LEGISLATIVE COUNCIL

Thursday 7 February 2013

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

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 the Status of Women, Minister for State/Local Government Relations) (14:18): I move:

That the sitting of the Legislative Council be not suspended during the continuation of 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 the Status of Women, Minister for State/Local Government Relations) (14:19): 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 Alternative Amendment No 1—

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

Clause 4, page 3, line 2 [clause 4(2), inserted definition of *graffiti implement*]—Delete the inserted definition of *graffiti implement* and substitute:

graffiti implement means—

(a) a can of spray paint, other than a can containing paint that—

(i) does not contain a pigment; and

(ii) is transparent when sprayed onto a surface; or

(b) an implement of a kind prescribed by the regulations;

and that the House of Assembly agrees thereto.

As to Amendments No 2, 3, 5, 6, 7 and 10—

That the Legislative Council no longer insist on its amendments

As to Alternative amendment No 4—

That the Legislative Council no longer insist on its alternative amendment

As to Amendment No 12—

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

New clause, page 7, after line 40—Insert:

14—Review by Legislative Review Committee

As soon as practicable after the expiration of 3 years from the commencement of this Act, the Legislative Review Committee must inquire into, consider and report to the Parliament on the operation and impact of this Act, including the effectiveness of sections 10A and 10B of the *Graffiti Control Act 2001* (as enacted by this Act) in reducing offending for prescribed graffiti offences (within the meaning of those sections).

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.

The Hon. S.G. WADE: I intend to speak briefly because I imagine all members of the house are glad that the disagreement between the houses has been able to be resolved. Through the agreement, the Legislative Review Committee will conduct a review so that parliament will have the opportunity to ensure that this legislation is working when it is reviewed in three years' time.

Also, the role of the parliament is protected by the current legislation, retailer list of spray cans being kept in the act and any further additions being by regulation. We support the compromise between the houses.

Motion carried.

WATER PRICING

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (14:23): I table a copy of a ministerial statement relating to water pricing made earlier today in another place by my colleague the Premier Jay Weatherill.

HEALTH DEPARTMENT

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:23): I table a copy of a ministerial statement relating to changes to the Department of Health and Ageing made earlier today in another place by the Minister for Health and Ageing.

CHINA TRADE LINKS

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:25): I seek leave to make a personal explanation.

Leave granted.

The Hon. D.W. RIDGWAY: I have been seriously misrepresented. Yesterday I asked a question of the Minister for Regional Development, the Hon. Gail Gago, about cuts to PIRSA amounting to 400 jobs and around $80 million. In her reply the minister discussed a food and wine project in China. The minister said:

> ...puts out a media release that bags this project—in writing, in public—bags a project in which we are still in negotiation, a project that is still under negotiation. He is so irresponsible that he puts out a media release that bags this really important project that has critical opportunities for the state.

At no time did I issue any media release bagging the project. I did not bag the project—and nowhere in the release did I bag the project. I table the media release to which the minister refers.

The Hon. G.E. Gago interjecting:

The Hon. D.W. RIDGWAY: I have had no phone calls at all and I request that the minister withdraw her statement to this place.

QUESTION TIME

WATER PRICING

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:26): I seek leave to make a brief explanation before asking the Minister for Water and the River Murray a question about water prices.

Leave granted.

The Hon. D.W. RIDGWAY: South Australians are paying more for their water than at any other time in history. In part this is because the Labor government built a large desalination plant that the state cannot afford and now does not need. Today the Essential Services Commission recommended a 3 per cent reduction in the price of water. The commission's draft determination of SA Water's water and sewerage revenues, released today, says that the commission expects a significant overall reduction in the value of the regulated asset base, that is, the value of SA Water's assets will be required to implement its revenue caps.

Yesterday in another place the Premier and Treasurer told the parliament that the government had no plans to write down the value of those regulated assets. My questions to the minister are:

1. How can the price of water be reduced without reducing the value of those assets?
2. Will SA Water be instructed to reduce operating costs or to cut staff?

3. Given that Kevin Rudd last night told people, asking about his possible challenge to Julia Gillard, to take a cold shower, and given that an average shower takes 150 litres of water, does the minister expect people not to take Kevin Rudd's advice?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:28): I thank the leader for his most important question. In his preface to the question he talked about having a desalination plant that we cannot afford. The fact is that we cannot afford not to have the desalination plant. Where is his memory? A few short years ago we were under the most stringent of water restrictions that we have experienced here for many years.

The Hon. D.W. Ridgway interjecting:

The Hon. I.K. HUNTER: It was even your policy to have a desalination plant. When we maximised the investment and got federal government contributions for the other additional aspect of the desalination plant, you should have been standing up on your feet applauding us. We will come, in the not too distant future, to be very appreciative of this government's decision to have that desalination plant online. The honourable member asked questions about the assets.

The Hon. J.S.L. Dawkins: It's offline.

The Hon. I.K. HUNTER: It is not offline at all. If the honourable member who interjected knew anything about the desal plant he would know that he had been drinking desal water for the last several months.

The Hon. G.E. Gago: They haven't got a clue, Ian. They just make it up.

The Hon. I.K. HUNTER: Presumably he drinks water elsewhere. They do; they just make it up. With any question they ask you have to check the facts because they just do not know. The honourable member in his preface to the question talked about assets. I can appreciate that he does not understand how the situation works because in the last 15 days it took me a little bit to get across the difference between the asset base, owned by SA Water, and the regulated asset base, which is another beast entirely.

The regulated asset base is a construct which you create when you are taking a property into a certain deregulated market. It has nothing to do, essentially, with the asset base of SA Water: it is how you construct the transition process through to the pricing mechanism. The regulated process, and it is exactly the same process, I am advised—it was undertaken in other states—to establish a regulated asset base for the regulation process—not for the valuation of SA Water but for the regulation process. I suggest that the honourable member might go away for the next week, read up on that and come back and ask an intelligent question in a fortnight's time.

Members interjecting:

The PRESIDENT: Finished? Just relax; we have 55 minutes of this to go. The Hon. Ms Lensink.

ROYAL SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

The Hon. J.M.A. LENSINK (14:31): I seek leave to make a brief explanation before asking the Minister for Sustainability, Environment and Conservation a question in relation to the RSPCA investigation into Brinkworth.

Leave granted.

The Hon. J.M.A. LENSINK: As avid readers of *Hansard* would know, this is an issue that has occupied the mind of a number of members. In a question on notice of 22 June 2010, I asked the then minister for environment and conservation about the investigation and whether the findings of the Solicitor-General's review would be released publicly. The reply of 7 April 2011 was as follows:

1. It is anticipated that the Solicitor General's review will be completed in May 2011.

2. A summary of the findings of the review will be publicly available.

That has not occurred. The RSPCA has certainly conveyed to me that it would welcome the public release of the report. Applications under freedom of information have been refused by the government. Can the minister explain when this review will be made publicly available and why it will have taken so long to release?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:32): I thank the honourable member for her most important question. I can say to the house that I have asked my department for a briefing on this matter. Once I have had that briefing and considered the material, I will be in a position to make a decision.

RIVER MURRAY ECO ACTION

The Hon. S.G. WADE (14:33): I seek leave to make a brief explanation before asking the Minister for Water and the River Murray a question relating to the River Murray ECO Action group.

The Hon. D.W. Ridgway interjecting:

The PRESIDENT: I'm sorry, Mr Wade.

The Hon. S.G. WADE: Thank you, Mr President.

The PRESIDENT: I am sorry, Mr Wade; leave has not been granted yet. I cannot hear you over the din of the Leader of the Opposition's wild and non-funny interjections.

The Hon. S.G. WADE: I seek leave to make a brief explanation before asking the Minister for Water and the River Murray a question relating to the River Murray ECO Action group.

Leave granted.

The Hon. S.G. WADE: On 9 January 2013, it was reported that boat use would be restricted at 28 sites along the River Murray under a government-sponsored plan to reduce riverbank erosion. The plan is said to be part of the River Murray ECO Action group's campaign and a joint initiative of the Boating Industry Association of South Australia, Keep South Australia Beautiful and the South Australian government. At the time, the acting environment minister, the Hon. Patrick Conlon, commented that the government welcomed the initiative to reduce damage to the Murray. He is quoted as saying:

> It highlights what boat owners can do to help minimise structural damage to the fragile riverbanks along the River Murray.

The plan has caused considerable concern in riverside communities. I understand that representatives from the River Murray ECO Action group have been unable to provide indepth information regarding the initiative. My questions are:

1. Will the minister explain the organisational make-up and purpose of the River Murray ECO Action group and what part the South Australian government plays in the work of that group?

2. Is the River Murray ECO Action group a name for a previous group focused on River Murray issues named the high energy working group?

3. Will the minister clarify why this action group was created and what selection criteria was used to choose its membership?

4. Will the minister indicate who this working group reports to, its scope and what time lines have been specified for its recommendations?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:34): Riverbank collapse was declared a state hazard under the State Emergency Management Plan in September 2009, following a series of significant and hazardous landslides along the banks of the River Murray downstream of Lock 1. The Department of Environment, Water and Natural Resources is the riverbank collapse hazard leader under the South Australian Emergency Management Plan.

Despite the recovery of water levels downstream of Lock 1, riverbank instability remains a significant hazard at sites affected during the period of unprecedented low water levels. Some affected areas will remain at risk into the foreseeable future. Where riverbanks are already damaged and showing signs of tension and cracking, there is no natural process whereby they will fully self-repair to their original condition. As I understand it, there has been no loss of life or personal injury to date. However, notable damage continues to affect property and infrastructure.

The current focus of the Riverbank Collapse Hazard Program is to identify a strategic long-term management approach to guide future management of the hazard, whilst continuing to offer

advice to landowners and providing important safety information to the public. Site-specific management plans are being developed and implemented to assist in clearly identifying the management options for each site affected by riverbank collapse.

In recent months, completion of a comprehensive site risk management plan has enabled four sites to be reopened for public access and they have significantly benefited their local communities. I understand these are at Caloote, the landing boat ramp and riverfront area; the closed section of Mannum caravan park; a large section of Dickson Reserve at Tailem Bend, which is the main publicly accessible riverfront area in that township; and the Walker Flat river vessel waste disposal station, which was reopened to the public in December 2012 following recommendations from a geotechnical investigation.

My department will continue to work with local communities and local councils on this hazard and will be involving local communities along the way in discussions about how we can remediate the riverbank and as best we can ensure that there is no further damage into the future.

RIVER MURRAY ECO ACTION

The Hon. S.G. WADE (14:36): I have a supplementary question. Given the minister's advice in relation to riverbank collapse, and considering my question related to the River Murray ECO Action group, could the minister explain what role the River Murray ECO Action group has in tackling the problem of riverbank collapse and what else the group exists for?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:37): Mr President, I have nothing further to say at this stage after that answer.

The Hon. S.G. Wade: You've got no answer.

The Hon. I.K. HUNTER: That is the answer you are getting.

WOMEN IN LEADERSHIP

The Hon. K.J. MAHER (14:37): I seek leave to make a brief explanation before asking the Minister for the Status of Women a question about women's leadership governance training scholarships.

Leave granted.

The Hon. K.J. MAHER: I will get on with the question, but I understand that the other side is in try-out season before the reshuffle tomorrow. Vickie is looking at taking back attorney-general, so I know people are very worried over the other side.

The PRESIDENT: The Hon. Mr Maher will get to his brief explanation.

Members interjecting:

The Hon. K.J. MAHER: And leadership questions. All but one has a portfolio at the moment, Mr President, and that looks likely to change.

Members interjecting:

The PRESIDENT: Order!

The Hon. K.J. MAHER: Women in Australia continue to be underrepresented in positions of leadership.

Members interjecting:

The PRESIDENT: The Hon. Mr Maher, can you start again, please? The Hon. Mr Maher, give us your brief explanation, please.

The Hon. K.J. MAHER: Thank you, Mr President. Women in Australia continue to be underrepresented in positions of leadership. This was highlighted recently by the Australian Bureau of Statistics' release of gender indicators, which brings together a variety of ABS and non-ABS data. Can the minister please tell the chamber about the recent initiative to help women gain leadership positions?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (14:38): While South Australia is the best performing state

for women on government boards and committees, the proportion of women on the 200 ASX companies remains low and is currently a meagre 15.4 per cent. I am sure all members would agree that there are many qualified and very talented and experienced women with the ability to positively contribute to the governance of organisations. However, it is often the case that they have very limited opportunity to develop themselves and then to be considered for more senior and leadership positions.

I am therefore absolutely delighted to advise that the Premier and I are offering scholarships for women to attend governance training with the Australian Institute of Company Directors. The Australian Institute of Company Directors is an internationally-recognised, member-based, not-for-profit organisation for directors. Its principal activities include education, conducting professional development programs and events for boards and directors; producing publications on director and governance issues, and developing and promoting policies on issues of interest to directors.

Twenty-five women will be given the opportunity to increase their knowledge of governance issues through the completion of the Foundations of Directorship—Governance for the New Directors course which will be fully funded. The Office for Women is currently developing the scholarship criteria; however, preference will be given to women living in regional areas, Aboriginal women, women from culturally and linguistically diverse backgrounds and women with a disability. This training will enable the scholarship winners to feel more confident in their knowledge of governance and board operations and it is my hope that it will pave the way for greater participation of women on boards.

As women represent half of the talent pool, it is clear that they should have equal representation at the forefront of business, not just out of a sense of fairness but to ensure that the very best minds are brought together to address the issues that business and society face. Further, research tell us that organisations that have women on their boards and in senior decision-making positions will generally deliver better outcomes. I am advised that the US-based Glass Ceiling Research Centre tracked the number of women in high-ranking positions at 215 of the Fortune 500 companies over 18 years and found a strong correlation between a company's profits and the number of senior female executives in its ranks. I am advised that companies with the highest percentage of female executives delivered earnings far in excess of the other larger firms in their industries.

I would also like to mention that I was very pleased to host a women's networking event last night where the Premier announced the new scholarships. It was inspiring being in the same room with so many successful women, who were leaders in their various fields. I want to put on the record my thanks to Kate Gould, a member of the PLUS network group and co-chair of the Premier's Council for Women, for working with me to host this event.

PLUS is a wonderful network of very senior women who use the network to develop professional networks to exchange information and also for personal development. It is a wonderful, inclusive organisation and I certainly congratulate them on that fabulous network. I want to acknowledge the founders of PLUS, Loretta Reynolds, Jacquie Colwell, Rachel Rees and Julianne Parkinson, and also thank Julianne and Amanda Rischbieth for their ongoing work in organising events like the one that we hosted last night.

I would also like to acknowledge the ongoing commitment of the Premier, the Hon. Jay Weatherill, to advancing the role of women in South Australia.

NATIVE ANIMAL CULLING

The Hon. M. PARNELL (14:43): I seek leave to make a brief explanation before asking a question of the Minister for Sustainability, Environment and Conservation about the culling of native animals.

Leave granted.

The Hon. M. PARNELL: In response to a freedom of information request, the Department of Environment, Water and Natural Resources has released to me information on permits to cull native animals over the last two years and the numbers are deeply disturbing: over 100,000 animals in just two years; 44,778 animals in 2010-11 up to 56,499 in the year 2011-12.

The FOI response reveals that permits to destroy wildlife were issued for 12,181 animals listed as 'rare' by the state government and even two species listed as 'vulnerable': the yellow-tailed black cockatoo and tammar wallaby were allowed to be killed. The most popular species to

be destroyed were the western grey kangaroo with over 35,000 permits, followed by the tammar wallaby with 17,575 and the brush-tailed possum with 10,446, despite it also being listed as rare because of habitat destruction. Other species to be killed were the Cape Barren Goose, 385, the eastern grey kangaroo, 1,320, and the little egret, 30. Reasons given for culling include 'loss of amenity', 'spreading rubbish' and 'fouling playing fields and swimming pools'.

The lack of transparency around destruction permits for native wildlife, especially when they are in relation to rare and vulnerable species, is of serious concern to many in the community. This is especially so as these statistics are just the number of formal permits issued and do not include native animals killed without permits. Many people are saying that the public should not have to chase this information under freedom of information. My questions of the minister are:

1. As the new minister for conservation, are you concerned about the number of permits being granted by the Department of Environment, Water and Natural Resources for the culling of native animals?

2. Will you commit to reviewing the government's Living with Wildlife policy to ensure that culling permits are only granted as a last resort and only after all other non-lethal options have been exhausted?

3. Will you commit to removing the cloak of secrecy around these permits by tabling destruction permits in parliament, or at the very least publishing them on the Department of Environment, Water and Natural Resources website?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:45): I thank the honourable member for his most important questions. The Department of Environment, Water and Natural Resources administers the National Parks and Wildlife Act 1972, which regulates the management of wildlife. Under section 53(1)(c) of the National Parks and Wildlife Act a permit may be granted to a person that allows the destruction or removal of animals that are causing, or are likely to cause, damage to the environment or to crops, stock or other property.

The department encourages a 'living with wildlife' approach to managing interactions between wildlife and people. This approach promotes positive attitudes towards wildlife, encourages wildlife conservation and considers the welfare of all animals. It focuses on reducing negative impacts caused by wildlife through using humane and non-lethal methods. The department also provides advice about appropriate ways to reduce the impacts of wildlife on human activities, and takes into account the underlying causes of these impacts, such as urbanisation, land clearance, changed land use and development activities.

A decision to grant a permit to destroy wildlife takes account of the ecological, economic, social and animal welfare principles that are involved. A permit is only granted once a range of non-lethal options have been tried first, unless there is an overriding public safety issue, such as wombat burrows undermining railway lines, for example. All destruction of wildlife must comply with the relevant code of practice and conditions of permit.

In the 2010-11 financial year, the department issued 614 permits for the destruction of wildlife. In 2011-12, the department issued 775 permits. This increase is most likely attributed to the increase in animal populations associated with three years of good rainfall. For example, kangaroos, I am advised, are opportunistic breeders that can increase their numbers quickly when there is food and water available. With good crops, birds that feed on grain or fruit, such as corellas and lorikeets, increase in number and this can lead to an increase in some of the negative impacts on agriculture, amenity and businesses.

So, although the species covered under destruction permits are generally common or abundant, in certain circumstances it is necessary to issue a permit for a species that is rare or vulnerable. This decision is not made lightly and permit conditions such as numbers, timing or technique are set to protect the conservation status of the species. A permit system is necessary to ensure that problem birds or animals are not being removed unnecessarily or in unsustainable numbers. It also makes people accountable for the number of animals they destroy and encourages them to work with their local natural resources centre to first try non-lethal control methods.

NATIVE ANIMAL CULLING

The Hon. M. PARNELL (14:48): Will the minister commit to publishing the permits so the public can judge whether the permits are issued as a last resort?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:48): That is not something that I have considered. I will take some advice on that before I make a decision.

WORLD WETLANDS DAY

The Hon. R.P. WORTLEY (14:49): My question is to the Minister for Sustainability, Environment and Conservation. Can the minister inform us about the importance of World Wetlands Day and the community science forum held at Signal Point to mark the day?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:49): I thank the honourable member for his very important question. World Wetlands Day is celebrated each year to mark the signing of the Convention on Wetlands of International Importance in Ramsar.

The theme for World Wetlands Day 2013 was 'Wetlands take care of water'. Healthy wetlands provide important hydrological functions, such as flood alleviation, improving the quality of water and groundwater recharge. The ongoing health of wetlands depends on not only the quantity and quality of water that reaches them but also how effectively they are managed.

Several events were held in South Australia to celebrate World Wetlands Day 2013. I was pleased to attend one of these events, a community science forum, on Friday 1 February at Signal Point at Goolwa. This event was organised by a number of people and groups in the region, and it was a great opportunity for community members to receive more information about the science, monitoring and research currently occurring in the Coorong, Lower Lakes and Murray Mouth region.

The region itself was listed as a wetlands of international importance under the convention in 1985, one of only 66 across Australia. Covering an area of 142,500 hectares, the Coorong, Lower Lakes and Murray Mouth region has a diverse range of fresh water, estuarine and marine habitats. The many diverse plants and animals found in this region are unique to this region, rarely found in other parts of the world. It continues to be a significant habitat for many internationally migrating birds.

The region also provides habitat for a number of threatened species, such as the hooded plover, the orange-bellied parrot, the Mount Lofty Ranges southern emu-wren, the Murray cod, the southern bell frog and the southern pygmy perch.

The wetland itself forms at the terminus of the Murray-Darling River, incorporating 23 different types of wetlands which range from freshwater to hypersaline, dense vegetation to open water and temporary to permanently inundated land.

The community science forum included presentations and discussions with representatives from a number of organisations, including the Department of Environment, Water and Natural Resources, the EPA, the CSIRO, the Ngarrindjeri Regional Authority, SARDI and Flinders and Adelaide universities.

Other groups that play an important role in the wellbeing of this site include the Goolwa to Wellington Local Action Planning Association, the Community Advisory Panel and the Scientific Advisory Group. Their ongoing commitment and involvement ensures that this region has a sustainable and resilient future.

Just a few short years ago—and anyone who travels regularly to the area knows of the drought conditions and plunging water levels—the resilience of the community and the local economy was tested in many ways, just as much as the environment. Fortunately, significant investment from the commonwealth and state governments, along with the development of strong partnerships with the Ngarrindjeri people and other communities, has seen a significant recovery underway. There is no doubt the region has a bright future, but there is still much more to be done.

The biggest delivery to date of environmental water to South Australia is currently underway. Through the Living Murray program, more than 245 billion litres of environmental water

from the Goulburn and Murrumbidgee systems is being released during the summer months to provide environmental benefits to the River Murray channel and the Coorong, Lower Lakes and Murray Mouth.

South Australia has secured a further 300 billion litres of environmental water from the commonwealth water holder, which was delivered during December as a 'pulse' to promote spawning of golden perch and other native fish species. This water will help to improve conditions for native fish and river vegetation, and it will help to reduce nutrient and salinity concentrations. Environmental flows are delivering benefits for other organisms in the food chain, such as worms, insects, bivalves and aquatic plant life.

The United Nations has named 2013 the International Year for Water Cooperation, and cooperation is at the heart of the Murray-Darling Basin plan, between governments, communities and the divergent interests of river users. The Labor government, with the strong backing of the South Australian community, is very proud to have secured 3,200 billion litres of water for the river every year under the plan. This water will help to ensure that the river, lakes and Coorong system will continue to function as a sustainable wetland.

Other events held to mark World Wetlands Day here in South Australia included a Family Fun Day at Clayton, a take care of water display at the McCormick Centre in Renmark and a tour of the Greenfields Wetlands site at Mawson Lakes. I am looking forward to getting out to these communities in the near future to see what they are doing for our river systems and waterways. The state government remains committed to protecting and sustaining our unique and fragile habitats for the benefit and enjoyment of communities now and into the future.

CATFISH BANS

The Hon. D.G.E. HOOD (14:54): I seek leave to make a brief explanation before asking the Minister for Fisheries a question regarding catfish bans on the River Murray.

Leave granted.

The Hon. D.G.E. HOOD: Freshwater catfish in the River Murray fishery have been a protected species since the early 1990s; however, that was in conjunction with very low numbers at the time, and there has since been a bag limit of just one per day in place. Recent improved river conditions have resulted in a resurgence in fish stock numbers, including catfish, according to local anglers, with catches of as many as 50 or 60 a weekend being reported in some cases.

Recreational fishermen have identified that they would be more than happy to report their catch numbers, in coordination with PIRSA, with an increase in the bag limit if that were approved. The Murray-Mallee Local Government Association wants a catfish season for the River Murray to improve tourist activity in the region. Some commentators suggest that people are going interstate to catch catfish upstream, where the bag limits are more relaxed than is presently the case here in South Australia. My questions to the minister are:

1. Has the government reached a deadlock with the Murray-Mallee LGA on who will fund a study on the merits of lifting catfish restrictions, as has been reported amongst media outlets?

2. If so, what amount of money is involved and how much of it is on offer?

3. Is the minister able to commit to making a decision on the matter within the next 28 days or so in order to provide certainty for the region?

4. Has the minister or the department ever looked at developing a phone application for smartphones for reporting catch numbers for monitoring purposes (which would certainly make it easier and more timely than it currently is)?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (14:56): I thank the honourable member for his most important questions. The sustainability of our fisheries is an incredibly important economic as well as environmental issue, and South Australia can be very proud of the fact that we have one of the best-managed fisheries in the nation. This is due to the good leadership and good technical support and expertise within PIRSA.

A number of different measures are used to assist in the sustainability of our fisheries, including bag limits. It is obvious that we do not make changes to these measures without very

well-substantiated evidence. In terms of the bag limits for catfish, I am very happy to have a look at that. I am not too sure where that is up to at the moment, but I am more than happy to look at what work has been done and what the result of that has been, and whether there is any prospect of changing bag limits. I cannot commit to 28 days because I am not sure how complex it is and how much material is available, but I will certainly commit to expedite that.

Regarding the issue of a smartphone app, I think it is an excellent idea. I will have a look at that and see whether or not we can use that to report. I will take these questions on notice and will be happy to bring back a response as soon as I am able.

WATARRU COMMUNITY

The Hon. T.J. STEPHENS (14:58): I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation questions about the future of the Watarru community.

Leave granted.

The Hon. T.J. STEPHENS: The Watarru community was established in the 1980s and is one of the most remote in South Australia, located in the Great Victoria Desert in the north-west of the state. Millions of dollars worth of infrastructure has been spent on the community since its establishment. I have been advised that more recently the community store and transaction centre have both been closed, and that school attendance is close to zero. My questions to the minister are:

1. What is the status of the local school: is it open, is it staffed? If so, how many students are enrolled and how many, if any, are attending?

2. What is the current level of government expenditure in Watarru?

3. Has the $300,000 market garden failed completely?

4. Will the government continue to support this community?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:59): I thank the honourable member for his most important questions. This government has a strong commitment to the APY lands. As of 22 January this year, I am advised that there were only four residents residing in two houses at Watarru. The small size of the community and its remoteness present significant challenges, of course, for service delivery. I am advised that the school was closed in September 2012 due to low enrolments and attendance. Students who were previously going to Watarru, I am advised, are now attending school at either Pipalyatjatjara or Fregon. The store closed due to management issues and the clinic also closed due to an incident that led to the withdrawal of the service.

The community garden, I am advised, is operating. However, the garden beds have been left to lie fallow over the hot summer months but I understand that residents have been very appreciative of the gardens and the educative value they provide to them, and I am advised that the orchard is being hand-watered on a weekly basis with the assistance of a portable generator. I will continue to monitor the challenges facing Watarru and will ensure that government action is taken in the best interests of community members on the APY lands.

WATARRU COMMUNITY

The Hon. T.A. FRANKS (15:00): I have a supplementary question. Given that the gardens are apparently educating the community of some two households, can the minister inquire as to whether there is any education about the plant life in those gardens and why those who were tending the gardens could not even name which plants they were—particularly the chard?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (15:00): I could not name what chard is either.

EYRE PENINSULA GRAIN GROWERS RAIL FUND

The Hon. G.A. KANDELAARS (15:01): I seek leave to make a brief explanation before asking the Minister for Agriculture a question about grain growers on Eyre Peninsula.

Leave granted.

The Hon. G.A. KANDELAARS: Eyre Peninsula has a strong reputation as a producer of high-quality grain and the development of the grain industry there has, in turn, shaped the population and infrastructure on the peninsula. Minister, how can Eyre Peninsula grain growers help guide the future development of their region?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (15:01): I thank the honourable member for his excellent question.

Members interjecting:

The Hon. G.E. GAGO: In fact, grain growers on Eyre Peninsula—

Members interjecting:

The PRESIDENT: They would think that it was comedy hour instead of question time. Let's come to order. Minister for Agriculture, Food and Fisheries.

The Hon. G.E. GAGO: They are all very excited about the prospect of keeping their shadow portfolios, Mr President. You can see they are all very nervous—

The PRESIDENT: They are nervous.

The Hon. G.E. GAGO: They are all very nervous, Mr President—

The PRESIDENT: Minister!

The Hon. G.E. GAGO: —and they should be nervous, too, considering today's performance in this place.

The PRESIDENT: Minister—Eyre Peninsula and grain.

The Hon. G.E. GAGO: Yes, thank you for your assistance, Mr President; I was distracted. Eyre Peninsula grain growers have a history of directing funds to improve their economic infrastructure. Members may not recall but in 2006 the Primary Industry Funding Scheme Regulation was gazetted at the request of Eyre Peninsula growers to raise $2 million (net of costs and refunds) to contribute to a joint industry and government logistics upgrade program at a total cost of around $43 million. The work included rail upgrades, road improvements and updating of various grain loading facilities.

Once the goal of the fund and the target sum were reached, the contribution rate was set at zero, and that was in August 2011, I am advised. During the first two years the fund operated, drought conditions meant that the amount raised was much lower than expected and then, due to a better than average crop in the last of year of operation of the fund, more moneys were received than anticipated. As a result of that good season there is now a small surplus. While the final amount has not been determined, I am advised that the surplus is currently around $230,000 which is going to be made available.

Honourable members can rest assured that these funds will not be wasted. I now want grain growers who contributed to the fund to help decide how best to use the balance remaining to further improve their economic infrastructure. Using a quick online survey, which sets out some options, growers can ensure that their contributions help to make it safer and easier to move grain on Eyre Peninsula.

In addition to the $2 million contribution from grain growers, funding for the original $43 million grain infrastructure upgrade included an investment of $15 million from the Australian government towards upgrading the rail; $10 million from the state government comprising road ($8 million) and rail ($2 million) improvements; $11 million from the rail operator, ASR, for the rail upgrade; $3.5 million from ABB Grain (now Glencore) on rail outloading facilities; and $2 million from local government to upgrade strategic roads. We can see it was a joint effort.

The South Australian grains industry generates up to $3.9 billion in revenue from commodity and processed products, with around 80 per cent of our grain exported around the world. South Australia's grain exemplifies one of the Weatherill government's key priorities, that is, premium food and wine from our clean environment. It is in demand overseas and our grain is well renowned for its premium qualities.

We would like all Eyre Peninsula grain growers to complete the survey (I am told it takes less than two minutes to complete). In addition to providing some options, the survey enables

growers to put forward their own suggestions. EP grain growers have until 1 March this year to participate in the survey and I certainly encourage all those growing grain on Eyre Peninsula to get online and make known their views.

FAMILIES SA

The Hon. A. BRESSINGTON (15:07): I seek leave to ask the minister representing the Minister for Education and Child Development a question about Families SA.

Leave granted.

The Hon. A. BRESSINGTON: I was made aware of a situation where a young girl alleged interference by an adult whilst she was under the care of the minister. It was actually the son of a foster carer who sexually abused her at the age of 12. As a result, this young girl had two children to this person before she was aged 15 years. This young girl made numerous complaints and admissions to workers of Families SA. She ran away from the home and was placed back with the home after the birth of her second child and the abuse continued.

I have contacted the police. This young girl was seeking a DNA test to prove that this person was the father of her children so that she could press charges for sexual abuse. After speaking with her and contacting the police, we received a phone call from the police on 3 January, after following this through since November last year, saying that this matter was being made a ministerial matter.

I wrote to the police and asked why this was not being pursued as a criminal investigation for child sexual abuse and received no letter. I was told that I would be receiving a letter from the minister's office, which has not arrived as yet. My questions to the minister are:

1. In what cases would serious criminal allegations of sexual abuse about a child not be investigated by the police but rather made a matter for the minister?

2. When allegations are made to Families SA workers, what processes and protocols are suppose to be followed to ensure that the perpetrator is investigated and taken to trial if charged?

3. Medical staff are mandatorily required to report such occurrences: what disciplinary action do they face if they do not make a mandatory report, given that a 12-year old girl has given birth to a child while under the care of the minister?

4. Is it possible for a matter to be investigated by the police with ministerial oversight and, if so, why?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (15:09): I thank the honourable member for her most important questions. I undertake to take the questions on a matter relating to Families SA to the minister in the other place and seek a response on her behalf.

WORKCOVER

The Hon. R.I. LUCAS (15:10): I seek leave to make an explanation before asking the minister representing the minister for WorkCover on the subject of WorkCover.

Leave granted.

The Hon. R.I. LUCAS: On 4 September last year, the Auditor-General wrote to WorkCover raising a number of issues in relation to the audit; in particular, I quote from attachment F of that letter. It states:

> Internal audits are not providing...assurance that controls are operating effectively throughout the year to enforce each requirement of the WRCA. Not projecting the value of detected errors across the whole scheme to estimate the value of undetected errors reduces the quantitative data needed by senior management to make decisions about whether controls or processes need changing. Not communicating the quarterly results of EML's quality assurance audit to WorkCover's Board Audit and Risk Committee may delay intervention by WorkCover to remedy ongoing issues.

Amongst a series of recommendations, the Auditor-General recommended as follows: that quarterly results of EML's quality assurance audits should be passed on to and monitored by WorkCover's Board Audit and Risk Committee to ensure EML are adequately addressing any issues.

On 25 September last year, WorkCover responded to the Auditor-General's recommendations and, in part, said:

> WorkCover does not agree that claims agent quality assurance audits should be passed to the Board Audit and Risk Committee quarterly, however, agrees that such results should be discussed at executive management team meetings on a quarterly basis to ensure actions are appropriate to the audit findings.

It is clear that WorkCover has snubbed its nose at the Auditor-General's recommendations, and it is clear that WorkCover management is intent on the WorkCover board not being appraised on a regular basis about the risks that have been identified by the Auditor-General in relation to the issues the Auditor-General has raised. My questions to the minister are:

1. Has this issue been raised with the minister and what was the minister's response?

2. Does the minister support WorkCover's refusal to agree to and implement the recommendation of the Auditor-General on this issue?

3. If the minister does not support the Auditor-General's recommendation and therefore supports WorkCover's position, can he give his reasons why he disagrees with the Auditor-General?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (15:12): I thank the member for his questions. I will refer them to the minister responsible for WorkCover in another place and bring back a response.

CONSERVATION PARKS

The Hon. CARMEL ZOLLO (15:13): My question is to the Minister for Sustainability, Environment and Conservation. Will the minister inform the chamber about the new management plans for the Ediacara and Bimbowrie outback parks?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (15:13): I thank the honourable member for her most important question. I am pleased to advise that the future of two important outback parks, the Ediacara Conservation Park and the Bimbowrie Conservation Park, are now much more secure thanks to the efforts of local landholders, traditional owners and, of course, the Jay Weatherill government.

As a result of consultation with all stakeholders and cooperation between these parties, new management plans have been put in place for both of these parks. Due to their remote location, these parks attract few visitors, but in terms of scientific and ecological value and cultural value to the local Adnyamathanha people, they rank particularly high. In the case of Bimbowrie, there is also significant post-settlement South Australian history on display.

In the case of the Ediacara Conservation Park, it is internationally renowned for its fossil collection. Indeed, I am told that, for palaeontologists, it is a veritable gold mine. Indeed, I think that my leader, the Hon. Gail Gago, spoke of this at great length many years ago in this place, and I was highly excited at the time at the idea of the fossils, and I mentioned with some banter across the chamber about fossils on the other side. I note that two of them are gone, but one is still here, a fossil named Lucasaria has been here for year after year after year and looks like maybe, sir, even outlasting you and me. I commend that bit of *Hansard* to members who were not there at the time; it was very entertaining reading.

North-west of Leigh Creek, Ediacara contains fossils displaying some of the earliest known multicellular organisms. The discovery of these fossils has been so illuminating in the quest to discover the origins of life on earth that in 2004 a new geological period was named and dated as the Ediacaran period. This was as a result, of course, of the great South Australian geologist Dr Reg Sprigg and his work in locating them back in 1946. Of course, their value was not realised at that particular point in time, but as people came to be aware of these fossils, their international renown grew.

For anyone who has not heard of Dr Sprigg AO, I can advise his story is one of great interest to anyone passionate about science or indeed the state of South Australia. He was the secretary of the Australian Association of Scientific Workers for some time—he was a good trade unionist—where he represented those employed in the scientific fields with great passion and commitment.

Now thanks to this partnership between the state government and the Adnyamathanha people, further palaeontological work can continue at Ediacara whilst Aboriginal cultural values and the park's plants, animals and fossils are all protected. Bimbowrie Conservation Park, north of the Barrier Highway, covers some 72,000 hectares and is known for its arid-zone habitats. It holds special significance for the local Aboriginal people and is also home to several historic buildings, such as the Antro Woolshed and many relics associated with Cobb & Co coaches.

One aspect of the management plan for Bimbowrie was continuation of a coordinated fox and rabbit management program which is supported and assisted by the park's neighbouring landholders. I want to remind members that this state of ours has plenty of cultural importance and scientific value, even in some of our most remote locations, and those sites need to be protected into the future.

INDIGENOUS OFFENDERS

The Hon. T.A. FRANKS (15:16): I seek leave to make a brief explanation before directing a question to the Minister for Aboriginal Affairs and Reconciliation on the topic of justice reinvestment.

Leave granted.

The Hon. T.A. FRANKS: Across the nation, Indigenous Australians are 14.3 times more likely to be in prison than other Australians. As of June 2011, in South Australia Aboriginal people were in fact 16.7 times more likely to be in prison than other South Australians. It is a shameful figure across the nation and the SA record is even more dismal. The ABS figures indicate that in 2011 in South Australia, Aboriginal people in fact made up less than 2 per cent of our population as a state but almost 24 per cent of all prisoners—and that number is rising.

On a more positive note, I draw the minister's attention to the landmark report released this week, 'An economic analysis for Aboriginal and Torres Strait Islander offenders: prison versus residential treatment' which was launched in the federal parliament. It showed that $111,000 can be saved per year, per offender by diverting non-violent Indigenous offenders with substance use problems into treatment instead of prison.

The report, which was produced by Deloitte Access Economics, also revealed that a further $92,000 per offender in the long term would be saved due to lower mortality and better health related and other quality of life outcomes. That report simply says justice reinvestment, investment in rehabilitation residential facilities, will in fact keep people out of prison. My questions to the minister are:

1. Has the minister read the report?

2. Will he undertake to read the report if not?

3. Will he then indicate to this council whether he is committed to a strategy of justice reinvestment, specifically ensuring that we have Aboriginal rehab beds for drug and alcohol in this state? In doing so, will the minister commit to a transparency in detailing the number of Aboriginal specific, not mainstream, rehab beds that currently exist for Aboriginal people, and how that compares over previous years?

4. Will he also commit to discussions with Kalparrin community about the closure of that facility that was a proudly Aboriginal run community rehab facility?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (15:19): Reports like this are very important. They empower governments and communities to bring to bear their resources to address disadvantage. We have come a long way in many areas and evidence-based policy is central to us in helping to close the gap between Indigenous and non-Indigenous Australians across a number of variables, including of course the disproportionate detention of Aboriginal people in prisons and youth justice centres.

As Aboriginal affairs minister, my role is not only to work across all levels of government to improve the delivery of services and facilitate the development of policy and programs but also to engage with Aboriginal South Australians in a way which delivers sustainable economic, environmental and social benefits to their communities and also empowers them to make decisions that impact on their own lives.

So this government is committed to reducing the levels of disadvantage experienced by Aboriginal South Australians. This is demonstrated by:

- the targets in the South Australian Strategic Plan and the increased prominence given to Aboriginal people;
- our commitment to the National Indigenous Reform Agreement; and
- our signing of an overarching bilateral Indigenous plan with the Australian government in 2010.

Most importantly, we are tackling problems in collaboration with Aboriginal people, involving Aboriginal people in planning, design and delivery of initiatives which, in my opinion, is the only way of achieving sustainable outcomes.

I thank the honourable member for her most important question. It is true to say that we face significant challenges, but the most recent report on government services highlighted that our Aboriginal prison population, while under the national average of about 26.5 per cent, is still unacceptably high, with an average of 23.7 per cent.

I am pleased to say that there is some good news. I am very firmly of the view that education has many benefits for people throughout their lives, not just while they are in school, and education will set the groundwork for allowing people to participate more fully in our society. This is why I am pleased to note that South Australia more than doubled the retention rates of Aboriginal students from years 8 to12 from 30 per cent in 2002 to 64 per cent in 2011. The magnitude of increase was higher than that recorded in any other state or territory and that has, of course, something to do with the fact that we put every child first as part of our state's Strategic Plan, as part of the Weatherill government's commitment that we have every chance for every child and that applies equally to our Aboriginal children.

South Australia also recorded the largest increase in national retention rates for Aboriginal students from years 10 to 12 from 41 per cent in 2002 to 68 or 69 per cent in 2011. Yes, there is more work to be done and I look forward to working with the local Aboriginal communities to do that and into the future.

INDIGENOUS OFFENDERS

The Hon. T.A. FRANKS (15:22): I have a supplementary question. Given the minister indicated he will be meeting with the Aboriginal communities, will that include the Kalparrin community?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (15:22): I advise the chamber that I will be meeting with Aboriginal communities across the state.

FORESTRYSA

The Hon. J.S.L. DAWKINS (15:22): I seek leave to make a brief explanation before asking the Minister for Forests a question about timber harvesting rights.

Leave granted.

The Hon. J.S.L. DAWKINS: In late 2012, the Liberal opposition met with representatives of OneFortyOne Plantations to discuss the sale of the ForestrySA South-East timber harvesting rights to its parent company, The Campbell Group. Several issues were raised, including Glencoe Nursery and the several conditions imposed on the sale. During the meeting with the representatives, which included the chief executive officer, chief operations officer, and the chief financial officer of OneFortyOne Plantations, as well as a director from the Hawker Britton Group, it was indicated that the company did not know which government department it would deal directly with. My questions to the minister are:

1. Will the minister indicate whether Treasury or PIRSA is directly responsible for dealing with The Campbell Group and its local subsidiary OneFortyOne Plantations?

2. Will the minister explain why this detail was not included in the discussions concerning the conditions of the sale and during the sale process?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for

State/Local Government Relations) (15:23): I thank the honourable member for his most important question. Indeed, in terms of the leasing out of some of our forests, the government announced some time ago that it reached a financial closure to sell the forward rotations of the state's Green Triangle plantations to a consortium led by The Campbell Group, trading in Australia as OneFortyOne Plantations, backed by a number of investors including Australia's Future Fund.

TCG is one of the world's largest timber investment managers and currently manages over 1.2 million hectares of timberland assets. I am advised that OneFortyOne is committed to the local industry and is looking forward to working with local customers and suppliers and the high quality management team at ForestrySA. The government is committed to working with OFO and the local industry participants to further enhance investment and employment in the region. This forward sale will allow the government to invest taxpayers' money into key areas, such as roads, police, schools and future infrastructure, to benefit all South Australians.

The honourable member makes reference to conditions: the conditions that were agreed to by the round table group and the government in March 2012 were accepted by OneFortyOne, and those conditions were included in the contract. I am advised that the details of these conditions are available on the website for public information. OFO will be required to provide to the government a comprehensive annual report on its compliance obligations under the lease. While the exact form of the report is yet to be finalised it is envisaged that it would include things like: a compliance report containing a written certification that the purchaser has complied with its contractual and legal obligations, proof of forestry management certification and changes to the status of the estate, including summary details of the resources planted and the number of log parcels offered for sale.

The reporting would be commercial-in-confidence to the government. That report will be made to PIRSA and it will be PIRSA's responsibility to ensure that those matters are complied with. If there are financial details that it would need advice from Treasury on, obviously Treasury would make its expertise available, given that the negotiations of the original contract were made through Treasury so it has in-depth information and detail on that, but the report will be made to PIRSA.

SURVEILLANCE DEVICES BILL

Adjourned debate on second reading.

(Continued from 29 November 2012.)

The Hon. T.A. FRANKS (15:28): I rise briefly to indicate the Greens' position on the Surveillance Devices Bill 2012, which is a complex bill dealing with the use of surveillance devices in South Australia, not only by SAPOL but also by private citizens. I note that it allows for cross-border recognition of surveillance devices warrants from other jurisdictions, and that is something, in this day and age, that we need to be mindful of in terms of policing across state borders. We have no concerns with those sorts of provisions; however, we do have concerns with a bill that comes before us not having been properly consulted on. We may or may not have well-founded reservations about this bill, in fact it is our understanding that this bill is to now be referred to a committee to do the due diligence that the government should have done before bringing it to this place.

I echo some of the concerns that other members have raised, but I particularly want to note a piece of correspondence that was sent to my colleague the Hon. Mark Parnell from a woman called 'Julie from Adelaide' (that is how she preferred to be referred to in this chamber), who writes to us stating that:

> I became personally aware of the important protection which the present legislation provides when I discovered that a relative had forged my signature in order to acquire ownership of a substantial life insurance policy. Unfortunately, the insurance company claimed to have lost the original document, and the forensic examiner has only been able to confirm that the signature has a significant number of potential discrepancies.
>
> The SA Police advised me that I could legally record my conversations with the relative who stole my policy, an insurance broker, and also my insurance company without informing them, or seeking their permission. Without an accurate record of these telephone calls, I would not have this compelling circumstantial evidence in support of my allegations of fraud.

She continues:

> I can only implore the parliament not to further restrict the rights of vulnerable people to gather such vital evidence by further complicating the legislation relating to these issues.

This is just one particular case, and I know that members of this council have been approached not only by individuals, but obviously also by groups such as the Law Society and so on with grave and serious concerns about the bill. Certainly my concerns were not assuaged by the government's detailing of what I think was a very meagre attempt at consultation on the bill. In fact, put simply, I believe the government thought it was enough to introduce the bill and then the community could have an input. That is not appropriate when we have such a complicated area, an area where the technologies are advancing greatly, an area that impinges on people's rights to privacy and also their civil and political rights.

I do not think this bill has been thought through well enough and, as I say, I am very pleased that it is to go off to a committee. I would also hope that that committee would not hold up this bill unduly. The due diligence should have been done by the government in the first place. The Weatherill government, in its claims to have moved away from the Rann government days of 'declare and defend' to 'consult and consider', should have consulted on and considered the bill, and it should have consulted and considered not only within its own internal ranks, but in a way that every member of the public and every member of this parliament can access the contribution of those who have had something to say, should they be willing to have that on the record.

It cannot be that hard in the year 2013 to call for submissions, put them on a website and have them publicly available so that everyone engaged in the debate can have the full range of information from those who have the expertise or the individual circumstances (such as Julie from Adelaide) to contribute to the democracy in this place. I will conclude with the words from Julie:

> I believe that this proposed legislation would have serious implications for the ability to compile evidence of illegal and abusive behaviour, and may further restrain investigative journalism, and the potential exposure of instances, such as animal cruelty.

I cannot leave that without remarking on it. We have, of course, seen cases of animal cruelty exposed by both investigative journalism and also by citizen activists such as Lyn White—obviously not on our own shores. I note that there are members of the public who undertake work down at Port Adelaide, and such groups are a vital part of our democracy and our system of transparency. I do not believe that we have had due concern for the implications of the bill in its formulation. Certainly no evidence has been produced in briefings to us. I commend the bill being referred to a committee, and we hold reservations on our position on the bill.

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (15:34): I understand that there are no further second reading contributions to the bill. I want to thank members for their contribution. There is no denying that this is a very controversial and complicated area of law. Opinions differ widely and strongly around a great deal of it. Some honourable members may recall that the last time a bill was before parliament in this area it took over 18 months of negotiation to pass. This time it seems that there may be little difference, at least as far as controversy is concerned. The government remains hopeful that it will not take 18 months to pass this bill.

The Hon. Ms Bressington, the Hon. Mr Hood and the Hon. Mr Wade have expressed a number of related concerns about the attitude of the bill to the legality of the use of surveillance devices by private citizens. They appear particularly concerned with the use of surveillance devices by a private citizen to protect what might be a lawful interest.

Both the Hon. Mr Wade and the Hon. Ms Bressington have put great emphasis on the supposed restrictions on the ability of the media to conduct genuine public interest news and current affairs reporting. This is an interesting issue, and I am sure that even within this place there will be many different opinions about what constitutes reporting in the public interest and what are, essentially, the actions of scandalmongers and paparazzi. We are not in England nor the United States and, thankfully, our media still manages to retain elements of restraint when reporting into the personal lives of others—at least most of the time. However, there is a role for the law to play in ensuring that this line is not crossed. Where that line is is obviously a very interesting question.

Another interesting question is about when a citizen has the right to be protected from covert surveillance by other members of the public or the media. Most would say that if you were in your own home, backyard or paddock you should not be concerned about the possibility of a camera recording your every move; however, what about if you are at a gym, for which you pay membership fees, or what about if you are in your workplace? These are complex and important questions.

The very nature of this debate and the way it has played out over the past few months indicates that it will not be possible to resolve these difficult legal and policy issues by amendments to the bill. Indeed, the government agrees that it is appropriate for the Legislative Review Committee to consider these issues, with input from interested parties, and to report to the Attorney-General about how these issues may be best dealt with in this bill. The committee will be strongly urged to report as quickly as practicable so that the bill can be passed this year.

The Hon. Ms Bressington and the Hon. Ms Vincent also identified some issues with the provisions dealing with powers of law enforcement. The government has been happy to discuss these questions with the honourable members, and remains of the opinion that the provisions dealing with law enforcement can be dealt with on the floor of the house in the usual way. Accordingly, the government does not intend to include part 3 onwards of the bill in terms of reference to the committee.

The government looks forward to continuing its discussions with the Hon. Ms Bressington and the Hon. Ms Vincent on these issues, and I look forward to the report from the Legislative Review Committee. With those concluding remarks, I commend the bill to members.

Bill read a second time.

SPENT CONVICTIONS (MISCELLANEOUS) AMENDMENT BILL

In committee.

Clause 1.

The CHAIR: Do any honourable members have contributions to clauses 1 to 9?

The Hon. M. PARNELL: Yes, at clause 1. I had a brief discussion earlier with the Hon. John Darley and I understood he may have had an amendment to clause 4, in which case I would be concerned if we were to proceed all the way up to the Hon. Mr Wade's amendment without at least determining whether that is the case.

The CHAIR: Who is shedding light on this?

The Hon. G.E. GAGO: As leader I am happy to. The Hon. John Darley has indicated that he does not want to proceed with his amendments to clause 4.

The CHAIR: The Hon. Mr Wade?

The Hon. S.G. WADE: That is my understanding.

Clause passed.

Clauses 2 to 9 passed.

Clause 10.

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

Page 4, line 35—After '2 years' insert:

unless the application is made with leave granted by a qualified magistrate

I pause to thank the government for consultation on the amendments. We did have other amendments that we were contemplating moving but, in consultation with the government, we do not see the need. However, we believe that this one amendment and its consequential amendment will enhance the bill. As we said in the second reading speech, we support the bill as a whole. We believe that it is appropriate to have a mechanism by which people who have dealt with their offending behaviours can have an opportunity to make a fresh start.

In addressing amendment [Wade-1] 1, I remind the council that the bill proposes that, if an application to spend a conviction is refused by a qualified magistrate, the bill provides that the unsuccessful applicant may not reapply for that conviction to be spent within two years of the refusal. The Law Society of South Australia has raised with the opposition its concerns. It believes that a two-year prohibition would be unduly lengthy, overly harsh and oppressive, especially since the offence which is the subject of the application is at the lower end of the scale of seriousness—after all, it attracted a non-custodial penalty.

Whilst the bill provides individuals with the option to seek judicial review in the Supreme Court, given the costs and prospects of successfully overturning a decision, it is likely to be inappropriate in many such circumstances. Conversely, there is a possibility that the two-year

prohibition will encourage people to seek a judicial review more often than they otherwise might. The Law Society suggested a prohibition period of 12 months and provision for reapplication within that time if circumstances change or the applicant has a good reason to do so.

The opposition supports the concerns of the Law Society to the extent that even within a two-year period circumstances can change such that people might need to have their case reconsidered. However, we do not specifically see a need as to why they actually need to reduce the 12 months. We believe it is better just to provide an opportunity for the magistrate to reconsider in special circumstances. So, on behalf of the opposition I am moving an amendment which retains the two-year prohibition period proposed by the government but allows applications by leave of the qualified magistrate in extenuating circumstances. We believe this will allow flexibility in the interests of justice without allowing unnecessary reapplications.

The government in discussions with us so far has not been able to justify why two years is an appropriate prohibition period. Why not one year, as the Law Society suggests, or three or five years? It has an element of an arbitrariness about it. In contrast, our amendment would ensure that the discretion of the qualified magistrate would provide flexibility in that arbitrary prohibition period. There is a reasonable discretion there to accommodate the interests of justice.

Let us remember that the whole reason the bill is here is because circumstances in this area vary so markedly and we need to provide people with an opportunity to have offences reconsidered by a magistrate. In our view the discretion of whether further consideration is given to spending the conviction should be in the hands of a qualified magistrate. There may be any number of reasons why there are grounds for a person to reapply within a two-year period, and they would have to justify their reasons.

The Hon. G.E. GAGO: I rise to oppose this amendment. Under the bill persons who have been convicted of a sex offence, which currently cannot be spent, are able to apply to a qualified magistrate for that conviction to be spent and to be disregarded for one or more of the three excluded purposes. This application can only be made if the person has fulfilled the required 10-year qualification period of good behaviour. The applicant will have had a substantial amount of time to prepare their application.

As currently drafted, once an application for a conviction to be spent has been refused, the convicted offender is unable to reapply within two years. Under the Hon. Mr Wade's amendment, this time limitation is retained. However, under his amendment the convicted offender is at liberty to seek leave from a qualified magistrate to reapply. The government does not support this amendment. It is unnecessary and will merely burden the courts, which have enough work already, with ongoing applications for leave. The decision of the qualified magistrate is an administrative decision. Administrative decisions are subject to judicial review; therefore, any decision made by a qualified magistrate concerning the spending of a conviction is subject to judicial review.

The government does not agree with the contention of the Law Society that two years is an unduly lengthy period, and the government does not agree that this two-year period is oppressive or harsh. But the Law Society suggested that this be reduced, and not the proposal put forward by the Hon. Mr Wade. The Hon. Mr Wade's amendment does not reflect the Law Society's position. The reform proposed in this bill is giving people a second chance after 10 years of good behaviour, a chance to have their conviction spent that currently they do not have. That is hardly oppressive or harsh.

The government has also consulted with the courts—something the opposition clearly has not done—and the courts are against this amendment as it allows a person continually to make application for leave to reapply to the Magistrates Court to have their conviction spent, despite the fact that their application has already been considered and been dismissed. If an offender's application is refused and they consider there was an error in the decision, then the offender should seek judicial review. That is the appropriate course of action to take.

The government certainly does not support allowing applicants to seek leave to reapply. We cannot support this amendment. Under this amendment an offender would be at liberty continually to seek leave from a qualified magistrate to reapply, and the government cannot allow this to happen.

The Hon. S.G. WADE: I highlight to members who are considering this amendment to note that the minister's response related to judicial review. The reasons a person might be seeking to justify a reapplication to a qualified magistrate may have nothing to do with the process that led to the qualified magistrate's decision, and therefore not be at all able to be attacked by judicial

review. For example, it might be a change in their own circumstances. An idea that comes to mind is that perhaps a sick relative is in the United States and the need to travel overseas becomes acute. The qualified magistrate might have a different attitude in terms of balancing all the factors involved in those circumstances. I just stress that changing circumstances are not always able to be attacked by a judicial review.

The Hon. M. PARNELL: The Hon. Stephen Wade made the point that the two-year period during which a person cannot go back for another go to the magistrate to try to have the conviction spent is arbitrary. I think that is exactly right: it is arbitrary. It is as arbitrary as the 10-year period that precedes this amendment.

The issue of a person's circumstances perhaps lending themselves to a qualified magistrate allowing the conviction to be recorded as spent I think are important. It includes things like an employment opportunity. The example I had thought of is someone whose mother might have died in the United States, for example, where, as I understand it, they have fairly strict rules about who they will let into the country.

You can imagine circumstances where a person might want to go to court fairly quickly to see whether they can get the conviction spent. So, we can understand it. But we are overlaying these circumstances on what is fundamentally an arbitrary system of dates: whether 10 years is the right length of time before a person can make their first application; whether it should be five or 15. I do note that 10 is the minimum. It may well be that someone comes along after 20 or 30 for the very first time to apply to have their conviction spent.

The other point I would note is that my understanding of the amendment as drafted would be that there would be nothing to stop a person who is unsuccessful, for example, at their 10-year review (if we can call it that) to then forum shop and go to find as many qualifying magistrates as they can and apply month after month after month to see whether they can find someone who is prepared to allow the conviction to be spent. That might seem a fanciful example. Under the government's model, a person would have to wait the two years and there would be no discretion. I do not know how firm that would be. If someone had a compelling case, there may be an opportunity. The law seems fairly clear the way it is written. It provides:

> ...if a qualified magistrate has refused to make an order under this section in respect of the same conviction within the preceding 2 years.

Even for a court that was minded to give a person another go, it would be difficult to get around that clause.

Before I state a final decision, because we are debating this late amendment on the run, I ask the mover of the amendment to address that question about whether it would be possible for a person, on a monthly basis, to keep going back to court until they could find a magistrate who was prepared to allow the conviction to be spent?

The Hon. S.G. WADE: I think the honourable member raises a legitimate concern with my amendment, but I would be more concerned about the bill as it stands. The fact is that it may well be, as we often do with legislation in this house, the council indicates whether or not something is an issue for the council, and then the government, having had that indication of legislative intent, sits down with the mover and with other members and finds an appropriate set of wording to accommodate all concerns.

I appreciate the issues that Mark Parnell raises about the possibility for persistent applications may well have been what led the judicial officer to whom the minister claims the government spoke to indicate their position. As we have seen in previous reports of government views of government bodies proffered by ministers, I remind members of the advice we received via the government from the police in relation to the parole bill. Often we do not actually get the question asked and the answer in full. I would suggest to the government and to members of the council that this is a bill which has received the overwhelming support of the government, the opposition and other members of this place. This is one opportunity the Law Society has identified to improve it, and I think they have a point. I think there is scope for significant injustice in that two-year period.

The minister says, 'My position is not the same as the Law Society's position because we are willing to accept the government's two years rather than the Law Society's one.' If the government is happy to accept my amendment as amended with a one-year rather than a two-year period, then we can play those word games. The point is, we are not fixated on the arbitrary nature

of the period. As I said, it could be one, two, five, seven or 10. What we think the Law Society has rightly identified and the Hon. Mark Parnell has also highlighted in his remarks, is that this does seem to be extremely rigid. What happens if circumstances change within those two years? We believe that it is a good bill, but here is one opportunity to improve it.

The Hon. G.E. GAGO: The Hon. Stephen Wade asked who the government consulted with in the judiciary over his amendment, and I have been advised that the government consulted with the Chief Magistrate. I would be asking who the Hon. Stephen Wade consulted with over his amendment in terms of providing him with advice from the judiciary. My understanding is that he has not consulted with any of the judiciary in regard to his amendment, but I am happy to hear otherwise.

In relation to the two years, the Hon. Mark Parnell is absolutely right; it is arbitrary. Two years is arbitrary. It is a balancing act. It is trying to balance the public interest and that of the person with the conviction. If one looks at the discretionary conditions that a magistrate has to consider in subsection (5), in determining whether a conviction should be spent or not, they are things like the nature, circumstances and seriousness of the offence; the victim impact statement, elements to that; any penalty imposed or any other order imposed by the court; the length of time since the conviction; the circumstances of the applicant and whether the applicant appears to have rehabilitated, to be of good character; whether the spending of the conviction on disclosure, etc., might present a risk to the public; whether there is any other public interest served, etc.

You can see that the weight of the considerations is around public interest. One can only imagine that if a magistrate has looked at those significantly weighted public interest considerations and said, 'No, I am not going to spend that conviction,' the circumstance of a relative of the convicted person dying overseas is hardly going to overturn or make a significant impact on those sorts of discretionary conditions. As I said, they are heavily weighted in terms of determining the public interest in spending that conviction. I believe that the two years is a good balance. As the Hon. Mark Parnell says, it is arbitrary, but we believe that we have the balance right.

The Hon. S.G. WADE: I have two points. First of all, the minister is fighting with a straw man. Nobody in this house is suggesting changing the arbitrary two-year limit. The Law Society suggested it; nobody has proposed it. The minister does us the disservice of selectively quoting the bill before us. Of clause 10, the proposed 8A(5)(e), the minister only chose to quote some sections. Let me read them in full. The introductory part is:

> (5) The making of an order under this section is at the discretion of the qualified magistrate and that discretion will be exercised having regard to…
>
> (e) all the circumstances of the applicant, including the circumstances of the applicant at the time of the commission of the offence and at the time of the application...

It goes without saying that the public interest is fundamental in a qualified magistrate's decision. It goes without saying that most of the criteria relate to, shall we say, objective elements; most of them actually go back to, if you like, the historical elements. But the government's own bill says, 'The circumstances of the applicant at the time of the application are relevant'. If those circumstances change, why should there not be an opportunity to have a reapplication?

I am sure there are opportunities to put a fence around that, if you like, to try to avoid unnecessary and unwarranted reapplications, but we think the Law Society has got a point. We believe there is an opportunity to enhance justice and we would encourage the council to support the amendment.

The Hon. M. PARNELL: The Hon. Stephen Wade referred to what he called a significant injustice that could occur if his amendment is not accepted. I think we need to put this in perspective. The single biggest significant injustice at present is that these very minor offences can never be spent and so the main evil, if you like, to be overcome is that a mechanism will now exist for the first time for these offences to be spent. Yes, it is arbitrary; yes, it is 10 years.

So really the only debate we are having is whether a person, as of right, has the ability to go to court at year 10, 12, 14, 16, 18, until they get the answer they want or they die or they give up, or whether in odd-numbered years a person might be able to have another go. I think where the Hon. Stephen Wade is correct is that judicial review will be of no benefit to a person who is challenging the valid application and interpretation of the criteria to be taken into account under subsection (5) in paragraph (e). In other words, if 'the circumstances of the applicant at the time of the application'—that cannot be judicially reviewed because that could change in the meantime; that might be the very reason a person wants to go back to court.

I am nervous about a person being able to make multiple applications. It seems that they get their 10 year go, they get to judicially review that with that one exception that I have mentioned, but all of the other criteria can be judicially reviewed, and if that outcome is unsuccessful—it would probably take a year, so that will be year 11—year 12, presumably, they get another go at it as well. I do not know whether the two years date from the judicial review or whether the two years date from the original application.

It seems to me that there are a number of windows of opportunity for a person to be making the application and there may well be a waste of resources if a person can sort of work the system by lodging regular applications on a regular basis. On that basis, whilst I thank the Hon. Stephen Wade for putting his amendment forward and having us think about whether the injustice remedied by this bill can be further improved, the Greens are not inclined to support the amendment.

The Hon. S.G. WADE: I would agree with the point the Hon. Mark Parnell raised which is the greatest public benefit of this bill is the bill. The opposition offered the council an opportunity, in our view, to improve the bill; we take it that the council prefers the bill as it stands.

The Hon. K.L. VINCENT: If my memory serves me correctly, it is not often that Mr Wade and I disagree on matters of civil liberty and judicial processes and so on, but unfortunately, this is going to be one of those cases. For reasons that I think have already been stated quite clearly and quite eloquently, I am fearful that this amendment would lead to a clogging up of the courts. While I am not insensitive to what the Hon. Mr Wade is trying to achieve, I am also fearful that if people were given the ability to make countless and immediate applications to the magistrate, that that could perhaps be fuelled by emotion rather than thorough thought and debate, and if they were able to do that immediately after being first rejected rather than having a cooling-off period. For those two main reasons, I am afraid I am not able to support the amendment at this time.

The Hon. J.A. DARLEY: I will not be supporting the amendment because I understand that the Chief Magistrate does not agree with it either.

Amendment negatived; clause passed.

Clauses 11 to 13 passed.

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 the Status of Women, Minister for State/Local Government Relations) (16:06): I move:

That this bill be now read a third time.

Bill read a third time and passed.

ADVANCE CARE DIRECTIVES BILL

Adjourned debate on second reading.

(Continued from 5 February 2013.)

The Hon. T.A. FRANKS (16:07): I rise to speak on behalf of the Greens with respect to the Advance Care Directives Bill 2012. As the minister stated in her second reading explanation, this is a bill which allows a person to make decisions and give directions relating to their future health care, residential and accommodation arrangements and personal affairs. On that, I note that they are not provisions in this bill, they are in separate areas of legislation with regard to financial affairs. I also commend the Hon. Michelle Lensink for her work and attention to those areas. However, this bill provides for the appointment of substitute decision-makers to make such decisions on behalf of a person to ensure that their health care is delivered in a manner consistent with that person's wishes and instructions.

I note that the Greens have consulted and been lobbied by a variety of individuals and groups with regard to this bill, notably: Martyn Evans, former health minister; Marion Seal, a nurse currently undertaking her PhD in this field; Sandra Bradley, researcher from Flinders University; both Dr Tim Kleinig and Mr Robert Britten-Jones of Doctors Opposed to Euthanasia; as well as Paul Russell, Executive Director of HOPE: Preventing euthanasia and assisted suicide; and Bernadette Davies. On that note, I observe that the Greens do not believe the bill is in any way a

bill about voluntary euthanasia. Certainly, while the parties interested in that particular issue have a very valid interest in this bill, it is in no way a bill for voluntary euthanasia.

I indicate that the Greens are generally supportive of this bill, with some small reservations. We note that the legislation does have a need for clarity in some areas and acknowledge that the government has indicated a similar position, and we are awaiting the government amendments that will address those areas of small concern. In broad terms, the bill has been informed by extensive consultation and we acknowledge that. Certainly, during the Advance Directives Review and the development of the National Framework for Advance Care Directives, we have seen quite extensive consultation.

It takes a broad view that health and wellbeing is not restricted to medical treatment, and decisions at the end of life include protections for health practitioners, substitute decision-makers and others who give effect to advance care directives in good faith and without negligence. It sets out some processes for dispute resolution, and I note that additional powers have been given in this bill to the Office of the Public Advocate to conduct voluntary mediation and to the Guardianship Board to hear disputes and review mediation outcomes as well as to give orders and directions to resolve matters.

I would like to acknowledge the valid concerns that have been raised certainly with the Greens and no doubt with other members, specifically in the area of administration: the forms, the directions given to medical practitioners and the processes around referrals by medical practitioners. I believe that the government is in negotiations with the AMA and the salaried medical officers, and certainly we await those particular negotiations to come to us with more substance in the form of government amendments to address those valid concerns.

Further consultation will need to be undertaken, and I imagine that the government is in no hurry to rush this bill through. We would certainly encourage the government to consider that we also need to then take those amendments back and further consult on them. The consultation that we do should be meaningful, and timeliness around that is part of that consultation being meaningful. We will continue our conversations with stakeholders on this bill, and I am sure that the government and other members of this council will as well.

Having said that, I would like to thank the previous minister for health for the briefing he provided from his office in his final days in that role. We also acknowledge that this has now been taken on by a new minister, and we indicate that we will certainly have some patience with that settling-in process, as staff and indeed the minister himself bring themselves up to speed across the board.

As I said, we are very keen to continue our consultations. I trust that the new minister will look at the McCann review submissions (which close this week) and the measure of the services that are non-hospital-based services in that framework with a fresh set of eyes that we perhaps have not seen previously from the former Rann government. We certainly look forward to working constructively with the new health minister. On that note, we look forward to the government amendments to the bill but, in general, we indicate our in-principle support.

The Hon. S.G. WADE (16:13): The Advance Care Directives Bill 2012 was tabled by the Minister for Health in the House of Assembly on 17 October 2012. At that time the minister for health was the Hon. John Hill. The bill enables competent adults to: firstly, make decisions and give directions in relation to their future health care, accommodation arrangements and personal affairs, and, secondly, to appoint substitute decision-makers to make such decisions on their behalf.

I understand that the bill is a government bill. For the Liberal Party, however, this is a conscience vote, and the views I express today are mine alone. As a Liberal, I believe that people should live the life of their own choosing, even if others think that it is not in their best interests. In my view, this legislation makes a positive contribution to that goal. It is the result of a long and detailed consultation process.

In April 2007 the government launched the Advance Directives Review with the release of an issues paper titled 'Planning ahead: your health, your money, your life'. An independent Advance Directives Review Committee was established with the 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 professionals, lawyers, community organisations, consumers, Aboriginal communities, government agencies and financial institutions. My understanding is that the submissions were broadly in support of the current regime and

enhancements to it. After 18 months of deliberations the Advance Directives Review Committee reported to the Attorney-General in two stages with 67 recommendations.

In 2011 the Australian Health Ministers Council endorsed a national framework for advance care directives. The framework provides a lexicon of terms (to facilitate national harmonisation), a code for ethical practice and best practice guidelines. I understand that the bill substantially accords with the national framework and only fails to address one recommendation of the review, that recommendation being that there be an integrated directive encompassing powers of attorney. Like the Hon. Tammy Franks, I pay tribute to the work of the Hon. Michelle Lensink in this area.

Having said that the bill reflects the national framework and the review, I do caution that it may not be the best way to express those reviews in legislative form, and the bill may yet be able to be improved. While I support the second reading of the bill, I look forward to more detailed consideration in the committee stage.

To summarise the benefits of the bill, I thought I would quote from a letter to me from the Australian Medical Association (South Australian division) which considers:

> that the Advance Care Directives Bill offers significant key benefits, including:
>
> - It supports patient autonomy by making it easier to complete and apply ACDs.

I pause to add that ACDs in that context means advance care directives. The letter continues:

> In particular, the bill aims to protect individuals who have specified a refusal of treatment, and aims to protect health practitioners who comply with these wishes.
>
> - It creates a single form of ACD to replace the current confusion that exists between the application of Enduring Power of Guardianship (Guardianship and Administration Act 1993), Medical Power Of Attorney and Participatory Directions (Consent to Medical Treatment and Palliative Care Act 1995).
> - It resolves issues regarding s17(2) of the Consent to Medical Treatment and Palliative Care Act which has been interpreted to provide for medical practitioners to be legally compelled to provide treatment to patients in the terminal phase of an illness even if they believe it to be of no benefit to the patient.

Later in the letter the AMA states:

> We believe that the bill significantly improves the framework for medical and healthcare decision-making in SA, rectifying some of the problems with existing legislation.

I thank the government for the briefings of parliamentarians, both as individuals and groups. The bill has been the subject of a range of criticism and comments from a range of stakeholders and constituents raising legal, medical and ethical issues in relation to the bill.

Personally, I thank minister Hill and his officers for briefings on the bill and for information on the government's responses to concerns raised. In that context, I again refer to the letter to me from the Australian Medical Association dated 30 January 2012 in which it indicated that the government had well advanced amendments to address concerns with the bill. The letter stated:

> The government and minister subsequently provided a number of clarifications to the AMA(SA) and we understand the government to be introducing some key amendments to the bill in response to the concerns we raised. In summary we understand that these amendments will:
>
> - Mean that medical practitioners who are acting in urgent situations in which there is uncertainty will be protected, for example, if they resuscitate a patient. This is an extremely important provision.
> - Protect health practitioners who believe in good faith that they are acting in accordance with the advance care directive but may have misinterpreted the provision.
> - Mean that medical practitioners are not required to find another practitioner to comply with a directive to which they themselves have a conscientious objection, bringing the bill into line with current professional standards.
> - Allow for the correction of iatrogenic complications.
>
> The AMA(SA) welcomes these amendments, which address the key issues we have raised regarding the bill. With these important amendments, the AMA(SA) supports the bill.

Clearly, the government has provided these amendments to a peak body outside this chamber, but it has not felt it necessary to provide them to this chamber. I am disappointed with that, and I do not intend to address in detail the concerns raised with the bill when a peak body tells me that government amendments to address these concerns are waiting in the wings. I urge the government to table the amendments as soon as possible so that this council can consider the bill and the form that the government actually intends that it should pass.

Like the Hon. Tammy Franks, I, too, would like to address the issue of euthanasia. As the record shows, while I support individual medical self-determination, I will be very cautious in endorsing any legislative scheme for euthanasia. Concerns have been raised that the bill does provide a form of euthanasia. Again, I am reassured by the submission of the AMA which I will now quote. In a section headed 'Euthanasia and end of life care', the AMA states:

> The AMA(SA) notes that it is specified that this Bill does not provide for euthanasia. The Association does not consider that this Bill advances or legalises euthanasia, nor would the Association support the introduction of amendments to the Bill which would enhance or legalise euthanasia. The AMA does not support euthanasia.

In summary, I support the second reading of the bill. I look forward to amendments from the government or other members to enhance the bill so that this council can give it due consideration and that as soon as possible South Australians can benefit from care which more closely accords with their values and wishes.

The Hon. J.M.A. LENSINK (16:20): I rise to make some remarks in relation to this bill which consolidates a number of existing anticipatory instruments that exist in several different acts and which relate to issues of health, medical, residential and personal decision-making. I would also like to add to the comments of speakers prior to me and commend the former health minister, the Hon. John Hill, for conducting a review and attempting to simplify the laws because they are quite complex. They often require some legal assistance in order for people to take advantage of them, they take several forms in several different acts, so I think that it is a laudable aim to attempt to bring them under one piece of legislation. I note that these sorts of consolidations have taken place in other jurisdictions.

I also strongly support the existing intent of these acts in terms of trying to assist people to make decisions while they are still able. As those of us who have ageing parents know, if you are prepared for things in advance it makes it a lot easier if things happen suddenly. People's health can deteriorate very quickly, and if you have some guidance from them it makes those decisions much easier. These instruments also serve as a guide to health professionals who have expressed that they value it and need it to be provided to them because it is part of their practice at all times to follow the wishes of the patient—if I can use that term, which is not always in vogue in health language but be that as it may I think we all understand what it means.

There is also the concept in this legislation of substitute decision-makers. I support the aim that they should try to stand in the shoes of the person as if they were that person. However, I have expressed my views before in relation to the voluntary euthanasia debate and I am not about to indicate that I think this in any way opens the door on voluntary euthanasia—I do not think that is the case. I think a lot of times when people make decisions in advance of when they are faced with a particular situation it is almost like a hypothetical. You hear a lot of people saying, 'If I'm in a particular state then I don't wish to be kept alive,' but when they are confronted with that situation they may well not hold that point of view.

Indeed, it has been my own situation, having some executive over my mum, that she has expressed to me that, whilst she may have signed documentation not to have certain treatment, she certainly wishes to hang around. I have said to her, 'We are going to have to ignore that then. You've told us that you wish to stay around, so we will encourage the doctors to give you every treatment possible.'

We have all been lobbied extensively by a number of stakeholders, and I was a little concerned when I read the letter from the South Australian Salaried Medical Officers Association (SASMOA) (and I will not read it all) to the minister dated 19 November last year, reflecting on the debate in the House of Assembly, in which they expressed that they are concerned that the government does not actually understand the issues that have been raised. It is written by Dr David Pope who says:

> Specifically there seemed to be an assumption on your part that you believed the motivation for concerns raised—

I think this is in the debate—

> including some proposed amendments, was a desire to deny patient wishes. I wish to make it very clear that that is not the case.

On the second page he goes on to say:

> Indeed, if the bill did function as you described it in your speech last Thursday and in your responses while in the committee on the Bill, the majority of salaried doctors would not take any issue with it.

However, parts of the bill raise concerns that relate to problems in the construct of the act and amendments of other legislation in the bill which relate to the mechanics of the functioning of the act such that doctors and other health professionals could only be faced with a choice between:

1. Following an advance care directive, which is written in a way such that it applies in a binding way in a circumstance unforeseen...

2. Not following an advance care directive of the like described above and then face a career ending sanction...

In summing up I would appreciate if the minister in this chamber could address those particular issues. They may be unintended consequences or may in fact not be a correct interpretation of the legislation, but in any case those issues need to be resolved.

The SA Nurses Supporting Choices in Dying have also written to us and are advocating that we support this legislation. They make the point that many people who are admitted to hospital for end-of-life care have not actually made any decisions or had discussions, so they are very supportive of the legislation. I assume they would be supportive of the current legislation that also attempts to do the same thing.

Anyone listening to or reading this may not be any the wiser as to what is my position, but I support the intent of the legislation. I hold concerns about whether there are unintended consequences. We do not want to bind patients to a decision they have made in the past. My overriding concern with all of this is that the current wishes of the patient, if they are able to have those exercised, must always be paramount. I am very uncomfortable with a situation where someone has signed an advance care directive and it is almost as if it is written in stone. I know there are ways of revoking them, but it is incumbent on all of us, whether family or health professionals, to check at every point in the process that the wishes of the patient are being exercised.

The Hon. K.L. VINCENT (16:29): I will speak briefly today on Dignity for Disability's support for the second reading of this bill and perhaps hope to contribute a little more in committee. I also hope to have heard from the new Minister for Health, the Hon. Jack Snelling, our colleague in the other place, about his position on the government proposing amendments as requested by the Australian Medical Association (AMA) and others. Whilst I congratulate minister Snelling on his move into the very important health portfolio, I think it is unfortunate for the passage of this bill that there has been a ministerial changeover whilst this bill is only halfway through the parliament.

Despite the fact that this bill has been some eight years in the making, and comprehensive public and professional consultation has been done by the Advance Care Directives Review from 2008 onwards, there seems to be confusion and opposition over both the intent and the effect of this bill, and much of it, I would suggest, is unfounded. Many health professionals, academics and bureaucrats in this area have spent years working through issues to ensure that the bill has the intended impact. It is time for legislation to progress through the parliament so that we can be brought into line with the agreed national framework in this area.

This bill has comprehensive supporters, such as UniSA Adjunct Professor Margaret Brown, and I thank her for the time she took to meet with me and my staff to share some of her immense knowledge and expertise in the area. She has more than 20 years of both academic and real world experience in the field. I believe that it is high time that we passed legislation which brings South Australia into the modern era and which consolidates other pieces of legislation.

People's individual wishes when they are sick, injured or nearing end of life or, I would argue, at any time, should be respected and not put upon them by societal expectations and the desires of others around them. Self-autonomy should be assured. Of course, we all recognise that this is a sensitive subject and in no way an easy one to deal with, but I certainly see it as my job as a member of this parliament to advocate so that South Australians are able to live with dignity and autonomy, and I think it is high time that we recognised that death is a part of that life.

I also thank the government and SA Health for the early briefing on this legislation last November and for yesterday's further briefing from relevant staff. I have received several letters from constituents opposed to this bill stating that they believe that it supports and encourages euthanasia, and they are opposed to it for those reasons.

I have also had Family Voice, Medicine with Morality and Doctors Opposed to Euthanasia echo these sentiments. I appreciate the concerns, and I understand that they are approaching this from the perspective that they believe it facilitates euthanasia, but I am afraid that I cannot agree with this view. I do not think that it opens the way to euthanasia, nor is it a backdoor method for

introducing the same. I have received a larger volume of letters from constituents urging me to support this bill, and I also note that I very much appreciate that correspondence.

At this stage, I indicate my support for the second reading of the bill, and I look forward to further discussion and amendments that improve the impact of this bill in those stages.

The Hon. J.S.L. DAWKINS (16:32): I rise to speak on the Advance Care Directives Bill which, as has been indicated earlier, is a conscience issue for members of the Liberal Party. I commend the Hon. Stephen Wade for the amount of preparation and background information he has provided to Liberal members. I think that, in general, he is prepared to discuss these matters sincerely with any member of the parliament.

Certainly, the Hon. Stephen Wade, in his work coming up to the Liberal Party joint party room discussion last year, provided considerable research on the background of this bill and the various stages of the governmental processes that have led to it. I also commend the Hon. Michelle Lensink for the valuable work she has done in this area, and that was noted earlier by the Hon. Mr Wade.

I have noted a range of community views about this bill. Even those that are critical in some aspects still generally indicate that the bill has many good parts to it, despite some of the reservations they have expressed. My view, I suppose, is that I am supportive of what the bill intends to do. I have taken note of some of the suggestions that it could become a short cut to voluntary euthanasia. I am someone who is on the record as having supported voluntary euthanasia on a number of occasions, but I certainly do not see the bill in that light whatsoever. I do respect those who are concerned, but that is not my view.

It is my intention to support the second reading of the bill and during the committee stage I will examine at some length the amendments to be moved by the Hon. Mr Wade and any others, and that includes government amendments if they come to fruition. With those comments in mind, I indicate my support for the second reading of the bill.

Debate adjourned on motion of the Hon. R.I. Lucas.

ELECTORAL (MISCELLANEOUS) AMENDMENT BILL

Second reading.

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (16:36): 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 amends the *Electoral Act 1985* to improve participation in elections, further regulate the use of electoral material and, importantly, enhance the integrity of the State electoral roll by ensuring that information contained on the roll is accurate and complete.

In addition to several technical amendments recommended by the South Australian Electoral Commissioner, the Bill contains a number of substantive amendments which arose from recommendations of the Select Committee on matters related to the general election of 20 March 2010 (the Select Committee).

The Bill also fulfils two commitments given by the Government to amend the *Electoral Act 1985* in the context of the 2010 election. The first of these commitments is to address concerns regarding the use of certain how-to-vote cards such as those which allegedly confused voters in the 2010 election. It is important to note that this Bill does not seek to regulate what preferences parties, candidates and political groups choose to advocate, or whether they choose to advocate a first or second preference. However, it does regulate the way preferences are put forward by confining the context (including the language, colour and form of the card) in which the preference order can be represented, striking at the heart of the mischief complained of in the 2010 election.

In addition to the current requirements in the Act, proposed section 112A provides that a how-to-vote card may only be distributed during the election period if the card distributed is substantially the same as a card that has been submitted to the Electoral Commissioner for inclusion in polling booth posters, four days after the close of nominations, under section 66, or lodged with the Commissioner no later than two days before polling day. Distribution of a how-to-vote card during the election period that was not submitted or lodged with the Electoral Commissioner, or that differs substantially from the initial how-to-vote card lodged or submitted with the Commissioner, will constitute an offence.

In regulating the use of how-to-vote cards the Government has deliberately avoided being overly prescriptive to prevent any risk of infringing implied freedom of political communication. Whilst the requirement to

lodge a how-to-vote card locks a party, candidate or group into a specific form and design of a how-to-vote card, it does not lock them into a preference position. Accordingly, in the unforseen events of a death of a candidate, the withdrawal of an endorsement by a political group or some other intervening matter, a how-to-vote card promoting a different preference order can be distributed, so long as it has substantially the same appearance as the initial how-to-vote card submitted or lodged with the Electoral Commissioner. Similarly, if parties or candidates submit a how-to-vote card under section 66, and wish to lodge another how-to-vote card no later than 2 days before polling day, they may do so, even if the card is intended to secure second preference votes, as long as the card has substantially the same appearance as the initial how-to-vote card previously submitted. There is an interpretive provision in the Bill relating to the term *substantially the same appearance*.

In addition to this measure, the Government also intends to amend the regulations to expand the authorisation requirements, increasing the size of the font in which authorisation details must be published. This measure is designed to assist voters to make informed decisions when voting.

In a similar vein, the Bill also addresses concerns raised by the South Australian Electoral Commissioner regarding the ease with which electors are able to identify the source of electoral advertisements. Currently, the *Electoral Act 1985* requires disclosure of the name and address of the person authorising the material but need not state the party he or she represents. The proposed amendment to section 112 requires all authorised electoral advertisements to disclose any relevant political party affiliation (or an abbreviation if the Register of Political Parties includes an abbreviation) in addition to the name and address of the person authorising the material. Disclosure of the party affiliation will prove more open and informative to the voter, increasing the level of transparency of electoral advertising.

The second commitment made by the Government relates to the requirements to identify a person responsible for political content in published material. The Bill reverses the 2009 amendments to section 116 so the provision no longer applies to material published or broadcast on the Internet. It also repeals subsection 116(2)(c), that obliges the publisher of a journal to record the name and address of, and publish the name and postcode of, a person who takes responsibility for a letter, article or other material published in the journal, as a condition of exemption from section 116. The exemption that existed prior to the 2009 amendments (that allows the publisher or another person to take responsibility for all electoral material published during an election period) is to be reinstated into the Act.

This Bill also addresses complaints of voter confusion and lack of transparency in relation to the distribution of postal vote applications and electoral material in recognition of recommendations put forward by the Electoral Commissioner and the Select Committee.

The distribution of postal vote applications by political parties and their involvement in the collection and return to the Electoral Commissioner confuses electors and has contributed to a significant increase in the number of applications being received by the Electoral Commissioner. The bulk delivery of applications by parties contributes to a presumption of an automatic entitlement to vote by post which encourages people to apply as a convenient method of voting. It also imposes a significant cost on political parties.

Proposed section 74A amends the *Electoral Act 1985* to remove the capacity for political parties to distribute postal vote applications, making the Electoral Commissioner the sole distributor of such applications. However, the Bill allows parties and candidates to request the details of applicants for postal votes under section 74(1)(b) from the Electoral Commissioner to ensure parties and candidates are able to continue to provide campaign material to those electors who have applied to the Commissioner to submit a postal vote in an election.

With a view to improving the legitimacy of election results and the democratic process, the Bill amends the *Electoral Act 1985* so that a ballot paper is not informal merely because the voter has marked it in a way that might identify them. It is reasonable to assume that, if the vote is otherwise formal, it was intended to be a valid vote and the voter was most likely unaware that the presence of their name would invalidate it. This change will achieve consistency with local government elections and, importantly, reduce the number of informal votes.

One of the most significant changes contained in the Bill involves the harmonisation of the State and Commonwealth electoral rolls. At present there is a significant and increasing divergence between the two rolls. There are currently 11,350 electors enrolled on the Commonwealth electoral roll who are not enrolled on the State roll. This is due to differences in the respective enrolment processes.

In particular, the Commonwealth has modified their enrolment provisions to achieve greater flexibility in order to better maintain their electoral roll Most recently the Commonwealth has adopted an enrolment scheme that allows the Australian Electoral Commissioner to enrol a person (provided the person meets the relevant entitlement provisions) or update a person's enrolment details on his own motion, using data collected from trusted government agencies.

In order to maintain the integrity of the joint roll arrangement and ensure the accuracy and completeness of the State Roll, the Bill amends the *Electoral Act 1985* so that, if a person is properly enrolled on the Commonwealth roll, and meets all other current enrolment requirements, the person is entitled to be enrolled on the State roll. In addition, proposed section 32B provides that, if a person is enrolled on the Commonwealth roll, the person is taken to have made a claim in accordance with the Act and be enrolled in a state subdivision.

Currently, under the joint roll arrangements, the Australian Electoral Commission ('AEC') maintains the Commonwealth electoral roll and the South Australian electoral roll on a single database. With the current difference in processes for enrolment, electors are being added to the enrolment database as 'Commonwealth only' electors, or enrolled at one address at a State level and a different address at a Commonwealth level. The amendments contained in this Bill will allow an elector who has enrolled as a Commonwealth elector in relation to a subdivision in this State, or updated their enrolment details online with the AEC, to be enrolled or have their address updated under

the South Australian Electoral Act. It will also address the current lag in South Australian enrolments allowing these electors to receive their State entitlement based on their existing Commonwealth enrolment.

It is important to note that these amendments change the process of enrolment, they will not change the grounds on which a person becomes entitled to enrol and vote in South Australia. However, to achieve consistency with Commonwealth provisional enrolment provisions, the Bill also amends the eligibility age of provisional voters in South Australia to 16 rather than the current 17 years. It also removes the requirement for an application for enrolment of itinerant voters to be attested and allows claims for enrolment and transfer of enrolment on the State roll to be made to an electoral registrar in a manner and form approved by the Electoral Commissioner, thus providing the Commissioner with more flexible enrolment provisions for the enrolment of electors at the local level.

Finally, the Bill amends the *Electoral Act 1985* to provide that the position of Deputy Commissioner be a 5 year statutory appointment rather than an appointment until the age of 65. This will bring the length of the appointment in line with other similar statutory appointments that provide for a 5 year appointment with the possibility of renewal. However, the provision will commence after the current incumbent's term in office has ceased. The Electoral Commissioner's conditions of appointment will remain unchanged.

The technical amendments adopted in the Bill include:

- removing the requirement for the Electoral Commissioner to deposit the prescribed amount paid for nominations in each district with the returning officer;
- inserting a requirement that the electoral registrars supply to the Electoral Commissioner, certified lists of electors enrolled for districts; and
- removing the reference to 'telegram' in sections 95 and 96 of the Act regarding the manner in which voting results are to be transmitted.

These are minor amendments that will modernise the *Electoral Act 1985* and ensure the legislation reflects current electoral practices.

I commend this Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Electoral Act 1985*

4—Amendment of section 4—Interpretation

This amendment is consequential.

5—Amendment of section 7—Remuneration and conditions of office

This clause amends section 7 to make the term of appointment of the Deputy Electoral Commissioner 5 years instead of a term that expires at age 65, and makes some related amendments.

6—Amendment of section 21—Suppression of elector's address

7—Amendment of section 23—Rolls to be kept up to date

These amendments are consequential to the amendments to section 29 relating to persons on the Commonwealth roll.

8—Amendment of section 29—Entitlement to enrolment

This clause amends section 29 to provide that a person properly enrolled on the Commonwealth roll in respect of an address in a subdivision is entitled to enrolment on the roll kept under the *Electoral Act 1985* for that subdivision. The amendments to section 29(2) relate to provisional enrolments.

9—Repeal of Part 5 Division 2

This clause repeals Part 5 Division 2.

10—Amendment of section 31A—Itinerant persons

Subclause (3) amends section 31A(2)(b) to remove the requirement that an application under section 31A be attested as required by the Electoral Commissioner, consistent with changes to claims for enrolment generally. The amendments in subclauses (1) and (2) are consequential to the amendments to section 29. The amendment in subclause (4) is consequential to the repeal of Part 5 Division 2.

11—Amendment of section 32—Making of claim for enrolment or transfer of enrolment

Subclause (2) inserts proposed subsection (1a) (a provision previously in Part 5 Division 2) into section 32. Proposed subsection (1a) removes the requirement that a claim for enrolment be signed and attested as required by the Electoral Commissioner. The other amendment is consequential.

12—Amendment of section 32A—Notification of transfer within the same subdivision

This amendment is consequential.

13—Insertion of section 32B

This clause inserts section 32B, effectively relocating existing section 31. However, in addition to the provisions of existing section 31, proposed section 32B provides that if a person is enrolled on the Commonwealth roll and the person's address recorded on that roll is an address in a subdivision, the person is 'deemed' to be enrolled, or provisionally enrolled (as the case may be) on the roll kept under the *Electoral Act 1985* for that subdivision.

14—Amendment of section 53—Multiple nominations of candidates endorsed by political party

This clause amends section 53(4) to remove the requirement relating to depositing the prescribed amount.

15—Substitution of section 68

This clause makes a technical amendment to section 68.

16—Amendment of section 74—Issue of declaration voting papers by post or other means

This clause makes 2 amendments relating to electors who have applied for the issue of declaration voting papers under subsection (1)(b). One amendment requires the inclusion of any postal address provided by such applicants for declaration voting papers on the register of declaration voters kept under the section. The other amendment requires the Electoral Commissioner to provide (on request) a copy of the information contained in the register in relation to such electors to the registered officer of a registered political party and a nominated candidate (and in the latter case, the information to be provided is limited to only that which relates to the candidate's district).

17—Insertion of section 74A

New section 74A creates an offence relating to the distribution of application forms for the issue of declaration voting papers.

18—Amendment of section 94—Informal ballot papers

This clause amends section 94 so that a ballot paper is no longer informal if it has on it any mark or writing by which the voter can be identified.

19—Amendment of section 95—Scrutiny of votes in Legislative Council election

20—Amendment of section 96—Scrutiny of votes in House of Assembly election

These amendments delete references to telegrams.

21—Amendment of section 112—Publication of electoral advertisements, notices etc

This clause amends section 112 to provide that if an electoral advertisement is authorised for a registered political party or a candidate endorsed by a registered political party, the party's name or, if the Register of Political Parties includes an abbreviation of the party's name, that abbreviation must appear at the end.

22—Substitution of section 112A

This clause substitutes section 112A to expand on the offence provisions relating to how-to-vote cards. In addition to the existing requirements relating to the distribution of how-to-vote cards during an election period, proposed subsection (1) provides that a person must not distribute a card unless the card has substantially the same appearance as a how-to-vote card submitted for inclusion in posters under section 66 or lodged with the Electoral Commissioner no later than 2 days before polling day.

The regulations may prescribe requirements relating to cards that are to be lodged.

Proposed subsection (3) prohibits, in relation to a how-to-vote card submitted for inclusion in posters under section 66 for a candidate (an *initial submitted how-to-vote card*), the subsequent lodgement or distribution of a how-to-vote card authorised by or for the candidate or a registered political party of which the candidate is a member unless the card has substantially the same appearance as the initial submitted how-to-vote card.

Proposed subsection (5) is an interpretive provision relating to the phrase *substantially the same appearance*. Proposed subsection (6) sets out inclusive definitions of *distribute* and *how-to-vote card* for the purposes of the section.

23—Amendment of section 112B—Certain descriptions not to be used

This clause, consistent with inserted section 74A and substituted section 112A, makes an amendment to clarify that distribute includes distribute in electronic form.

24—Amendment of section 116—Published material to identify person responsible for political content

This clause limits the type of publication to which section 116(1) applies by removing journals published in electronic form on the Internet and Internet broadcasts from the scope of the provision. The clause makes

amendments to section 116(2) which are consequential to the amendments to section 116(1). The clause also amends section 116(2)(c) to restore the provision to its form prior to its amendment by the *Electoral (Miscellaneous) Amendment Bill 2009*, except that the term *journal* replaces the former term 'newspaper'.

Debate adjourned on motion of Hon. J.S.L. Dawkins.

SUMMARY OFFENCES (FILMING OFFENCES) AMENDMENT BILL

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

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (16:37): I move:

That this bill be now read a second time.

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

Leave granted.

The Internet, and the growth of social media on it, has brought a growing and unwelcome phenomenon. The central example of this particular evil is that there is some kind of fight or other criminal conduct involving a victim, provoked or not, unwitting or not, but the point is that the assault is filmed and then screened on the Internet somewhere (presumably on Youtube, Facebook, a social medium or an Internet homepage). A major result, usually intended, is the indiscriminate pictorial humiliation of a victim. While there may be legal remedies against the assailants, it is unclear what can be done about those who further victimise the victim in this way.

It is possible that some of this behaviour is caught by existing criminal offences. If a victim is hit, it will be at least an assault. The publication of images may be caught by the indecent filming offence in section 23 of the *Summary Offences Act 1953*. But it may not be possible to catch the actual perpetrator and the indecent filming offence only deals with a part of the concerning behaviour.

This concerning practice is unhappily common and covers a number of examples. Many are listed by the Victorian Law Reform Commission in its 2010 *Report on Surveillance in Public Places*. The Commission said:

> There has been a disturbing trend of people recording their own criminal conduct. In some cases this has involved activities that are especially cruel and violent.
>
> In a widely publicised Victorian example, a group of teenage boys lured a teenage girl to a park in Werribee and forced her to remove some of her clothing and perform oral sex. They then set fire to her hair and urinated on her. The young men responsible filmed the entire incident and produced a DVD that they distributed to a number of people. In another incident in Geelong, five men set upon two teenage girls, sexually assaulted them and filmed the incident on a mobile phone. In a recent case, a woman filmed her 14-year-old daughter assaulting another girl. Footage from these types of incidents is commonly distributed among friends. There have also been some examples of footage having been posted on the internet.

The Commission went on to make it clear that this kind of behaviour is potentially wider. At paragraph 4.55, the Commission said:

> Recently, the media have reported incidents in which individuals have used their mobile phones to film emergencies for the apparent purpose of entertainment.
>
> In Queensland, after a runaway vehicle hit a backpacker, 'dozens' of bystanders apparently filmed the victim's final moments on their mobile phones. Similarly, in New South Wales, after a traffic accident in which children were killed, bystanders began filming the mother's pleas for assistance and the accident scene.

Similar behaviour overseas has caused some European jurisdictions to enact new criminal offences directed at this kind of behaviour. While reports are similar to those described above, an unusual variation was reported in Spain, where teenagers jumped in front of traffic while accomplices filmed the resulting panicked drivers for their own (and others) entertainment.

This Bill comes to terms with some of this anti-social behaviour. It adds to the *Summary Offences Act* a new Part 5A dealing with filming offences. It addresses two concerns. The first one might call invasion of dignity, and the second, invasion of privacy.

Addressing the first concern, proposed new sections 26B and 26C would create new offences connected with filming of a person being subjected to a humiliating or degrading act. There are three offences. First, it is to be an offence to take film of a person who is being subjected to or forced to engage in a humiliating or degrading act. Filming includes moving or still images taken by any means. Second, it is to be an offence to distribute such a film. Third, it is a more serious offence both to engage in the humiliating or degrading treatment of the victim and also to either film it or distribute the film.

This law is meant to capture the subjection of one person to humiliating or degrading treatment by another person. These offences will not capture things that happen by accident, such as where a person slips over in the street or suffers a wardrobe malfunction. It will not capture things that the person himself does, such as being drunk in public or stealing from a shop, even if the taking and distribution of the film are very embarrassing. It will not

capture filming that merely exposes a person to scrutiny that he would rather avoid, such as a criminal defendant being filmed walking out of court after a hearing, or a celebrity being followed by paparazzi. In these situations, the person is not being subjected to or forced to undergo humiliating or degrading treatment at the hands of another.

This law is not meant to cover situations that are merely embarrassing. The act to which the victim is subjected must be one that reasonable adults would think that it was humiliating or degrading of that person. One might say that this new offence is aimed at invasions of human dignity, that is, at actions that all right-thinking people would consider unacceptable. A person might find it embarrassing to be lawfully stopped and questioned by the police in a public place, for instance, but this is not a humiliating or degrading act because it is not one to which a reasonable adult could properly object.

An act is not humiliating or degrading just because the person subjected to it feels humiliated or degraded. The test is not subjective. This law does not seek to protect the over-sensitive. Rather, the Bill sets an objective test which requires the court to consider whether reasonable adult members of the community would consider such an act humiliating or degrading. However, the characteristics of the victim are relevant. Reasonable adults might judge the same behaviour to be degrading to one person and not another. For example, suppose that a young man out with friends is wearing a baseball cap and one of his mates playfully knocks it off his head. Reasonable adults would probably judge that this was not humiliating or degrading to him. On the other hand, suppose that a woman wearing a hijab is approached on the street by a stranger who grabs the hijab and pulls it off. Reasonable adults might well judge this to be a degrading act.

It is true that one cannot say exactly where the line is between embarrassment and humiliation or degradation. However, it is not unusual for criminal offences to use concepts that are not capable of precise definition. Disorderly behaviour is one example. Dishonesty is another. The law often requires a court to apply community standards or the judgment of a reasonable person, for example, in laws about offensive material. The government sees no unfairness in this. No doubt prosecutorial discretion will be exercised in such a way that the court's time is not wasted on film of events that were merely embarrassing or annoying or about which the victim has over-reacted.

The Bill does not intend to capture conduct for a legitimate public purpose, that is, conduct that is in the public interest. The Bill gives examples of matters that the court should consider. For instance, it should look at whether the conduct was for the purpose of educating or informing the public. As an example, film that aims to expose abuses, for instance, film of police brutality or film of degrading conditions in a detention centre would be likely to be considered to be taken for a legitimate public purpose. The same would be true of news broadcasts or documentary film depicting assaults, racial vilification or other matters of public concern. The court should also consider whether the filming or distribution was for a purpose connected to law enforcement or public safety. Security camera film would be an example. Cameras commonly operate on public transport, at banks and in city streets as a way of detecting crime or threats to safety. This is in the public interest and it is not intended that the Bill capture such filming, even if, by chance, humiliating or degrading conduct is filmed. Operators of security cameras would also have the defence that they did not knowingly film the relevant images. There is no knowing what security film may capture and no-one is held responsible for that. Third, the court must consider whether the filming or distribution occurred for a medical, legal or scientific purpose. For example, film might be evidence in legal proceedings and might properly be submitted to experts for analysis for the purposes of those proceedings. Fourth, the court should take account of any other factor it considers relevant in answering the question of whether the filming was in the public interest. That is the decisive question.

On the second matter, that is, invasion of privacy, the Bill creates a new offence of distributing an invasive image. With the use of filming devices now commonly available, it is easy for people to film themselves or each other in any situation. Often, these images may be obtained by consent, as where two people in a relationship take consensual film of their sexual activity, or one may take pictures of himself or herself that are sent to the other perhaps using a mobile phone. In and of itself that is not unlawful, although if the person photographed is under 17, the images could be child pornography and in that case their possession or transmission would be seriously unlawful. Assuming the participants are adults, and assuming they send the images to one another privately and by consent, this law is not concerned with that. What this law is concerned with, however, is the wider distribution of those images without consent.

The Bill proposes to make it an offence to distribute these invasive images in a situation where the distributor knows, or should know, that the person depicted did not consent to distribution. That is likely to capture, for example, the boyfriend who, unknown to the girlfriend, passes on to his friends the pictures that the girlfriend may have sent him or may have posed for, intending them to be seen only by him. It is not intended that the offence capture third parties who distribute the images without having any reason to know that the subject objects to that distribution. The Internet is replete with explicit images, many of which may be captured by classification or other existing laws. There is no intention to create a new offence of distributing such images where the distributor knows nothing of the circumstances in which the image was created and cannot tell whether or not the subject consented to distribution. With these images, it will rarely be possible to know whether they are distributed with consent or not and this offence is not intended to capture that. Instead, what is intended is to capture the person who distributes an image when they know, or they reasonably ought to know, either that the person filmed does not consent to this particular distribution or does not consent to distribution in general. That will most commonly arise where the distributor knows who the subject is or knows the circumstances in which the images were taken.

The Government has engaged in extensive and detailed discussions with representatives of traditional media organisations about this Bill. The result has been that any disagreement about the effect of the Bill has been narrowed, in effect, to two amendments. These amendments were made in another place. the amendments of substance concern the defence of legitimate public purpose. The representatives of traditional media organisations

were firmly of the opinion that some of what they show or report would fall foul of the prohibition on humiliating and degrading filming. They submitted, strongly, that this was a restraint on the freedom of the media.

The Government's position was and remains that the new proposals contained in this Bill are not and were never aimed at traditional media organisations. The amendments say that the media are to be given the benefit of a presumption that they are, in effect, doing the right thing. If the prosecution can then prove that they were not doing the right thing - well, the usual consequences would flow from that.

The Bill now defines who is entitled to the benefit of the presumption. That presumption is to be limited to traditional media organisations. In this digital and multi-electronic age, anyone can be a media organisation. Many people can and do comment on political and social affairs through blogs, Twitter, Facebook and so on. But traditional media organisations subscribe to professional ethics and codes of conduct enforced by national bodies. They voluntarily undertake self-regulation. This definition confers a benefit - the presumption - because of that fact.

In addition, the Bill repeals and re-enacts the existing law against indecent filming. That law covers upskirting and other covert indecent filming. The substance of those offences is unchanged although drafting changes have been made.

These new laws are intended to better protect dignity and privacy against invasions that are made so easy by modern technology.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Summary Offences Act 1953*

4—Repeal of section 23AA

This clause consequentially repeals section 23AA (now to be included in proposed Part 5A as section 26D).

5—Insertion of Part 5A

This clause inserts a new Part as follows:

Part 5A—Filming offences

26A—Interpretation

This section defines certain terms used in the proposed new Part. In particular:

- a *humiliating and degrading act* is defined as an assault or other act of violence against the person or an act that reasonable adult members of the community would consider to be humiliating or degrading to such a person (but does not include an act that reasonable adult members of the community would consider to cause only minor or moderate embarrassment);
- *humiliating and degrading filming* is filming images of another person while the other person is being subjected to, or compelled to engage in, a humiliating or degrading act, but does not include filming images of a person who consents to being subjected to, or engaging in, a humiliating or degrading act and consents to the filming of the act;
- *invasive images* are images of a person engaged in a sexual act of a kind not ordinarily done in public, using a toilet or in a state of undress such that the person's bare genital or anal region is visible (but does not include an image of a person under, or apparently under, the age of 16 years or an image of a person who is in a public place).

26B—Humiliating or degrading filming

This section creates new offences relating to humiliating and degrading filming (with a penalty of imprisonment for 1 year), distribution of images obtained by humiliating and degrading filming (with a penalty of imprisonment for 1 year) and taking part in a humiliating and degrading act and engaging in such filming or distribution (with a penalty of imprisonment for 2 years). The proposed section also sets out defences that are available in relation to a prosecution and a presumption relating to conduct by or on behalf of a media organisation.

26C—Distribution of invasive image

This section creates an offence of distributing an invasive image (with a penalty of $10,000 or imprisonment for 2 years) and sets out defences to such a charge.

26D—Indecent filming

This section contains the current provisions from section 23AA of the Act.

26E—General provisions

This section contains provisions applicable in relation to all sections in the Part. The section covers issues of relating to what is an effective 'consent' for the purposes of the Part, the non-application of the Part to law enforcement personnel, legal practitioners and medical practitioners, or their agents, acting in certain circumstances and the power of the court, when dealing with an offence against the Part, to order forfeiture of equipment or items.

Debate adjourned on motion of Hon. J.S.L. Dawkins.

GRAFFITI CONTROL (MISCELLANEOUS) AMENDMENT BILL

The House of Assembly having considered the recommendations of the conference agreed to the same.

At 16:38 the council adjourned until Tuesday 19 February 2013 at 14:15.