes consequential amendments to section 3 of the principal Act, and inserts new terms used in the Act.

17—Amendment of section 5—Principles to be observed

This clause makes a consequential amendment.

18—Repeal of Part 3

This clause repeals Part 3 of the principal Act (relating to the appointment of enduring guardians). That role is instead to be dealt with by way of an advance care directive.

19—Amendment of section 28—Investigations by Public Advocate

This clause extends the operation of section 28 of the principal Act (dealing with investigations of certain matters by the Public Advocate) to include the affairs of a person whose advance care directive has been revoked by the Guardianship Board under the measure.

20—Amendment of section 29—Guardianship orders

This clause extends the operation of section 29 of the principal Act (dealing with when the Guardianship Board can make a guardianship order) to include where a person's advance care directive has been revoked by the Guardianship Board under the measure.

The clause also inserts new subsection (7) into section 29, requiring that the terms of a guardianship order should, as far as is reasonably practicable, be consistent with the terms of any relevant advance care directive.

21—Insertion of section 31A

This clause inserts new section 31A into the principal Act, which requires a guardian to find out whether the person for whom they are a guardian has given an advance care directive (including certain advance care directives that have been revoked), and then to take steps to give effect to any wishes or instructions it may contain, particularly in terms of avoiding unwanted outcomes.

22—Amendment of section 32—Special powers to place and detain certain persons

This clause amends section 32 of the principal Act to include persons who have given an advance care directive under which a substitute decision-maker has been appointed among the persons who can be placed and detained under the section.

23—Amendment of section 33—Applications under this Division

This clause makes a consequential amendment.

24—Amendment of section 37—Applications under this Division

This clause makes a consequential amendment.

25—Amendment of heading to Part 5

This clause makes a consequential amendment.

26—Repeal of sections 58, 59 and 60

This clause repeals sections 58, 59 and 60 of the principal Act, those sections having been moved to new Part 2A of the *Consent to Medical Treatment and Palliative Care Act 1995*.

27—Amendment of section 61—Prescribed treatment not to be carried out without Board's consent

This clause makes a consequential amendment.

28—Repeal of section 79

This clause makes a consequential amendment.

29—Repeal of Schedule

This clause makes a consequential amendment.

Part 6—Amendment of *Health and Community Services Complaints Act 2004*

30—Amendment of section 24—Who may complain

This clause makes a consequential amendment to the *Health and Community Services Complaints Act 2004*.

Part 7—Amendment of *Wills Act 1936*

31—Amendment of section 7—Will of person lacking testamentary capacity pursuant to permission of court

This clause makes a consequential amendment to the *Wills Act 1936*.

Part 8—Transitional provisions

32—Transitional provisions relating to anticipatory directions under *Consent to Medical Treatment and Palliative Care Act 1995*

This transitional provision converts, on the day clause 6 of Schedule 1 comes into operation, a current direction under section 7 of the *Consent to Medical Treatment and Palliative Care Act 1995* to an advance care directive of corresponding effect and given in accordance with this Act, and makes consequential and procedural provisions accordingly.

The provisions of this measure will then apply to the advance care directive.

33—Transitional provisions relating to medical agents under *Consent to Medical Treatment and Palliative Care Act 1995*

This transitional provision converts, on the day clause 7 of Schedule 1 comes into operation, a current appointment of a medical agent under section 8 of the *Consent to Medical Treatment and Palliative Care Act 1995* to an advance care directive of corresponding effect and given in accordance with this Act, and makes consequential and procedural provisions accordingly.

The provisions of this measure will then apply to the advance care directive.

34—Transitional provisions relating to other instruments continued under *Consent to Medical Treatment and Palliative Care Act 1995*

This transitional provision converts, on the day Part 2 of Schedule 1 comes into operation, a current direction or enduring power of attorney continued in force under Schedule 3 of the *Consent to Medical Treatment and Palliative Care Act 1995* to an advance care directive of corresponding effect and given in accordance with this Act, and makes consequential and procedural provisions accordingly.

The provisions of this measure will then apply to the advance care directive.

35—Transitional provisions relating to enduring guardians under *Guardianship and Administration Act 1993*

This transitional provision converts, on the day clause 18 of Schedule 1 comes into operation, a current appointment of an enduring guardian under section 25 of the *Guardianship and Administration Act 1993* to an advance care directive of corresponding effect and given in accordance with this Act, and makes consequential and procedural provisions accordingly.

The provisions of this measure will then apply to the advance care directive.

36—Only 1 advance care directive to be created

This transitional provision provides that, even if 2 or more of the preceding transitional provisions have work to do, only 1 advance care directive will be created, covering all of the relevant provisions.

37—Disputes

This transitional provision extends the operation of Part 7 of this measure dealing with dispute resolution to include disputes arising out of the operation of Schedule 1 of the measure.

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

**FIRST HOME OWNER GRANT (HOUSING GRANT REFORMS) AMENDMENT BILL**

The House of Assembly agreed to the amendments made by the Legislative Council without any amendment.

**CRIMINAL LAW (SENTENCING) (GUILTY PLEAS) AMENDMENT BILL**

The House of Assembly agreed to the amendments made by the Legislative Council without any amendment.

**JOINT PARLIAMENTARY SERVICE COMMITTEE**

The House of Assembly informs the Legislative Council that it has appointed Mr Goldsworthy as the alternate delegate to Mr Pengilly on the Joint Parliamentary Services Committee.

**SURVEILLANCE DEVICES BILL**

Adjourned debate on second reading.

(Continued from 13 November 2012.)

**The Hon. S.G. WADE (21:36):** I rise to speak on the Surveillance Devices Bill 2012 and I remind honourable members that I have a contingent notice of motion which cannot be put until tomorrow, so I will be seeking the council's concurrence with not taking a second reading vote today because I have not had the opportunity to move that contingent motion yet.

Since this bill has been introduced, there has been increasing community, industry and media concern of the impacts of the controls on the use of listening devices by individuals and the media. It is fair to say that the main concern has focused on what I call the consumer aspects of the bill being part 2 of the legislation.

It is part of a pattern of legislative activity by this government that progressively has made this state much more secretive. From suppression orders to surveillance devices, from secretive ICAC hearings to criminal intelligence, the lack of reform on whistleblower laws, this government has consistently and steadily moved to increase the powers of the state and simultaneously undermine the rights of individuals and their ability to protect their lawful interests. It is a concerning trend that has taken away rights, and checks and balances, without increasing accountability. Such an approach reduces public confidence in the justice system and a free society and undermines confidence that laws are being implemented fairly.

Again, I am concerned that the government has tried to sneak through laws that undermine the capacity of private citizens and the media to uncover corruption. The bill, as it stands, takes away the rights of individuals in protecting their lawful interests. Under it, you will not be allowed to record a conversation you are a party to without the consent of the other party. The only exception is if you are a victim of an offence in which case you may well not know until afterwards. The government is saying that to protect your interests you must first break the law.

The opposition is concerned that the bill may significantly restrict investigative journalism and be a major barrier to the work of private investigators. We have been told by media that this bill 'could undermine genuine public interest news and current affairs reporting'. I understand the government has received the same advice.

My office has been contacted by a number of consumers who cite examples of where they would not have been able to protect their lawful interests and gather required evidence if they had been banned from making recordings as this bill proposes. They have also raised the power imbalance between those organisations that control the immediate premises where the meeting takes place.

For example, if a customer of an insurer negotiates with them at the insurance company's premises, the insurer would be able to make a recording but not the client unless they had the insurer's permission. I have also been made aware of instances where a parent has been able to substantiate their version of events and meetings with Families SA as a result of a recording made. Without that right to make the recording, the outcome may have been quite different.

The bill also proposes significant changes that would limit the ability to collect data information without the express or implied consent of a person. We live in an information economy, as the Hon. Gerry Kandelaars so ably reminded us last sitting week. The exchange of information is increasing at greater speeds and volumes than ever before. The bill appears to criminalise even basic data collection, such as the use of cookies and anonymous user information on web pages. This technology is increasingly complex and deserves close scrutiny about the practical impact it will have. A preliminary look at the bill suggests that it may well criminalise common programs such as Google, Facebook and, indeed, many of the websites of members in this place.

There are recurring themes. The government has once again failed to consult anyone outside of its own departments. Had it done so it would have heard the kind of feedback that my office has received over the past few months and had the opportunity to make changes to the proposed laws before they were introduced. Instead, the government has left the job of detailed consideration and consultation to this parliament and in particular to this council.

I note that the Attorney-General rushed this legislation through the House of Assembly in three sitting days. I consider that the best way forward is to put the bill to a select committee so that proper consultation can be undertaken and enhancements to the legislation considered. I remind the government that if it had done its job in the first instance and consulted on the bill and taken feedback on board, we may well have had a much better bill presented to the parliament in the first place.

I would indicate that the opposition is broadly comfortable with other aspects of the bill. These include: cross border recognition of police surveillance operations and the improvement of processes for police to access surveillance equipment. I understand that there are honourable members who are considering amendments to those other parts and we look forward to considering them in due course.

The government had earlier raised the possibility of splitting the contentious parts of the bill from the non-contentious parts to expedite the passage of the areas that have broad agreement. The opposition indicated to the government that we were positive and open to that approach, however, we are yet to hear further on the government's intention in that regard. Here we are at the later stages of the second reading and we are still to hear what the government's intention is.

We are now at the point where the bill requires further consideration by the parliament before it progresses further. To ensure that the community is adequately consulted on the bill and that the government provides adequate time for parliamentary consideration, I propose that the bill be referred to a select committee of the Legislative Council at the end of the second reading stage. In particular, I consider that the impact of the bill on individuals protecting their lawful interests and the impact on investigative journalism should be given consideration by a select committee.

I urge honourable members to consider the motion, I am happy to discuss it with them, and seek their support to refer the bill to a select committee to ensure it gets the attention it deserves.

Debate adjourned on motion of Hon. K.J. Maher.

At 21:44 the council adjourned until Wednesday 28 November 2012 at 11:30.