LEGISLATIVE COUNCIL

Thursday 7 March 2013

The PRESIDENT (Hon. J.M. Gazzola) took the chair at 11:03 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) (11:03): I move:

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

Motion carried.

SITTINGS AND BUSINESS

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) (11:04): I move:

That standing orders be so far suspended as to enable petitions, the tabling of papers and question time to be taken into consideration at 2.15pm.

Motion carried.

RESIDENTIAL TENANCIES (MISCELLANEOUS) AMENDMENT BILL

In committee.

(Continued from 5 March 2013.)

Clause 40.

The Hon. G.E. GAGO: A couple of questions were asked previously in committee, which I took on notice and agreed to bring back a response. I have answers to those questions, so at this point I will give those responses. There was a question from the Hon. Kelly Vincent as to whether the pet bond would apply to assistance animals, such as guide dogs and hearing dogs. The honourable member stated that, if it did, it would breach the Disability Discrimination Act. I was advised that it was arguable that the proposed pet bond may apply to all animals, including assistance animals. We were confident that the antidiscrimination legislation dealt with this issue. After further consideration, it appears that it is arguable that, in some instances, a request for a pet bond for an assistance animal may breach the antidiscrimination legislation, therefore, when clause 35 is recommitted, the government will look to amend that provision to provide certainty that the pet bond cannot apply to assistance animals.

There was also a question asked by the Hon. Ann Bressington about who suggested the introduction of a pet bond. I am advised that the concept was suggested by respondents during the public consultation process, including the Real Institute of South Australia and the Landlords' Association of South Australia. All submissions referring to a pet bond are publicly available on the AGD website. The flavour of the submissions on this issue was that landlords and agents would be more inclined to keep pets if the pet bond was able to be requested; however, this matter may be discussed in further detail when clause 35 is recommitted.

The Hon. D.G.E. HOOD: I move:

Page 19—

Line 19 [clause 40(2), inserted subsection (1a)]—Delete 'The obligation' and substitute:

Subject to subsection (1b), the obligation

After line 20 [clause 40(2)]—After inserted subsection (1a) insert:

(1b) The obligation to repair does not apply if the tenant has agreed in writing that he or she does not require the state of disrepair to be remedied (but this subsection does not derogate from the operation of subsection (3)).

The first is a fairly simple amendment. The second amendment seeks to insert (1b) after (1a) in the bill. If I read from section (1a) of the bill, it makes it fairly obvious:

The obligation to repair—

that is the landlord's obligation to repair—

applies even though the tenant had notice of the state of disrepair before entering into occupation.

What this requires is that a landlord is compelled to repair a particular item in the home, even though that landlord may have advised the tenant, 'Look, the dishwasher does not work, are you okay with that?' and the tenant presumably would then say, 'Well, yes, I am okay with that if you would lower the rent by 20 bucks a week', or whatever it may be. I see no reason why the tenant and the landlord should not be able to agree on that. The bill means that they will not be able to agree on that if it is not amended.

My amendment says that, as long as the tenant and the landlord have an agreement in writing about this particular item—that is, in this case, the dishwasher not working—that does not need to be repaired during the term of that tenancy. That is the effect of the amendment.

I think that it is a sensible amendment. There are plenty of items in homes that tenants may not need and would seek to lower the rent as a result. I think that it is a win for landlords and tenants, so I would hope to get the support of the chamber.

The Hon. G.E. GAGO: The government rises to oppose this amendment. It is understood that the amendment seeks to address the situation where a landlord and tenant agree that a broken appliance does not have to be repaired in exchange for a discounted rent. If the tenant later changes their mind and requests the landlord to fix the appliance, the landlord is then obliged to do so but is prevented from increasing the rent as a consequence.

It is queried whether it is appropriate for a landlord to contract out of their statutory obligation under section 68 of the act. However, it is understood that domestic items that are not prescribed by the Housing Improvement (Standards) Regulation 2007 as being required to be provided in a house may be expressly excluded from a tenancy agreement so that, if the item breaks down, the landlord is not obliged to repair it. So, that provision exists.

Section 68 of the act exists to protect tenants by requiring landlords to keep the premises in a reasonable state of repair. It would be highly undesirable to reduce this protection, particularly for a minority of cases that may arise from time to time. Most importantly, it is crucial that vulnerable and disadvantaged tenants are protected from landlords who may abuse the situation created by the proposed amendment, and for this reason the government opposes this amendment.

The CHAIR: The Hon. Mr Hood, do you want to respond to that?

The Hon. D.G.E. HOOD: Perhaps I will respond to the minister quickly, for the benefit of other members, sir. My response is that I was told beforehand that the government would not support the amendment—so be it. I simply do not agree that this in any way puts undue pressure on tenants because specifically in (1b), which I seek to insert into the bill, it says that there has to be an agreement in writing. So, the tenant has to physically sign that they agree with that. However, if they are coerced into doing it, there are other protections available to them. That is what I am seeking to insert, and I believe that is the right thing to do.

The Hon. J.A. DARLEY: Can the minister confirm that the government amendment at clause 29 would apply equally to this clause; that is, if a non-essential item has been excluded from a lease agreement, both parties can come to a mutually agreeable arrangement to have it included, and the rent payable could then be adjusted accordingly? If this is the case, does it not make the Hon. Dennis Hood's amendment unnecessary, especially in light of concerns about trying to overcome statutory obligations?

The Hon. G.E. GAGO: The Hon. John Darley is correct in his summation; that is, if the landlord and tenant agree to exclude items that are not prescribed, they are not required to repair those and they have the ability to negotiate a rental price they can mutually agree. The government finds it completely unacceptable that we would create a situation where the landlord would be able to contract out of their statutory obligations. That is a very important principle, and it is a principle that is there to protect particularly the tenant. It does not take a great deal of imagination to see situations where vulnerable tenants could quite easily be talked into basically contracting away a whole range of repair obligations for a pittance of a rental benefit.

The Hon. A. BRESSINGTON: I am just wondering if the minister can clarify whether this particular piece of legislation also applies to Housing Trust and its agreements with its tenants?

The Hon. G.E. GAGO: We do not have that information. Housing Trust has separate legislation and we do not have that particular detail with us today.

The Hon. A. BRESSINGTON: Would the minister be able to provide that information before we finish this debate? I think it is very important that the laws that are being placed on private rental are also a standard that is required of the state.

The Hon. G.E. GAGO: Certainly.

The Hon. M. PARNELL: I understand where the Hon. Dennis Hood is coming from in terms of examples of non-essential items, where it might seem reasonable for the landlord and tenant to agree, 'We all agree the dishwasher does not work and we're not going to insist on you fixing it' but as the minister has pointed out with reference to housing improvement regulations, we could replace the word 'dishwasher' with 'cooker' or 'bath' or a whole range of things that are more important.

I know the Hon. Dennis Hood did in his contribution say they need to sign an agreement. It comes down to that question of undue pressure. The relationship we are talking about, between landlords and tenants, is not an equal relationship when you have low vacancy rates and tenants are desperate to secure whatever property they can. To be honest, they would sign whatever they could.

The other pressure tool that landlords can use—I will not agitate it now, because we get to it later—is the landlord can always say (and they will deny they said it), 'You know I can just give you three months and you're out.' When you have that hanging over your head, people will sign whatever, they will agree to whatever, and there is a risk that they will actually sign away some of the key elements that make for a really habitable, pleasant and safe living environment.

Amendments negatived; clause passed.

Clause 41 passed.

Clause 42.

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

Page 20, lines 40 and 41 [clause 42(1)]—Delete subclause (1)

This clause proposes to introduce a new phrase into the act which says that the consent for alterations to premises by tenants must not be reasonably withheld. The problem with that particular clause is that it refers to alterations or additions, and they are not defined and in our view could potentially encompass a wide range of actions, from minor matters to structural work. The government is insisting that this would only be for run-of-the-mill changes and would only apply to a small number of instances where a landlord unreasonably rejected minor alterations that the tenant reasonably needed, yet that is not what has been drafted and it is not what we are here debating today.

We need to respect the fact that landlords bring their private property to the table in a tenancy agreement. A landlord who rents their property to tenants does so through mutual agreement. The property they provide is not always simply an investment they hope to make a return on; it can also be a property they have received through a relative's estate or purchased to later reside in themselves. Needless to say, a landlord may be quite attached to the property in its current form.

When a tenant moves to a property and signs a tenancy agreement, they take the property as it is, not as the property they wish it to be. They should not be entering the premises with an intention of playing home renovator or of radically changing the premises without the agreement of the landlord, yet the government's amendment seeks to put the presumption towards allowing the change, rather than towards the reasonable maintenance or habitation of the premises in keeping with the landlord's wishes. If a landlord had suspected that a prospective tenant wanted to play home renovator, they might never have let the property in the first place.

The government's amendment gives no regard to the future use of the property, whether by another tenant or by the landlord themselves. As such, the Liberal Party is proposing that this section of the act remain as it is. I commend the amendment to the committee.

The Hon. G.E. GAGO: The government opposes this amendment. The proposal, under clause 42 of the bill, is based on feedback received from respondents during consultation which highlighted the fact that some landlords unreasonably withhold consent in relation to alterations or

additions to the premises. An example may be the refusal of a request from an elderly person to install handrails and the like in a bathroom in response to a fall.

Additionally, the Department of Broadband, Communications and the Digital Economy suggested the amendment in relation to the rollout of the National Broadband Network. The department was concerned that some landlords might not agree to having fibre, wireless or satellite services connected to their properties during the free rollout, meaning that their tenants would miss out on access to the National Broadband Network.

The Hon. S.G. WADE: I find it interesting that the minister has raised the NBN at this point. It is also raised in an amendment by the Hon. Mark Parnell. The Liberal Party has been in discussions with the Greens, and we support their desire that tenants have access to basic infrastructure; in the modern world, communications infrastructure is essential to a decent life.

The minister has raised the response of the Department of Broadband, Communications and the Digital Economy to consultation. I do not think it would be accurate to say that the department has suggested it; the department suggested that there was a need for change and provided an attachment which detailed a wide range of alternative provisions in other states and territories. A number of those specifically limit the unreasonable element to minor changes; as I have said in my contribution, the government makes no such limitation.

We urge the committee to maintain the basic integrity of the landlord-tenant relationship and then, through further work that the Hon Mark Parnell is suggesting later in the clause, ensuring that tenants get access to basic infrastructure.

The Hon. M. PARNELL: The Greens will not be supporting the Liberal amendment. We support the government's position, which is to include the words 'which must not be unreasonably withheld'. I make that statement of position and also want to refer to what the Hon. Stephen Wade said in terms of tenants playing home renovator. The scope of the amended clause, the government's position, is that it does include picture hooks, which is probably the most common issue people have found. However, similarly, and as the Hon. Stephen Wade pointed out, it might be major structural alterations.

Of course, the key to it is 'unreasonably', and the arbiter of a dispute would be the Residential Tenancies Tribunal. Members have to remember that these are additions or changes that are made at the tenant's expense. For example, a tenant may want flywire on the doors or the windows to keep out the mosquitoes. It would be a matter of fact and degree about whether that was unreasonable or not. If it was a heritage building, where it was going to be impossible to install flywire in a way that was consistent with the heritage values, then maybe the landlord is not being unreasonable by saying no, but if it was any other house, then I would suggest that for something like the tenant wanting to put some flywire on the windows, it would be unreasonable for the landlord to say no.

We need to go one step further and think, 'What are the consequences of a finding of whether something is reasonable or unreasonable?' My understanding is that if the landlord is behaving unreasonably then that is likely to result in the tenant having a very good case to say, 'Well, I do want to live in a house that has these facilities. I was prepared to pay for it but because the landlord is saying no, I want out of this agreement.' If they get a finding that it was unreasonable for the landlord to agree, then perhaps that would be the best option, that maybe the tenant can give notice and break their one-year lease or whatever they have and find somewhere else. That is, as I understand it, a consequence of a finding of unreasonableness.

Certainly, I think including the words that the government proposes is going to redress some of the problems that people have had; for example, they do not want to be home renovators but they want to hang a picture and it can be fixed afterwards. They can put in a picture hook and remediate it afterwards, because that is their obligation—to put it back to the same condition. It is not that hard and the landlord should not be able to say no in those circumstances.

The Hon. S.G. WADE: I am happy to defer to the Hon. Mr Hood if he would prefer but if I may by way of partial response, as we progress this item, let us remember that what might be minor to all of us might be very significant to the landlord. A lot of people inherit estates and, for a period, they may have no intention of occupying it but that place means an awful lot to them and they intend to take it. It is a family home, perhaps, that they grew up in; they do not want it transformed.

For example, the carpet that was on the bedroom floor when they grew up might be a minor matter to a residential tenancies tribunal, it might be a minor matter to the tenant, but for that person, that might be the most important object in the whole house. This is private property. If the person who comes to tenant a property can object after the event—not even say when they come in, 'I hate this carpet; I am not going to take it with it,' but object after the event—how can we say, 'No, the Residential Tenancies Tribunal thinks that carpet is minor.'

We have to remember that this is private property. This parliament has a duty to protect not only, shall we say, the private property rights of individuals but also their aesthetic and virtue values, if you like. That includes family heritage, not just whether a tribunal thinks a carpet matters.

The Hon. D.G.E. HOOD: I think the Hon. Mr Wade has put it very succinctly. Family First will be supporting the opposition amendment.

The Hon. A. BRESSINGTON: I will also be supporting the Liberal Party amendment. I think we are treading on very dangerous ground here, where we start prescribing to people who own a property and who, in many cases, are basically doing a community service by making houses available for people to rent and have a roof over their head. For those landlords now to lose control of what decisions they can and cannot make about their own property, I think, is treading on very dangerous ground, so I will support the amendment.

The Hon. J.A. DARLEY: I would like to ask a question. If the Hon. Stephen Wade's amendment gets up, does that have any impact on the Hon. Mark Parnell's amendment? The other thing is that I have to disclose that I have an interest: I do have rental properties and, touch wood, I have never experienced that sort of problem in all the time that I have been renting properties, so I will not be supporting the Hon. Stephen Wade's amendment.

The Hon. S.G. WADE: If I can be so daring as to respond on behalf of perhaps the Hon. Mark Parnell; I am not sure where the question was directed. The fact is that the Hon. Mark Parnell's amendment subsequently does rely on this clause but, as I will say in the context of the Hon. Mark Parnell's amendment—and I am happy to say it now if it will facilitate the committee—my view is that, whilst the Liberal Party shares the commitment of the Hon. Mark Parnell and Greens SA to ensure that people have access to the NBN, we do not believe that his amendment will do that.

We will be supporting the amendment at the appropriate point not because we think it works but because we want to put a stake in the ground. There are recommittal matters that we will be coming back to later, and I think the NBN amendment is one such amendment. We will be seeking the support of the committee to maintain the private property and other rights of South Australians. After all, why should the tenant have the right to access the NBN but the landholder does not have the right to control their own property? Let's have a balance of interests here.

Let me say again that I think the government has basically given us a very good bill. This is a good balance of the interests of landlords and tenants. I think this is one where we are going completely out of whack. I appreciate that the amendments are in opposition to the government at this point and that our support for the Parnell amendment at a subsequent point is not sustainable before we put this bill through the third reading, but as we often do—I often ask the council to put a stake in the ground so the government knows what interest this council is willing to stand up for—I urge the committee at this point to stand up for the rights of landlords to maintain their own property.

We hope that the whole committee will be standing together at the Greens' amendment to stand up for the rights of tenants to have access to basic infrastructure.

The Hon. M. PARNELL: I do want to address a little of what the Hon. John Darley said as well. We need to keep this in some perspective. The first thing to notice is that the status quo is that a tenant must not, without the landlord's written consent, make an alteration or addition. That is your starting point; there are no ifs or buts. The landlord has an unfettered ability to say no, they can refuse to sign any piece of paper.

What the government is proposing is just to add some words, 'which must not be unreasonably withheld'; that means that if the tenant puts in what they consider to be a reasonable request. Bear in mind that there are subsequent parts of section 70 which say that the tenant has to fix up any damage—for example, if you put a hole in the wall that it has to be repaired or you have to compensate the landlord for the cost of repairing it if you do not do it yourself. I just raise

the picture hook because I think that for all of us who have ever rented it has always been an issue that has been raised and does cause tension.

The Hon. Stephen Wade talked about the carpet. Let's test that a bit more. Let's say the tenant decides that they want to, at their own expense, replace the carpet and the landlord says, 'No, that has great sentimental value. I want that carpet to be there. It's my house. I want to perhaps move back in at some stage and make it my home.' If the tenant did not accept that they were not going to be allowed to replace the carpet, it could end up at the Residential Tenancies Tribunal, which would then make a judgement about what was reasonable. I would be quite amazed if, having put the position the Hon. Stephen Wade put—in terms of the house, their future plans for it, the sentimental value—the tribunal said, 'No, we are going to force you to agree to the replacement of the carpet.' I just do not see it working like that.

I think that what the government is proposing is sensible and does actually say to landlords, 'Yes, it's your property. Yes, it's your house, but it is someone else's home for the time that they are renting it and they should be allowed at least to ask for permission to fix something up,' such as in the example of the handrail or whatever, bearing in mind that they have to remedy any damage they cause—they have to plug the holes, repaint and do all that sort of stuff. If the landlord ultimately takes possession back and does not want the handrail in the bathroom, well, it will have to be reinstated, it will have to be fixed and it will be at the tenant's expense. So, I think this is a reasonable amendment.

In relation to broadband, which we will get onto soon, my amendment does cross-reference the words 'unreasonably withheld', but I do take the Hon. Stephen Wade's point, that if his amendment is successful now we are going to have to revisit the broadband issue later. But I think we can have both: I think we can have the new provision that the government is proposing, I think that makes sense, and we can strengthen it with my broadband amendment to follow.

The Hon. J.A. DARLEY: I would like to thank the Hon. Stephen Wade for his clarification and, on the basis of that, I will be supporting the amendment.

The Hon. S.G. WADE: I thank the honourable member for his support, and I will very briefly respond to the Hon. Mark Parnell's comments. We are trying to make the residential tenancy jurisdiction work for landlords and tenants; why would we load it up with ongoing debates about matters of degree? Why would we put landlords at huge risk to try to recover costs to make properties right after a tenant left? I seek the support of the council for this amendment.

Amendment carried.

The Hon. M. PARNELL: I move:

Page 20, after line 41—After subclause (1) insert:

(1a) Section 70—after subsection (1) insert:

(1a) A landlord will be taken to have unreasonably withheld his or her consent to an alteration or addition to the premises if he or she does not consent to an alteration or addition that is necessary to enable connection of the premises to the National Broadband Network.

I took the opportunity late last night after we had risen to email all members with some additional information because, when I originally had this amendment drafted, I did so on the basis of interstate experience where it was found that landlords were refusing—or neglecting, it is probably fair to say—to sign the NBN sign-up forms as the NBN was being rolled out through their areas. If you look at some of the interstate media, you see that areas that had a very high proportion of home ownership had a very high uptake of the NBN; in those that had a higher proportion of rental properties it was lower. I think it was Brunswick, from memory, where it was only about 50 per cent and part of the problem was landlords not signing the form.

The way the NBN works, as members would know, is that it is a free service. Well, it is not free to taxpayers—it is a very expensive service overall, but it is free when it comes past your house. There is a small white box which is installed, usually where the phone comes into the house but I think in other circumstances you would want to put it around the side. If it is a heritage property, you would not want it on the front. In some situations undergrounding is possible.

Basically the idea behind my amendment was to use those words which we have now removed about 'unreasonably withheld' and to say it is unreasonable for a landlord to say no to the free broadband connection. As I pointed out to members in my email, this was in fact the

submission that was made to the state government by the commonwealth department of broadband communications and the digital economy. The words—and the Hon. Stephen Wade referred to this—in the action component of the commonwealth department's letter to the state government are:

> To help tenants to access the NBN (and other telecommunications services), South Australia may wish to consider including similar provisions in the Act, at least when it comes to telecommunications facilities.

By 'similar provisions' they refer to a chart in an attachment which talks about the different approaches that have been taken to it, but what they have in common is the idea that it would be unreasonable for a landlord to say no to the NBN connection.

The other bit of information that I wanted to point out to members is that when the NBN is rolled out, ultimately the copper wires are going. Whether they are physically removed or just turned off at the exchange, you lose your phone. If you do not connect to the NBN, if you do not have those fibre optic cables coming to your house and connect up, you eventually will lose your phone. We can talk about what are the essential elements of a liveable home, and we can talk about hot water and we can talk about a flushing toilet, but I have to say that these days being connected to the world through either internet or even more basically than that through telephone is pretty fundamental.

So, what my amendment would do is attach connection to the broadband to this concept of the landlord not unreasonably withholding permission to connect and it would give the tenant the ability if a landlord says no to ultimately end the lease and find somewhere to rent that does have the NBN connection if that is important to them. That was the thinking behind my amendment. I appreciate the Liberal position is to support this concept but we may now need to revisit the words because my amendment does cross-reference words that we have just removed from the legislation, so I ask the government to commit to recommitting this clause in the event that my amendment is successful.

The Hon. S.G. WADE: Thank you for the opportunity to speak after Mr Parnell, because I would like to flag that I do not think we have one problem but two. The Hon. Mark Parnell is rightly highlighting the point that his amendment was on the assumption that the government's previous amendment would get up. I do not think that is insurmountable at all: I have great confidence in parliamentary counsel. To say that subsection (1) does not apply in relation to the NBN I am sure is quite possible, but to problem two.

Let me restate up-front, because I do not want the government to continue to misrepresent the Liberal position, as they have previously: the Liberal Party is very supportive of the principle of the amendment, but it is not convinced that the amendment, as currently drafted, will provide any additional support for residents hoping to be connected to the NBN. This amendment aims to allow tenants to access the NBN if they want to, regardless of the wishes of the landlord.

In practical terms there are very few reasons why a landlord would not want their house connected to the NBN as it adds value for no extra cost. Under the NBN neighbourhoods that have NBN infrastructure installed will have the old technology, such as copper cabling, removed within 18 months, effectively meaning that, if households do not opt into the NBN, they will have to rely on wireless mobile technologies. So it is in the landlord's direct interest to arrange for the installation of the NBN and, as I said earlier, I believe that tenants have the right to the tools of a modern life, and that includes assess to communications technology.

I have been advised by the office of the federal shadow minister for communications that they are unaware of any instances where a landlord has refused to have the NBN installed for their tenants. But, in practical terms, neither the Greens' amendment nor the government's 'reasonableness' amendment would have given the tenant any further rights to access to the NBN in our view. This is because our understanding is that the NBN in South Australia is an opt-in scheme: it requires the owner of the property to request it, but neither the government's nor the Greens' amendments compels the landlord to do anything.

The amendment proposed by the government simply puts a reasonableness test on what the landlord can stop the tenant doing. This is evident from the other provisions in the section which are all to do with a tenant taking action to make an alteration to the premises. There is nothing in these provisions that compels the landlord to make the alteration or do anything other than say yes or no. The paperwork to connect could still sit on the landlord's desk gathering dust: consent is not the same as compulsion.

The Greens' amendment would also mean that a landlord is breaking the tenancy agreement if they did not consent, allowing the tenant to take the matter to the tribunal or leave the property without the cost of a tenancy break. The Liberal Party agrees that tenants should have access to what is essentially a public amenity, funded by taxpayers and functioning in much the same way as a drain pipe, a sewer or electricity. However, this amendment does not treat it like that: it asks for lip service from the landlord.

We are open to continuing to work—and I thank the Hon. Mark Parnell for a stimulating exchange about how these provisions would work. Clearly we believe further work is to be done. I appreciate that the Hon. Mark Parnell does not interpret the operation of the NBN in South Australia in quite the same way, but these are matters in which we should engage the NBN. To cut and paste a couple of phrases from an attachment from a letter, in our view, will not make South Australian landlords respond to the needs of the tenants. We will support this amendment, but we believe that at a recommittal stage it will need to be redrafted.

The Hon. G.E. GAGO: The government has two issues of concern with this amendment and we therefore oppose it. First, the amendment seeks to define 'unreasonably withheld', and those words no longer exist in the act because members have just voted down our amendment that would have dealt with that issue. Secondly, no-one is obliged to connect their house to the national broadband network; therefore it is not considered appropriate to oblige landlords to consent to this, despite the rollout being free. In fact, such a connection would presumably increase the value of the property, so it is hard to imagine a landlord who would not avail themselves of this opportunity. Nevertheless, no-one is obliged to connect.

It is noted that in future the national broadband network is likely to be the only fixed line telephone option available. This is because Telstra will be decommissioning the existing copper network once the fibre network has been deployed. However, a landlord is not necessarily required to provide a telephone line to a rental property. People who do not connect to the National Broadband Network obviously can avail themselves of wireless connection.

However, it is noted that a landlord may be obliged to provide a fixed telephone line as part of an agreement, particularly if that agreement is already in place, and therefore the landlord may be required by that agreement to connect the property to the National Broadband Network.

The Hon. M. PARNELL: I would like to comment on what the minister has just said and then propose a way forward. The minister rightly said that there is no law which obliges a landlord to provide a fixed-line telephone service to a property. Of course, that is correct, but should there not be a law to prevent them pulling one out that is there? That is effectively the result if the landlord does not accept the broadband connection and the tenant ends up with something less than they had before.

My suggestion to honourable members as to the way forward—and, as the Hon. Stephen Wade has pointed out, we have some difficulties and the government has some concerns—is that if members support this amendment now, that is the trigger for recommittal. If we do not support the amendment now, there will be nothing much to bring back. So, I think we should, and Stephen Wade uses the words 'a stake in the sand—'

The Hon. S.G. Wade: No, just 'a stake'.

The Hon. M. PARNELL: Just a stake. It is not in the sand; his stakes are always in firmer foundation than sand, we would hope. If we can support this amendment now, we will come back with a different form of words that achieves what I think everyone is agreeing we want, that is, for tenants to be able to access the NBN.

Whilst we might not want to go as far as forcing a landlord to have that white box on the side of their house, we would at least need, I would suggest, to give the tenant the ability to bail out of that arrangement and go somewhere where they can get a service that is essential for their life. I urge all members to continue to support this amendment, and let's come back later and finetune it.

The Hon. G.E. GAGO: One of the points I was trying to make was that if a fixed line is pre-existing, that does in fact oblige the landlord to continue to provide a fixed line. What the Hon. Mark Parnell says is incorrect, and that is that we remove a pre-existing entitlement. In fact, that cannot happen under the current arrangements. If a fixed line is pre-existing, and the rollout comes and removes the copper wire and there is no longer a fixed line, the landlord, because it is pre-existing, is obliged to provide a fixed line. Therefore, they would be required to use the NBN.

I need to make sure that the record reflects what the current arrangements are and the current protections that are in place that entitle a person to pre-existing amenities.

The Hon. S.G. WADE: I appreciate the government does not want to accept the amendment of Mr Parnell because as it has concerns, as we have too. To avoid putting the stake in the ground, I wonder if we might make people feel more comfortable if the minister might be willing to agree that if the Hon. Mark Parnell was willing to seek leave to withdraw his amendment, on the understanding that we would recommit the clause, the government might put an amendment at that time and hopefully we will get the support of the council.

The Hon. G.E. GAGO: I think the honourable member is entitled to recommit anyway; the honourable member is entitled to do that of his own accord.

The Hon. S.G. WADE: Can I indicate on behalf of the opposition that we will be seeking to recommit this clause at a later date. To try to express goodwill (which apparently the minister is having trouble comprehending), I would suggest that we do not go to the point of putting a stake in the ground. Let's just understand that we are going to recommit this clause and discuss these issues further.

The Hon. M. PARNELL: In terms of the efficient use of the committee's time, the Hon. Stephen Wade has said that he wants to recommit it, I clearly want to recommit it, the government needs to recommit it. Let us not vote on it now. I will withdraw the amendment for now, and we will recommit and we will come back and debate it again.

The CHAIR: The Hon. Mr Parnell has sought leave to withdraw his amendment on the understanding that the amendment will be revisited.

Leave granted; amendment withdrawn.

Clause as amended passed.

Clauses 43 to 45 passed.

Clause 46.

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

Page 24, line 1 [clause 46(2)—Delete 'Section 73(2)—delete subsection (2)' and substitute:

Section 73(2) and (3)—delete subsections (2) and (3)

This is a simple drafting amendment.

The Hon. S.G. WADE: On that understanding, the opposition supports the amendment.

Amendment carried.

The Hon. D.G.E. HOOD: I move:

Page 24—

Line 2 [clause 46(2), inserted subsection (2)]—Delete 'subject to subsection (3)' and substitute:

in relation to rates and charges for water supply

Lines 11 to 19 [clause 46(2), inserted subsection (3)]—Delete subsection (3)

Amendment [Hood-1] 7 is the operative amendment, and amendment [Hood-1] 6 is consequential on [Hood-1] 7. This is a simple amendment in terms of what it does to the bill. It simply removes subsection (3), lines 11 to 19, from the bill. Subsection (3) provides:

(3) A tenant is not required to pay rates and charges for water supply if—

(a) the landlord fails to request payment from the tenant within 3 months of the issue of the bill for those rates and charges by the water supply authority; or

(b) the tenant has requested from the landlord a copy of the account for the rates and charges and the landlord has failed to provide the copy to the tenant within 14 days of the request and at no cost.

At first reading, that probably sounds reasonable, but you can imagine various circumstances. When I took these issues to the various landlord bodies, they raised a couple of issues that I thought legitimate and therefore required further examination of this issue.

Paragraph (a) talks about the fact that requests need to be asked for within three months. I guess that, in a philosophical sense, I object to penalties applying for what is a relatively short time.

Someone could be overseas for three months, and there could be other arrangements in place for that period of time.

If that were the case—if someone was overseas for three months and one day, or something like that—that landlord would then cease to have the ability to charge the tenant at all for their water bill during that period, and it may be a very substantial bill. We could be talking about a property with very large grounds that required frequent watering or something of that nature, and the bill may be very substantial. I do not see why we would create loopholes for people to avoid these things. I am not suggesting that anyone would misuse that, but I think that we are creating a potentially disadvantageous situation for the landlord unnecessarily. That is the paragraph (a).

Paragraph (b) is, I think, even more difficult to justify, and that is that the landlord has 14 days to provide a copy of the bill, upon request from the tenant. Fourteen days is a very short time indeed. Someone could be overseas or sick in hospital, or someone could have potentially misplaced the bill for a couple of weeks. These things happen in the real world. I think that to take away the capacity of that landlord to have any claim on that amount whatsoever for what may be a period of 14 days is not right, and my amendment simply removes that.

The question is: if the amendment passes, what is the situation? The situation then is that those issues are removed from this bill and we revert to the current situation, which is that common sense applies and there are none of these time limits put in place. I do not support having that in the bill, and my amendments take them out.

The CHAIR: I advise the committee that we have a number of amendments standing in the name of the Hon. Mr Hood and the minister, so we are going to have to be a bit careful about working through them.

The Hon. G.E. GAGO: Thank you, Chair. The purpose of clause 46(3) is to ensure that tenants are billed quarterly, rather than, say, a very large lump sum annual payment, which can be a huge impost on a household; that is what can occur at the moment. That is what this is trying to do: it is trying to ensure that tenants are billed quarterly. We think that is fairer, less onerous and creates less of an impost.

It also means that the tenants are able to verify the charges by being able to request a copy of the original bill, which is fair enough. Removing the right to recover the water charges is considered reasonable to ensure compliance by landlords. Landlords have to pay their bills as well, and we do not believe that three months is unreasonable. Therefore, we oppose the amendment.

The Hon. D.G.E. HOOD: I do not object to what the minister has just said, but what she did not say was that the penalty for not providing a bill on a quarterly basis is the lack of ability to charge that bill at all.

The Hon. M. Parnell: Yes, that's the whole point.

The Hon. D.G.E. HOOD: Well, if somebody happens to be overseas for a period of time, or whatever it may be, why should they lose the right to forward that bill on? Why should they lose that right? That is the point I want to make.

I do not disagree with the general principle that someone should provide a quarterly bill but, if that is what the government's aim is, that is what it should say in the bill. That is not what the bill says. The bill says that they have to provide a bill every quarter and if they do not they lose the capacity to charge the bill at all.

The Hon. S.G. WADE: As I said earlier, the opposition basically regards this bill as a good balance between the obligations of landlords and the obligations of tenants. We actually support the government position, and we will be opposing the amendment because we believe that the government's provisions ensure transparency from landlords about the charges being passed on.

I take the Hon. Mr Hood's comments about 'within three months of receiving a bill' but, under these provisions, if a landlord includes a copy of the water bill in the initial request for payment, the 14-day request period provision is redundant. The amendment in the name of the Hon. Dennis Hood is proposing to remove the obligation of the landlords to provide a copy of the water bill in the account and allow the landlords to take longer than three months to pass on the cost of water once they have received the bill.

I agree with the points the honourable minister has made in relation to avoiding onerous 12-monthly piles. As the minister said, that would be a huge impost on tenants. Also I would suggest that it is in the interests of tenants to get regular payments. My memory is not as good as

that of other honourable members, and if you were to ask me what happened 12 months ago that might have led to a spike in my water bill I might not be able to tell you. Also, 12 months later, the water company may not be willing to review it.

I also think that in a way this protects the landlord because, for example, it the tenant says, 'No, that wasn't me; it must have been you. There must be a leak in the property somewhere,' it could actually fall back on the landlord. I am not clear on that, but certainly I think the issue of reviewability, together with the point the minister made about the huge cost, and together with the point the minister made about verification, suggests to the Liberal opposition that the bill as it stands, without amendment, is well founded.

The Hon. D.G.E. HOOD: I can see the numbers are not with me on this. That is fine; I seek leave to withdraw the amendment.

Leave granted; amendment withdrawn.

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

Page 24, line 2 [clause 46(2), inserted subsection (2)]—Delete 'subsection (3)' and substitute:

subsections (3) and (4)

I am advised this amendment is consequential to the Statutes Amendment and Repeal (Budget) 2012 Bill in relation to the once-off 2013 water rebate.

Amendment carried.

The Hon. D.G.E. HOOD: All subsequent amendments on my behalf are consequential, and I will not be moving them.

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

Page 24, after line 19—After subsection (2) insert:

(3) Section 73(4)—delete 'must, as soon as is reasonably practicable after obtaining the benefit of the water security rebate amount, ensure that an amount borne by a tenant under an agreement under subsection (2) or under subsection (3)(b)' and substitute:

must ensure that an amount borne by a tenant under an agreement under subsection (2)(a) or under subsection (2)(b)(i)

(4) Section 73(6), definition of *water security rebate amount*—after 'those rates and charges' insert:

(whether before or after the commencement of this definition)

The Statutes Amendment and Repeal (Budget) 2012 Bill introduced a once-off water rebate, and this amendment seeks to make the rebate provisions retrospective to ensure that tenants obtain the full benefit of the water rebate.

The Hon. M. PARNELL: My question of the minister is: how will tenants be made aware of their right to actually have the rebate returned to them in relation to water bills they have paid or of their entitlement to it? What will be the mechanism for tenants knowing that they have this rebate coming to them?

The Hon. G.E. GAGO: I am advised that CBS conducted an education campaign targeted at tenants advising them and educating them about their right to a rebate.

Amendment carried; clause as amended passed.

Clauses 47 to 51 passed.

New clause 51A.

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

Page 25, after line 38—After clause 51 insert:

51A—Amendment of section 80—Notice of termination by landlord on ground of breach of agreement

Section 80(2)—after paragraph (c) insert:

and

(d) if the tenant gives up possession of the premises—

(i) the landlord is entitled to compensation for any loss (including loss of rent) caused by the termination of the tenancy (but the landlord must take reasonable steps to mitigate any loss and is not entitled to compensation for loss that could have been avoided by those steps); and

(ii) the Tribunal may, on application by the landlord, order the tenant to pay to the landlord compensation to which the landlord is entitled under this paragraph.

I will be brief because I understand that the government is supportive of the amendment. During consultation on this bill, the Liberal Party consulted a number of stakeholders, including the Real Estate Institute of South Australia.

REISA is concerned that the act as it stands allows a tenant to vacate a property without incurring the cost of a leaseback by defaulting on rental payments. This escape clause is clearly unacceptable, and our view is that it should be remedied. While it may be the case that tenants in this predicament might not have the ability to pay, for those who can it is vital that landlords have the means to seek the payments they are entitled to.

We understand that the government has consulted the relevant government agencies, and they have advised that what we propose will address the concerns raised. Our amendment provides for the landlord's reasonable losses to be covered by the tenant. It is fair that tenants who leave the landlord unreasonably out of pocket should have to wear that cost. I commend the amendment to the committee.

The Hon. D.G.E. HOOD: Family First supports the amendment.

The Hon. G.E. GAGO: The government supports this amendment. It has been proposed during consultation that, where a tenant vacates a property after receiving a breach notice, the landlord should be able to be compensated for their reasonable losses due to the early termination of the tenancy agreement. There was a strong response in favour of this recommendation. It was also submitted that, while landlords should be entitled to compensation in these cases, it should be subject to proof that the tenant has actually abandoned the premises.

As a solution, it was decided to amend the existing abandonment provision under the act by introducing criteria to be considered by the tribunal in determining whether a property has been abandoned by the tenant. This is contained within clause 62 of the bill and includes a failure to pay rent and evidence suggesting that the tenant no longer resides in the premises. Section 94 of the act already provides that, if a tenant has abandoned the premises, the landlord is entitled to compensation for any loss, including loss of rent caused by the abandonment.

The amendment proposed by the Hon. Stephen Wade seeks to reintroduce the original proposal released during consultation, that is, to enable landlords to be compensated for their reasonable losses due to the early termination of a tenancy agreement where a tenant vacates after receiving a breach notice. The honourable member's amendment specifically relates to a breach through rent arrears. One problem is that, in many cases where a tenancy has been terminated through a breach notice, it is unlikely that the landlord will be able to recover further compensation from a tenant who has been unable to pay their rent. This is one of the reasons why the proposal had been originally rejected.

Although the proposal does raise concerns about hardship for tenants who are already struggling with their obligations, these can be mitigated through requiring landlords to apply to the tribunal for compensation, thus proving that they are entitled. It is acknowledged that, when a tenant deliberately enters into a rent arrears in order to avoid break lease costs, the landlord suffers a great loss through vacancy and reletting costs, as well as rent arrears, that force the eviction. For this reason the government supports the amendment.

The Hon. J.A. DARLEY: I understand this amendment would address situations whereby tenants intentionally stop paying rent so that the lease can be effectively terminated. Whilst I do not know to what extent this practice occurs, I appreciate that it would have a detrimental impact on landlords and, to that extent, I am certainly sympathetic of this situation. Obviously this could also impact a tenant's ability to rent new premises in terms of being blacklisted.

Can the government advise what feedback it received during its consultation with stakeholders, particularly the Real Estate Institute of South Australia, with respect to this issue generally? Again, whilst I am very sympathetic to this amendment, I would like to know whether it is intended that the tribunal will consider issues of financial hardship in making an order for

compensation? We know, for instance, that in minor civil matters, defendants who can establish hardship may be ordered to repay a debt by way of affordable instalments.

New clause inserted.

Clause 52 passed.

Clause 53.

The Hon. M. PARNELL: I move:

Page 26, lines 7 to 19—Delete the clause and substitute:

53—Repeal of section 83

Section 83—delete the section

This is the most significant of the amendments that I will be moving to this bill and it does go to the heart of the fairness of the relationship between landlord and tenant. It goes to security of tenure and in particular the security of tenure of people who are on periodic tenancies, that is those who are not in a one-year tenancy or a two-year tenancy but are simply on a periodic basis. The question that arises is: under what circumstances should the landlord be able to end that arrangement? The act makes it quite clear in section 81 that there is a list of legitimate reasons that a landlord can end the tenancy and I will just go through them.

The landlord requires possession of the premises for demolition.

That can give rise to an ending of the residential tenancy such that the tenant has to move out—they want to demolish it. Secondly:

The landlord requires possession of the premises for repairs or renovations that cannot be carried out conveniently while the tenant remains in possession.

So that makes sense as well. Thirdly:

The landlord requires possession of the premises for the landlord's own occupation.

in other words they want to move back in themselves or even move in for the first time themselves, maybe that is the inherited property situation. The list continues:

The landlord requires possession for occupation by the landlord's spouse, child, parent or the spouse of the landlord's child or parent.

They are all legitimate reasons. Section 81(1)(d) states:

The landlord has entered into a contract for the sale of the premises under which the landlord is required to give vacant possession of the premises.

So if you are selling the property, that is a good reason. And the last one is:

The landlord requires possession of the premises for a purpose prescribed by regulation.

Now, that is a catch-all provision which says that the government can, in regulation, prescribe any good reason that it wants to allow a landlord to end a tenancy agreement, so a list of all the reasons. As if that list I read out is not enough, the government can add to the list of reasons that a landlord can use for ending an agreement.

If that was the situation, that would be fine if the law of South Australia said that landlords have to have a reason to be able to end a tenancy agreement, but that is not what the law of our state says. What the law of our state says in section 83 is that a landlord can give notice of termination to the tenant without specifying grounds of termination. In other words, you are out and we are not going to give you any reason and we are not obliged to give you any reason. The only thing we have to tell you is that you have three months to move out.

I can tell you as a fact that, having worked in this field for some time, that is the clause that is used for retaliatory evictions. The landlord does not like you for whatever reason, they can give you three months' notice and you are out. It does not matter that there is no reason and it does not stop them reletting the premises once you are gone. Three months' notice, you are out, no reason need be given.

In my second reading contribution I referred to the submission of Shelter SA. They want to see this clause gone. The case for removing section 83 is even stronger than that because the government is calling for it. The government's own agencies are calling for the deletion of section 83. You go onto the Attorney-General's website (the minister referred to that before), look

at the government of South Australia Department for Communities and Social Inclusion's submission. What that submission says on page 4 under the heading 'Termination of agreement' and keep in mind this is the government's submission to the government:

> The discussion paper is silent on s83 of the Act which currently allows landlords to evict tenants without a cause, provided they give at least 90 days' notice. However, Housing SA would like to see this provision abolished to remove the potential for 'no cause evictions'—in the interests of providing better security of tenure and the potential for long term tenancies.

Here we have a situation where the government agency responsible for housing, Housing SA, under the auspices of this submission from the Department for Communities and Social Inclusion—another part of government—where you have the government telling the Attorney-General to get rid of section 83 because it leads to unfair outcomes. It is not as if a landlord having rented a premises out is obliged to keep renting it out forever and ever. There needs to be a list of circumstances that give the landlord the right to end the agreement, and that is the list that I have read out which includes the catch-all provision of whatever else the government thinks is a good reason. Add it to the regulations.

However, the idea that a landlord can simply say to a tenant who had paid their rent punctually, they have paid all their bills and they have not caused one iota of damage, they have not caused any inconvenience to any of the neighbours, they have done absolutely nothing wrong, and the law of South Australia says give them 90 days' notice and you can get rid of them. I say it is used for retaliatory purposes because I know it is. The tenant starts talking about the repairs—and we have had a debate about the repairs—that the dishwasher is not working, the stove is not working, the hot water is leaking, and the landlord can form a view that 'I reckon I can find someone out there who is not going to harass me for repairs, they are not going to harass me to keep the place liveable. I am going to send these people packing and I don't have to give them any reason. They might complain that it is retaliatory but they cannot prove anything. I am within my rights to end the tenancy agreement after three months and that is what I am going to do.'

This goes to the heart of security of tenure. There has been discussion already about why we don't have a culture of long-term renting in this country. In European countries they rent from generation to generation, the same house for 100 years I have heard about, but in South Australia we have this ability for the landlord after three months to say, 'You are out and I am not going to give you a reason.' If members are looking for a reason why they should support this amendment, look at the submission from the Department for Communities and Social Inclusion and they cross-reference Housing SA who also want this to go, and that is on top of the other submission, Shelter SA, various academics who work in this field.

This is an appalling provision in South Australian legislation. It is time for it to go and, just for the benefit of members, I will be dividing if I do not get the call on this one.

The Hon. G.E. GAGO: The government opposes this amendment for very good reason. It is quite clear that this amendment seeks to protect tenants on periodic agreements from being evicted for no reason. However, it is most likely that most parties who actually enter these periodic agreements, rather than a fixed-term agreement, do so because they require flexibility over accommodation arrangements. We are a very mobile workforce: there may be family commitments that may not be able to be foreseen, so people would choose a periodic arrangement so that they have more flexibility in their work arrangements, and so on.

These arrangements are often sought out by tenants and something they prefer over a fixed arrangement. If the Hon. Mark Parnell's amendment is carried, it is doubtful that landlords would agree at all to enter into periodic agreements with a tenant if section 83 were to be repealed. It is likely that it would be withdrawn as an option in most cases. What landlord would want to go down that path if they did not benefit from flexibility as well? I is a flexibility that exists for both parties.

It is considered important for landlords to be able to retain the means to end a periodic agreement, and therefore the government opposes this amendment. Tenants are able to choose what sort of lease arrangements they want to enter. In our culture, people do not choose to have long leases; tenants generally do not favour them for personal reasons and because of the flexibility afforded to them with shorter or periodic leases. The likely outcome would be that this option being withdrawn altogether if the Hon. Mark Parnell's amendment succeeded.

The Hon. M. PARNELL: I will respond to what the minister says, and I know the Hon. Stephen Wade wants to put his party's position. I reject the minister's analysis. A more typical

scenario is a situation where a tenant may enter into a fixed-term tenancy. My first tenancy was for a six-month period when I first moved to Adelaide. We wanted longer, but they only gave us the six months. When the six months expires, the landlord does not want to commit and they say, 'Okay, you can just do it month to month,' and the tenant might want security of tenure.

This is not a simple contractual arrangement, where you go to the shop next door and buy it from someone who is going to give you a better deal. You have moved in, you are in the house, your kids are at the local school, you are established in that area, but the landlord says, 'No, I want to keep open my flexibility. I'm not going to give you another six months, another year or another two years; you're doing it month to month.' Will the landlord say, 'Oh, no, I'll move out then'? Of course they will not. Moving house is a significant issue for most people; it is an inconvenience for anyone who has ever had to do it.

As to getting rid of 'no cause' eviction, bear in mind that if the landlord has a good reason for ending the agreement, there are a list of reasons. If the government thinks the list is not big enough, add to the list in the regulations. The idea that, by passing my amendment, suddenly landlords will never again enter periodic tenancies is rubbish. I refer to academic studies that have been done based on real life examples that say that the decision about how landlords behave, in terms of whether or not they will be in the rental market, is all about negative gearing and returns on your investment much more than it is about the balance of rights and responsibilities between landlords and tenants.

It is very hard to see what disadvantage is caused to a landlord by making them have a reason before a tenant can be evicted. If you do not have a reason, then the suspicion (and it is very likely to be the truth, in most cases) is that your reason is an unacceptable one: it is to do with prejudice, it is to do with bias. It is not to do with anything about breaching the tenancy agreement; not paying rent, causing damage, or whatever. Does the minister have confidence in the Department for Communities and Social Inclusion; does she have confidence in Housing SA that they know what they are talking about when it comes to housing policy in this state?

The Hon. G.E. GAGO: We are an open government and different agencies have the right and responsibility to express their point of view. We are an open government and there are a range of views that are often expressed in these matters and we embrace that and try to balance the different points of view.

The Hon. S.G. WADE: The Liberal Party does not believe that the case for change has been made and we will not be supporting the amendment.

The Hon. D.G.E. HOOD: I respect the Hon. Mark Parnell's passion on this issue. Obviously, he has had some personal experience on the legal side of the matter, but we will not be supporting the amendment.

My view is this: as a landlord myself who has had a number of properties over the years—some of them quite inexpensive properties, some of them quite expensive properties—my experience has been that when you find a good tenant, you keep them and you do everything to keep them. There will be exceptions, I am sure the Hon. Mr Parnell could relate stories where injustice has been done, but certainly that is my experience on the whole and I think it should be within the landlord's right, within reason, to have the capacity, for whatever reason, as long as it is a decent one, to decide that some other tenant might be more suitable.

The Hon. J.A. DARLEY: I will not be supporting this amendment.

The committee divided on the amendment:

AYES (3)

Franks, T.A.	Parnell, M. (teller)	Vincent, K.L.

NOES (16)

Bressington, A.	Brokenshire, R.L.	Darley, J.A.
Dawkins, J.S.L.	Finnigan, B.V.	Gago, G.E.
Hood, D.G.E.	Hunter, I.K.	Kandelaars, G.A.
Lensink, J.M.A.	Maher, K.J.	Ridgway, D.W.
Stephens, T.J.	Wade, S.G.	Wortley, R.P.

NOES (16)

Zollo, C.

Majority of 13 for the noes.

Amendment thus negatived; clause passed.

Clauses 54 to 57 passed.

Clause 58.

The Hon. M. PARNELL: I move:

Page 28, line 27 [clause 58, inserted subsection (1a)(b)]—Delete '2' and substitute '4'

The intent of this amendment is to expand the number of rent defaults that are required before the fast-track eviction process can be instituted. My amendment proposes to increase the number to four. Shelter SA supports the amendment I have moved, and what Shelter SA says in its submission is as follows:

> It is acknowledged that tenants who are living with rental stress (that is, paying more than 30% of their household income in rent) and who are required to increase their rental payments a first or second time would potentially find it impossible to further increase their payments by even a small amount. For landlords, a tenant's third experience of rental arrears potentially places them in a position where they will never recover the rent arrears. Anecdotally however, some public and community housing tenants who are in rent arrears have been able to successfully address rental arrears, but only given a much longer time frame.

So, that is what it is about; it is about giving tenants longer to be able to get on top of their rent arrears situation.

I also refer members to the submission from Adjunct Associate Professor Michele Slatter from the Centre for Housing, Urban and Regional Planning at the University of Adelaide. What the professor says in her submission is as follows:

> ...this accelerated procedure should not be available after only 2 previous delayed payments. In the current (and likely future) employment market the proposed change would be harsh and oppressive. Landlords have the capacity to protect themselves by means of landlords' insurance against losses from tenancies. They can claim the costs of professional assistance as a tax deduction. They may well also enjoy the advantage of negative gearing. In creating a new balance between the parties appropriate to the post-GFC 21st century, these realities of risk must be observed.
>
> It is questionable whether any such accelerated procedure is 'appropriate'. If some change is made, a history of 4 previous Form2 [that is, the default form] in 12 months would be a more reasonable suggestion.

I have moved this on behalf of experts in the field whose intention is to give tenants every possibility to get on top of their rental situation before they face eviction, which is the inevitable consequence, at the end of the day, of not paying your rent. The Greens seek to postpone that end of day situation for a little longer than is proposed in the government's bill.

The Hon. G.E. GAGO: The government opposes this amendment. As the Hon. Mark Parnell has outlined, his amendment seeks to increase the number of breach notices required to be served in the previous 12 months, from two to four. Clause 58 of the bill is aimed at making it easier for landlords to evict tenants who habitually breach their agreement by being behind with their rent payments.

Allowing for the service of two breach notices is considered fair and reasonable in these situations. Often a payment plan remedies the problem, which is an option for the tribunal to set up rather than making it an order for vacant possession. What this bill seeks to do is to balance the interests of both the landlord and the tenant, and we believe that two breach notices is a fair and reasonable position.

The Hon. S.G. WADE: Do the minister's comments suggest that the capacity to pay issue the Hon. Mark Parnell made in relation to community housing and other organisations could be addressed by the tribunal?

The Hon. G.E. GAGO: No.

The Hon. S.G. WADE: The opposition believes that the government's bill is an appropriate balance, and we will not be supporting the amendment.

The Hon. D.G.E. HOOD: Just for the record, Family First will not be supporting the amendment.

The Hon. J.A. DARLEY: I will not be supporting the amendment.

Amendment negatived; clause passed.

Clause 59.

The Hon. M. PARNELL: I move that this clause be opposed. This amendment seeks to restrict the range of people who can bring third-party eviction proceedings against tenants to make sure that the list of those persons is confined to those who are directly affected by the behaviour complained of. In other words, my amendment maintains the status quo.

In my second reading contribution, I made some observations about section 90 and its unique nature in contract law. I think I might have posed the question (I do not recall if it was answered) about whether there is any other example of where third parties can infringe the privity of contract, break into an arrangement between other people and end that contractual relationship. Maybe there are examples out there; I certainly do not know what they are.

We are talking about bad behaviour on the part of tenants. The existing section 90 says that those who are, if you like, the victims of that bad behaviour are able to go to the Residential Tenancies Tribunal and seek an order for eviction. The reason this is unusual is that normally in a contract between two parties either of those parties can seek to end the contract, but it is rare, if not unique, for a third party to come in and say, 'I want that contractual relationship between that tenant and that landlord to end on the basis of the bad behaviour of the tenant.'

We need not debate the scope of that behaviour. I think it is a mainstay of programs like *Today Tonight*, the 'tenant from hell story'. There are landlords from hell as well, but the tenants from hell story always gets a great run on television, and there are some neighbours you really would hate to live next to, there are some dreadful situations out there.

The position the Greens have taken on this is that, overwhelmingly, behavioural issues that are criminal in nature should be dealt with by the criminal law, and using third-party evictions as a tool often does no more than move the problem somewhere else. So rather than dealing with the bad behaviour for what it is, the tenant is evicted and ends up becoming a problem to someone else in a different neighbourhood. That is problematic.

However, whilst I have serious concerns, fundamentally, about section 90 I am not proposing to repeal that section. The section has been there for a while, and I have discussed it with members of the Residential Tenancies Tribunal. They assure me that they have very strict standards and requirements for proving the case, making sure that it is not just trivial neighbourhood disputes that end up in having someone evicted. So I will accept, for now, that the tribunal is dealing with them as fairly as it can, but do we need to extend it? Do we need to add to that list of people who can bring those third-party proceedings?

I will, again, read very briefly from the submission of Adjunct Associate Professor Michele Slatter from the Centre for Housing, Urban and Regional Planning at the University of Adelaide. She says:

> Section 90 is a uniquely South Australian provision that allows third parties with no connection to the tenancy to bring eviction proceedings. It has no precedent, parallel or support in orthodox tenancy or contract law.

She then includes, in brackets, that it was adopted by the Northern Territory in 1999. So perhaps it is not unique, maybe the Northern Territory has taken it on as well; however, it is unique for South Australia and the Northern Territory, which was always part of South Australia, as we know, in earlier days.

The Hon. S.G. Wade interjecting:

The Hon. M. PARNELL: The Hon. Stephen Wade wishes it still was. The submission continues:

> The tribunal has given a series of judgements which provide the section with some defining parameters but it remains a potentially abusive provision. Extending s90's availability to 'authorised officers' such as, but clearly not limited to, the police and CBS, is indefensible. Existing third-party status to sue is (very loosely) comparable with an action for nuisance. 'Authorised officers' act on behalf of the state. To include this unspecified and unconnected class of applicants as potential evictors appears [more] to treating housing issues as quasi-criminal. Where criminal issues arise there is plenty of scope for criminal actions. Section 90 should not be extended in this way.

The Greens accept that analysis from the professor. We are not seeking to remove all third-party eviction tools, but we do want to keep the list of people who can bring such action to those who are directly affected, not any other parties, including police and other government officers or even, for example, the body corporate where blocks of flats are involved. Let us keep it to those who are directly and personally affected.

People might say, 'Well, the police should be able to bring the action because that will save the neighbours from having to do it.' I can tell the committee that if the police do bring an action the neighbours will have to give evidence. There is no way that the tribunal will accept the police officer's version of the bad behaviour; they will have to hear from the people concerned. So it is not a matter taken lightly by the neighbours. They often need the courage of numbers, they often get together in a group and seek the eviction. If the intention behind this amendment is to have third parties who will not be intimidated by having to bring the action, I do not think it will succeed, because the people who are the actual victims of the bad behaviour will have to front the tribunal and give evidence. I cannot see how any successful application would otherwise work.

The Hon. G.E. GAGO: The government opposes this amendment. During the Hon. Mark Parnell's second reading contribution he argued that the provision is at odds with the doctrine of privity of contract, questioning whether there is any other area in contract law. I was pleased to note he answered his own question; the Northern Territory Residential Tenancies Act contains a provision similar to section 90 of the act.

A privity of contract may be overridden by statute. In this instance parliament has determined to enable interested persons to apply to an independent body for an order that the tenancy agreement be terminated. It is entirely within the powers of parliament to make such laws. It is important to note that section 90 provides a very high threshold before a tenancy may be terminated. It requires the tribunal to give the landlord an opportunity to be heard in relation to the matter and, if the landlord objects to the termination of the tenancy, the tribunal must not make such an order unless it is satisfied that exceptional circumstances exist to justify it.

Tenants behaving badly and abusing neighbours can cause significant problems in neighbourhoods. Those affected are often too afraid to make an application to the tribunal, as they are intimidated by the tenants. Expanding the definition of 'an interested person' would mean that SAPOL could initiate actions where there has been illegal activity and that Consumer and Business Services could act on behalf of neighbours who are too afraid to initiate action for fear of retaliation.

It is acknowledged that there is a need to balance the genuine fear of other residents against the right of a tenant to know who is making allegations against them and to challenge their evidence. Ultimately, the decision as to what action to take lies with the tribunal and it may be assumed that evidence provided to the tribunal would need to be sufficiently compelling to prove that termination of the tenancy is an appropriate order to make.

The Hon. S.G. WADE: The Liberal Party obviously respects privity of contract, but we share the view of the government that this clause as it currently stands in the bill provides a high threshold and only allows that privity of contract to be overridden in exceptional circumstances. Whilst the landlord's right to choose their tenant should be respected, it might also provide an opportunity for landlords who fear retribution to engage police to evict tenants who are using the property for criminal activity. This and other provisions need to be monitored in their operation and we look forward to that happening.

Clause passed.

Clauses 60 to 63 passed.

New clause 63A.

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

Page 30, after line 23—After clause 63 insert:

63A—Amendment of section 96—Forfeiture of head tenancy not to result automatically in destruction of right to possession under residential tenancy agreement

Section 96—after subsection (1) insert:

(1a) An order under subsection (1) must be served on the tenant and takes effect—

(a) in the case of an order made in favour of a mortgagee—30 days after the day on which it is served or at such later time as is specified by the court or the Tribunal; and

(b) in any other case—at such time as is specified by the court or the Tribunal.

(1b) If an order of a kind referred to in subsection (1a)(a) is made, the tenant—

(a) is not required to pay any rent, fee or other charge in respect of his or her occupation of the residential premises in the period following service of the order; and

(b) is entitled to compensation for any rent paid in respect of that period.

(1c) The Tribunal may, on application by the tenant, order a person to whom rent has been paid to pay to the tenant compensation to which the tenant is entitled under subsection (1b).

Section 79D of the act provides that a tenancy terminates if a person having title superior to the landlord's title becomes entitled to possession of the premises under the order of the tribunal or a court.

It was submitted that the existing provisions do not adequately protect a tenant who may be unexpectedly evicted from their home as a result of their landlord defaulting on their mortgage. This is because mortgagees go to the Supreme Court rather than the tribunal to obtain such orders and most tenants are too intimidated to appear in Supreme Court proceedings, even if they have been given notice of the action.

Tenants are therefore generally unaware that orders for possession have been made in favour of the mortgagee and they unexpectedly received a notice to vacate at short notice. Therefore, the amendment proposes that, whilst the tenancy terminates when the mortgagee becomes entitled to possession, the tenant has 30 days to move out upon receipt of the notice to vacate, during which time they are not required to pay rent. This short period of rent-free occupation is a form of compensation for the early termination of the tenancy.

The Hon. S.G. WADE: The Liberal Party supports the amendment as a fair balance of the rights of all parties.

The Hon. M. PARNELL: The Greens also support this amendment, but I just make the observation that, for any law students who are reading *Hansard*, when you study property law, you cannot possibly conceive of the relevance of the lectures they give you on prior legal and subsequent equitable interests and who has priority, but this is a clear example of where the parliament needs to step in and make sure that the balance is redressed because, simply left to the common law in terms of the priority of legal interests over land, injustice would be the outcome. The Greens are happy to support this amendment.

New clause inserted.

Clauses 64 and 65 passed.

Clause 66.

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

Page 34, after line 25 [clause 66, inserted Part 5A]—After inserted section 99B insert:

99BA—Extra-territorial operation of Part

(1) This section applies if—

(a) a person does an act, or makes an omission, outside the State in relation to personal information—

(i) about a person who resides in the State; or

(ii) relating to, or arising from, the occupation of residential premises in the State; or

(iii) entered into a residential tenancy database for reasons relating to, or arising from, the occupation of residential premises in the State; and

(b) the act or omission would constitute an offence against a provision of this Part if it were done or made by the person within the State.

(2) The person commits an offence of the same kind as that mentioned in subsection (1)(b) and may be charged with and convicted of the offence.

The bill adopts national model provisions for the regulation of residential tenancy databases (RTDs). The model provisions were the result of a national project to develop a harmonised

regulatory framework for RTDs. The RTDs are often referred to as 'tenant blacklists' and have the power to affect a person's ability to secure rental accommodation.

The government identified an issue with the model provisions in relation to the enforcement powers of the tribunal against interstate operators. It appears that without the inclusion of an extra-territoriality provision, the offence provisions may only apply to conduct within South Australia. This is a concern because the major national RTDs operate outside this state. The same issue would apply to most other jurisdictions. To remedy this, the South Australian government requested that a national project be reopened with a view to amending the model provisions through the inclusion of an extra-territoriality provision.

The national teleconference was held on Monday 4 March 2013 during which the Queensland Residential Tenancy Authority, which was the original project lead, agreed to circulate a proposed extra-territoriality provision to be considered and adopted by all other jurisdictions. This is why the amendment was only recently finalised and placed on file. The amendment to include the extra-territoriality provision in the bill is important to ensure that the model provisions provide the proper protection that was envisaged for tenants.

The Hon. S.G. WADE: I have a question for the minister. I understood her to say that on Monday 4 March the Queensland authority was asked to distribute the clause for consultation. Is that the case, or was it that on that day agreement was struck on the proposed clause? I suppose another way of putting the question is: is the provision before us a draft provided by Queensland or an agreed clause with other jurisdictions?

The Hon. G.E. GAGO: I have been advised that Queensland drafted the original provisions. They identified this issue, and their drafters then drafted accordingly, distributed it and identified that other jurisdictions would need to adopt this provision.

The Hon. S.G. WADE: Was it agreed by everyone?

The Hon. G.E. GAGO: I am advised that the agreement was that it would be circulated to jurisdictions and it would be up to jurisdictions to decide because some jurisdictions had already put the model through and it might be too late for them.

The Hon. S.G. WADE: I should stress that the opposition supports the amendment. We support the other provisions in the legislation that engage South Australia in the 'national tenant blacklist'. In that regard it makes sense to facilitate the extra territorial operation of the act.

Amendment carried; clause as amended passed.

Clauses 67 to 79 passed.

Clause 80.

The Hon. D.G.E. HOOD: I had prepared two amendments but these are consequential on amendments that were defeated earlier, so I will not be moving them.

Clause passed.

Progress reported; committee to sit again.

[Sitting suspended from 12:58 to 14:15]

KNIGHT, PROF. J.

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:16): I table a copy of a ministerial statement made by the Minister for Health and Ageing on the subject of settlement of claims by Professor John Knight.

ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEX ABUSE

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) (14:17): I table a copy of a ministerial statement made by the Premier, Jay Weatherill, on the Royal Commission into Institutional Responses to Child Sex Abuse.

MEMBER'S FACEBOOK PAGE

The Hon. A. BRESSINGTON (14:18): I seek leave to make a personal statement.

Leave granted.

The Hon. A. BRESSINGTON: Over the last few weeks gradually my Facebook page has been hacked. My personal information has been accessed and friends on my page have also had their Facebook pages compromised. A page has been set up using my identity called 'the Ann Bressington appreciation page'. It is a hate page, by the way. It says, 'A big thank you to all Ann Bressington supporters coming here and letting us harvest their names, social media and other details. They have been added to our database. You have been most helpful. Thank you very much.'

I have been unable to delete posts that have been put on my Facebook page. Statements have been made in my name that I have never made. Comments that I have not made, with my picture beside them, have been posted on other Facebook pages, and other messages have been circulated around false Facebook pages claiming to be connected to me. I was up until three this morning trying to delete over 1,000 people who have been put on to my page without my accepting them. After I finished I got a message on my screen saying, 'Ann Bressington, in 2.45 seconds, what do you see?' All the deletions that I had spent 3½ hours on were reinstalled on to my Facebook page!

I have been unable to deactivate my page. I have had four attempts to do this, and each time I have deactivated it I have got up the next day and there it is. Last night I deactivated it at 3 o'clock and it seems to have taken this time. I know of three people who are absolutely involved in this, and I am making a report to the police commissioner because they have circulated their identities on Twitter and have sent me messages on my email address at home and identified themselves and who they are working with.

There are people in here who are on my Facebook page, and this is to let them know that your information is at risk because they can hack into anybody's information that is on my Facebook page. One of the people is a lawyer, and he has already been charged and convicted with fraud of over $30 million from a Victorian university, and he has also been charged with making death threats against the head of the anti-vaccination network and pursuing her for almost three years and causing her distress and harm.

I am basically saying that people in here need to delete themselves because I do not have the ability to delete anybody from my page and, if you are on there, get yourself off. I have also seen screenshots of another page in my name using my identity, and they have been sent to me over my phone, so they have actually accessed my phone, too. For anybody in here, this is a warning to all of you: they can access your banking details, get into your private email and basically do as much damage as they can. So, if you are on my page, please remove yourselves.

QUESTION TIME

SOUTH AUSTRALIAN SEAFOOD

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:21): I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question regarding South Australian seafood.

Leave granted.

The Hon. G.E. Gago interjecting:

The Hon. J.M.A. Lensink: She is obsessed with your lips.

The Hon. D.W. RIDGWAY: Is she? Well, they are beautiful lips, I know, but no need to be obsessed with them.

Members interjecting:

The Hon. D.W. RIDGWAY: It's been 20 seconds and they are into it, Mr President. On 18 December—

Members interjecting:

The Hon. D.W. RIDGWAY: I would listen if I were you, minister. On 18 December 2012, the minister said, 'South Australian food can be sourced from a huge variety of locations, including

the Adelaide Central Market.' The minister is also on the record as saying, 'South Australians are spoilt for home-grown choice.' In the lead-up to Christmas, the minister encouraged South Australians to eat South Australian seafood, including 'a seafood platter gloriously piled with smoked salmon, marinated calamari and octopus and Spencer Gulf king prawns'. Further, the minister explained the benefits of sourcing our food from within our state. Again, I quote:

> Buying local food and beverages supports our farmers and producers, which in turn helps generate income, create jobs, build our regions, and boost our economy.

On 11 February this year, the minister claimed that the South Australian's strategic priority of premium food and wine was one of the seven key areas of which the state government was focusing its efforts.

My question is: on 1 March this year, at one of the state's premier tourism sporting events, the Clipsal V8 race, why were the guests in the South Australian government's own suite served Queensland barramundi?

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 thank the honourable member for his question.

The Hon. D.W. Ridgway: It's a pretty important question—practise what you preach.

The PRESIDENT: He's not listening, minister, but you can tell me.

The Hon. G.E. GAGO: I thank the member for his question; it does beggar belief. We do attempt, where we can, to promote our local produce. We do, from time to time, also source food from elsewhere. As I said, our practice is that wherever possible we source local. I don't know what went behind the decisions made at the Clipsal V8. I am not responsible for ordering food there. As Minister for Food and Fisheries, I promote wherever possible to eat local. We do have a fabulous range of beautiful produce. On many occasions, we do serve local food. Our Convention Centre prides itself on being predominantly local. Their track record for local produce is truly remarkable, not just in terms of the food they serve, but also the wines as well are predominantly local.

The Hon. D.W. Ridgway: Predominantly but not all though.

The Hon. G.E. GAGO: I think that about 99 per cent, or close to that, is local wine. This is a very good practice, and it does promote local industry and it can also help reduce our carbon footprint by reducing freight costs and suchlike.

The Hon. D.W. Ridgway interjecting:

The Hon. G.E. GAGO: Does the honourable member really want us to be a state that is exclusive? If that is what he is saying, that his government, when in government, will be exclusively SA then South Australia is going to be terribly disadvantaged in relation to other states because we promote very much our food to other states. If every other state around Australia moved to an exclusive South Australian position, we would be considerably disadvantaged because we rely heavily on other states importing our fresh produce. In light of that, it is reasonable that we do purchase food from other states from time to time, and we do that.

With respect to the Clipsal V8, the Minister for Recreation and Sport, I believe, is the minister responsible for that. I am very happy to refer the question to that minister in another place and bring back a response.

The PRESIDENT: I might add that the barramundi was delicious, minister. David, did you have any?

The Hon. D.W. Ridgway: It was from Queensland, nonetheless.

The PRESIDENT: You didn't have any?

The Hon. D.W. Ridgway: No.

The PRESIDENT: The Hon. Ms Lensink.

The Hon. R.P. Wortley: Pretty hard to eat barramundi after seven dozen oysters.

The PRESIDENT: Order!

The Hon. D.W. Ridgway: You idiot. There were no oysters there on Friday. Sunday when you had your snout right in it they were there, but not on Friday.

The PRESIDENT: Finished?

The Hon. D.W. Ridgway: Not yet.

The PRESIDENT: Well, you keep going. Your deputy leader is on her feet, and I am waiting to give her the call. The Hon. Ms Lensink.

KANGAROO ISLAND LIGURIAN BEES

The Hon. J.M.A. LENSINK (14:28): Thank you, Mr President. I seek leave to make a brief explanation before asking the Minister for Sustainability, Environment and Conservation questions regarding Kangaroo Island Ligurian bees.

Leave granted.

An honourable member: They're beautiful.

The Hon. J.M.A. LENSINK: Not edible, though, I understand. South Australia is especially known for its Ligurian bees located on Kangaroo Island, which were introduced in 1884. The government has proclaimed Kangaroo Island a Ligurian bee sanctuary; they are well known for their ability to fertilise a number of plants.

My office was contacted recently about the killing of Ligurian bees in national parks. I have been informed that this work was contracted by the Department of Environment, Water and Natural Resources after a staff member was stung and therefore it is apparently being done for occupational health and safety reasons.

This constituent, in concern, contacted another government agency, which has verbally confirmed their concerns, but it has stated that it is unable to take any action as it is an interdepartmental issue. My questions are:

1. Will the minister confirm that Ligurian bees have been baited and poisoned by his department and, if so, why were the bees not being trapped and relocated?

2. What is the effect on other native species?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:29): I thank the honourable member for her most important questions about Ligurian bees. If I can find out who it was in the chamber who suggested some unholy practices being visited upon those bees, I will have words with them. You would not want to waste chocolate like that.

I think that the honourable member, in her question where she referred to bees fertilising a number of plants, really meant 'pollinating'; it is an easy mistake to make. I will take the question on notice, and I will bring back a response on her behalf.

WATER INDUSTRY ALLIANCE

The Hon. J.S. LEE (14:29): I seek leave to make a brief explanation before asking the Minister for Water and the River Murray about the Water Industry Alliance program.

Leave granted.

The Hon. J.S. LEE: On Tuesday, I asked a question about the Water Industry Alliance funding. The minister provided to council a breakdown of the $265 million program. I quote from *Hansard* what the minister said:

> The $265 million funding announcement is comprised of $180 million from the commonwealth Sustainable Rural Water Use and Infrastructure program, all of which will be put towards the Water Industry Alliance program, and $85 million from the South Australian Industry Futures Fund to be established for research, regional development and industry redevelopment in South Australia, with $60 million of the $85 million to be forwarded to the Water Industry Alliance program.

In his answer, he said that $60 million of the $85 million will be forwarded to the WIA, but he did not provide a further breakdown of where the remaining $25 million will go. If we add $180 million and $60 million, that equals only $240 million, which is not the amount of $265 million previously announced by the Premier. My questions are:

1. Can the minister outline the details of how the other $25 million will be spent?

2. Specifically, will the minister confirm whether the remaining $25 million of the funding will be injected into the River Murray communities, as promised by the Premier?

3. If the minister does not have the answers, can he investigate this matter with his department and bring back an answer to this council?

The PRESIDENT: Water and the River Murray—I admit I have a touch of deja vu here.

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:31): I supposed the simple answer really is yes, but let me just revisit some of the figures I gave yesterday.

The Hon. J.S.L. Dawkins: 'Let me just read the briefing paper I have read before.'

The Hon. I.K. HUNTER: Well, I can. I don't want to give the chamber an elementary lesson, but I would have thought to add up the $180 million that I mentioned yesterday and the $85 million that I mentioned yesterday, you would come to a figure of $265 million.

WATER INDUSTRY ALLIANCE

The Hon. J.M.A. LENSINK (14:32): I have a supplementary question. Will the minister confirm whether one of his environment agencies is charging some sort of fee to hold the money?

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): Sir, I am not sure if that is in fact a supplementary to my original answer.

The Hon. J.S.L. Dawkins: And it's not for you to rule.

The Hon. I.K. HUNTER: It's not, and that's why I am asking. I am not sure that it is; nonetheless, I will ask my department to try to explain to me the honourable member's question and if I see an appropriate answer I may consider bringing it back. Can I just say, the Hon. Ms Lee, I don't know where the $25 million comes from. I have mentioned $180 million and how that will be spent. I have mentioned the $85 million. As far as I can determine, they add up to the $265 million which we proposed.

The Hon. J.S. Lee: No, you said $60 million of the $85 million, so there is $25 million there that's missing.

The Hon. I.K. HUNTER: Well, $60 million out of $85 million—do the sums and you can then go back to the original part of my answer and see that I said '$85 million from a South Australian Industry Futures Fund to be established for research, regional development and industry redevelopment in South Australia'. Read the *Hansard*.

Members interjecting:

The PRESIDENT: I'm thinking about leaving. The Hon. Mr Kandelaars.

MARINE BIOSECURITY

The Hon. G.A. KANDELAARS (14:33): I seek leave to ask the Minister for Regional Development a question about biosecurity.

Leave granted.

The Hon. G.A. KANDELAARS: The government has set out as one of its priorities premium food from our clean environment. Doubtless, all South Australians are proud of our beautiful environment and want to maintain this competitive edge. Can the minister advise of an aquatic development which will help maintain this environment?

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) (14:34): I thank the honourable member for his most important question. I have no doubt that the member is correct in identifying the pride with which South Australians regard their surroundings, and Biosecurity SA, which is part of the PIRSA agency, works tirelessly to help ensure that we maintain this.

I was recently advised of a method that can be used by boat owners to help ensure that they do not bring unwanted visitors with them when they travel into our waters. Biosecurity SA has been investigating a boat sleeve since 2011, and I am pleased to say that I have been advised that the two trials undertaken so far have been very successful.

The IMProtector means that boaties can clean boats without taking them out of the water, while also doing their bit for the environment and the fish that live in it. Some marine pests can damage boat engines, reduce vessel performance, damage the environment and deplete fishing grounds—something I know would concern you, Mr President—and prevention and early detection are vital to prevent this.

An introduced marine pest protector is a heavy polypropylene tarpaulin with built-in ropes, weights and floats. It is wrapped around a vessel that may have pests on its hull as marine growth (or bio-fouling) and pulled up tight around the hull, and then nature does its work. The tarp forms a sleeve around the hull to stop pests escaping and to kill them. It traps a small volume of water, starving the marine growth of oxygen and blocking sunlight for photosynthetic organisms. As the growth dies it kills off any marine pests in the process naturally.

I am advised that two to four people can install it in about 45 minutes, and it comes with a small petrol-driven water pump to remove excess water to help speed up the process. I understand that the South Australian government trials of the boat sleeve were undertaken in the middle of winter, and all growth was dead after two weeks. However, I am advised that if used in warmer conditions it would process even more quickly.

Boaties will not entirely get out of the job of slipping their vessel to replace anti-fouling coating; however, it can help keep marine growth to a minimum, reducing the risk of marine pests attaching to the hull. It will decrease the time and effort required by boaties to anti-foul their vessels, as they would usually have to charter their vessel to the slip, leave it there for treatment, and then return to bring it back to their marina. The added benefit of this technique is that it can also be used in emergencies, when a new pest has been found, to quarantine a vessel and prevent the marine pest from spreading.

I am advised that Biosecurity SA is working on making the boat sleeve available for public rental. Biosecurity SA developed and procured this first lightweight, government-owned version of the IMProtector in Australia. The concept has since been adopted by Western Australia Fisheries, which has bought several of the sleeves. Other regions may also soon take up the idea.

MARINE BIOSECURITY

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:38): I have a supplementary question. What is the maximum length or size of vessel that the sleeve can be used on, and how many boats are coming into South Australian waters annually with marine pests?

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): I am happy to take those questions on notice and bring back a response.

PEISLEY, MS S.

The Hon. K.J. MAHER (14:38): My question is to the Minister for Aboriginal Affairs and Reconciliation. Given that tomorrow is International Women's Day, will the minister share with this place the significant contribution made by the eminent Aboriginal South Australian Ms Shirley Peisley AM to the Aboriginal people of South Australia and, more recently, her efforts to support the constitutional recognition of Aboriginal people within our state?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:39): I thank the honourable member for his most important question. As a caring and sharing person I will share with the chamber. As the honourable member suggested, there is no doubt that Ms Shirley Peisley AM is a special South Australian.

Ms Peisley, or Auntie Shirley as she is more affectionately known, has been a figure on the landscape of Aboriginal rights and reconciliation within South Australia, and indeed across the nation, for most of her adult life. She is fondly remembered as being the face of the 1967 referendum campaign to provide basic citizenship rights to Aboriginal Australians and, indeed, to include Aboriginal people in the federal government census.

The overwhelming support for the yes vote created a constitutional head of power under which the Australian government could make special laws for Aboriginal people. The picture of Auntie Shirley pinning a Vote Yes button on the lapel of the late Labor senator Reg Bishop on

referendum day became a symbol of national success; it thrust Auntie Shirley into the limelight and was published in newspapers right around the country.

It is important to remember, however, that prior to the 1967 referendum the government counted the heads of cattle and sheep but not Aboriginal people in this country. They were still considered to be part of the flora and fauna and not worth counting, and that is why long before that photo of Shirley was taken she has been fighting and engaging in activism for the rights of Aboriginal people.

She recalls a time when she was pulled up by the police on a sunny afternoon at Semaphore Beach; it was one of the first incidents that politicised her as a young Aboriginal woman. She says that being a young student and the only black woman amongst a number of white friends on the beach on the day caught the attention of the police. The police wanted to arrest her and her friend for consorting.

She recalls the police telling her that the consorting laws were to protect innocent young Aboriginal women from mixing with unscrupulous white males, but she remembers it differently. She believes this to be a racial and sexual swipe against her as an Aboriginal woman. Interestingly, Shirley has since reflected that in actual fact she and her family were already deemed to be exempted from the South Australian Aborigines Act and that under the law she was considered to be white and could mix and socialise with anyone she chose to.

For many, this might seem a lifetime ago, perhaps even another world, but it is important that we remember such times in this place and that the community do so as well. We cannot forget that just less than 50 years ago the Aboriginal people of Australia and of this state were subject to unjust and unequal laws. There is no doubt that we have made significant steps towards reconciliation as a state and as a nation, but Auntie Shirley will be one of the first to tell us that we still have some way to go—and of course she is absolutely right.

Throughout her life, Shirley has been involved in Aboriginal activism. She has been telling governments and politicians of all persuasions what needs to be done to improve the quality of life of Aboriginal people and also where we are falling short. As a young woman, Auntie Shirley was involved with the Council of Aboriginal Women of South Australia, where her efforts and those of many Aboriginal women gave rise to some of the first Aboriginal non-government organisations in South Australia. Examples include the Aboriginal Legal Rights Movement in the old Aboriginal Community Centre, which was located at 125 Wakefield Street. When that closed, Nunkuwarrin Yunti became the new centre for Aboriginal people to receive health and medical care, which I am told laid the foundations for specialised Aboriginal health services right across our country.

Shirley took an active interest in committees where women could have a say. She was mindful that the voices of Aboriginal and Torres Strait Islander women were not heard, nor was their presence felt, and she decided to do something about that. She became an active member of the International Women's Day Committee, serving for many years and encouraging other Aboriginal women to attend. She became Vice President of IWD and during this time created the first award for Aboriginal women in South Australia, convening these awards for the next 10 years.

Members of this chamber might also know of Auntie Shirley's efforts as convenor of the annual Gladys Elphick Awards, another pioneering Aboriginal woman who was an inspiration to many, including Auntie Shirley herself. On 10 March 2010, Shirley was made a life member of the International Women's Day Committee SA and later that year presented with the IWD Centenary Medal at a dinner that was held in her honour. In 2000, in Adelaide, leading the march for reconciliation across the Torrens Bridge with a huge crowd of over 50,000 people, I think, on the day, it was announced that she had been awarded the Order of Australia Medal, the AM.

In more recent times, Auntie Shirley was appointed to the state government's constitutional reform advisory panel, where she was instrumental in supporting the consultation phase of the bill to recognise Aboriginal people in the state's Constitution Act, and members can expect to see Auntie Shirley in the strangers' gallery on the 21 March watching the proceedings of the debate on that bill.

As it happens, it was in fact Shirley who suggested the bill should be debated in this place on the 21st because it would be fitting to do so on a day that is both Harmony Day and International Day for the Elimination of Racial Discrimination. As the honourable member has pointed out, tomorrow is International Women's Day. I am advised that, as usual, Auntie Shirley will be involved in the day's events and will be making an announcement in regard to the Gladys Elphick awards.

On behalf of the government of South Australia and this chamber, I take the opportunity to note the considerable efforts of Auntie Shirley towards improving both the rights and the quality of life of Aboriginal people within our nation and consequently enriching the lives of us all.

GOVERNMENT STATIONERY CONTRACT

The Hon. J.A. DARLEY (14:45): I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries, representing the Minister for Finance, questions regarding the across government contract for the provision of stationery and related products.

Leave granted.

The Hon. J.A. DARLEY: Contention has been raised recently with regard to the government's attempt to provide a one-stop shop across government for all stationery products, including toners following the 'tonergate' fiasco. The contract was awarded to two multinational companies. Particularly contentious is the fact that only metropolitan schools were included in the contract. I have been advised by the company previously responsible for supplying all schools with stationery, KW Wholesale Stationers, that non-metropolitan schools were excluded from the contract. I have been further advised that some may consider the exclusion of non-metropolitan schools to be profit skimming as predominately profit is made by supplying the metropolitan schools and that it is virtually non-viable to only supply non-metropolitan schools. My questions are:

1. Why did the contract exclude non-metropolitan schools from the contract? On whose advice was this done? What was the nature of the advice?

2. Why were other essential school products such as art and craft materials and janitorial supplies also not included in the contract?

3. Was an economic impact study conducted before the tender was awarded? If not, will the minister consider conducting economic impact statements of the effects on local businesses before tenders are awarded in the future?

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) (14:47): I thank the honourable member for his most important questions and I will refer them to the Minister for Finance in another place and bring back a response. If I recall, I believe that—and obviously the minister will either confirm this or not—the exclusion of regional schools was at the request of those regional centres that wanted to be excluded because of the local arrangements that they had in place and the convenience around that. But as I said, I am not the minister responsible and I will refer the questions to the appropriate minister and bring back a response.

GOVERNMENT STATIONERY CONTRACT

The Hon. J.A. DARLEY (14:48): I have a supplementary question. Is the minister aware of the fact that 10 to 15 jobs could be lost as a result of this decision?

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) (14:48): I will refer the question to the Minister for Finance in another place and bring back a response.

DISABLED WOMEN

The Hon. K.L. VINCENT (14:48): I seek leave to make a brief explanation before asking the minister representing the Minister for Health questions regarding the sterilisation of women with disabilities.

Leave granted.

The Hon. K.L. VINCENT: The sterilisation of women with disabilities is an issue regularly raised with my office by women with disability, advocates, media and constituents. The stories of the culture pervading much of our medical profession, and some in society, surrounding this issue are of great concern to me.

Similar to the patriarchal attitude that is sometimes seen in the abortion debate, for example, many people seem to think they should have a say over the reproductive rights of women with disability, in particular. So concerned about this was the Senate's community affairs committee that they are now conducting an inquiry into the matter, and I am aware that the United Nations is

also looking into the issue. In investigating the matter we have found it difficult to get accurate or detailed data, so on the eve of International Women's Day my questions are:

1. Does the minister acknowledge that this is an issue that needs to be looked into by the Department for Health directly?

2. Does the minister acknowledge that the data available is not adequate since it does not tell us whether the person sterilised has an intellectual or physical disability, for example?

3. Will the minister conduct an inquiry into the extent of sterilisation procedures on women with disability in South Australia?

4. Does the minister agree that improved sex education for all people with disability, particularly women with physical and intellectual disability, might prevent some of the circumstances that arise for these women, their family and their carers?

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 her very important question. As I understand it, the Department for Communities and Social Inclusion led the South Australian government's response to the Inquiry into Involuntary or Coerced Sterilisation of People with Disability in Australia, and I certainly do recall that body of work.

Under current legislation, as I understand it, involuntary or coerced sterilisation of people with disability is illegal in South Australia. I have been told that there is no evidence to suggest that it is occurring. In South Australia, only the Guardianship Board or the Family Court can consent to procedures that lead to sterilisation of people who are unable to make their own informed decisions. Nonetheless, we have a commitment to ensure that the rights of people with disability are upheld in our society and that people who have difficulty making decisions are actively supported to make their own choices. I would have thought that the control of one's body is and has to be a primary consideration for all of us.

Government and non-government partners are committed to ensuring that people with disabilities are supported to access sexual health, contraceptive and family planning services to ensure alternative options to sterilisation are available. The sterilisation of people without their consent denies their basic human right to control their own bodies or to plan a family and does nothing to reduce their vulnerability to abuse or neglect.

South Australia's submission is due with the commonwealth government very soon, with the committee due to report its findings by, I understand, 19 June 2013. On 18 July 2011, the United Nations wrote to the commonwealth government requesting a response to a formal submission by Women with Disabilities Australia that requested intervention on non-therapeutic and forced sterilisation of women and girls in Australia. In response, the commonwealth government committed to undertake an inquiry into the matter.

I am advised that, on 20 September 2012, the Senate referred the matter of involuntary or coerced sterilisation of people with disabilities in Australia to the Senate Standing Committee on Community Affairs for inquiry and reporting. Statistics cited by the Guardianship Board of South Australia from 1996-97 to 2010-11 indicate that of the 22 applications for sterilisation, eight had been approved. The Guardianship Board does not report on whether approval was given on therapeutic or other grounds. There were no applications to the Family Court in South Australia for sterilisation of minors from July 1992 to June 2011, I am advised.

In late February 2013, a media outlet published an article reporting, 'Health department figures show 24 SA girls were sterilised by hysterectomy in the five years to 2010-11'. SA Health has advised that it does not know the origin of the figure quoted in the article. It has confirmed that it does not publish any information and did not receive any requests for information from the media outlet on this issue, is my advice. The article did not indicate the age of the girls or young women or whether they had a disability. Although the article described girls undergoing 'forced hysterectomies', it is unclear if the quoted figure relates to forced hysterectomies or hysterectomies generally.

Although it is difficult to speculate without knowing the source of the data, the hysterectomies may have been a result of a medical condition or complications during pregnancy or the termination of a pregnancy. They may have been performed on girls aged over the age of 16, who are legally able to make decisions about medical procedures.

I am told that the article also tells a very distressing story of a woman with disability who was eventually killed by her partner while pregnant with her eighth child. Her seven other children were in the care of the woman's parents, who were seeking authority to have her sterilised. This is a tragic situation, but it is inaccurate to imply that a sterilisation would have prevented this woman's death. I come again to my most important point: the control of one's own body has to be a primary consideration for all of us in this place. I will take the other detailed question the honourable member enumerated and seek a response from the Minister for Health and Ageing in another place on her behalf.

DISABLED WOMEN

The Hon. T.A. FRANKS (14:54): Supplementary question: in doing so, will the minister also undertake to provide evidence of where gender reassignment has been performed on individuals, whether that is considered because they have a disability or a medical condition?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:54): I am not sure that gender reassignments, in South Australia at least, are usually coerced or forced, but I will certainly pass that on to the honourable minister in another place and seek a response on the honourable member's behalf.

DISABLED WOMEN

The Hon. T.A. FRANKS (14:55): By way of a supplementary question, just to clarify, I mean of those under 18.

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:55): Thank you.

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

DISABLED WOMEN

The Hon. K.L. VINCENT (14:55): Will the minister clarify exactly what he means by 'coerced sterilisation', given that I believe that it would be difficult to tell whether or not a person was being coerced into this procedure, particularly if they did have an intellectual disability of some sort?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:55): I am not in a position to define it in this case, but I imagine it would mean 'improperly encouraged'.

LOCAL GOVERNMENT, CONSTITUTIONAL RECOGNITION

The Hon. S.G. WADE (14:55): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations a question relating to constitutional recognition of local government.

Leave granted.

The Hon. S.G. WADE: In September 2010, the federal government announced that it would pursue recognition of local government in the Australian constitution. I know that that commitment was part of a prenuptial agreement between the Greens and Labor. The government established an independent expert panel in August 2011, which carried out its national consultation process between 22 September and 4 November 2011. The panel's discussion paper highlights two distinct forms of constitutional recognition: I refer to democratic recognition and financial recognition. My question focuses on the latter, on financial recognition.

In 2009, the High Court declared that the constitutional basis on which the commonwealth traditionally had relied to support the legality of direct grants to local government did not do so. Financial recognition of local government involves changing the federal constitution to ensure that the commonwealth government can provide funding directly to local councils without having to pass through the state governments. The expert panel's discussion paper specifically asked:

> Should the constitution be changed to explicitly say that the commonwealth government can provide funding directly to local councils?

I ask the minister:

1. When the government says it supports recognition of local government, does that include financial recognition?

2. To the panel's specific question, is it the view of the government of South Australia that the constitution be changed to explicitly say that the commonwealth government can provide funding directly to local councils?

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) (14:57): I thank the honourable member for his most important question. The formal recognition of local government in the Australian constitution has been a key goal of the ALGA and our South Australian LGA as well. It is strongly supported by our LGA. They are obviously pursuing federal government support of this, although I think they are hoping for a referendum in the forthcoming election.

The South Australian government's view on this has been consistent—that in principle we support constitutional recognition. We recognise local government here in this state in our constitution, so it is recognised constitutionally at a state level. In principle we support that occurring nationally as well. However, we have always said that the devil is in the detail, and it is a specific wording that needs to be addressed.

A great deal of work has been done, and I think an expert panel released a discussion paper which looked at four different options for the recognition of local government: symbolic recognition, financial recognition, democratic recognition and recognition through federal cooperation. I understand that the preferred position they have landed on is for the pursuit of financial recognition, and it is considered the greatest chance to gain support. A joint select committee was convened to look into this. It held a number of hearings, and an interim report was handed down, and that support was directed towards the financial recognition model.

The Hon. Simon Crean has written to this state government asking us for our views and we have said that we will wait until the final report is handed down to see what recommendation is made and then we will respond to the position that is indicated in the final report. In the meantime, we continue to support, in principle, we await the outcome of that final report, and we will respond to the details in that.

UPPER SPENCER GULF

The Hon. R.P. WORTLEY (15:00): I seek leave to make a brief explanation before asking the Minister for Regional Development a question regarding the Upper Spencer Gulf.

Leave granted.

The Hon. R.P. WORTLEY: Much attention has been focused on the area around the Upper Spencer Gulf in the past several years as discussions have occurred on its potential economic growth. My question to the minister is: what role has the South Australian government played recently in this work?

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 most important question, and I know he has a keen personal interest in the Upper Spencer Gulf. Indeed, the Upper Spencer Gulf involves the cities of Whyalla, Port Pirie and Port Augusta, cities which are no strangers to development nor to speculation about their futures.

The area has a history of extractive and mining industry over many years. The wealth coming from these has been quite remarkable and the number of mining and energy prospects continue to generate interest in the area. While the area's link to mining and, I should say, to the mining priorities of this government is strong, the area is also one that has much to contribute to another of the Jay Weatherill government's priorities, and that is advanced manufacturing.

The potential of the three population centres in the Upper Spencer Gulf, with their access to road, rail and sea transport, have been recognised by the South Australian, federal and local governments. On 25 September 2012, the governments entered into a tripartite memorandum of understanding. The Upper Spencer Gulf MOU, which was signed by the South Australian government, recognised the mutual interests of the three levels of government in reflecting the priorities and aspirations of stakeholders and communities while:

- ensuring appropriate sequencing of investments and better coordination of the existing and future effort;
- maximising the benefit of investment in improving infrastructure, liveability and economic resilience, particularly in high-growth regional economies and economies in transition; and
- aligning economic, environmental and social development actions.

The governance framework was established to deliver the MOU and it involves an Upper Spencer Gulf Alliance and an Upper Spencer Gulf working group underpinning that with a South Australian reference group which involves senior officers from federal and state agencies, the LGASA and the three RDAs. There is also a commonwealth reference group.

On Thursday 28 February, I was very pleased to attend the first meeting of the Upper Spencer Gulf Alliance, and the federal regional development minister, Simon Crean, Local Government Association president, Kym McHugh, and also the mayors from the Upper Spencer Gulf, and the deputy mayor of Port Augusta, supported, obviously, by officers, met on that occasion and they agreed to a strategy. That strategy is expected to help the region unlock billions of potential private sector investment in the area and help to diversify the region and the regional economy.

The strategy is framed around five key determinants of long-term regional economic growth, as agreed in July by the Council of Australian Governments Standing Council, and that involves human capital, particularly education and skills; sustainability in terms of economic, environment and social; access to international, national and regional markets; comparative advantage and business competitiveness; and the effective cross-sectoral and intergovernmental partnerships, including place-based approaches.

The five key determinants of long-term regional economic growth form the basis of the five action plans that underpin the strategy. Further work will then be undertaken by the Upper Spencer Gulf Working Group on refining the action plans for each strategy area, articulating the timing, responsibilities and required support.

The Upper Spencer Gulf Working Group will now review the place-based strategy and prioritise over 70 initiatives within the five draft action plans. Whilst endorsement of strategies arising from the place-based approach does not mean a commitment to fund all of those projects identified, this approach will provide a more targeted and compelling case for federal government funding, such as the RDA Fund, worth $1 billion, and the Regional Infrastructure Fund, which is about $4.5 billion.

LAKE EYRE BASIN

The Hon. M. PARNELL (15:06): I seek leave to make a brief explanation before asking the Minister for Sustainability, Environment and Conservation a question regarding the Lake Eyre Basin.

Leave granted.

The Hon. M. PARNELL: A fortnight ago, about 100 graziers, Indigenous people, scientists and policy experts attended a three-day conference at Longreach in outback Queensland to discuss the future of the world's last great desert river system, the Lake Eyre Basin. Following the conference, the delegates sent a communiqué urging Queensland Premier Campbell Newman, South Australian Premier Jay Weatherill, and federal environment minister Tony Burke to work together to prevent 'the disaster of the Murray-Darling river system being repeated' through the opening up of the Lake Eyre Basin system to irrigation and mining.

On 27 February, the Australian Senate passed the following motion moved by Greens' Senator Sarah Hanson-Young:

> That the Senate—
>
> (a) notes that South Australia's iconic Lake Eyre is dependent on water flows from the Cooper, Diamantina and Georgina rivers, which are under threat from the Queensland Government's proposal to repeal legislation that currently protects them;
>
> (b) opposes the repealing of the Wild Rivers legislation by the Queensland government; and
>
> (c) urges South Australian Premier, Mr Weatherill, to act promptly to work with the Federal Government to protect the Lake Eyre Basin from the proposal of the Premier of Queensland, Mr Newman.

According to reports by the ABC, South Australian environment minister, the Hon. Ian Hunter, said in response that he will speak to Queensland 'if and when the time comes'. My questions are:

1. Does the minister oppose moves by the Queensland government to open up iconic desert rivers feeding Lake Eyre to irrigation and mining?

2. Why is the minister waiting for a formal proposal to emerge before he engages in this issue rather than the proactive approach urged by participants in the Lake Eyre Basin Under the Spotlight conference?

3. Has the minister, or members of his staff, had any discussions yet with his Queensland or federal ministerial equivalents about these issues?

4. Have there been any discussions between officers from the Department of Environment, Water and Natural Resources and its Queensland or federal equivalents and, if so, what message was sent about South Australia's position?

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 his most important questions. There is some excitement around this issue; I recognise that. It is important that we engage with this issue in a fairly considered way. One needs not to jump at shadows, in some respects.

I accept some of the things the honourable member said in his summary remarks, but we need to understand what it is that Queensland is proposing, what are the internal politics of this matter in Queensland, and how we can best influence an outcome that suits us in South Australia. In my view, to do those things, you do not have a knee-jerk response to a press release or something you see in the media; you need to have a considered plan.

For some background, currently the Wild Rivers Act in Queensland provides considerable protection from both mining and irrigation to the Georgina and Diamantina river systems, as well as the Cooper Creek Basin. These protections were put in place by the previous Labor government, but the current Newman government has indicated its intention to remove these protections. The proposals would see the Queensland government amend the Cooper Creek and Georgina and Diamantina wild rivers declarations in relation to petroleum and gas activities, I am advised. The Queensland government has established a Western Rivers Advisory Panel to provide feedback on reforms to the former Queensland government's wild rivers declarations.

The advisory panel has been asked, I am advised, to give consideration to resource projects and small-scale irrigation in the region and is due to report back to the Queensland minister this month. Any changes to the wild rivers declarations which have the potential to impact on the amount of water flowing into our state are of course of great concern to the government. I have written to the Queensland minister for natural resources and mines and the minister for environment and heritage protection requesting information on the proposed changes.

The allocation of water that can be taken from the wild rivers area is governed by the Queensland water resource plans. The Queensland government has not indicated as yet an intention to amend these plans. South Australia and Queensland are both signatories to the Lake Eyre Basin Intergovernmental Agreement, signed in the year 2000, I believe. As such, South Australia should be consulted prior to the Queensland government changing its policy with respect to the Lake Eyre Basin. That is our expectation. The Queensland government's recent announcements have created some uncertainty, and the state will be seeking further information on how the proposals affect South Australia.

It is not only this government which has concerns about the Queensland government's plans. I am very pleased to note that the federal environment minister, Hon. Tony Burke, has commented that he is alarmed by the willingness of the Newman government to disregard the environment in every decision and has said that he is looking at all his options. I encourage him to look at those options very seriously.

Additionally, the federal National Party member for Maranoa, Mr Bruce Scott, has also said that the plan would be 'over the dead bodies of an awful lot of people'. I understand also that the Liberal member for Stuart, Mr Dan van Holst Pellekaan, has already stated that he is completely opposed to any irrigation upstream on any of these rivers. As I have stated, I have written to the Queensland ministers expressing my concerns. I will work to ensure there is no reduction in the quantity or quality of the water that flows into our state. I am greatly heartened by the support we are receiving in this across the political divide and across the country, and I will be working together

with all like-minded people to see that the outcome does not cause harm to the iconic Lake Eyre Basin.

APY LANDS, ELECTRICITY INFRASTRUCTURE

The Hon. T.J. STEPHENS (15:12): I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation questions about the poor upkeep of electricity infrastructure on the Centre Bore homeland.

Leave granted.

The Hon. T.J. STEPHENS: On 31 October last year I asked a question of the then minister for communities and social inclusion who was representing the then minister for Aboriginal affairs and reconciliation on behalf of a Centre Bore resident about a community constable who had had no access to electricity in his home since June 2012. As you know, community constables provide an invaluable service to our remote communities and are in the front line of keeping order and harmony in the same. I still have not received an answer and given that the minister is now the Minister for Aboriginal Affairs and Reconciliation himself, I seek an answer directly from him to the following:

1. Why has the council not received an answer to this question, which was of serious urgency?

2. Does the minister believe it is satisfactory that this gentlemen has been without electricity now for almost nine months?

3. Will the minister make a commitment to remedy this as soon as possible?

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 his most important question. I suppose the Liberal remedy for such a thing would be to go back to what they did previously and simply fix this problem by not having police on the homelands or the Aboriginal lands at all?

APY LANDS, ELECTRICITY INFRASTRUCTURE

The Hon. T.J. STEPHENS (15:14): I have a supplementary question. Given that those opposite constantly talk about occ health and safety and working conditions, is it fair that a community constable is in 45 to 50° heat on the lands trying to do his job?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (15:14): Forgive me, Mr President, I forgot to add of course that I will take the honourable member's questions on notice and take them to the Minister for Mineral Resources and Energy in the other place and seek a response on his behalf.

Members interjecting:

The PRESIDENT: Order!

RECYCLING, REGIONAL COMMUNITIES

The Hon. CARMEL ZOLLO (15:15): My question is to the Minister for Sustainability, Environment and Conservation. Will the minister inform the chamber about how the South Australian government is assisting regional communities deal with and recycle waste?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (15:15): I thank the honourable member for her most interesting question and also for her ongoing involvement and interest in areas dealing with recycling and local communities. The government recognises that recovering and recycling waste in regional communities presents a number of challenges that are often not shared by larger metropolitan communities. Dispersed population centres, fewer people and considerable transport distances create difficulties for achieving a viable recycling outcome in many regional areas.

In recognition of these difficulties, South Australia's Waste Strategy 2011-15 does not set specific recycling targets for regional South Australia. Instead, the strategy allows for flexibility for rural councils. Through a regional implementation program, Zero Waste SA is working with councils to progressively implement waste reforms to continue to improve the recovery of materials from country areas. Most regional councils in South Australia have, with funding from Zero Waste SA,

developed regional waste management plans. The plans provide a blueprint for the commissioning and decommissioning of infrastructure, including landfill sites, and services across the state.

Seven rounds of funding have been awarded under a regional implementation plan since 2004, with a total state government funding commitment of $6.79 million for 102 regional infrastructure projects. On 18 February 2013, I released an eighth round of funding for projects that will stimulate further improvements in regional areas, such as the development of transfer stations and sorting operations that divert recyclable material from landfill. Innovative projects that achieve additional diversion of waste from landfill are encouraged to apply for this funding source. Applications for funding are open until Friday 5 April and will be assessed by regional assessment panels that include local government and industry representatives.

In the past few years, we have seen this significant investment transformed into infrastructure across various regions of our state. Some examples include:

- $300,000 to the Berri Barmera Council for a Riverland regional resource recovery facility. This has provided an effective resource recovery option, including opportunities for re-use of unwanted goods;
- $138,200 to the District Council of Loxton Waikerie for the establishment of a transfer station on council's site to ensure the recovery of scrap metal, green organics, recyclables and concrete;
- $140,000 to the City of Victor Harbor for a resource recovery facility to assist in the recovery of larger recyclable materials, including concrete, scrap metal, green organics and other recyclables;
- $122,000 to the Kangaroo Island Council for an auto baler for the KI Resource Recovery Centre to improve freight efficiencies;
- $140,000 to the District Council of Robe to establish a waste transfer station and resource recovery facility; and
- $126,000 or thereabouts to the Flinders Ranges Council for a transfer station at Quorn.

For many regional communities this funding has made a big difference in the processing and recovery of waste across regional South Australia.

The regional waste support program has been so successful that it has been able to evolve over the past few years to place a focus on establishing waste transfer stations, as councils have begun to rationalise and close landfill sites. As I said, this government recognises that resource recovery in the regions presents a number of challenges, but that does not mean that it is impossible for regional communities to reduce, re-use or recycle their waste.

Thanks to a collaboration with councils, we are able to see firsthand results in the reduction of waste going to landfill and increases in the recovery of resources. I think it is fair to say that our results speak for themselves. When we are utilising, for example, the waste levy in terms of recycling for local government, these funds are used generally for providing grants and incentives for a diverse range of world-class recycling and leading-edge waste reduction projects. They have provided grants and incentives to councils to improve kerbside recycling systems. They are also used to support businesses and industry to improve waste management practices, provide regional communities with new or upgraded transfer stations using state-of-the-art technologies, sorting equipment and improved waste management. They are used to support school educational programs, litter reduction initiatives and free household collection services for hazardous waste, including e-waste.

As I have outlined previously, the waste levy revenue also funds a range of EPA priority projects and programs, including the development and implementation of waste policy, the management of site contamination legislation and the establishment of the illegal dumping unit, and we know that this expenditure has produced results. That is why South Australia has reduced the amount of waste going to landfill by 17.32 per cent since 2003-04 and that is why South Australia's recycling rate is among the world's best, diverting more than 70 per cent of all waste generated from landfill. We have spent over $68.9 million of waste levy revenue on initiatives that have generated a cultural change in South Australia, and it is something we should all be very proud of.

SUMMARY OFFENCES (FILMING OFFENCES) AMENDMENT BILL

In committee.

(Continued from 5 March 2013.)

Clause 1.

The Hon. S.G. WADE: The government and the opposition are very keen that the council appreciates the unusual nature of this committee stage. I appreciate that I did this on Tuesday but, just so members are in no doubt, I will reiterate the context that I mentioned on Tuesday.

I will try to simply put it that, in the context of this bill, the opposition took the view that, while we strongly support strengthening the law in relation to enacting criminal sanctions for humiliating and degrading filming, we felt that there were enough issues with the legislation to see if we could refer it to a parliamentary committee to sharpen the focus of the bill. The council did not feel inclined to support our proposed amendment to the surveillance bill reference to the Legislative Review Committee because the council wanted to have more clarity as to the issues of concern that we had.

In that context, this committee stage of the debate is somewhat unusual in that, rather than being a series of comments and queries, it will be a statement of concerns the opposition has. The government may well wish to clarify their view of those concerns and whether or not they are well founded. I indicate, and the minister can correct me if I am misstating it, that it is the intention of both the government and the opposition that at the end of the committee stage (probably at the end of clause 4) the opposition will move to report progress, not that we think there is any more work to be done after that but, if you like, it is a vote to get an indication from the house whether or not it is interested in further committee consideration.

If that vote to report progress is successful, the motion would be that we defer consideration until later this day so that the opposition can consult with the Attorney's office in particular as to what committee might be appropriate. We have indicated a preference originally for a select committee; we are happy for it to go to the Legislative Review Committee in the context of surveillance devices but it may well be that, subject to the outcome of that vote, the Attorney's office might have a view as to which way to proceed.

As I said on Tuesday and I reiterate today, if the council is sufficiently confident this legislation is robust and it does not want to refer it to a committee, the opposition supports this legislation and, if that reporting progress vote is not supported by the council, the opposition will support the passage of this Summary Offences (Filming Offences) Amendment Bill today. It might be a good opportunity for anybody to make a comment if that is not clear. It is an unusual stage for committee stage. If you like, without having a motion before us, I suggest we use the report progress vote at the end of the discussion as an indicative vote as to whether the house would want a motion put before it to have a committee consideration of the bill.

With those comments of background, I will return to my comments. The issues being considered here are complex. The ranges of situations captured by the bill are very broad. Given that the Surveillance Devices Bill is going to be looked at by the Legislative Review Committee, the opposition is of the view that it would be convenient for the same committee to look at this bill but as I said, subject to the view of the council, we are open to other alternatives.

In terms of the Surveillance Devices Bill consideration by the Legislative Review Committee, both bills involve issues of privacy and dignity, both bills involve the use of modern filming devices, and it is our view that it is more efficient to deal with both bills conjointly, even though as the Attorney has rightly said the issues are significantly different. They approach privacy and dignity from different directions but the values, in my view, are shared.

I remind the committee that this legislation is novel legislation. On 16 March 2011 in a report in *The Advertiser*, headed 'New laws target cyber thugs', the Attorney claimed that this legislation would be the first of its kind in Australia. In light of the Attorney's comments that this legislation is the first of its kind in Australia, it is my view that we make the law as robust as possible.

The government has distributed two draft bills for consultation, one in November 2011 and the other in May 2012. The opposition has requested a copy of the consultation submissions received by the Attorney-General, but the government has only provided two late stage submissions. I suggest that referral to a committee would ensure that the parliament gets access to all submissions and would stimulate a considered community perspective on the final draft of the bill. I do not have any further comments on clause 1.

The Hon. T.A. FRANKS: I have a question at clause 1. Members would be very familiar with the incident over the weekend at the Sydney Mardi Gras Festival where members of the public filmed police in what I would certainly consider to be engaging in an act that degraded and humiliated a member of the public. I note that we have had some negotiations here with free TV and members of the media able to film such an act in the public interest. Under this bill, would a member of the public still be able to film an act such as the one that occurred over the weekend at the Mardi Gras, where the police restrained a member of the public and behaved in a way that I believe degraded and humiliated that member of the public?

The Hon. G.E. GAGO: I refer the honourable member to section 26B(6). What would constitute legitimate public purpose for the purposes of filming would need to have regard to the following:

(a) whether the conduct was for the purpose of educating or informing the public;

(b) whether the conduct was for a purpose connected to law enforcement or public safety;

(c) whether the conduct was for a medical, legal or scientific purpose;

(d) any other factor the court determining the charge considers relevant.

The Hon. T.A. FRANKS: So, in the opinion of the minister, filming of the police engaging in those acts against a person would actually still be possible under this bill should it come into law in South Australia?

The Hon. G.E. GAGO: I am advised, yes.

The Hon. T.A. FRANKS: Finally on that note, during this incident—and certainly I have seen incidents in South Australia where this has been the case—the police directed members of the public to stop filming, not to film them in the course of their duties and to move away from the area. Will that still be something that the police in South Australia would be able to undertake, and does a similar code of conduct as exists in New South Wales exist in South Australia?

The Hon. G.E. GAGO: I am advised that this bill does not go to the issue of police powers to direct. They are provisions elsewhere.

The Hon. T.A. FRANKS: Sorry, I will be slightly clearer. The New South Wales code of conduct for the police force does actually prohibit them from directing members of the public to stop filming them. Do we have a similar code of conduct here?

The Hon. G.E. GAGO: The short answer is: I do not know.

The Hon. T.A. FRANKS: Can we get clarity on that?

The Hon. G.E. GAGO: Yes. It is an interesting question and I do wonder how legitimate the powers of the police are to make those directions in those circumstances. It will be interesting to see whether we have either regulatory provisions or code of conduct provisions that actually cover that sort of conduct.

The Hon. R.L. BROKENSHIRE: On that point, my recollection of where SAPOL are up to on that at the moment is subject to the impossible budget with which they are dealing. They are dealing with technology where, when police officers are involved in arrest and altercation, there will be filming technology that will actually protect both the police and the alleged offender and other people around the incident. I understand that is something at which SAPOL is looking at the moment, and they are moving that way for the benefit of the community generally and for their own best interests when it comes to the protection, under police integrity, of police officers and the issues of prosecution. That is my understanding.

With respect to the shadow attorney-general and what he has requested, Family First appreciates the fact that both the opposition and the government—and I think that the opposition first came up with a private member's bill with the general intent of this some time ago—

The Hon. S.G. Wade: Could I clarify that?

The Hon. R.L. BROKENSHIRE: Yes.

The Hon. S.G. WADE: The honourable member has invited me to recap on the history of this bill. It would be fair to say that this bill originates from government concerns, particularly in late 2010/early 2011 in relation to the misuse of filming to aggravate a criminal assault, bullying behaviour, and what have you. The opposition has not offered any private member's legislation on this matter. The government has done two rounds of consultation, which has led to this bill. We

support the bill and certainly believe in strengthening the criminal law. We have concerns about issues of focus.

In progressing the bill as expeditiously as possible, we would suggest that a committee consideration in whatever form would be helpful. The government and the opposition have agreed that, once all members have had the chance to highlight any issues with the bill, both positive and negative, we will do a 'report progress' vote to get an indication of whether the council would prefer to complete the consideration in the council or to have a parliamentary committee look at it further.

The Hon. R.L. BROKENSHIRE: To clarify Family First's position on that, we appreciate the fact that on the general intent of the bill there is what I would describe as multipartisan support, including the two major parties. We looked at the bill and we have been happy with the amendments made by the Attorney-General during its consultation period.

At the moment people in South Australia are grappling with an issue around trolling, another e-crime matter. Whilst South Australia probably leads the way with Queensland on legislation, it is not uniform or integrated between the states and New Zealand, and as a result we have some shocking bullying and harassment issues going on through Facebook—disgusting issues. I raise that because we are now in a situation where parliaments have to move fairly quickly on some of this.

This bill has been before our house since early February and, whilst as a general principle we like to support any member who moves to report progress, and despite the fair and reasonable explanation by the Hon. Mr Stephen Wade, we would be loath on this occasion to support reporting progress because we think there is some urgency about getting through this bill, particularly given the comments of the shadow attorney-general where he says, notwithstanding what we have just discussed, that if progress is not reported he would, through his party and his position in the party, support the finalisation of this bill.

The Hon. G.E. GAGO: The honourable member raises several very good points. First, this bill has been around for years. It was released at least in November 2011. It has been around for a long time and people are well and truly aware of it and well informed about it. What the Hon. Stephen Wade is proposing to do is use a procedural motion to really test his position, which should be in the form of an amendment, to take this off to committee, if that is what he wants to do. Using a procedural motion in such a way puts members in this place in a very difficult position because of the custom and practice around that particular procedural motion, which is basically that if any member in this place feels they need more time, needs to do more work with constituents or needs to work up an amendment, they move a motion in this way, and it is usually supported in that way.

Now the honourable member is really using it as an amendment motion which, as I said, I think puts members in a very difficult position in this place. If the member chooses to go down this particular path, and other members are willing to do that, then that is the will of the chamber and so be it. But I certainly want to put on the record that this government is of the very firm view that this should be passed now, today—we should get on with it. It does not need to go to committee. An enormous amount of work has been done on the bill right throughout all relevant stakeholders.

I think the opposition is somewhat misguided. I think the opposition seems to think that the bill is like the Surveillance Devices Bill—and it is clearly not the Surveillance Devices Bill. There is no community opposition to this, unlike that Surveillance Devices Bill. There has been thorough and significant public consultation on the various sections of the bill and appropriate adjustments made along the way. All significant stakeholders have been spoken with, and in detail, and any concerns allayed. We have been able to address those concerns that were raised.

The bill is very limited and very specific, and all those consulted actually agreed with the objects of the bill, and the opposition even is conceding this; they are prepared to support the bill. It is my firm view that it is time. The bill has been around for a long time, it has been thoroughly consulted, there is no opposition to the bill, and it does not need to be protracted for another year or so in some committee stage or for any length of time. This thing has gone on for too long. It is a simple bill, it is well supported—let's get on with it.

The Hon. S.G. WADE: I would remind the government that, in good faith, I withdrew an amendment to a reference to the Surveillance Devices Bill to the Legislative Review Committee on the basis that there were members of this house who wanted to have my concerns more fully described, and it was agreed that a way of doing that was to do it in the committee stage. All I am

doing is facilitating the progress of the Surveillance Devices Bill and the progress of this bill in an expeditious and cooperative way.

Although I cannot seek to suspend standing orders and move a motion at a time during this debate to refer the bill to a committee, my purpose in reporting progress was to facilitate discussions with the government as to what form of committee might be appropriate.

The Hon. G.E. Gago: No, no committee; we don't want a committee.

The Hon. S.G. WADE: I appreciate you do not want a committee, but that is the vote. If the committee agrees not to report progress, the bill will go through and there will not be further consideration in the committee. Let me say that this is not a contribution I am ambushing the house with; it was clearly foreshadowed in the last sitting period. I have done my level best to bring those concerns together in a clear and concise way, and I will go on to do that now.

In terms of the minister's comments about the community consultation and concern, I would completely agree. If you like, we can have a set of agreed facts on this. The level of community concern in relation to surveillance devices far outweighs the level of community concern in relating to filming offences; the community concern in relation to filming offences is relatively low. I do not agree with the minister that there is no concern, but it is relatively low. It is not community concern that I am seeking to respond to. It is our duty as legislators to make sure that we have the best law possible. So, in the next few minutes, what I propose to do is to highlight some of the concerns that come to me as a legislator and my party agrees that those concerns are significant enough to have a committee look at it.

The government supported the referral of surveillance devices to the Legislative Review Committee, and that was done in the context of an agreement between the government and the opposition that there was no reason to think that cannot be concluded by winter. It is my view that that is true of this bill as well. The fact of the matter is that the matter has been under consideration for two years. I do not think that another two months or so is worth not taking the opportunity to reflect on the bill. If I could respond to the request—

The Hon. G.E. Gago interjecting:

The Hon. S.G. WADE: I have no belief that a committee would take two years on a reference such as this. In his speech on the second reading of this bill in the House of Assembly, the Attorney-General said:

> 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, or a social medium or an internet homepage. A major result, usually intended, is the indiscriminate. pictorial humiliation of a victim.

Later in the speech, he says:

> The law is meant to capture the subjection of one person to humiliating or degrading treatment by another.

The opposition shares the government's commitment to ensuring that the law deals clearly and strongly with the mischief; that is, criminals who want to film their assaults on the person, privacy and dignity of others and to distribute the product to compound that damage. But the opposition is concerned that the bill does not have the focus right. The government has consistently asserted that the focus of the law should be on the filmers who are involved in the incident.

On 16 March 2011, the Attorney-General issued a press release, entitled 'King hit for cyber thugs', which announced 'moves against thugs who film assaults and post the images on the internet'. The release goes on further to say:

> 'The Government wants to attack this disgusting fad of thugs engineering and filming violent and humiliating acts and posting the images to websites,' Mr Rau said.

On radio that day, the Attorney stated that the law would be against those 'who are involved in deliberately setting up these events'.

The bill, on my reading, does not require any involvement in events leading up to the filming. In April 2011, the discussion paper described the problem as thus:

> ...the conduct may be planned or an impromptu act by two or more people acting together on a third person [and I stress the following words] with the intention of capturing film of the event and making that film available to other viewers.

Subsequently, it says:

> The reasoning behind this proposed offence is that, for some people, the motivation for a criminal attack is to get film of it which can be shown to others, as a way of boasting about the offence or about the humiliation of the victim. The criminal law should make clear that the filming and distribution is just as wrong as the attack itself. For this reason, the penalties should be similar.

Elsewhere, the Attorney claimed that the law would be against those who 'act together in order to humiliate or degrade another person and place that film on a platform such as YouTube or Facebook' or 'act in concert with the assailant'. In spite of these repeated and clear statements, the bill does not in fact require any connection between the filmer and the assailants. The Attorney claimed that the law would be against those who 'have advance knowledge of the incident'. The bill does not require any advance knowledge. The filmer may not be involved in subjecting or compelling the victim. The filmer may not know that it is an assault or an act of violence. The filmer may not know that the act is humiliating and degrading to the person. The bill penalises filming alone.

The bill runs the risk of capturing innocent bystanders. In the discussion paper of April 2011, the Attorney-General claimed:

> However, it would be important to design the offence so that it did not capture people who filmed for legitimate purposes an event which they did not take part in contriving. The offence should not apply to an innocent bystander who films the event, nor to the collection of evidence by security camera, nor filming by a news reporter who observes the event.

I suggest to the council that there would be value in a committee assessing to what extent the bill meets the Attorney's goal of excluding an innocent bystander.

I would now like to turn to the act on which the offence focuses. In the Attorney-General's second reading speech, the government claims that the bill focuses on criminal conduct, but I would suggest that it goes further. Specifically, the bill covers the filming of conduct which is not itself unlawful. The bill covers two quite distinct classes of acts and conflates them by putting them both under the definition of 'humiliating or degrading act'. As defined by the bill, a humiliating or degrading act is either (1) an assault or an act of violence against the person, or (2) an act that humiliates or degrades a person. Both classes of acts exclude where a person consents to being subjected to or engaged in the act and consents to the filming of the act.

In relation to the second only, the bill does not cover acts which lead to minor or moderate embarrassment, but in the first class of actions—that is, an assault or other act of violence—the consent and severity are not relevant. An assault is likely to be circumscribed by its common law meaning, but one issue we do need to address is: what is an 'other act of violence'? Does the bill cover a fight on the football field as an act of violence? It probably does. If it is, whether it is minor or not, it is covered by this provision. Is being hit by a rolled-up magazine an act of violence? I suspect so. If it is, whether it is minor or not, it is covered by this provision. The videotaping of the assault on the then deputy premier on 28 November 2010 would have been an offence under this act, likewise the assault on former premier Rann.

Assaults and violence were not originally part of the bill put out for consultation. In the opposition's view, there would be value in a committee considering whether this broad inclusion of acts of violence is appropriate. I note that the Law Society of South Australia's submission of 24 January 2013 highlights that assaults or acts of violence 'are existing offences and by taking part in them the participant commits an existing offence'. The society says that in their view criminalising the filming by those responsible for existing crimes is unnecessary and unlikely to achieve anything that the current law is not already able to achieve. Again, I think there would be value in a committee considering whether including existing criminal offences adds to the provision.

The provision also takes us back to the filmer. A filmer may not even be aware that he or she is filming an assault. For example, on 25 February 2013, a young woman suffered serious burns when a flare was let off in the crowd at a music festival in Sydney. Police are investigating the evidence, but media reports are that the flare may have burned plastic, which then fell on the woman and burnt her arm. The promoter received a perfectly clear screenshot of a video purporting to show the person who set off one of several flares. The image clearly shows him holding a flare and his face is clearly visible. That filming, if it had occurred in South Australia under this act, may well have been caught by it.

If the bill is too broad, South Australians in that situation may well be discouraged from taking photographs or videos in uncontrolled environments to avoid inadvertently capturing images

that might be an assault or an act of violence. I consider that there will be value in a parliamentary committee considering the net effects of these provisions.

The second component of a humiliating or degrading act is an act to which the victim is subjected that a reasonable adult would think was humiliating or degrading to that person. The Law Society's submission of 24 January states that the extent of paragraph (b) of the definition of humiliating or degrading act is not clear. The society suggests that it may be appropriate to revisit the definition and the formulation of the offence.

I turn now to the element that a person needs to be subjected to or compelled to engage in the act. The government seems to assume that the definition will deal only with third-party acts on a victim, but I consider that the phrase 'to be subjected to or compelled to engage in' can and would be read to include a range of acts primarily only excluding the relatively narrow acts of the person themselves. For example, the government claims that the offence in the bill does not cover accidents. It may exclude where the person has an accident when they, on their own, have contact with another vehicle; however, if a person is hit by another vehicle, they have been subjected to or compelled to engage in the act.

A range of questions can arise. Can you be subjected to an act as a result of events? Can you be subjected to an act by a natural disaster? Can you be subjected to an act by an act of God? As I said, can you be compelled by events? For example, in his second reading speech the Attorney highlighted cases where individuals have used their mobile phones to film emergencies for the apparent purpose of entertainment. In Queensland, after a runaway vehicle hit a backpacker, he advised that dozens of bystanders filmed the event.

According to the government briefing, these two emergencies would not have come under the act, presumably because the victim was not subjected to or compelled to engage in an act. However, the courts may well find that the victims were subject to an act. The government says that the bill would exclude someone who slips in the street. The government may be right if someone slips completely of their own volition, but what if they trip over a crack? The government says that a wardrobe malfunction or something else of that nature is excluded, but what if the malfunction is the result of an act or omission of another?

The government says that mere exposure to scrutiny that the person would rather avoid is excluded. A criminal defendant being filmed walking out of a court hearing is used as an example, but could that be deemed to be an act of another party? For example, a defendant leaving a court may be compelled to do an act (by walking out the front door) if court officials do not provide an alternative exit. The person may well be being subject to compulsion. I suggest that the committee could consider the scope of the offence. To be effective in discouraging inappropriate behaviour and not repressing appropriate behaviour, the bill needs to be clear in its scope.

In relation to a humiliating or degrading act which is not an assault or an act of violence, the act needs to be one which reasonable adults in the community would consider to be humiliating or degrading. This is an objective test in the sense that the law understands reasonableness—the man on the Clapham bus. However, the characteristics of the event or the victim are relevant; reasonable adults may judge the behaviour to be degrading to one person and not another.

The Law Society's submission of 24 January 2013 suggests that the scope of paragraph (b) of the definition of a humiliating or degrading act which depends on the reasonable person test is uncertain and would lead to dispute. The bill does not impose a simple reasonableness test; the standard of reasonable adults must be applied with respect to the individual to whom the act relates.

The question arises: is it necessary for the victim to actually feel humiliated or degraded? In the government briefing on the bill I was told that whether or not a person was actually humiliated by a particular act was pertinent in the case of car jumpers. Car jumping is where people jump in front of traffic while accomplices film the resulting panicked drivers for their own and others' entertainment.

In the end, the conduct of citizens should be assessed on an objective basis according to community standards, not on an assessment of the subjective experience of the particular person. I think there would be value in a committee considering whether the bill as drafted is overly subjective.

The bill attempts to recognise legitimate forms of filming by way of defences to the offences, rather than as exceptions to the relevant offences. In general, it is good legislative

practice to basically prescribe the scope of the offence in the relevant provisions and allow defences to provide limited exceptions. In this bill, to construct the offence you effectively need to blend the definition, the offence clause and the defences.

The way the bill is drafted has the effect, in my view, of shifting the onus of proof onto the defendant. The focus is on the defendant making the case for the defence, rather than on the prosecution making the case for the offence. The Attorney acknowledged that fact in his press release of 16 March 2011 in which he states:

> The onus will be on the person charged to prove that they had a legitimate purpose for capturing images other than humiliating, degrading or demeaning the victim.

Further, the way the consent elements of the offence of humiliating or degrading filming work mean that a person filming at any time is essentially required to be positively satisfied of the consent to the act and consent to the filming of the act to avoid criminal responsibility.

Key media organisations have objected to the fact that the bill criminalises legitimate conduct, and I appreciate that the government has worked with organisations to provide more reassurance in relation to the rights of media organisations. My understanding is that it would not be fair to say they were comfortable nonetheless. In relation to the issue of consent, I agree with the comments of the Attorney-General in his letter of February 2013, where he said:

> Consent is a concept which depends upon its factual context for precise meaning which is an issue best left for the courts to determine in all the circumstances of the particular case.

However, I think there would be value in a committee considering whether consent elements in this bill could be simplified and made clearer. Consent is relevant in establishing both the offence and the defences. If a person consents to being subjected to or engaged in a humiliating or degrading act and consents to the filming of the act, humiliating and degrading filming in the meaning of the bill has not occurred. A person may wish for filming of a humiliating and degrading act to occur, for example, to record evidence but does not consent to the act itself. Likewise, the distribution offence is only established when the distributor knows or has reason to believe that the victim does not consent to the act.

In conclusion, I put to the council that, whilst the bill is an important attempt to strengthen the law, the opposition is of the view that there is a range of issues in the bill that would benefit from further consideration by a parliamentary committee. Our suggestion was that that could be the Legislative Review Committee, but I stress again that we support the bill.

If the council does not think that the issues I have raised are sufficient, that a reference to a committee is warranted, the opposition will nonetheless support the passage of the bill. We believe that the bill helps deal with a current social problem. We believe that in the context of two years' development of the bill, a month or two's consideration would give us the opportunity to strengthen it.

The Hon. T.A. FRANKS: I simply want to reiterate our previous position, which I indicated in the second reading of this debate—that unless there is anything at this committee stage that the bill's debate cannot address, we will not be seeking a call to report progress; we will proceed with this bill through this committee stage.

The Hon. G.E. GAGO: In relation to a couple of the specific points the Hon. Stephen Wade mentioned, in regard to proposed new section 26B(3), attacks the attacker who films and distributes a film, there is no need to criminalise the mere attacker; that is already thoroughly covered by the law of assaults and related offences. The law does not cover innocent bystanders, and I have already pointed to the defence a legitimate public purpose; I have outlined that. The opposition really has been quite unable to put forward any credible scenarios where an innocent bystander might be caught.

The Law Society says that 'subject to the comments below we do not oppose the general effect of the bill'. The Law Society reservation is that this amounts to over regulation which, with respect, the government obviously does not agree with. The Law Society has, for example, completely misread section 26B(3). The Law Society thinks that a reasonable person test is uncertain and this obviously cannot be taken seriously. The law is full of tests that relate to a reasonable person, so there is nothing new or novel in relation to that and the courts have dealt very well with that in the past.

I think that the member outlines a number of quite technical, obscure concerns that we do not believe provide any rationale for sending this bill off to a committee. As I said, the bill has been

around since November 2011. It has been out there in the public arena. There has been lots of opportunity for key stakeholders to input. Changes have been made in relation to that input. There is a high level of support for this bill that has undergone a great deal of public scrutiny by all levels of the community—legal, technical, etc. We believe that the bill is of high enough integrity to withstand the fairly obscure sorts of issues that the honourable member raises at this point in time. We need to get on with it and deal with this bill this afternoon.

The Hon. K.L. VINCENT: I will not support reporting progress.

The Hon. S.G. WADE: I have taken the opportunity to consult with members on the floor and there is not support for reporting progress, so as the opposition indicated we will be supporting the progress of the bill.

Clause passed.

Remaining clauses (2 to 5) and title passed.

Bill reported without amendment.

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (16:09): I move:

That this bill be now read a third time.

Bill read a third time and passed.

CRIMINAL LAW CONSOLIDATION (CHEATING AT GAMBLING) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 19 February 2013.)

The Hon. S.G. WADE (16:10): I rise on behalf of the Liberal opposition to indicate my support for the Criminal Law Consolidation (Cheating at Gambling) Amendment Bill 2012. The 2010 report of the Productivity Commission on gambling found that 70 per cent of Australians participated in some form of gambling in 2009. Gambling revenue in 2008-09 was reported to be just over $19 billion. Of this revenue, 14.8 per cent (that is, approximately $2.8 billion) was attributed to betting.

In South Australia there are presently 27 licensed bookmakers, 344 TAB agencies and 37 active racing clubs. There are also currently 26 interstate betting operators providing services in South Australia. During 2011-12, the Independent Gambling Authority received 10 complaints relating to wagering (that is, the services offered by the above agencies). Two of these complaints were in relation to telephone bets, one of which was resolved in favour of the patron, and no other breaches were identified.

The Coalition of Major Professional and Participation Sports (COMPPS) represents seven of the national sporting codes, including the AFL and Cricket Australia. In 2010, COMPPS formed the Anti-Corruption Working Party with the sole purpose of providing the sports industry with a comprehensive analysis of betting-related corruption in sport and an effective approach to deterring potential corrupters and maintaining the integrity of their sports. One of the recommendations made by the working party was that nationally consistent criminal legislation be enacted creating an offence of 'cheating in connection with sports wagering'.

In August 2011, the New South Wales Law Reform Commission issued a report on gambling corruption. It recommended a uniform criminal offence based in state and territory law. As I understand it, this preference for a state-based offence was based largely on the practicalities of investigation and enforcement, which will depend on the cooperation between betting providers, local sports controlling bodies and state and territory police forces.

In November 2011, the Standing Council on Law and Justice (SCLJ) decided to develop nationally consistent match-fixing legislation. The New South Wales Crimes Amendment (Cheating at Gambling) Act 2012 was developed as the model law and was passed on 12 September 2012.

COMPPS welcomed the introduction by the New South Wales government of that bill and its use as a basis for enacting nationally consistent legislation. The government acknowledges that the behaviour in question in this bill is almost universally covered by existing laws. As the Attorney-General said in his second reading speech:

All States and Territories agreed that their framework of existing offences, both at common law and in legislation, deal with the agreed match-fixing behaviours in almost all circumstances.

That is, the government admits that these laws basically duplicate current laws. However, the government claims that it provides clarity for betting industries and persons involved in events subject to bets. Equivalent practices will be treated the same in each state, and serious penalties will apply for that behaviour.

The bill before the council virtually mirrors the model law; however, it differs in two respects. First, it includes an offence which is more far reaching than that contained in the model law. In addition, the Law Society is of the view that the offence proposed in section 144I(1) extends more widely than is appropriate for criminal law. The society's concern is that it makes offering to engage in one of the offences a major indictable offence, even though no harm has actually resulted. Notably the model bill (that is, the New South Wales bill) does not contain such a provision. Secondly, the South Australian bill lacks provisions providing for a three-year review of the part.

Given that the bill will create duplication in offences, it is important that the government monitors the effectiveness of offences created by these provisions. I note that the New South Wales legislation, which the SCLJ recommended using as the model legislation, contains a provision for a three-year review to monitor, and I quote, 'whether the policy objectives of the Part remain valid and whether the terms of the Part remain appropriate for securing those objectives'.

It may assist the council if the government was able to advise whether, considering that New South Wales is maintaining the model law, for want of a better word, its review is intended to be national in scope such that any problems that emerge in the South Australian jurisdiction are within scope for that review. In any event, the government has not decided to make provision for the review in this act.

Each offence carries a maximum penalty of 10 years' imprisonment, except for an offence of using insider information, which attracts a penalty of two years. Wagering/betting is available at almost every major sporting event in this country. It is also available for an array of other events, such as the size of the next increase or decrease in the Reserve Bank interest rate determination, elections, events of public significance (such as when the Duchess of Cambridge will give birth), beauty pageants and even the weather. My understanding is that the bill would cover all such betting events.

The bill duplicates South Australian law, but, in the government's view, in the process provides more clarity. The Law Society has expressed its concern that having duplicate offences could allow prosecutors to charge a person multiple times for the same conduct and also has the potential to be counterproductive by creating long, drawn-out, complicated trials. I would certainly appreciate the government's view on that concern at the second reading summing-up stage.

The council would be rightly concerned if that were to be an outcome, especially in the context of having recently passed legislation that had a particular goal of reducing the backlog of cases in our courts. Nonetheless, on behalf of the Liberal opposition, I indicate that we intend to support this legislation.

The Hon. T.A. FRANKS (16:17): I rise on behalf of the Greens to support the Criminal Law Consolidation (Cheating at Gambling) Amendment Bill 2012. I do so, echoing some of the sentiments of the previous speaker that, strictly speaking, this bill actually is not necessary as in fact almost all the provisions are covered by existing laws, with the possible exception of the concealment of match fixing, although it is likely that this also is covered should that be tested in the courts.

However, I acknowledge that industry and sporting groups want it and that it in fact may have some international ramifications in terms of our ability to host events in the future. I also acknowledge the position that many involved in sport are in at the moment, with drug scandals and match-fixing scandals around the world. It can only be a good thing to send a strong message of cleaning up the area of professional sport.

Certainly the Greens, in our support of this bill, are cognisant that the Australian sports ministers have signed, on behalf of their governments, Australia's first national policy on match fixing in sport and agreed, through the Attorneys-General, to consistent approach to criminal offences and penalties, and we certainly support that. Sport is not an activity these days constricted by state boundaries and, while state borders are often are important in the rivalries of sport, many

of those engaged in professional sports in this day and age travel not only within and across our jurisdictions in Australia but also internationally.

We are also incredibly grateful for the work of the New South Wales Law Reform Commission, its reference on cheating at gambling and the report (report 130) which was subsequently produced, which was quite extensive, and we made great reference to that in terms of ensuring that this bill was well consulted on. While it was not consulted on specifically with regard to this bill in our state, certainly the New South Wales' bill is the base for this bill, and the areas we are dealing with had consultation and support not only from sport and industry groups but also from those within the 'profession' of gambling, for want of a better word.

I will, on that note, commend the Weatherill Labor government for the removal of the word 'gambling' from their sport and recreation portfolio, certainly a move supported by the Greens. It would be a welcome thing on behalf of the Greens to see gambling less associated with sport in our society.

While acknowledging that, in fact, many of the provisions in the bill are not new and possibly not necessary, we do recognise that there is an explosion in match fixing around the world and an explosion in gambling, not only in Australia but around the world. Worldwide sports bets have actually grown by 66 per cent between 2001 and 2011 to about 52.5 billion as internet and mobile phone wagers, in particular during live betting throughout games, have proliferated.

I refer to the article by News Limited journalist Anthony Sharwood that, in fact, it is probably close to impossible in this day and age to engage in match fixing in Australia. However, there is still the potential, particularly for exotic bets, to have some relevance to this particular legislation and certainly it will make it clear to all involved, not only in the sporting industry but also in the industry itself, that it will not be supported by this government and by this parliament.

The connections between sport and illegality and, of course, the recent scandals not only in the area of match fixing but things like doping, do no favours to sports. I feel for those athletes who are tarred with the brush of those who are not necessarily as ethical as many athletes are. They have had to face some pretty bad press over the last few months and years and certainly many of them made those representations, not only in the course of the consultations in this area of the bill but also most recently in the federal parliament in regard to doping in sport. To support those athletes who are doing the right thing and also to send a clear message that match fixing is not acceptable, the Greens are pleased to support this bill.

The Hon. J.A. DARLEY (16:22): I rise briefly to speak on the Criminal Law Consolidation (Cheating at Gambling) Amendment Bill 2012. As members are aware, the bill seeks to create offences for those who engage in conduct that corrupts the betting outcome of an event. In its simplest form, it addresses the issue of match fixing. The most obvious sorts of match fixing that spring to mind are those that relate to sporting events.

Over the years, there have been numerous scandals, both in Australia and overseas, relating to match fixing or the manipulation of sporting games that result in some sort of unfair financial advantage in most major sporting codes, whether it be cricket, soccer, football or rugby. We are probably all aware of cases involving the footballer, for instance, who provided information to family and friends about an upcoming game and those family members and friends have, in turn, placed bets on that game using the knowledge they have obtained. At present, as I understand it, players who partake in this sort of behaviour may face disciplinary action and be sanctioned by their club or by the AFL, but they do not face any criminal charges for their actions.

As the minister alluded to in her second reading speech, allegations of improper behaviour are not limited to players only. They extend to referees, coaches, team officials, support staff and players' agents. We are also probably aware that many professional athletes and others involved in the sport have, over the years, revealed that they themselves have gambling problems. In some instances, players have been sanctioned for placing bets on games within their own sporting codes, albeit against the rules of the sport.

The bill itself is not limited simply to match fixing in sports; rather, it extends to any event that an individual can legitimately place a bet on. For instance, it would apply equally to bets on who will win the next federal or state election or any particular seat in an election, or the next federal leadership.

A quick look at Centrebet's websites also reveals other rather interesting events that one can bet on, such as who will be the next James Bond, who will win the next UK general election,

who will win the next Eurovision contest, or whether the next RBA cash rate announcement will result in an increase or decrease. It is really rather easy to bet on virtually anything.

In terms of the scope of the bill, in a nutshell, if I were, for instance, to tell one of my friends that I had had a chat with a member of parliament who had indicated to me in confidence that they would not be standing at the next election and this was something that one could bet on and my friend proceeded to place a bet on that member's not standing, that could be considered conduct that corrupts the betting outcome of an event. If I asked my friend to place the bet knowing that the member did not intend to stand with the intention of obtaining a financial advantage, we could both be prosecuted for using inside information.

There is no question that betting is becoming increasingly available, and the rapidly growing online betting facilities make it possible for people to gamble 24 hours a day. You can no longer watch or attend a football match without the constant reminder of betting facilities. You can no longer watch television in general without being bombarded by gambling advertisements. The inception of online gambling has meant that our gambling legislation falls short in terms of adequate regulation, and this is clearly an area that warrants closer scrutiny, particularly given the growing number of concerns about illegal betting and money laundering.

We know that, internationally, links have been identified in professional sport between organised criminal groups and match fixing, illegal betting, money laundering and corruption. Whilst I would question whether this is limited to international professional codes only, this is an issue that we need to nip in the bud. I understand that there are, of course, a number of jurisdictional issues that need to be overcome in relation to these matters.

Whilst this bill does not address these issues in particular, it is a good starting point, and I am pleased that it goes some way towards addressing a growing problem in our society. With that, I support the second reading of the bill, and I look forward to the committee stage debate.

VISITORS

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): Before moving further, and I note that the Hon. Mr Brokenshire is seeking the call, I acknowledge the presence in the gallery of the Hon. Carolyn Pickles, a former Leader of the Opposition in this place.

CRIMINAL LAW CONSOLIDATION (CHEATING AT GAMBLING) AMENDMENT BILL

Second reading debate resumed.

The Hon. R.L. BROKENSHIRE (16:28): I want to put on the public record Family First's situation regarding this bill. Back in 2008, five years ago, there was an opportunity to bring much of what is in this bill into the parliament when we were dealing with the racing code. We moved amendments relevant to these issues way back then. Unfortunately, at that time the government was not prepared to expand the debate and improve generally issues around gambling, cheating, etc.

However, having said that, we have put our detailed remarks onto our blog, which members are welcome to have a look at if they wish to do so. Given that the government has brought in this bill to this place, albeit some time after we would have liked to have seen it come in, we support the bill and feel that it is a positive step. Therefore, we will be voting in favour of 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) (16:29): I understand there are no further second reading contributions to this bill and I would like to thank those members who made a contribution and for their support of this bill. A couple of issues were raised by the Hon. Stephen Wade and I would like to put some comments on the record about them.

The honourable member raised concerns about the prospect of duplication and I am advised that that is not a matter of concern. There is good and thorough protection against the imposition of double punishment for the same conduct, starting with the decision of the High Court with Pearce and the doctrine of abuse of process. In relation to the three-year review, a three-year review was considered, but it was decided that on the whole it was not necessary. Why would one review the law after three years that largely is clarification of existing law and not controversial?

There was also an issue in relation to different offences. I am advised that this has probably been a misunderstanding. It is simply the way that the bill is drafted. New South Wales enacts the offences by using the definition of 'facilitate'. Parliamentary counsel did the same thing

by enacting separate offences. Different method; same result. With those comments and those responses, I look forward to this bill being dealt with expeditiously through the committee stage.

Bill read a second time.

Bill taken through committee 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) (16:33): I move:

That this bill be now read a third time.

Bill read a third time and passed.

ELECTORAL (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 21 February 2013.)

The Hon. S.G. WADE (16:34): I rise on behalf of the Liberal opposition to indicate our in-principle support for the Electoral (Miscellaneous) Amendment Bill. We will be tabling amendments, nonetheless. From the early days of South Australian history, democracy has been a central part of the life and aspirations of the colony, the province and now the state. In 1851 South Australia was granted a partially elected Legislative Council to represent the interests of South Australians. It was a progressive reform that laid the foundations of the democratic state we now enjoy. In 1856, South Australia was the first Australian colony to introduce full voting rights to males over the age of 21. It was also in that year that South Australia introduced the secret ballot. The following year, in 1857, South Australia achieved self-government, and from that self-government the state flourished as a world leader in democratic reform.

Australians often forget that Aboriginal men also received the vote at the same time as other citizens in South Australia in 1857. In 1894, South Australia was the second place in the world, after New Zealand, to give women the right to vote, and it was the first in the world to allow women to stand for parliament. With the abolition of the requirement to own land and the enfranchisement of younger and broader cross-sections of the community, our democracy has strengthened. Our electoral fairness clause is a contemporary example of that reformist tradition continuing.

However, Labor's abuse of the electoral system has cast a shadow over our democracy. Its acts have undermined the confidence of South Australians not only in their government but also in their laws. When a governing party can get away with deception, win an election on a minority of votes, and then have the contempt to claim a mandate, South Australians have the right to feel not only let down but angry.

Ironically, in deceiving voters in four electorates with fake how-to-vote cards, the Labor Party showed its true colours. This followed on the coat-tails of attempts to stifle internet comment, forcing voters to disclose their address on the internet if they wanted to participate in democratic debate online. It followed a multitude of dodgy election promises. Time and time again we see the Labor Party gagging party officials, lashing out when these officials give honest, frank opinion. The Labor Party continually runs roughshod over community views.

In this place, perhaps the most classic example of the contempt of the Labor Party for democracy is its attempts to abolish the Legislative Council. This chamber serves as a vibrant, defiant declaration of pluralism in this state. Since Labor tried to abolish the council in 2009, for the first time in a century crossbenchers have become a larger group in this council than either the Labor Party or Liberal Party contingents. This council continues to prove itself to be an innovative chamber where a variety of views are heard, considered and, at times, adopted.

Labor struggles with the idea of pluralism. It arrogantly asserts its intellectual and moral superiority and denies the legitimacy of dissenting views. These are the seeds of a one-party state, where all dissenting views are hidden. We have all been victims of Labor's dirty tricks—from the impersonation of Family First to the disenfranchisement of voters with a disability and the stifling of dissent, we have all witnessed Labor's underhand election tactics. We come to consider this bill in this context.

The bill proposes a number of changes, including the requirement to include political party affiliation in the authorisation line of election material, the prohibition of the issuing of postal votes

by political parties, synergising commonwealth and state electoral rolls, and the removal of the 2009 internet censorship provisions that require a person to disclose their name and address in online comment. Some of the reforms have their origins in the select committee established on 26 May 2010 by this council to inquire into matters related to the general election of 20 March 2010.

As I alluded to before, one of the key issues that led to the establishment of the select committee was the Labor Party's use of bogus how-to-vote cards, and one of the key tasks of the select committee was to identify measures that may be necessary to ensure that electors are not misled in the future. I remind the house again of the deplorable behaviour of the Australian Labor Party that led to the committee being established.

In four electorates at the March 2010 election, the Australian Labor Party distributed bogus how-to-vote cards. It used Family First's light blue colours and included on the how-to-vote card the statement, 'Put your Family First'. The cards named the individual House of Assembly electorate and identified the respective Family First candidate as first preference, with an arrow and the words, 'Start voting here', which suggested a preference vote flowed, placing the ALP candidate above the Liberal candidate. In all four seats, the Family First-authorised how-to-vote card recommended that its supporters place the Family First candidate first with preferences to the Liberal candidate before the Labor candidate.

Formal complaints were laid by the Liberal Party and Family First in response. The Electoral Commissioner advised that in her view there had been no breach of the act. In any event, the cards were broadly condemned as misleading by academics, journalists and the wider community. In *The Independent Weekly* of 26 March, Flinders University political scientist Professor Dean Jaensch described the cards as:

> ...the worst example of its kind I have seen in a 40 year career. It is deceitful, deliberately designed to mislead voters, no doubt at that.

The *Sunday Mail* of 28 March published an editorial which read in part, 'Vote cards a betrayal of trust.' It read:

> The appalling behaviour of the Australian Labor Party in the state election has damaged the relationship between citizens and the government far more than it appears to realise or care.

Let us be clear about what Labor did in their dodgy how-to-vote card scandal. They had their own followers disguise themselves as rival party supporters in what appeared to be a cynical, cold-blooded and calculated attempt to trick voters into believing that they were from Family First and then duped them to steal the preference votes that Family First had every right to allocate. Labor's candidates who participated in this grab for power by allowing voters to be deliberately tricked, should be aware that their victories will be forever tarnished, if not illegitimate. While they enjoy the fruits of office, the damage they have wrought on our political system is significant. The public's faith in those who seek office has been significantly eroded and the price on that trust is beyond measure.

I am surprised none of the Labor Party failed to appear before the select committee to justify its behaviour. The majority of the select committee found:

> The distribution of bogus how-to-vote cards by the Australian Labor Party in selected marginal seats of the 2010 general election fell short of community expectations of the standards of a political party and undermined public trust in the democratic processes of the state.

The fact that the dissenting report demurs from that finding raises questions as to whether the Labor Party has listened to the people. The Labor Party was embarrassed, not because they were sorry but because they were caught out. The community backlash that followed made it perfectly clear that this behaviour falls short of community expectations. The public has made it clear the incident has undermined its trust in the democratic processes of the state.

The select committee found that whilst the use of bogus how-to-vote cards in the 2010 election did not change the result in any seat at the election, there is a real risk that bogus how-to-vote cards could determine a seat in the future or even a government, but it does not stop at how-to-vote cards. Almost all the reforms in this bill are proposed as a direct result of bad behaviour by the Labor Party. The how-to-vote card provisions are clearly to be a direct response to their bad behaviour. I am told the Liberal Party has never been cautioned about its conduct in helping voters cast a postal vote where they need to, yet this bill proposes to ban parties from doing so. I can only assume that the supposed evil that is being addressed is evil being perpetrated by the Labor Party.

The reversion of the disclosure requirements for online comment are a direct response to the Labor Party's attempt to force every person to publish their address online. In an ideal world where everyone behaves as they should, there would be no need to introduce laws to cover every possible misdemeanour that could occur, yet that is exactly what we find ourselves having to do as a result of the poisonous political culture that pervades the Labor Party. Dodgy how-to-vote cards in South Australia, Obeid in New South Wales, Thomson in Canberra. Even Labor's supposed attempts to address this culture continue to fail public expectations.

At the time of the interim report of the select committee on matters relating to the general election of March 2010, the government had tabled a bill which it claimed would address the problem. That bill sought to enact a provision rejected by the council in its consideration of the Electoral (Miscellaneous) Amendment Bill 2009, which included provisions relating to how-to-vote cards. This council supported two sections of the Electoral Act, sections 112A and 112B, which the government said would deal with bogus how-to-vote cards. Section 351 of the Commonwealth Electoral Act was enacted in 1940 following concern that the Communist Party had issued material that suggested electors should vote for a particular Labor candidate with their own candidate as number two.

Section 351 has been in the commonwealth act for 71 years, yet there has never been a successful prosecution under it. In fact, the Australian Electoral Commission has recommended that section 351 be considered for repeal as it does not apply to the second preference how-to-vote cards increasingly being distributed at federal elections and does not appear to have any relevant contemporary application. Further, the AEC states:

> In the light of the unusual historical origins of section 351, its lack of application to contemporary circumstances and the current difficulties about its interpretation for those who are endeavouring to understand and apply the law, the AEC restates its view that section 351 should be considered for repeal.

The select committee recommended that the government's 2010 Electoral Amendment Act should not proceed. Yet, it took this government another two years to bring legislation back to this parliament and again, as in 2009, we find ourselves determining the rules for the next election a year out from the election itself.

While we support the bill in principle, the bill has a number of elements we have significant concerns about and we will be tabling amendments to highlight those concerns. In our view, a number of the measures are designed to both advantage the Labor Party and let them continue with business as usual. We are keen to see reform in this area. South Australians have been demanding it and are expecting it, but we also need to ensure that the bill reflects democratic fairness. We need to ensure that it maximises the opportunity to participate. We need to make sure that electoral laws reflect the democratic spirit of the state, not the self-serving interests of a party.

It is very important for the future of this state that we reassert our determination to maintain a fair playing ground so that the people of this state can elect members to this parliament to represent their interests in a fair and open manner.

The Hon. D.G.E. HOOD (16:47): Certain parts of the Electoral (Miscellaneous) Amendment Bill are the result of the events in March 2010 on the day of the last state election, as the Hon. Mr Wade has just outlined in some detail. As was well reported at the time, the Labor campaign workers attending some polling booths were wearing blue T-shirts which read on the front of them 'Put your family first' using the words of our very first campaign slogan from just over a decade ago. The words 'family first' were in large capital letters that you really could not miss.

This was intended to (and did, of course) give the appearance that they were representatives of the Family First Party. They stood at the polling booths in the electorates of Mawson, Morialta, Light and Hartley and handed out how-to-vote cards indicating a primary vote for Family First and then a preference for Labor. Of course, it is nothing new to this chamber that these were not how-to-vote cards issued by the Family First Party but were cards prepared on behalf of the Labor Party or at least certain senior members of it.

It is clear that their intention was to mislead voters into thinking that those wearing the T-shirts were from the Family First Party and that Family First had intended its preferences to go to Labor when, as the Hon. Mr Wade has just outlined and many other speakers have and will no doubt, the intended preference in each of those four seats was actually to a Liberal candidate.

I do not think I have said this in this chamber before as I am somewhat reserved with my language, that is my nature and I think it is the appropriate way to conduct ourselves, but it was

disgusting behaviour. It really was. It was a slight on our democracy. The premier at the time, the Hon. Mike Rann, acknowledged that and in his words it was 'disgusting' and 'untrue' behaviour.

The Hon. T.J. Stephens interjecting:

The Hon. D.G.E. HOOD: Well, that's right, after the event it does not mean much, but those are his words not my words, although I join him in using those words. As we all know, free and fair elections are the cornerstone of democracy and any actions that mislead voters in an election place democracy itself in jeopardy.

Soon after the election in 2010, as I have just suggested, the premier at the time (Hon. Mike Rann) acknowledged that these tactics should not have been used and undertook to have the legislation passed before the next election to prevent a recurrence. Given the public reaction, he had little choice but to do that. This bill incorporates the changes to the law for that purpose as well as other changes, and obviously Family First will be supporting this bill and welcomes it. I was a member of the committee that the Hon. Stephen Wade chaired which looked at this very issue.

The changes concerning how-to-vote cards regulate and formalise the process of the use of these cards which will make this sort of thing impossible in the future. It is something that we should never see again in this state. It was deceptive—plainly deceptive—and the premier at the time acknowledged that.

The bill provides for the harmonisation of state and commonwealth electoral rolls. In particular, the state electoral roll will be updated automatically in line with changes to the commonwealth electoral roll, which is appropriate. This makes the enrolling procedure simpler for voters and is therefore beneficial. The process for updating changes of address for itinerant workers will be simplified. There are changes to advertising rules, of course, including a requirement that political advertisements disclose the party that authorises them. I agree that this will assist voters in making an informed decision, and Family First supports it.

The postal vote procedure has also changed. No longer will political parties have an official role to play in distributing postal vote applications, but parties will have access to relevant information as to applicants so that they can distribute election material to them. This is an appropriate change, and Family First supports it. The bill also changes the tenure of future deputy commissioners to a five-year term rather than an appointment until the age of 65, as is currently the case. One reappointment is possible. This is in line with modern expectations and consistent with other statutory appointments.

It would be remiss of me to conclude my speech on this bill without mentioning some of the media reports at the time; they are absolutely damning. One of them, entitled 'Family First slams Labor's dirty tricks', published in *The Australian* on 22 March 2010, just a few days after the election, names the individuals that were involved and specifically names candidates Grace Portolesi and Leon Bignell, who said they did not know the tactic was used in their electorates. I understand that they have since changed their position on that. In fact, that article directly quotes the Hon. Ms Portolesi, as she is now known, as follows:

> 'The Liberal Party is certainly not beyond its own dirty tricks...so my conscience is very clear,' said Ms Portolesi, favourite to retain Hartley.

That would suggest that she was indeed aware of it. We know the seats that this occurred in—they have been outlined—the four seats that the Hon. Stephen Wade mentioned and that I mentioned in my speech a moment ago. I would like to end on a positive note, if I may. I think so terrible was this action that I would be shocked if we ever saw it again. In fact, this bill will essentially stop it from occurring again. However, I would like to mention two candidates on the Labor side who did the right thing.

The Hon. Tom Kenyon, the member for Newland, is in a very tight seat. He has said publicly that he was contacted by his head office at the time explaining their tactics for the upcoming election and asked if he wanted to be a part of that particular deception. He declined, and that is a credit to him. He is in a marginal seat. You can understand the temptation, if you like, although it is certainly not something I would do. I want to pay credit to the member for Newland for that. The temptation would have been to involve himself in the deception. He did not, and that is a credit to him. I also understand that is true of the member for Bright, the Hon. Chloe Fox. She is in a very, very marginal seat. I understand she won the seat by 100 votes in the end—or less,

perhaps. She also is credited for having turned down participation in this deception, and that is a credit to her.

The Hon. R.P. Wortley: They'll be worthy of your preferences at the next election.

The Hon. D.G.E. HOOD: Well, that's a matter for later, Hon. Mr Wortley. I am not one to make histrionics in this chamber, I am not one to sing and dance about things, but clearly this was wrong. Clearly this was wrong. I think it was despicable and I hold it in contempt. I think this bill will fix it once and for all, and it is entirely appropriate.

The Hon. R.P. WORTLEY (16:54): I rise to express my support for the Electoral (Miscellaneous) Amendment Bill. I will keep my remarks brief, especially in light of the fact that there is broad support for elements of the bill. The bill has led me to consider our extraordinary good fortune in being born in, growing up in and, indeed, having a very particular role in a very robust democracy here in South Australia. I have been reflecting on the nature of democracy and on the electoral system that underpins the system we are privileged to enjoy. As Aung San Suu Kyi once said:

> I've always tried to explain that democracy is not perfect. But it gives you a chance to shape your own destiny.

I will return to that theme shortly, but in the meantime I want to commend the bill under discussion.

Electoral reform is an ongoing process, and it is one that we on this side of the chamber hold particularly dear. Electoral reform has a fairly chequered history in South Australia, to say the least, and it is true to say that those opposite know a little bit more about electoral reform and its avoidance. Let's just consider those interminable 27 years of the Playmander.

For the benefit of people in the chamber, I will explain the basic premise of the Playmander. The beginning of responsible government in South Australia meant that for every city and suburban electorate there were two country electorates. When the Liberal Federation and the Country Party joined forces in 1932, forming the Liberal and Country League (LCL), this imbalance was preserved and, in addition, multimember assembly districts were abolished.

As a result, there were 26 rural electorates and 13 metropolitan electorates, and we all know what the consequence of that was. Tom Playford spent 27 stultifying years as premier right here in what was colloquially known as Uncle Tom's Cabin. As historian Dr Jenny Tilby Stock's excellent 1996 paper on the Playmander points out:

> Since Labor could not possibly win, the triennial elections became something of a formality. An obvious casualty of this predictability was the electorate itself, large numbers of whom came to have little say in the electoral process...
>
> Vast sections of the state were virtually out of bounds to the other party...While this made good sense to party officials, it meant that many voters never got a chance to either endorse or reject Playford's government.

Eventually, in 1968, premier Steele Hall courageously initiated the measure of electoral reform. A man of integrity, to whom the malapportionment that delivered his party victory was in fact an acute embarrassment, Steele Hall wanted fairer and more equitable representation. To the disadvantage of his own party, he achieved this, and we in South Australia owe him a true debt of gratitude.

During my research for this speech, I found an article written by Mr Andrew Gleeson from *The Age*. It showed that Steele Hall was well and truly not only an electoral reformer but a social reformer who was responsible for the decriminalisation of abortion. He also had Mr Hall's opinion of what he calls the extreme right:

> 'The extreme right are among the dirtiest fighters in the business,' he says, 'even worse than the left of the ALP.'

I must say that I did not realise he was actually a fan of the left of the ALP, but it obviously shows this man was a great thinker.

Subsequently, premier Don Dunstan entrenched the principle of one vote, one value. A later referendum saw electoral redistribution following every election become law. Back in the late sixties and seventies, we obviously had some very true reformers in this state and people we can look up to as true electoral reformers. The ALP went on to produce many more leaders like that; unfortunately, for the Liberals that was the end of their true reformers in this parliament.

The proposed amendments we consider today will ensure that the how-to-vote cards on which many electors rely at polling booths will not differ substantially in colour, language or format

from the version lodged with the Electoral Commissioner before the election within a prescribed period. Obviously, there are certain changes—for example, the reordering of preferences will be permitted; authorisation details will appear in bigger type; all authorised election advertisements will include the subject's political affiliation; and the Electoral Commissioner will become the one and only distributor of postal vote applications, though details of applicants for postal votes will be made available for parties and candidates.

If a ballot is marked and may identify a voter but is in all other respects formal, it will not automatically be considered an informal vote. Federal and state electoral rolls will be harmonised, and the term of the Electoral Commissioner will henceforth be one of five years, with the potential for renewal. These are sensible and useful reforms, and they are driven by the need for integrity and transparency in our electoral system, because democracy may not be perfect, as the very eminent leader to whom I referred earlier said, but people are dying it for it all over the world. While that may sound a bit florid, it is nonetheless true, and for that reason we are very fortunate to be in a position to vote in favour of this bill and I commend it to the chamber.

The Hon. M. PARNELL (17:00): The Greens, too, will be supporting this bill. We appreciate the origins of the bill, in the mischief, as it has been described, that was perpetrated by the Labor Party in the 2010 election, but we are also pleased that the government has taken the opportunity to fix up some other aspects of our electoral laws whilst it is in the process of fixing up the how-to-vote card provisions.

I note a submission I received from the Electoral Reform Society of South Australia, and it states that it supports most of the proposed changes. It is particularly supportive of clause 17, dealing with the distribution of postal vote applications, and clause 18, dealing with the informal ballot papers, but they raise some interesting questions, which I think we will need to explore in committee on this bill in relation to the detailed application of the new regime that is being created.

The mischief complained of in the 2010 state election has been well described by other members, and I do not need to go into it in detail again. I note that the normally restrained Hon. Dennis Hood used what is for him strong language—disgusting, deception, contemptuous, despicable were just some of the ones I wrote down—and it is pretty hard to disagree with him. What happened in 2010 was nothing short of passing off. If you have ever studied law you would appreciate that passing off is frowned on by the law, pretending that you are someone else to get a personal advantage for yourself. That is what passing off is, and that was what happened on polling day in 2010.

In relation to the how-to-vote cards, there is always pressure on all political parties from members of the public, who hate running the gauntlet on election day, to perhaps ban how-to-vote cards. Certainly the Greens receive a fair bit of this correspondence, given that people know that we are the strongest party in this country environmentally. If I had a dollar for every time someone commented on how many trees must have been felled to produce all the how-to-vote cards, then I would be wealthy—except I would not be because I would not be taking outside employment but relying on my parliamentary salary. Anyway, I digress!

The Electoral Reform Society, in relation to the how-to-vote cards, said that they were not sure if it will achieve what it is attempting. To quote from the submission:

> If there must be how-to-vote cards and to counteract the mischief complained of in the 2010 election, it may be easier to legislate that how-to-vote cards can only be submitted to the Electoral Commission for display in polling booths, as allowed under section 66, and not handed out on election day.

That is certainly an interesting position to take, and it would certainly avoid the need for people to run the gamut of party volunteers outside the polling booth. We are not pushing that in relation to this bill, but they raise the interesting point about the posters in the polling booth, because that is the alternative source of information about what parties are suggesting if a person does not get a how-to-vote card from either all of the parties and candidates or at least the ones that they were considering supporting.

I want to talk just briefly about those posters that are in the pooling booth, because it is the subject of an amendment the Greens will be moving to this legislation, and that amendment is to provide that, if a how-to-vote card lodged by a party only advocates a No.1 vote for the candidate of first choice, and then invites electors to make up their own mind, then that should be information that is able to be displayed on the poster. Now, at present, it is not. At present, if you do not provide the Electoral Commission with a full list of preferences, putting a number in the square next to all candidates, they will not put that how-to-vote card on their poster. I think that is undemocratic. I

think that it takes away from what should be public knowledge in the community, but all of us who have worked on polling booths know that it is not, and that is that voters are responsible for their own preferences. There are a number of people who come up to you at a polling booth and seem to think that unless you have followed a how-to-vote card somehow you have broken the law or you are doing the wrong thing.

I am not going to get into a diatribe about civics education, but certainly from my party's point of view in the majority of seats we have tended in recent elections to advocate what we call an open ticket. In other words, we urge people to vote for our candidate first and we remind them that they have to number all the squares, but we tell them that it is up to them how they fill them in. I think that is a respectful approach for voters and I think the electoral authorities should recognise that that is a respectful approach to voters, and they should allow a card bearing those instructions to appear on the poster in the polling booth. I think the Electoral Reform Society, by drawing our attention to section 66, make a very good point.

I will mention very briefly the seminar that was held in Parliament House today. I think representatives of all parties were at that seminar, which was convened by our own Dr Jenni Newton-Farrelly from the Parliament Research Library. It was an excellent presentation by Joo-Cheong Tham on the topic, 'Eight principles for reforming election funding and disclosure schemes in Australia'. Whilst the topic of that talk was about election funding models, he did invite us, I think quite properly, to go back to first principles and have a think about what we are talking about when we talk about democracy. It is one of those phrases that means slightly different things to different people.

Joo-Cheong Tham picked out four overriding principles and three of them I think are directly relevant to the debate on this bill: first, protecting the integrity of representative government, including prevention of corruption and undue influence; secondly, promoting fairness in politics; and thirdly, respect for political freedoms. Certainly I think the behaviour of some members of the Labor Party in the 2010 election infringed all three of those principles. We need to make sure that we always have an eye to the big picture when we are debating the minutiae of this bill.

There is one other amendment that the Greens will be pursuing in relation to this bill that I want to draw members' attention to, and that is our longstanding belief that Robson rotation, as it is known, is the fairest way of presenting a ballot paper to electors. Quite simply, all that means is that each candidate gets an equal turn on the top of the paper. That means that if you have four candidates then you would have four different ballot papers and they would each have one of the candidates on the top for a quarter of those papers.

That means that the well-known concept of the donkey vote means nothing. There is no donkey vote if everyone gets a fair share of time or space at the top of the ballot paper. Those of us in this place who live and breathe politics could debate until the Hon. Rob Brokenshire's cows come home whether the donkey vote is worth 1 per cent or 2 per cent or more. Various studies have been done. Whilst we might not agree on what the percentage is, we know it means something, and on big ballot papers with lots of candidates it means more because there is more effort involved in filling it out. So, on a big ballot paper people are more inclined to follow a donkey vote. The Greens' amendment basically says that the Robson rotation should be the new standard for House of Assembly ballot papers, with everyone getting a turn at the top of the paper.

With those brief comments, the Greens are pleased to support this bill. I will not go through all of the different elements that we support because it is basically most of the bill. I look forward to the committee stage when we get into the fine detail and I am sure there will be some robust debate when we get to that stage.

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) (17:10): I thank honourable members for their second reading contribution to this very important bill. I also thank them for the support they have indicated during the second reading. A number of issues have been identified which, no doubt, will be dealt with in detail during the committee stage, and I look forward to engaging in that robust debate.

So that members are clear, I do not intend to progress the committee stage today. We will deal with the second reading vote, and then we will defer the committee stage until the next day of sitting. I thank members for their support.

Bill read a second time.

STATUTES AMENDMENT (APPEALS) BILL

Adjourned debate on second reading.

(Continued from 19 February 2013.)

The Hon. J.A. DARLEY (17:11): I rise briefly to speak on the Statutes Amendment (Appeals) Bill 2012. The bill, if you like, is an alternative to the Criminal Cases Review Commission Bill, as introduced by the Hon. Ann Bressington in 2010. It is intended to improve appeals procedures in South Australia by enabling renewed appeals against conviction on the basis of fresh and compelling evidence.

As a member of the Legislative Review Committee, I was able to consider the need for an improved appeals procedure following the referral of the Hon. Ann Bressington's Criminal Cases Review Commission Bill for inquiry. Very briefly, the committee considered alternative approaches to rectifying issues with the prerogative of mercy, as well as the possibility of establishing a criminal cases review commission. It did so in response to concerns about the limited opportunity and statutory rights available to a person who believes that they should not have been convicted of an offence.

As provided by the committee's report, currently, a person has a right of appeal against their conviction on limited statutory grounds; namely, a wrong decision on a question of law, on grounds that the verdict was unreasonable or could not be supported having regard to the evidence or on the grounds that there was a miscarriage of justice.

The court has determined that it will not reconsider evidence already adduced at the trial and will not allow an appeal simply because it disagrees with the decision of a jury. Further, fresh evidence is able to be admitted only if it is relevant and admissible. A convicted person has no right to a further appeal on any grounds after this one right of appeal has been exhausted.

The only other option for a person wanting to challenge their conviction is to petition the Governor for a pardon in the exercise of the prerogative of mercy. This is an entirely discretional exercise of power by the Governor and does not result in a conviction being quashed. In practice, the Governor acts on the advice of the Attorney-General and the government.

The bill proposed by the Hon. Ann Bressington was aimed at providing convicted persons the opportunity to have any claims about the safety of their conviction investigated by an independent body and referred to the court for the quashing of their conviction if they concluded that there was a reasonable possibility that the conviction would be overturned. It was based on existing UK legislation.

Whilst ultimately the committee did not recommend the establishment of a criminal cases review commission at this point in time, it did, nevertheless, recommend the following:

- that part 11 of the Criminal Law Consolidation Act 1935 be amended to provide that a person may be allowed at any time to appeal against a conviction for serious offences if the court is satisfied that: the conviction is tainted; where there is fresh and compelling evidence in relation to the offence which may cast reasonable doubt on the guilt of the convicted person;
- that the Attorney-General liaise with the courts in undertaking a review of the process of discovery and presentation of scientific evidence in criminal trials and, in particular, considers amendments to the legislation to allow certain expert evidence to be agreed by prosecution and defence and amendments to legislation and/or court rules which allow the jury and/or judge in a criminal trial the opportunity to ask questions of expert witnesses;
- that the Attorney-General consider establishing a forensic science review panel to enable the testing or retesting of forensic evidence which may cast reasonable doubt on the guilt of a convicted person and for these results to be referred to the Court of Criminal Appeal;
- that the Commissioner for Victims Rights' and victims of crime (if they request) be notified of any post-conviction review to be undertaken under any act, be able to make submissions to any such review proceedings either through written submissions or through representation by the Commissioner for Victims' Rights and be entitled to information about the progress of such a review; and, lastly

- that the Attorney-General consider amendments to relevant legislation to provide that a person granted a pardon for a conviction should be eligible to have their conviction quashed.

The government bill addresses some of these recommendations by introducing four new measures. Firstly, consistent with recommendation No. 1, it provides for new procedures for renewed defence appeals against conviction in the event that fresh and compelling evidence comes to light after the existing right of appeal has been exhausted. Secondly, consistent with recommendation No. 7, it provides that a person granted a full pardon for a conviction on the basis that the evidence does not support such a conviction will be eligible to have their conviction quashed.

Thirdly, it provides the prosecution with an automatic right of cross appeal without the usual need to obtain permission where a defendant appeals his or her sentence on the grounds of error and therefore that a lower sentence should have been imposed, or alternatively on grounds that the sentence was manifestly excessive. Lastly, the bill provides the Chief Justice with the discretion to constitute the Full Court by a bench of two judges rather than three for both sentence and conviction appeals.

I am somewhat disappointed that more of the recommendations were not adopted by the government at this time and I take the opportunity to ask the minister at this point whether there are any plans to implement any of the other recommendations at a later date. In particular, I am keen to hear the government's views on the establishment of a forensic science review panel to enable the testing or retesting of forensic evidence and for the Commissioner for Victims' Rights and victims of crime (if they request) to be notified of any post-conviction review to be undertaken with a view to enabling them to make submissions to any such proceedings. I would also be interested to get a more detailed response as to why the new appeal right was based only on fresh and compelling evidence and not on whether the conviction was tainted.

I take this opportunity to remind all honourable members that the recommendations were supported unanimously by the committee, which is constituted by a majority of government members. This in itself is quite telling and I maintain my position that these measures ought to have been incorporated into the current raft of changes. In closing, I think credit ought to be given where credit is due and, in this case, that is with the Hon. Ann Bressington who has persisted with this matter. With that, I support the second reading of the bill and look forward to receiving responses about the matters raised.

Debate adjourned on motion of Hon. Carmel Zollo.

STATUTES AMENDMENT (REAL ESTATE REFORM REVIEW AND OTHER MATTERS) 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) (17:19): I move:

That this bill be now read a second time.

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

Leave granted.

The Government has always supported a real estate framework which promotes and protects the interests of consumers while at the same time enabling agents to conduct their business as expeditiously and efficiently as possible. Buying a property is probably the biggest financial investment most people will ever make and it is essential that the Government gets this balance right.

The Government can only do this by listening to the concerns of vendors and purchasers in the marketplace as well as those within the industry working at the coalface. To this end, the Government acknowledges the support and cooperation of members of the public and those within the industry for their comments and insights which have proved invaluable in developing these reforms.

The Government has got the balance right and the Bill is a reflection of the Government's commitment to ensuring that its real estate legislation is as robust and effective as possible. In particular, the Government has listened to ongoing concerns about the practices of underquoting and bait advertising.

Consumer and Business Services continues to receive complaints from prospective purchasers about properties selling at auction far in excess of marketed prices and more disturbingly, being passed in at prices well above those marketed. Prospective purchasers are outlaying money for building inspection reports based on a

marketed price for a property and then finding that the property was never intended to be sold for that price. This is due to the fact that the setting of a reserve price is unregulated.

This situation also facilitates collusion between the agent and the vendor. The agent and vendor can easily collude to specify a low price in the sales agency agreement and market the property at that price with the full knowledge that the vendor can set a reserve at any figure above that marketed price at any time prior to the auction.

It is not a question of the Government failing to enforce underquoting provisions in the legislation. It is almost impossible to prove that the estimate of an agent is not genuine or that the property was sold well above the advertised price as a result of deliberately disingenuous estimates rather than market forces.

The Government made it quite clear to stakeholders that if they were unable to provide a satisfactory solution to this problem, then the Government would intervene with legislation which would.

Most submissions that tackled this issue referred to the unwillingness of the Government to enforce the current provisions rather than proffering a strategy to fix the problem. The one strategy suggested to the Government in no way resolved the issues of proof and collusion that the legislation is unable to currently address.

The Government believes that the most effective way of eliminating the practice of underquoting once and for all is to create a nexus between the price sought by, or acceptable to, the vendor and the reserve price set by the vendor. In this way, the expectations of the purchaser will be realistically met when the auction of a property is based on advertising that reflects the genuine selling price of the vendor.

The proposals contained in the Bill will accomplish three main objectives:

- to strengthen the rights of consumers;
- to increase the level of transparency of real estate transactions, in particular, auctions; and
- to reduce the administrative burden on real estate agents and auctioneers.

The Bill implements the recommendations of the review into Parts 4 and 4A of the *Land and Business (Sale and Conveyancing) Act 1994* and addresses other issues raised during consultation with Consumer and Business Services, industry stakeholders and the public.

In late 2007, Parliament passed the *Statutes Amendment (Real Estate Industry Reform) Act 2007* (the *Real Estate Reform Act*) which commenced on 28 July 2008. The reforms contained in the Real Estate Reform Act were significant and established much higher standards for land agents in their professional conduct. Included in the legislation was a provision requiring that Parts 4 and 4A of the *Land and Business (Sale and Conveyancing) Act 1994* be reviewed with a report to be tabled in Parliament. Part 4 regulates the way properties are advertised and sold and the manner in which consumers engage the services of an agent, while Part 4A regulates the manner in which auctions are conducted.

Extensive consultation on the review took place with industry and consumer associations which culminated in a report that was tabled in Parliament on 16 September 2010. During consultation on the review, many observations and comments were made on provisions that were not within Parts 4 and 4A. However, these have also been considered and form part of the complete set of reforms that are contained in the Bill and the regulations that will be made following passage of the Bill.

The Bill implements the following key measures which arose from the review of Parts 4 and 4A:

- agents will be required to provide details of sales of comparable land or other information on which the agent will rely in support of his or her estimate of the selling price which they must include in the sales agency agreement. This provision will further strengthen the requirement included in the Real Estate Reform Act that agents specify in the sales agency agreement their genuine estimate of the likely selling price of the property being sold;
- agents will be able to extend a sales agency agreement for one further period of 90 days provided that the vendor agrees to an extension within 14 days of the expiration of the original agreement and that the vendor has the right to terminate the extension with seven days' notice;
- agents will now have a more flexible time limit of 48 hours in which to deliver a copy of the verification of vendor's statement certificate to the vendor and 48 hours (if agreed by the vendor) in which to deliver a copy of the sales agency agreement to the vendor;
- auctioneers will now only be required to audibly announce that the standard conditions of auction apply as binding contractual conditions. The requirement to audibly announce each auction condition has been removed;
- auctioneers will be permitted to use a unique identifier comprising a number, letter, colour or some other identifying feature when taking bids from purchasers, rather than just a number. This will still provide sufficient protection against dummy bidding and retain transparency in the auction process; and
- the definition of what constitutes a representation as to the likely selling price in marketing residential land will be tightened to prohibit the use of words or symbols in relation to single price advertising and only allow the use of words or symbols in price range advertising when used to denote a range.

The Bill also addresses a number of other issues drawn to the attention of the Government through the consultation process:

- the definition of 'small business' is amended to include businesses to the value of $300,000 excluding GST. This will provide greater protection to more purchasers of small businesses as they will now receive a vendor's statement;
- a cooling-off notice will now be able to be delivered by email with the permission of the vendor. This is consistent with the current allowance for the notice to be delivered by facsimile;
- bodies corporate will now have access to the cooling off period if purchasing residential land. This will be of particular benefit to small investors who are trustees of family trusts or superannuation funds and who will now have the opportunity to consider the contents of a vendor's statement in deciding whether or not to proceed with the purchase of residential land;
- auctioneers or agents will be required to take all reasonable steps to give a purchaser notice of the times and places at which the vendor's statement can be inspected prior to the auction. They will be able to do this by incorporating the relevant information in a newspaper advertisement, promotional material delivered to the purchaser, on their website or in a prominent position on their signboard. This will provide the purchaser with a far greater likelihood of seeing the statement and being able to inspect the vendor's statement prior to bidding at the auction; and
- vendors or agents will now be permitted to display the prescribed notice in a prominent position at an open inspection so as to indicate that the purchaser may take one if they so choose rather than personally give a copy to every prospective purchaser.

In addition, the Bill incorporates a number of other amendments that have arisen separately to the review and are considered appropriate for inclusion in the Bill.

- the reserve price will not at any stage be able to be greater than 110 per cent of the selling price sought by, or acceptable to, the vendor as stated in the sales agency agreement. The vendor or agent will not be able to vary the sales agency agreement in respect of the selling price sought by, or acceptable to, the vendor. If the sales agency agreement is terminated, the agent must not make a new sales agency agreement with the vendor specifying a selling price sought by, or acceptable to them which is greater than that specified in the former agreement unless the period of the former agreement has elapsed.
- restrictions are placed on agents and sales representatives who wish to disclose to prospective purchasers the fact that other offers may have been made in relation to residential land that the agent is authorised to sell.

The creation of a nexus between the selling price sought by, or acceptable to, the vendor and the reserve will accomplish the following objectives:

(1) encourage the vendor to specify an accurate selling price sought by, or acceptable to them, in the sales agency agreement;

(2) eliminate the marketing of a price significantly lower than the reserve;

(3) eliminate collusion between the agent and the vendor to estimate low prices in the sales agency agreement; and

(4) create transparency in the auction process by allowing the prospective purchaser a reasonable idea of what the reserve will be if the property is marketed.

- disciplinary action against agents or sales representatives who are found guilty of specific offences (breaching marketing requirements, acting in conflict of interest situations and making false and misleading representations) will be enhanced by requiring the Court to cancel their registration and disqualify them either permanently; or for a specified period; or until the fulfilment of stipulated conditions; or until further notice. The commission of these specific offences will have serious and automatic consequences and more align penalties to the type and level of offending;
- agents who fail to comply with the marketing provisions of the legislation will not be able to demand, receive or retain commission or expenses in respect of the sale of the land;
- agents will no longer be permitted to specify their genuine estimate in the sales agency agreement as a price range. This better reflects the requirements of the prescribed minimum advertising price and subsequent marketing of the property;
- payments from the indemnity fund will be expanded to include the costs of investigating compliance with and the costs of prosecutions taken under the *Land and Business (Sale and Conveyancing) Act 1994.* In addition, payments from the indemnity fund will be able to be utilised towards the costs of reviewing the operation of the *Conveyancers Act 1994,* the *Land Agents Act 1994* and the *Land and Business (Sale and Conveyancing) Act 1994*; and
- various penalties will be increased to reflect the seriousness of those offences.

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 *Conveyancers Act 1994*

4—Amendment of section 31—Indemnity fund

The purposes for which the indemnity fund may be applied is expanded to include—

- the costs of investigating compliance by conveyancers with the *Land and Business (Sale and Conveyancing) Act 1994*;
- the costs of prosecutions for alleged offences by conveyancers against the *Land and Business (Sale and Conveyancing) Act 1994*;
- the payment of amounts, approved by the Minister, towards the cost of reviewing the *Conveyancers Act 1994* or the *Land and Business (Sale and Conveyancing) Act 1994* insofar as that Act relates to conveyancers.

Part 3—Amendment of *Land Agents Act 1994*

5—Amendment of section 29—Indemnity fund

The purposes for which the indemnity fund may be applied is expanded to include—

- the costs of investigating compliance by agents or sales representatives with the *Land and Business (Sale and Conveyancing) Act 1994*;
- the costs of prosecutions for alleged offences by agents or sales representatives against the *Land and Business (Sale and Conveyancing) Act 1994*;
- the payment of amounts, approved by the Minister, towards the cost of reviewing the *Land Agents Act 1994* or the *Land and Business (Sale and Conveyancing) Act 1994* insofar as that Act relates to agents or sales representatives.

6—Amendment of section 47—Disciplinary action

Proposed subsection (1a) will require a Court to cancel the registration of a person and disqualify him or her from being registered if he or she has been found guilty of an offence against section 24A(2), section 24G(1), (2) or (3) or section 36 of the *Land and Business (Sale and Conveyancing) Act 1994* and the circumstances of the offence form, in whole or in part, the subject matter of a complaint, unless the Court is satisfied on the balance of probabilities, by evidence given by the person on oath, that the offence was trifling or committed in exceptional circumstances.

Proposed subsection (1b) clarifies that the Court may exercise such other powers under section 47 as the Court considers appropriate in the circumstances.

Part 4—Amendment of *Land and Business (Sale and Conveyancing) Act 1994*

7—Amendment of section 3—Interpretation

This clause adds the term *standard conditions of auction* to the definitions in section 3 of the Act since it is now used in different sections in the Act.

8—Amendment of section 4—Meaning of small business

This clause increases the upper limit applying to the definition of a small business from $200,000 to $300,000 excluding GST.

9—Amendment of section 5—Cooling-off

This clause enables a cooling-off notice to be given by email. It also amends subsection (7)(a) of the principal Act with the effect that bodies corporate purchasers of land who were previously prevented from cooling off in relation to contracts for the sale of residential land will now have the right to cool off in those circumstances.

10—Amendment of section 9—Verification of vendor's statement

This clause gives an agent 48 hours to provide a vendor with a copy of the certificate signed by the agent confirming the completeness and accuracy of the particulars of the vendor's statement.

11—Substitution of section 11

This clause substitutes section 11.

11—Auctioneer to make statements available

Section 11(1) requires an auctioneer or other agent acting on behalf of the vendor to make the vendor's statement available for perusal by members of the public at the office of the agent or auctioneer for at least 3 consecutive business days immediately preceding the auction and at the place of auction for at least 30 minutes immediately before the auction. It also requires such an agent to take all reasonable steps to give prospective purchasers notice of the times and places at which the vendor's statement may be inspected before the auction. The kinds of steps considered reasonable, set out in section 11(2), are if the agent—

- incorporates the notice with promotional material for the sale that the agent or sales representative delivers to the purchaser; or
- offers to deliver the notice, or promotional material for the sale incorporating the notice, to the purchaser but the purchaser refuses to take it; or
- publishes the notice in a prominent position—
  - (i) in promotional material for the sale on the agent's website or in a newspaper circulating generally throughout the State or the area in which the land or business is situated; or
  - (ii) on the signboard advertising the sale at the land or at the premises of the small business.

12—Amendment of section 13A—Prescribed notice to be given to purchaser

This clause enables the prescribed notice to be given by a vendor to a purchaser, in the case of an inspection that is open to the general public, by displaying the notice in a prominent position on the land and so as to indicate to persons inspecting the land that a copy of the notice may be taken by those persons.

13—Amendment of section 20—Authority to act as agent

Section 20(1) is amended to require the agent's genuine estimate of the selling price to be expressed in the sales agency agreement only as a single figure (and not as a price range). This is now consistent with how the selling price sought by or acceptable to the vendor is to be expressed. In neither case may qualifying words or symbols be used to express the price.

Section 20(2) will require an agent, before making a sales agency agreement, to provide details of sales of comparable land and any other information on which the agent will rely in support of his or her estimate of the selling price. Failure to comply with this requirement attracts a maximum penalty of $5,000 or an expiation fee of $315.

Section 20(4) is amended to enable an agent to provide a copy of a signed instrument or agreement to the vendor or purchaser either immediately or at a later time within 48 hours as agreed with the vendor or purchaser.

Section 20(5a) is inserted with the effect that a sales agency agreement for the sale of residential land by auction may not be varied by increasing the amount specified in the agreement as the selling price sought by, or acceptable to, the vendor. This measure aims to ensure that the vendor's price cannot be set low for the duration of the marketing campaign (to entice potential purchasers) and then suddenly increased just before an auction. This is one of the measures of this Bill that is designed to prevent bait advertising.

Section 20(6) is amended to enable an agent to provide a copy of any variation to a sales agency agreement to the vendor either immediately or at a later time within 48 hours as agreed with the vendor or purchaser.

Subsections (6a) to (6c) will enable sales agency agreements to be extended for a single period not exceeding the number of days prescribed by regulation provided that the extension is recorded in writing and dated and signed by the parties no earlier than 14 days before the agreement is due to expire. An agent must provide a copy of the record of extension to the vendor either immediately or at a later time within 48 hours as agreed with the vendor. The vendor may at any time during the period of extension, terminate the agreement without giving a reason by giving at least 7 days written notice.

Subsection (6d) is intended to prevent agents and vendors from prematurely terminating a sales agency agreement and entering into a fresh sales agency agreement specifying a higher vendor price. This is one of the measures of this Bill that is designed to prevent bait advertising.

Section 20(9) has been amended to require an agent to keep a copy of the record of any extension of a sales agency agreement.

14—Amendment of section 21—Requirements relating to offers to purchase residential land

The proposed amendment substituting subsection (2) is in the nature of a drafting tidy-up. It is proposed to further amend this section by inserting 2 new subsections which, while allowing an agent or sales representative to disclose to prospective purchasers the fact that other offers may have been made in relation to residential land, only allow the disclosure if the agent or sales representative complies with the requirements of those subsections.

15—Amendment of section 24A—Representations as to likely selling price in marketing residential land

Clause 15(1) and (2) amend section 24A of the Act and are consequential on the amendment of section 20(1) (above).

Section 24A(2) is substituted with the effect that the following requirements will apply to agents and sales representatives when making representations in marketing residential land:

- representations as to the likely price for the land must be expressed as a single figure without any qualifying words or symbols and must not be less than the prescribed minimum advertising price (which is the greater of the agent's or the vendor's price specified in the sales agency agreement at the time of the representation);
- representations as to a likely price range for the land must be expressed using two figures only, being the lower and upper limits of the range, with the lower limit being an amount that is not less than the prescribed minimum advertising price and the upper limit being no more than 110% of the lower limit.

Contravention of subsection (2) attracts a maximum penalty of $20,000 or imprisonment for 1 year.

Subsection (3) prohibits an agent from demanding, receiving or retaining commission or expenses in respect of the sale of land if subsection (2) has not been complied with (contravention attracting a maximum penalty of $5,000 or an expiation fee of $315).

Subsection (4) enables a person who, despite subsection (3), has paid such commission or expenses, to recover that amount as a debt from the agent.

16—Substitution of section 24I

This clause substitutes section 24I

24I—Standard conditions of auction for residential land

This section has undergone minor drafting improvements and now clarifies that the standard conditions of auction are binding on the vendor and purchaser, the vendor and the auctioneer and the bidders and the auctioneer.

17—Amendment of section 24J—Preliminary actions and records required for auctions of residential land

This clause amends section 24J(1) of the Act. Previous paragraph (b) (requiring an auctioneer to read out the standard conditions of auction) has been deleted and replaced with a provision now only requiring the auctioneer to draw the public's attention to the fact that the standard conditions of auction (as required to be made available for perusal before the auction) apply to the auction as binding conditions.

New paragraph (ba) will prohibit the reserve price for the land from exceeding 110% of the amount specified in the sales agency agreement as the vendor's price. This is one of the measures in the Bill designed to prevent bait advertising.

18—Amendment of section 24K—Registered bidders only at auctions of residential land

The amendments effected by this clause enable a unique identifier other than an identifying number (namely, including a letter, colour or some other identifying feature) to be allocated to intending bidders at an auction of residential land.

19—Amendment of section 27—Preparation of conveyancing instrument for fee or reward

The maximum penalty amount for this offence is increased from $5,000 to $20,000, making it consistent with penalties for similar offences.

20—Amendment of section 28—Preparation of conveyancing instrument by agent or related person

The maximum penalty amount for this offence is increased from $5,000 to $20,000, making it consistent with penalties for similar offences.

21—Amendment of section 29—Procuring or referring conveyancing business

The maximum penalty amount for this offence is increased from $5,000 to $20,000, making it consistent with penalties for similar offences.

22—Amendment of section 30—Conveyancer not to act for both parties unless authorised by regulations

The maximum penalty amount for this offence is increased from $5,000 to $20,000, making it consistent with penalties for similar offences.

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

STATUTES AMENDMENT (DIRECTORS' LIABILITY) 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) (17:21): I move:

That this bill be now read a second time.

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

Leave granted.

The purpose of this Bill is to give effect to that part of the National Partnership Agreement to Deliver a Seamless National Economy entered into through the Council of Australian Governments (COAG) in November 2008 in which the Commonwealth and all States and Territories agreed to reform directors' liability provisions in their legislation. These are provisions that impose personal criminal liability on directors of corporations by reason of the position they hold in a corporation that has committed an offence. These reforms will extend to members of management committees of other bodies corporate.

It has been common, not only in South Australia, but in other Australian jurisdictions as well, to include in legislation provisions that impose personal criminal liability that goes beyond the normal principles of accessorial liability. In many Acts there are provisions that hold each director criminally liable on proof of the company's offending, subject to a defence of due diligence that must be proved by the director. Frequently this has applied indiscriminately to every offence against the Act and also to any offences against the Regulations under the Act. Occasionally there was no statutory defence, so that a director became automatically liable to conviction.

The background to COAG's examination of the issue was reports and recommendations from bodies such as the Corporations and Markets Advisory Committee established under the *Australian Securities and Investment Commission Act 2001* (Cth) and the Commonwealth Governments Taskforce on Reducing the Regulatory Burden on Business (the Banks Report 2006). These reports found that there was a need for a more consistent and more principled approach to personal liability for corporate offences. They said such an approach would reduce complexity, aid understanding, increase certainty and predictability, and assist efforts to promote effective corporate compliance and risk management. The Australian Institute of Company Directors also made submissions to Governments seeking reforms.

COAG was concerned that the law should not impose unjustifiable burdens on business or discourage competent persons from becoming directors. It considered that reforming directors' liability provisions in a principled and consistent manner would improve productivity and have economic benefits for Australia.

A corporation has a separate legal identity from its shareholders or members, its directors and managers, and a corporation can be convicted of an offence. If directors or others are personally involved in the commission of the offence or have aided, abetted, counselled or procured its commission by the corporation they can be held liable as principal offenders or as accessories. In South Australia, this is generally done, if at all, via section 267 of the *Criminal Law Consolidation Act 1935*. Further, where a corporation commits an offence as a result of directors breaching their fundamental duties as directors, they may be prosecuted under the Commonwealth *Corporations Act*.

But in addition to these direct attributions of criminal responsibility, there are some circumstances in which it is justifiable in the public interest to hold the directors vicariously responsible for the wrongdoing of the corporation under State legislation. This is the view that has been taken across Australia for laws directed at very serious harms such as occupational health and safety laws and for some offences that are likely to cause serious environmental harm. These (and other such obligations) are of such public importance that the directors are expected to take an active part in ensuring their companies comply with the law. There are some other offences where there are compelling public policy reasons for making directors liable unless they can establish that they exercised due diligence.

This Bill will amend 50 Acts. It will reform directors' liability provisions in 43 Acts in addition to the reforms to directors' liability provisions in 25 Acts made by the *Statutes Amendment (Directors' Liability) Act 2011*. The Bill will also amend seven of the Acts amended by the 2011 Act so that directors will not be vicariously liable for offences against regulations made under them unless the regulations specifically provide for such liability.

This additional and more rigorous approach to the reforms is required by COAG decisions made after the *Statutes Amendment (Directors' Liability) Bill 2011* had been passed by the House of Assembly. In August 2011 COAG decided that all jurisdictions would conduct another audit of their legislation and make additional reforms in conformity with a new set of Guidelines that were to be developed to supplement the Principles that had previously informed reform. The new Guidelines are entitled *Personal Liability for Corporate Fault—Guidelines for Applying the COAG Principles* and they were approved by COAG on 25 July 2012. They are much more detailed and prescriptive than the Principles originally approved by COAG. All Australian jurisdictions have now identified additional provisions to be reformed.

The COAG Guidelines describe three types of vicarious directors' liability provisions and call them type 1, type 2 and type 3. The Guidelines require an examination of each offence provision to determine whether vicarious directors' liability is justified and, if it is, to determine which of these types of liability is appropriate.

Type 1 provisions are provisions where the prosecution must prove beyond reasonable doubt every element of the offence alleged to have been committed by the director including the director's lack of care.

Type 2 provisions provide that a person is guilty of an offence if certain matters are proved by the prosecution, subject to one or more 'defences'. An accused who wishes to rely on the defence must produce at least enough evidence to suggest that there is a reasonable possibility that the defence applies. If they do this, the onus reverts to the prosecution. Type 2 provisions are not used in South Australia.

Type 3 provisions are the typical reverse onus provisions where directors will be found guilty vicariously for corporate offences unless they prove on the balance of probabilities that they could not by the exercise of due diligence have prevented the company from committing the offence.

This Bill will remove directors' vicarious liability from 19 Acts. It will amend another 24 Acts by repealing the existing directors' liability provision and substituting other provisions. For these 24 Acts decisions have been made about whether there should be type 1, type 3 or no vicarious liability for each of the offences that can be committed by a corporation. When it is considered necessary that type 3 vicarious liability be retained for particular offences, those offences are either specified in the first subsection or described as 'prescribed offences' which are then defined in a separate subsection. The offences for which there is to be type 1 liability are covered by a subsection that requires the prosecution to prove that the corporation committed an offence, that the accused was a director at the time the offence was committed, and in addition that:

- the director knew, or ought reasonably to have known, that there was a significant risk that such an offence would be committed; and
- the director was in a position to influence the conduct of the corporation in relation to the commission of such an offence; and
- the director failed to exercise due diligence to prevent the commission of the offence.

For many of the offences in these 24 Acts there will be no vicarious liability and each of these is listed by section number in a subsection that disapplies the subsection for type 1 liability. These are in addition to the 19 Acts in which the directors' liability provision will be repealed without replacement.

The number of offences that attract vicarious liability, and particularly type 3 liability, will be vastly fewer than currently exist.

In conjunction with the measures in this Bill that modify or remove directors' liability, the opportunity has been taken to raise penalty levels for certain offences in a number of these Acts. It is expected that those measures will act as a significant incentive for bodies corporate to comply with those Acts.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

By way of general comments about this Bill, amendments are made to 50 Acts to modify or remove vicarious liability of directors and other persons in positions of authority in a body corporate, for offences committed by the body corporate against the relevant Act or against regulations under the relevant Act.

Where vicarious liability has been modified, the new provisions provide for one or both of 2 types of liability: type 3 directors' liability and type 1 directors' liability.

Type 3 directors' liability

First, directors (or other persons in positions of authority in a body corporate) will be liable in relation to certain offences committed by the body corporate unless they prove that they could not, by the exercise of due diligence, have prevented the commission of the offence. This is called type 3 directors' liability for the purposes of this clauses explanation and is the more onerous of the two liability types in terms of the burden of proof on a director.

Type 1 directors' liability

Secondly, directors (or other persons in positions of authority in a body corporate) will be liable in relation to certain offences committed by the body corporate if the prosecution proves that they knew, or ought reasonably to have known, that there was a significant risk that such an offence would be committed, were in a position to influence the conduct of the body corporate in relation to the commission of such an offence and failed to exercise due diligence to prevent the commission of the offence. This is called type 1 directors' liability for the purposes of this clauses explanation and is less onerous on a director than type 3 directors' liability.

The term 'directors' liability' is used in this clauses explanation as a generic term to describe the vicarious liability that may be imposed on persons in positions of authority in a body corporate for the acts of the body corporate. This term will be used in this clauses explanation despite the fact that some of the Acts being amended refer to persons other than directors, for example, managers, chief executives, members of the governing body and others.

Penalty increases

In addition to the modification or removal of directors' liability in various Acts, the opportunity has been taken in this Bill to raise penalty levels for certain offences in a number of these Acts.

Part 2—Amendment of *Agricultural and Veterinary Products (Control of Use) Act 2002*

4—Substitution of section 34

Type 3 and type 1 directors' liability (explained above in clause 3) is provided for a reduced number of offences. Directors' liability is removed for all other offences against the Act or regulations committed by the body corporate. The amendments clarify that the regulation making power exists to enable the regulations to impose such liability should that be considered appropriate in particular cases.

5—Amendment of section 36—General defence

The general defence under section 36 will no longer be available to a member of a governing body, or the manager, of a body corporate who is charged with a directors' liability offence under section 34. The defence available to such persons is incorporated within section 34 itself.

Part 3—Amendment of *Aṉangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981*

6—Amendment of section 23—Offence in relation to obtaining permission to carry out mining operations

Directors' liability is removed for an offence against section 23 committed by a body corporate. There is no other such directors' liability in this Act.

Part 4—Amendment of *Animal Welfare Act 1985*

7—Amendment of section 38—Offences by bodies corporate

Directors' liability is removed in relation to all offences against the regulations committed by the body corporate. The amendments clarify that the regulation making power exists to enable the regulations to impose such liability should that be considered appropriate in particular cases.

Part 5—Amendment of *Aquaculture Act 2001*

8—Amendment of section 88—Liability of directors

Type 3 and type 1 directors' liability (explained above in clause 3) is provided for a reduced number of offences. Directors' liability is removed for all other offences against the Act or regulations committed by the corporation.

9—Amendment of section 89—General defence

The general defence under section 89 will no longer be available to a director of a corporation charged with a vicarious liability offence under section 88. The defence available to such a director is incorporated within section 88 itself.

Part 6—Amendment of *Authorised Betting Operations Act 2000*

10—Amendment of section 84—Offences by bodies corporate

Directors' liability is removed in relation to all offences against the regulations committed by the body corporate. The amendments clarify that the regulation making power exists to enable the regulations to impose such liability should that be considered appropriate in particular cases.

Part 7—Amendment of *Building Work Contractors Act 1995*

11—Repeal of section 56

Directors' liability is removed in relation to all offences against the Act or regulations committed by the body corporate.

Part 8—Amendment of *Citrus Industry Act 2005*

12—Repeal of section 24

Directors' liability is removed in relation to all offences against the Act or regulations committed by the body corporate.

Part 9—Amendment of *Classification (Publications, Films and Computer Games) Act 1995*

13—Amendment of section 86—Proceedings against body corporate

Type 3 directors' liability (explained above in clause 3) is limited to prescribed offences only. Directors' liability is removed in relation to all other offences against the Act or regulations committed by the body corporate.

Part 10—Amendment of *Collections for Charitable Purposes Act 1939*

14—Amendment of section 15—Accounts, statements and audit

Type 1 directors' liability (explained above in clause 3) is provided for an offence against the section committed by a body corporate or an unincorporated body.

Part 11—Amendment of *Conveyancers Act 1994*

15—Repeal of section 61

Directors' liability is removed in relation to all offences against the Act or regulations committed by the company.

Part 12—Amendment of *Development Act 1993*

16—Amendment of section 48—Governor to give decision on development

17—Amendment of section 49—Crown development and public infrastructure

18—Amendment of section 49A—Electricity infrastructure development

19—Amendment of section 69—Emergency orders

20—Amendment of section 71—Fire safety

These clauses increase penalties for offences under the sections specified.

21—Amendment of section 105—General provisions relating to offences

Type 3 and type 1 directors' liability (explained above in clause 3) is provided for a reduced number of offences. Directors' liability is removed in relation to all other offences against the Act or regulations committed by the body corporate. The amendments clarify that the regulation making power exists to enable the regulations to impose such liability should that be considered appropriate in particular cases.

Part 13—Amendment of *Electricity Act 1996*

22—Amendment of section 61—Electrical installation work

23—Amendment of section 61A—Unsafe installation of electrical equipment

24—Amendment of section 84—Unlawful interference with electricity infrastructure or electrical installation

25—Amendment of section 85—Unlawful taking of electricity, interference with meters or positioning of lines

These clauses increase penalties for offences under the sections specified.

26—Amendment of section 92—General defence

The general defence under section 92(1) will no longer be available to a director of a body corporate charged with a vicarious liability offence under section 93. The defence available to such a director is incorporated within section 93 itself.

27—Substitution of section 93

Type 3 directors' liability (explained above in clause 3) is limited to prescribed offences committed by the body corporate. Directors' liability is removed in relation to all other offences against the Act or regulations committed by the body corporate.

Part 14—Amendment of *Emergency Management Act 2004*

28—Amendment of section 28—Failure to comply with directions

Type 3 directors' liability (explained above in clause 3) is retained in the principal Act only for an offence committed by a body corporate against section 28.

29—Repeal of section 35

Directors' liability is removed in relation to all other offences against the Act or regulations committed by the body corporate.

Part 15—Amendment of *Energy Products (Safety and Efficiency) Act 2000*

30—Amendment of section 8—Prohibition of sale or use of unsafe energy products

Type 1 directors' liability (explained above in clause 3) is provided for an offence committed by a body corporate against section 8.

31—Amendment of section 17—General defence

The general defence under section 17 will no longer be available to a director of a body corporate charged with a vicarious liability offence under section 8(6). The defence available to such a director is incorporated within section 8(6) itself.

32—Repeal of section 18

Directors' liability is removed in relation to all other offences against the Act or regulations committed by the body corporate. Note that it is retained for an offence committed by a body corporate against section 8 (see clause 30).

Part 16—Amendment of *Essential Services Act 1981*

33—Repeal of section 10B

Directors' liability is removed in relation to all offences against the Act or regulations committed by the body corporate.

Part 17—Amendment of *Essential Services Commission Act 2002*

34—Repeal of section 46

Directors' liability is removed in relation to all offences against the Act or regulations committed by the body corporate.

Part 18—Amendment of *Fair Trading Act 1987*

35—Amendment of section 43—Unlawful actions and representations

This clause increases the penalty for an offence under section 43(2).

36—Amendment of section 88—Defences

The general defence under section 88 will no longer be available to a director of a body corporate charged with a directors' liability offence under section 90(3). The defence available to such a director is incorporated within section 90(3) itself.

37—Amendment of section 90—Vicarious liability

Type 1 directors' liability (explained above in clause 3) is provided for offences committed by the body corporate against section 28A or 37. Directors' liability is removed in relation to all other offences against the Act or the regulations committed by the body corporate.

Part 19—Amendment of *Fire and Emergency Services Act 2005*

38—Amendment of section 86—Fire safety at premises

This clause increases the penalty for an offence under section 86(4).

39—Substitution of section 138

Type 1 directors' liability (explained above in clause 3) is provided for a limited number of offences committed by the body corporate against the Act. Directors' liability is removed in relation to all other offences against the Act or regulations committed by the body corporate. The amendments clarify that the regulation making power exists to enable the regulations to impose such liability should that be considered appropriate in particular cases.

Part 20—Amendment of *Fisheries Management Act 2007*

40—Amendment of section 71—Taking, injuring etc aquatic mammals and protected species prohibited

The defence under section 71 is not available to a director of a body corporate charged with a directors' liability offence under section 120(1) or (1a). The defence available to such a director is incorporated within section 120(1) or (1a).

41—Amendment of section 120—Offences committed by bodies corporate or agents, or involving registered boats

Type 3 and type 1 directors' liability (explained above in clause 3) is provided for a reduced number of offences. Directors' liability is removed in relation to all other offences against the Act or regulations committed by the body corporate. The amendments clarify that the regulation making power exists to enable the regulations to impose such liability should that be considered appropriate in particular cases.

Part 21—Amendment of *Gaming Machines Act 1992*

42—Amendment of section 85—Vicarious liability

Directors' liability is removed for offences committed by a body corporate against the regulations. The amendments clarify that the regulation making power exists to enable the regulations to impose such liability should that be considered appropriate in particular cases.

Part 22—Amendment of *Gas Act 1997*

43—Amendment of section 81—Unlawful interference with distribution system or gas installation

44—Amendment of section 82—Unlawful abstraction or diversion of gas

These clauses increase penalties for offences under the sections specified.

45—Amendment of section 88—General defence

The general defence under section 88 will no longer be available to a director of a body corporate charged with a directors' liability offence under section 89. The defence available to such a director is incorporated within section 89 itself.

46—Substitution of section 89

Type 3 and type 1 directors' liability (explained above in clause 3) is provided for a reduced number of offences. Directors' liability is removed in relation to all other offences against the Act or regulations committed by the body corporate. The amendments clarify that the regulation making power exists to enable the regulations to impose such liability should that be considered appropriate in particular cases.

Part 23—Amendment of *Genetically Modified Crops Management Act 2004*

47—Amendment of section 22—Offences by bodies corporate

Type 3 directors' liability (explained above in clause 3) is provided for a reduced number of offences. Directors' liability is removed in relation to all other offences against the Act or regulations committed by the body corporate. The amendments clarify that the regulation making power exists to enable the regulations to impose such liability should that be considered appropriate in particular cases.

Part 24—Amendment of *Harbors and Navigation Act 1993*

48—Repeal of section 86

Directors' liability is removed in relation to all offences against the Act or regulations committed by the body corporate.

Part 25—Amendment of *Health Practitioner Regulation National Law (South Australia) Act 2010*

49—Substitution of section 72

Type 3 and type 1 directors' liability (explained above in clause 3) is provided for a reduced number of offences. Directors' liability is removed in relation to all other offences against the Act or regulations committed by the body corporate. The amendments clarify that the regulation making power exists to enable the regulations to impose such liability should that be considered appropriate in particular cases.

Part 26—Amendment of *Heritage Places Act 1993*

50—Amendment of section 36—Damage or neglect

This clause increases the penalty for an offence under section 36(3).

51—Amendment of section 42—General provisions relating to offences

Type 3 and type 1 directors' liability (explained above in clause 3) is provided for a reduced number of offences. Directors' liability is removed in relation to all other offences committed by the body corporate including offences under the regulations. The amendments clarify that the regulation making power exists to enable the regulations to impose such liability should that be considered appropriate in particular cases.

Part 27—Amendment of *Highways Act 1926*

52—Amendment of section 39G—Power to close roads or railway lines

This amendment is a drafting tidy up.

53—Repeal of section 41A

Directors' liability is removed in relation to all offences against the Act or regulations committed by the body corporate.

Part 28—Amendment of *Hydroponics Industry Control Act 2009*

54—Substitution of section 31

Type 3 and type 1 directors' liability (explained above in clause 3) is provided for a reduced number of offences. Directors' liability is removed in relation to all other offences against the Act or regulations committed by the body corporate. The amendments clarify that the regulation making power exists to enable the regulations to impose such liability should that be considered appropriate in particular cases.

55—Amendment of section 33—General defence

The general defence under section 33 will no longer be available to a director of a body corporate charged with a directors' liability offence under section 31. The defence available to such a director is incorporated within section 31 itself.

Part 29—Amendment of *Irrigation Act 2009*

56—Amendment of section 40—Protection and facilitation of systems

57—Amendment of section 62—Protection of irrigation system etc

58—Amendment of section 63—Unauthorised use of water

These clauses increase penalties for offences under the sections specified.

59—Repeal of section 64

Directors' liability is removed in relation to all offences against the Act or regulations committed by the body corporate.

Part 30—Amendment of *Land Agents Act 1994*

60—Repeal of section 59

Directors' liability is removed in relation to all offences against the Act or regulations committed by the body corporate.

Part 31—Amendment of *Land and Business (Sale and Conveyancing) Act 1994*

61—Repeal of section 39

Directors' liability is removed in relation to all offences against the Act or regulations committed by the body corporate.

Part 32—Amendment of *Land Valuers Act 1994*

62—Repeal of section 20

Directors' liability is removed in relation to all offences against the Act or regulations committed by the body corporate.

Part 33—Amendment of *Legal Practitioners Act 1981*

63—Substitution of section 27

Type 1 directors' liability (explained above in clause 3) is provided for a reduced number of offences. Directors' liability is removed in relation to all other offences against the Act or any other Act or the regulations committed by the company. The amendments clarify that the regulation making power exists to enable the regulations to impose such liability should that be considered appropriate in particular cases.

Part 34—Amendment of *Liquor Licensing Act 1997*

64—Amendment of section 134—Vicarious liability

Directors' liability is removed in relation to all offences against the Act or regulations committed by the body corporate. Similarly, liability is removed from persons occupying positions of authority in a trust for the commission by the trustee of offences against the Act or regulations.

Part 35—Amendment of *Livestock Act 1997*

65—Amendment of section 27—Requirement to report notifiable conditions

This clause increases the penalty under section 27(1) and (2) for an offence involving an exotic disease.

66—Amendment of section 33—Prohibition on entry of livestock or other property absolutely or without required health certificate etc

This clause increases the penalty for an offence under section 33(4).

67—Amendment of section 78—General defence

The general defence under section 78 will no longer be available to a director of a body corporate charged with a directors' liability offence under section 80. The defence available to such a director is incorporated within section 80 itself.

68—Substitution of section 80

Type 3 and type 1 directors' liability (explained above in clause 3) is provided for a reduced number of offences. Directors' liability is removed in relation to all other offences against the Act or regulations committed by the body corporate. The amendments clarify that the regulation making power exists to enable the regulations to impose such liability should that be considered appropriate in particular cases.

Part 36—Amendment of *Maralinga Tjarutja Land Rights Act 1984*

69—Amendment of section 25—Offence in relation to obtaining permission to carry out mining operations

Directors' liability is removed in relation to an offence against section 25 committed by the body corporate. There is no further directors' liability in the Act.

Part 37—Amendment of *Motor Vehicles Act 1959*

70—Repeal of section 143A

Directors' liability is removed in relation to all offences against the Act or regulations committed by the body corporate.

Part 38—Amendment of *Natural Resources Management Act 2004*

71—Amendment of section 218—General defence

The general defence under section 218 will no longer be available to a member of the governing body, or the manager, of a body corporate charged with a directors' liability offence under section 219. The defence available to such a member or manager is incorporated within section 219 itself.

72—Substitution of section 219

Type 3 and type 1 directors' liability (explained above in clause 3) is provided for a reduced number of offences. Directors' liability is removed in relation to all other offences against the Act or regulations committed by the body corporate. The amendments clarify that the regulation making power exists to enable the regulations to impose such liability should that be considered appropriate in particular cases.

Part 39—Amendment of *Passenger Transport Act 1994*

73—Amendment of section 5—Application of Act

74—Amendment of section 27—Accreditation of operators

75—Amendment of section 28—Accreditation of drivers

76—Amendment of section 29—Accreditation of centralised booking services

77—Amendment of section 31—Conditions

78—Amendment of section 35—Related matters

79—Amendment of section 36—Disciplinary powers

80—Amendment of section 39—Service contracts

81—Amendment of section 42—Assignment of rights under contract

82—Amendment of section 45—Requirement for licence

83—Amendment of section 49—Transfer of licences

84—Amendment of section 54—Inspections

These clauses increase penalties for offences under the sections specified.

85—Amendment of section 59—General provisions relating to offences

Directors' liability is removed in relation to all offences against the Act or regulations committed by the body corporate.

Part 40—Amendment of *Plant Health Act 2009*

86—Amendment of section 54—Vicarious liability

Type 3 and type 1 directors' liability (explained above in clause 3) is provided for a reduced number of offences. Directors' liability is removed in relation to all other offences against the Act or regulations committed by the body corporate. The amendments clarify that the regulation making power exists to enable the regulations to impose such liability should that be considered appropriate in particular cases.

Part 41—Amendment of *Plumbers, Gas Fitters and Electricians Act 1995*

87—Repeal of section 38

Directors' liability is removed in relation to all offences against the Act or regulations committed by the body corporate.

Part 42—Amendment of *Primary Produce (Food Safety Schemes) Act 2004*

88—Amendment of section 43—General defence

The general defence under section 43 will no longer be available to a director or the manager of a body corporate charged with a directors' liability offence under section 44. The defence available to such a director is incorporated within section 44 itself.

89—Substitution of section 44

Type 3 directors' liability (explained above in clause 3) is provided for a reduced number of offences. Directors' liability is removed in relation to all other offences against the Act or regulations committed by the body corporate.

Part 43—Amendment of *Renmark Irrigation Trust Act 2009*

90—Amendment of section 41—Protection and facilitation of systems

91—Amendment of section 67—Protection of irrigation system etc

92—Amendment of section 68—Unauthorised use of water

These clauses increase penalties for offences under the sections specified.

93—Repeal of section 69

Directors' liability is removed in relation to all offences against the Act or regulations committed by the body corporate.

Part 44—Amendment of *Second-hand Vehicle Dealers Act 1995*

94—Amendment of section 47—Offences by bodies corporate

Directors' liability is removed in relation to all offences against the regulations committed by the body corporate. The amendments clarify that the regulation making power exists to enable the regulations to impose such liability should that be considered appropriate in particular cases.

Part 45—Amendment of *Security and Investigation Agents Act 1995*

95—Amendment of section 42—Offences by bodies corporate

Directors' liability is removed in relation to all offences against the regulations committed by the body corporate. The amendments clarify that the regulation making power exists to enable the regulations to impose such liability should that be considered appropriate in particular cases.

Part 46—Amendment of *South Australian Public Health Act 2011*

96—Amendment of section 59—Defence of due diligence

The general defence under section 59 will no longer be available to a director or the manager of a body corporate charged with a directors' liability offence under section 106. The defence available to such a director is incorporated within section 106 itself.

97—Substitution of section 106

Type 3 and type 1 directors' liability (explained above in clause 3) is provided for a reduced number of offences. Directors' liability is removed in relation to all other offences against the Act or regulations committed by the body corporate.

Part 47—Amendment of *Taxation Administration Act 1996*

98—Amendment of section 110—Offences by persons involved in management of corporations

Directors' liability is removed in relation to all offences against the regulations committed by the body corporate. The amendments clarify that the regulation making power exists to enable the regulations to impose such liability should that be considered appropriate in particular cases. The amendments at subclause (1) and (4) are drafting tidy ups.

Part 48—Amendment of *Teachers Registration and Standards Act 2004*

99—Amendment of section 59—Liability of members of governing bodies of bodies corporate

Type 1 directors' liability (explained above in clause 3) is provided for a reduced number of offences. Directors' liability is removed in relation to all other offences against the Act or regulations committed by the body corporate.

100—Amendment of section 60—General defence

The general defence under section 60 will no longer be available to a member of the governing body, or the manager, of a body corporate charged with a directors' liability offence under section 59. The defence available to such persons is incorporated within section 59 itself.

Part 49—Amendment of *Travel Agents Act 1986*

101—Amendment of section 40—Offences by bodies corporate

Directors' liability is removed in relation to all offences against the regulations committed by the body corporate. The amendments clarify that the regulation making power exists to enable the regulations to impose such liability should that be considered appropriate in particular cases.

Part 50—Amendment of *Water Efficiency Labelling and Standards Act 2006*

102—Amendment of section 72B—Liability of officers of body corporate

The amendment of section 72B has the effect of removing the vicarious liability of officers of a body corporate that has committed an offence against the Act or the regulations whilst retaining the liability of officers who knowingly promoted or acquiesced in a contravention of the Act or regulations by the body corporate.

Part 51—Amendment of *Water Industry Act 2012*

103—Amendment of section 103—General defence

The general defence under section 103(1) will no longer be available to a director of a body corporate charged with a vicarious liability offence under section 104. The defence available to such a director is incorporated within section 104 itself.

104—Substitution of section 104

Type 3 and type 1 directors' liability (explained above in clause 3) is provided for a reduced number of offences. Directors' liability is removed in relation to all other offences against the Act or regulations committed by the body corporate. The amendments clarify that the regulation making power exists to enable the regulations to impose such liability should that be considered appropriate in particular cases.

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

SECURITY AND INVESTIGATION AGENTS (MISCELLANEOUS) 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) (17:21): I move:

That this bill be now read a second time.

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

Leave granted.

The private security industry consists of businesses and individuals providing guarding and technical security services. Guarding services include protection of property, infrastructure, events and venues, close personal protection and escort, and carriage and protection of valuable commodities. Technical security services include provision of advice regarding, hire or supply of, and installation or maintenance of electronic security, alarm or surveillance systems.

Demand for security services has steadily increased since the mid 1980s, due to an increased perception of threats to security. Growing demand has contributed to increased competition and cost-cutting, leading to problems such as 'inadequate training, poor service delivery and a lack of consumer confidence'.

Each State and Territory Government is responsible for regulation of the private security industry within its jurisdiction. This has led to concerns regarding the need for nationally consistent regulation of this potentially high risk industry, particularly in the light of varying jurisdictional licensing requirements and the effect of mutual recognition on interstate transferability of security industry licences.

On 3 July 2008 the Council of Australian Governments (COAG) agreed to adopt a nationally consistent approach to the regulation of the private security industry to improve the probity, competence and skills of security personnel and the mobility of security industry licences across jurisdictions. The agreed reforms include:

- a list of licensable activities, including:
    - general guarding;
    - crowd or venue control;
    - guarding with a dog;
    - guarding with a firearm;
    - monitoring centre operations;
    - body guarding; and
    - training;
- minimum criminal exclusions in determining a person's suitability to hold a security licence;
- minimum standards for identification and probity checks;
- agreed competency and skills requirements; and
- introduction of provisional and temporary licences.

Jurisdictions have agreed that the national minimum probity standards agreed for the guarding sector are appropriate for the technical sector.

The current regime in South Australia already includes many features of the agreed reforms. For example, part of the new identification and probity regime includes mandatory fingerprinting, which was introduced in this State in late 2005. In addition, most of the agreed licensable activities are already licensed in South Australia. Implementation of the agreement will provide clarity for industry and the community about the activities performed by licensed security agents.

The *Security and Investigation Agents (Miscellaneous) Amendment Bill 2013* seeks to implement the remaining elements of the nationally agreed reforms to the guarding and technical sectors of the industry.

In particular, the Bill introduces:

- a requirement that a person who personally provides security industry training must hold an appropriate security industry trainers licence;
- a requirement that a person must not carry on a business of providing security industry training unless the person has been approved by the Commissioner for Consumer Affairs; and
- probity requirements (fingerprinting and criminal history checks) for the security training sector to the same standard as those imposed on security agents.

The quality and standard of trainers and training organisations is very important as trainers are effectively the gate keepers to the industry. Specific security industry licensing for trainers helps to prevent persons with a serious criminal history from remaining in the security industry through delivery of training and will ensure that those people who provide training satisfy the same eligibility standards as new entrants and licensees.

The existing stringent probity checks for security agents in South Australia will be strengthened. The vast majority of the agreed minimum disqualifying offences are already prescribed in the *Security and Investigation Agents Regulations 2011*. The COAG agreement does not require removal of any additional disqualifying offences from existing jurisdictional legislation, as the national agreement related to an agreed minimum list of offences. The

additional nationally agreed disqualifying offences will be prescribed in the Regulations, thus strengthening the position in South Australia.

The opportunity has also been taken to restructure provisions of the Act to simplify its presentation. While this restructuring is largely cosmetic in nature, it involves creation of an expanded concept of fit and proper person to hold a licence or to be a director of a body corporate that holds a licence.

COAG also agreed to implement *provisional* licenses (subject to completion of training) and *temporary* licenses (for people who, for example, come from interstate and seek a licence for a short time). South Australia does not currently issue temporary licences. Mutual recognition already allows for recognition of licences and entry of licensees from other jurisdictions. While the Bill provides for these licences, it is not proposed to commence these provisions at this stage, until additional consultation and further analysis of these licences has been undertaken. This approach prioritises implementation of those reforms that would, if deferred, undermine operation of mutual recognition or delay further work towards national licensing.

The harmonised laws aim to improve public confidence in the private security industry as stringent probity checks and training requirements will in future apply across all jurisdictions. Improved labour mobility across jurisdictions due to consistent controls may also address any shortages of private security personnel during times of high demand for public protection, contributing to improved public wellbeing and safety.

I commend the Bill to members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

This clause provides that commencement will be on a date set by proclamation and that section 7(5) of the *Acts Interpretation Act 1915* does not apply (whereby an Act comes into operation 2 years after it is assented to, unless brought into operation before then).

3—Amendment provisions

This clause is formal.

Part 2—Amendment of *Security and Investigation Agents Act 1995*

4—Amendment of long title

5—Amendment of section 1—Short title

The long title and short title are amended to accommodate the fact that certain trainers in the security industry are proposed to be regulated under the Act.

6—Amendment of section 3—Interpretation

The definition of controlling crowds is added to make it clear that a person commonly known as a bouncer will be taken to be performing the function of controlling crowds.

As dogs or other animals are not used to guard persons (only property), the reference to 'a person' is deleted from paragraph (b) of the definition of security agent.

The replacement of the definitions of investigation agents licence and security agents licence does not effect substantive change. It is consequential on the reworking of section 7.

New definitions relevant to the regulation of trainers in the security industry are included. The definition of security industry training sets the scope of the regulation.

The provisions of the Act relating to tests for eligibility to hold a licence or be approved under the Act are restructured. The restructuring involves creation of an expanded concept of a fit and proper person to hold a licence or to be a director of a body corporate that holds a licence as set out in new subsection (2). The new concept covers matters relating to previous offences and disqualifications currently dealt with separately in section 9(1)(b) and (c) and (2)(b)(i) and (ii). As is currently the case, relevant offences are to be spelt out in the regulations but, unlike the current position, the regulations may provide that being found guilty of an offence without conviction may result in the person being ineligible for a licence. The new concept also covers the matters currently set out in section 9A relating to reputation, honesty and integrity and the public interest for security agents and the matters currently set out in section 11AD in relation to psychological assessment of crowd controllers.

7—Insertion of section 4A

This amendment inserts a new clause that declares that certain provisions of the Act are excluded from the operation of section 9 of the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth. This will ensure that the new requirements being included in this measure in relation to the approval of security industry training providers (see inserted section 23AAA) will continue to apply to certain organisations providing training, assessment or instruction in relation to the performance of the functions of security agents, in addition to the requirements of the Commonwealth Act.

8—Amendment of section 5A—Enforcement

This amendment corrects the references to the relevant provisions of the *Fair Trading Act 1987* following the amendment of that Act.

9—Amendment of section 5B—Criminal intelligence

The current provision relating to criminal intelligence leading to the refusal of an application for, imposition of a condition on, or suspension of, a security agents licence is extended to cover a security industry trainers licence and approval as a security industry training provider.

10—Amendment of section 6—Obligation to be licensed

Section 6 is amended to make it an offence to personally provide security industry training except as authorised by a licence.

11—Substitution of section 7

Part 2 is restructured to accommodate the regulation of security industry training and to simplify its presentation. The concept of a restricted licence is removed since that concept was largely related to transitional arrangements when the Act was enacted and now involves an unnecessary layer of complexity. The examples of licence conditions are also removed for similar reasons.

2 substantive changes are made in sections 7 to 7D:

- A new concept of a temporary licence is included. This is a licence for a term of less than 12 months. Such a licence is not subject to an annual fee. This is dealt with in new section 7.
- A condition requiring training to be undertaken within a specified period following the grant of a licence is expressly contemplated, as is cancellation of the licence if the training is not satisfactorily completed. This is dealt with in new section 7A.

It is contemplated that these new components will be introduced with a delayed commencement.

7—Grant of licence

This section separates out the power of the Commissioner to grant a security agents licence, investigation agents licence or security industry trainers licence on application as an introductory statement.

7A—Licence conditions

This section deals with the imposition of licence conditions. It includes the contents of current sections 7 and 10. It is made clear that adding or removing authorised functions is to be dealt with through a variation or revocation of the restricted functions condition.

7B—Duration of licence

This section includes the contents of current section 12(1).

7C—Annual fee and return for ongoing licence

This section includes the contents of current section 12(2) to (5).

7D—Surrender of licence

This section includes the contents of current section 12(6).

12—Amendment of section 8—Application for licence

The requirement for an applicant to provide evidence of identity, age and address is extended to each director of a body corporate that is an applicant.

The requirements for the provision of fingerprints that is currently set out in section 8B and for psychological assessment currently set out in section 8C are incorporated into this provision.

The provision is extended to apply to a security industry trainers licence.

13—Amendment of section 8A—Applications for security agents licence or security industry trainers licence to be furnished to Commissioner of Police

The provision is extended to apply to an application for a security industry trainers licence. The content of current section 8B(5) is incorporated into the provision.

Subsection (1a) is new and allows the Commissioner to rely on a recent interstate police check of a person in appropriate cases.

14—Repeal of sections 8B and 8C

These sections have been incorporated into sections 8 and 8A.

15—Amendment of section 9—Determination of application for licence

Section 9 is restructured. It is expressed in terms of an applicant satisfying the Commissioner as to certain matters in order for the applicant to be eligible to be granted a licence. The fit and proper person test is streamlined—see the explanation in clause 6.

New subsection (2a) provides that the Commissioner may grant a licence to a person who does not have the necessary qualifications and experience, subject to conditions that require the applicant to be supervised and to undertake certain training and to not carry on a business as an agent but to only work as an employee. This is to enable the person to gain the necessary qualifications and experience.

New subsection (5) replicates current section 9A(2) and new subsection (6) replicates current section 9A(3). In both cases, the provisions are extended to apply to a security industry trainers licence.

New subsection (7) provides that an application for a licence need not be determined if the applicant for the licence or a director of a body corporate that is the applicant for the licence is subject to a charge of a prescribed offence.

16—Repeal of sections 9A and 10

Section 9A is incorporated into sections 3(2) and 9. Section 10 is incorporated into section 7A.

17—Amendment of section 11—Appeals

The right of the Commissioner of Police to appeal against the grant of a licence is extended to a security industry trainers licence. The remainder of the provision will also apply to such a licence.

A right of appeal is extended to the holder of a licence against a decision of the Commissioner refusing to vary or revoke a condition of the licence.

18—Amendment of section 11A—Power of Commissioner to require photograph and information

The application of the provision is extended to a security industry trainer.

The requirement to provide evidence of identity, age and address is extended to directors of bodies corporate (as in section 8).

Subsections (3) to (5) cover default which is currently dealt with in section 12(3).

19—Repeal of sections 11AB to 12

The content of section 12 is relocated as set out above, principally to sections 7B, 7C and 7D.

Section 11AB is relocated to section 23R (and extended to apply in relation to security industry trainers and providers) and sections 11AC and 11AD to section 23S. The provisions cover matters relevant to the ongoing regulation of agents and trainers.

Section 11B is a new provision designed primarily to assist in the transition to nationally consistent categories of security agents. It contemplates the making of regulations that explain the various descriptions and codes used on a licence to represent particular conditions and provide for the transition into the nationally consistent descriptions. The section allows the Commissioner to require a licence to be presented for updating of the descriptions.

20—Amendment of section 23—Entitlement to be process server

As with agents, section 23 is modified so that the regulations may provide that a finding of guilt without conviction may be prescribed by the regulations as a disqualifying factor for a process server.

21—Insertion of sections 23AAA and 23AA

2 new offences are created:

- carrying on a business of providing security industry training unless the person has been approved by the Commissioner as a security industry training provider;
- employing or engaging another as a security industry trainer to provide security industry training unless that other person holds a security industry trainers licence authorising him or her to personally provide training of the kind to be provided.

To be approved as a security industry training provider the person must be a fit and proper person to hold a security industry trainers licence and approval may be withdrawn by the Commissioner by notice in writing. Evidence of identity, age and address and fingerprinting may be required of applicants for or holders of approvals or of directors if the applicant or holder is a body corporate.

22—Substitution of heading to Part 3A

The heading is amended to accommodate the application of the Part to security industry trainers.

23—Substitution of heading to Part 3A Division 1

The heading currently incorrectly refers to disqualification and the amendment corrects this error.

24—Amendment of section 23A—Circumstances in which Commissioner may suspend security agents licence or security industry trainers licence

Section 23A is extended in application to a security industry trainers licence.

25—Amendment of section 23B—Circumstances in which Commissioner must suspend security agents licence

This is a technical amendment—the regulations simply prescribe offences relevant to a crowd controller.

26—Amendment of section 23C

This updates the penalty to make it consistent with the similar offence in section 36.

27—Amendment of section 23E—Appeal

The right to appeal against suspension is extended to the holder of a security industry trainers licence.

28—Amendment of section 23G—Cancellation of licence

Section 23G is extended in application to a security industry trainers licence. A technical amendment is made to match the prescription of offences by the regulations. It also updates the penalty to make it consistent with the similar offence in section 36.

29—Substitution of heading to Part 3A Division 2

This amendment is for consistency of terminology.

30—Amendment of section 23J—Security agent authorised to control crowds may be required to undertake drug testing

This amendment explicitly contemplates an agreement with a licensee about a different time or place for a drug test and ensures that the provision applies in such a case.

31—Insertion of Part 3A Divisions 3 and 4

Currently, armed guarding of property requires both a security agents licence and a firearms licence. The security agents licence is not expressly connected to the firearms licence and independently authorises the function of guarding property. If a firearms licence is suspended or cancelled (whether voluntarily because it is no longer required by the agent or as a consequence of a breach), the person could continue in a security agent's role without modification of the security agents licence. Under the COAG agreement, South Australia is required to introduce a category of security agents licence for guarding with a firearm. This will require the establishment of a restricted functions condition expressly referring to a firearm. Without amendment of the Act, in a case where the firearms licence ceases to be in force, the restricted functions condition could not be removed other than through disciplinary provisions or on application of the agent. Section 23R is inserted so that the security agents function is automatically limited if the related firearms licence is cancelled or suspended. The licence is required to be returned to the Commissioner so that any endorsement that indicates that the agent is allowed to carry a firearm may be removed.

Section 23S replicates section 11AB and extends its application to security industry trainers and providers. Section 23T replicates sections 11AC and 11AD. The requirement to participate in an approved psychological assessment is brought into line with that in section 8 in relation to an application for a licence.

32—Amendment of section 24—Interpretation of Part 4

This amendment is consequential on the extension of the disciplinary provisions to security industry trainers and ensures that former trainers may be subject to discipline.

33—Amendment of section 25—Cause for disciplinary action

In addition to amendments consequential on the extension of the disciplinary provisions to security industry trainers and the inclusion of references to fit and proper, 3 additional grounds for discipline are added, namely, acting contrary to an undertaking accepted under the Australian Consumer Law, circumstances coming to light indicating non-eligibility for a licence, and failing to properly supervise an agent subject to a supervision condition.

34—Amendment of section 27A—Procedure in the case of complaint against security agent or security industry trainer

35—Amendment of section 29—Disciplinary action

36—Amendment of section 30—Contravention of orders

37—Amendment of section 31—Delegations

38—Amendment of section 32—Agreement with professional organisation

These sections are extended in application to a security industry trainer.

39—Amendment of section 34—Register of licensed agents, security industry trainers and security industry training providers

The register is to be extended to cover security industry trainers and security industry training providers and to record undertakings accepted under the Australian Consumer Law.

40—Amendment of section 36AA—Taking of fingerprints

This amendment supports a more flexible approach to requiring persons to make arrangements for fingerprinting.

41—Amendment of section 36A—Destruction of fingerprints

These amendments are consequential on the changes to the taking of fingerprints and extend the application of the provision to security industry trainers and security industry training providers. They also require the destruction of fingerprints in circumstances where the person ceases to be a director of a body corporate.

42—Amendment of section 36B—Immunity

The immunity provided by the section is extended to cover the suspension or cancellation of a security industry trainers licence.

43—Amendment of section 38—Statutory declaration

This amendment is of a statute law revision nature.

44—Amendment of section 42—Offences by bodies corporate

This amendment extends the definition of *prescribed offence* to cover offences that operate in relation to security industry training providers.

45—Amendment of section 43—Continuing offence

This amendment is of a statute law revision nature.

46—Amendment of section 46—Service of documents

The section is extended to operate in relation to licensed security industry trainers and to provide for notification or service by email.

47—Amendment of section 48—Regulations

The regulation making power is modified to enable regulations to be made requiring security industry trainers to comply with a code of conduct.

48—Repeal of Schedule 2

This is an amendment of a statute law revision nature.

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

At 17:22 the council adjourned until Tuesday 19 March 2013 at 14:15.