LEGISLATIVE COUNCIL

Tuesday 9 April 2013

The PRESIDENT (Hon. J.M. Gazzola) took the chair at 14:16 and read prayers.

The PRESIDENT: I acknowledge this land that we meet on today as the traditional lands for the Kaurna people and that we respect their spiritual relationship with their country. We also acknowledge the Kaurna people as the custodians of the Adelaide region and that their cultural and heritage beliefs are still as important to the living Kaurna people today. We also pay respects to the cultural authority of Aboriginal people from other areas of South Australia and Australia.

WILDERNESS PROTECTION (MISCELLANEOUS) AMENDMENT BILL

His Excellency the Governor assented to the bill.

CRIMINAL LAW CONSOLIDATION (CHEATING AT GAMBLING) AMENDMENT BILL

His Excellency the Governor assented to the bill.

CONSTITUTION (RECOGNITION OF ABORIGINAL PEOPLES) AMENDMENT BILL

His Excellency the Governor assented to the bill.

STATUTES AMENDMENT (APPEALS) BILL

His Excellency the Governor assented to the bill.

ANSWERS TO QUESTIONS

The PRESIDENT: I direct that the following written answer to a question be distributed and printed in *Hansard*.

PUBLIC SECTOR EMPLOYMENT OPPORTUNITY PROGRAMS

169 The Hon. S.G. WADE (6 February 2013). Can the Premier advise—

1. What employment opportunity programs have been declared under Section 65 of the Public Sector Act 2009 and in relation to each program—

(a) When were they declared; and

(b) Have they been varied or revoked since declaration?

2. What reporting mechanisms are in place to monitor the implementation of Section 65 of the Public Sector Act 2009?

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): The Premier has been advised of the following:

A number of employment opportunity programs for the SA Public Sector have been established under Section 65 of the Public Sector Act 2009, including programs for Traineeships, Cadetships, and Apprenticeships and to facilitate employment opportunities for Aboriginal people, persons with a disability and persons on Work Visas (without Australian Residency).

Employment Opportunity Programs established under Section 65 of the Public Sector Act 2009 were gazetted in the South Australian Government Gazette on 1 September 2011. There have been no variations or revocations since the gazette notice was published.

The Commissioner for Public Sector Employment collects information from agencies in order to monitor workforce diversity including the employment opportunity programs.

PAPERS

The following papers were laid on the table:

By the President—

District Council Coober Pedy—Report, 2011-12

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

Regulations under the following Act—
Harbors and Navigation Act 1993—Ports—Easement Land
City of Holdfast Bay Heritage and Character Development Plan Amendment
Dangerous Area Declarations for the period from 1 October 2012 to 31 December 2012 pursuant to Section 83B of the Summary Offences Act 1953
Variation Agreement between the State of South Australia and OneSteel Manufacturing Pty Ltd dated 15 March 2013—Variation of the Indenture under the Whyalla Steel Works Act 1958

By the Minister for Sustainability, Environment and Conservation (Hon. I.K. Hunter)—

Carrick Hill Trust—Report, 2011-12

GM HOLDEN

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) (14:21): I table a copy of a ministerial statement relating to the activities of Holden's made in the other place by the Premier, the Hon. Jay Weatherill.

FISH AND MARINE ANIMAL DEATHS

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) (14:21): I seek leave to make a ministerial statement.

Leave granted.

The Hon. G.E. GAGO: Last week, I announced that a multi-agency government team of experts would work together to get to the bottom of a recent spate of fish and marine animal deaths along the state's coastline. That team is made up of scientists from Biosecurity SA (in PIRSA), SA Water, the EPA and the Department of Environment, Water and Natural Resources.

Since that announcement, the team has been working hard to continue collecting water samples, reviewing satellite imagery and continuing testing on dead fish. This work is in addition to the testing already underway by Biosecurity SA following the first reported fish deaths near Port Neill last month.

I can inform the council that all scientific evidence to date strongly suggests what the experts have been saying, that is, that the fish deaths are as a result of above average water temperatures across South Australian marine waters and algal blooms, a naturally occurring environmental phenomenon. This conclusion is supported by the science—warm air and water temperatures mixing with cold water and upwelling nutrients. They are conditions that very much support algal blooms.

Recently obtained satellite imagery has confirmed the presence of high algal abundance in the water and elevated water temperatures, which are 3º to 5º warmer than the average for March. The algae interfere with fish gills and cause gill tissue to break down. If gills are damaged, fish then obviously find it very difficult to extract oxygen from the water and they die. I am advised that this is the most likely cause of the recent fish deaths along our coastline.

In the last week, our scientists have been diving and gathering information from key areas. Dive observations at various sites in Gulf St Vincent last week, including near the desalination plant outlet pipe, have shown normal fish behaviour, which is obviously good news. While there has been much speculation about the desalination plant, the EPA has advised me that its reviews, using ongoing testing, have categorically ruled out any link to the desalination plant.

While all evidence points towards a naturally occurring environmental phenomenon, the multi-agency government team will continue to monitor and investigate this fish and marine animal death event. To assist the multi-agency team to provide the most up-to-date information to the public, a fish mortalities response website has been set up, which provides an interface with the South Australian community. The PIRSA website provides details of how to report significant fish deaths, and it will be updated regularly with the latest information and advice.

In relation to the recent dolphin deaths, I am informed that scientific experts from the Department of Environment, Water and Natural Resources are continuing to work with the South Australian Museum to conduct autopsies on the dolphins. However, it may be two to three weeks

before the cause of these deaths can be determined because it takes some time for test results to come back. The multi-agency team will provide a report back to me as soon as its work is concluded, and all results will be made available to the public.

STATE/LOCAL GOVERNMENT RELATIONS PORTFOLIO

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) (14:25): I seek leave to make another ministerial statement in relation to machinery of government changes.

Leave granted.

The Hon. G.E. GAGO: Yesterday I wrote to the LGA welcoming its feedback on the restructuring that is being proposed by the government for the state/local government relations portfolio. Members would know that I have long believed in encouraging the most streamlined and effective relationship between local and state levels of government. It is to that end that the government has decided to restructure the current Office for State/Local Government Relations where some functions will be incorporated into departments which are more directly aligned to those roles.

This important and progressive step in raising the bar as to how state and local governments relate to each other is timely now that the new ICAC legislation has been passed. The new framework, made up of the Ombudsman, the Auditor-General and the Anti-Corruption Branch, with the new ICAC commissioner at its pinnacle, should reduce the oversight role of the Minister for State/Local Government Relations. Furthermore, new codes of conduct for elected members and employees of councils will come into operation at the same time that the new ICAC commissioner begins his work.

Also, legislative amendments are now being developed with the aim of improving the conflict of interest provisions of the Local Government Act as well as tightening up the provisions that deal with how and when and, obviously, the frequency that councils can consider matters behind closed doors.

As Minister for State/Local Government Relations and Regional Development, I will continue to work closely with the local government sector. I am pleased to announce that, supported by PIRSA, I will assist local governments to engage directly with state local government agencies and the commonwealth, with particular reference to matters related to regional economic development. PIRSA will be assuming responsibility for the Outback Communities Authority as well as the Local Government Grants Commission.

The Local Government Act 1999 and the Local Government (Elections) Act 1999 will become the responsibility of the Minister for Planning. The Local Government Forum will be managed by the Department of the Premier and Cabinet so that it truly reflects an across-government strategic role.

I would also like to take this opportunity to emphasise the state government's ongoing commitment to our intergovernmental agreement, which will also be the responsibility of DPC. I look forward to working with the LGA on this change process into the future.

ABORIGINAL AFFAIRS AND RECONCILIATION DIVISION

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:28): I seek leave to make a ministerial statement on the topic of machinery government changes, Aboriginal Affairs and Reconciliation Division.

Leave granted.

The Hon. I.K. HUNTER: Effective 1 July 2013, the Aboriginal Affairs and Reconciliation Division within the Department of the Premier and Cabinet will sharpen its role as a provider of policy advice to government while its remaining service delivery functions will be incorporated into operational agencies. Implementation of the new administrative arrangements will be managed by a working group overseen by the Commissioner for Public Sector Employment. These changes will enable AARD to focus on providing strategic policy advice to government while enabling operational agencies to focus on improving service delivery outcomes for Aboriginal people.

The South Australian government is also committed to enabling local Aboriginal organisations and communities to contribute to the delivery of services and opportunities for Aboriginal people at the local level. The Aboriginal Reconciliation Division will continue to be the government's lead agency on Aboriginal Affairs matters. Its primary responsibilities and focus will be to:

- empower Aboriginal people to have a stronger voice in decisions that affect their lives and provide leadership and promotion of effective governance arrangements;
- provide whole of government policy advice and leadership;
- support engagement with Aboriginal stakeholders including the provision of culturally appropriate advice to government;
- develop and coordinate whole of government strategies, particularly the Council of Australian Governments National Indigenous Reform Agreements;
- provide support to the South Australian Aboriginal Advisory Council, the Chief Executives Group on Aboriginal Affairs and other representative bodies as required;
- encourage across-government knowledge sharing and support of reconciliation principles; and
- provide advice and support on the administration of the Aboriginal Heritage Act 1979, the Aboriginal Heritage Act 1988, the Aboriginal Lands Parliamentary Standing Committee Act 2003, the Aboriginal Lands Trust Act 1966, the Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981, and the Maralinga Tjarutja Land Rights Act 1984.

The Weatherill government is committed to improving the quality of life of our first peoples, and I look forward to working with Aboriginal communities, relevant government agencies, all members of this place and the wider South Australian community to advance this cause.

RIDGWAY, HON. D.W.

The PRESIDENT (14:31): Before I call the Hon. Mr Ridgway, I have a question for him: what happened on 9 April 25 years ago to you, sir?

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:31): Thank you, Mr President. It was my very good fortune to be married that day.

The PRESIDENT: On behalf of the house, congratulations.

The Hon. D.W. RIDGWAY: Thank you. You should ask my wife whether she had good fortune or not!

QUESTION TIME

SOUTH AUSTRALIAN OYSTER INDUSTRY

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:31): I seek leave to make a brief explanation before asking the Minister for Primary Industries a question regarding the threat of POMS to South Australia's $32 million oyster industry.

Leave granted.

The Hon. D.W. RIDGWAY: Earlier this year, 18 oyster farms in New South Wales were hit with the Pacific oyster mortality syndrome, known as POMS. POMS is caused by a virus which affects Pacific oysters, the same species which forms the backbone of the invertebrate industry in South Australia. It does not affect other species, like the Sydney rock oyster.

Up to 100 per cent of all Pacific oysters in a river can die within days of the syndrome's detection. So far, POMS has been found in the Georges, Parramatta and Hawkesbury river estuaries in New South Wales. It was first detected in November 2010. Immediate reporting of these mortalities resulted in rapid action by the New South Wales Department of Primary Industries to investigate the cause and implement controls on the movement of oysters and equipment from an area to help prevent the further spread of the disease, but even so the disease spread.

In February this year, the virus was detected in wild Pacific oysters from Brisbane water. The outbreak has wiped out most of the oysters in the Hawkesbury River, financially ruining

leaseholders. The New South Wales Department of Primary Industries says the syndrome destroyed about 10 million oysters, worth up to $6 million, in a matter of days.

In South Australia, Pacific oyster production is centred on the Eyre and Yorke peninsulas and Kangaroo Island. Water quality in all South Australian oyster growing areas is tested by SASQAP (South Australian Shellfish Quality Assurance Program). My questions are:

1. Oyster growers in New South Wales have had to walk away; they have been ruined. What contingency plans does the minister have in case the virus is detected in South Australia?

2. Is the minister working with her New South Wales counterpart to prevent the spread of this disease to South Australia?

3. What steps has the minister taken to increase South Australian oyster growers' market share in New South Wales in the wake of this emergency?

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. Indeed, we can be very proud here in South Australia of our history: we have exceptionally clean waters. We not only have excellently managed fisheries but we also have a very strong biosecurity system and testing system, in combination with the EPA, that ensure that we remain vigilant and extremely careful and cautious in how we manage our important fisheries. South Australia has an excellent track record. We have had very few issues or problems here in this state and that's because of the vigilance of our inspectors and our industry and also the integrity of our biosecurity system. So, we can see that what we currently have in place is working.

I have indicated that the South Australian Shellfish Quality Assurance Program, which was established 16 years ago, has very successfully provided public health protection for the consumption of South Australian shellfish. In addition, I am certainly aware that the government agencies are working very closely with the local councils and our interstate counterparts to ensure that safeguards are in place to handle effluent around our estuaries and to ensure that our oyster fisheries remain protected.

COASTAL WATER QUALITY

The Hon. J.M.A. LENSINK (14:36): I seek leave to make an explanation before directing a question to the Minister for Sustainability, Environment and Conservation in relation to water quality.

Leave granted.

The Hon. J.M.A. LENSINK: As reported recently, the government is due to release its so-called action plan in response to the now six-year-old report—the Adelaide Coastal Waters Study—which was based on 2003 data initially, which showed concerns for the health of the coastline. In particular, every year, tonnes of nitrogen are discharged from various locations along the coast from wastewater treatment plants and stormwater, which fuels algal growth.

The Adelaide Coastal Waters Study was released under the shadow of the Clipsal 500 in March 2008 by then minister Gago. The study clearly indicated that intervention was required to recover South Australia's coastline with wastewater and stormwater discharge needing to be reduced by 50 per cent. At the time, the government made some promises, including a review of the Coast Protection Act, which we are yet to even see. In 2011, the EPA released a draft Adelaide coastal water improvement plan—it's now 2013.

While the minister has stated that strategies have already been implemented to improve water quality, fish and sea life death continue along our coastline, including fish, leafy sea dragons, dolphins and penguins. My questions to the minister are:

1. What measurable improvement in water quality has the government achieved in the last 11 years?

2. What funding is available for the action plan?

3. How can we believe this program will be implemented, given that front page announcements such as the prisons rebuild and rail electrification have come to absolutely nothing?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:38): I thank the honourable member for her most important question and her congratulations on the government's speedy implementation of some of these plans.

The Hon. M. Parnell: Eleven years.

The Hon. I.K. HUNTER: Good things take some time, Mr Parnell. It's not as if we haven't been doing anything along the way. Let me educate you.

Members interjecting:

The Hon. I.K. HUNTER: They are all very keen to hear the answer. The draft Adelaide coastal water quality improvement plan was developed in 2011 in consultation with key stakeholder and targeted community groups. It contains targets and strategies for water quality improvement in line with the recommendations of the findings of the Adelaide Coastal Waters Study which commenced in 2001, I am advised, and was concluded in 2007.

The Adelaide Coastal Waters Study commenced as a result of loss of seagrass and water quality concerns evidenced by the comparison of aerial photography from different time periods in the 1990s. The study was publicly released in 2008 and included the release of 20 technical reports and a final report, which are publicly available on the EPA's website. The study's findings indicate that nutrient-rich inputs from sewerage treatment plants, industrial discharges and stormwater are the main causes for loss of seagrass along the Adelaide coastline. The draft Adelaide coastal water quality improvement plan provides a way forward for addressing the 14 recommendations of a previously completed Adelaide Coastal Waters Study.

The draft Adelaide coastal water quality improvement plan was made available for public comment via the EPA's website from 22 September through to 18 November 2011. In response, the EPA received more than 100 submissions, I am advised, which have been considered and, where appropriate, changes are being made to the plan on the basis of that advice. Specifically, the draft Adelaide coastal water quality improvement plan has been developed in consultation with the key stakeholders and targeted groups I mentioned, comprising:

- community-agreed environmental values for the use of Adelaide's coastal waters;
- targets for water quality improvement in line with the recommendations of the findings of the Adelaide Coastal Waters Study; and
- eight strategies for improving water quality for Adelaide's coastline and creating conditions that are suitable for the return of seagrass.

This work has provided us with the data to give us the understanding and the will to rehabilitate our coastal ecosystem. Targets in the plan—

An honourable member: Rubbish!

The Hon. I.K. HUNTER: Well, certainly there was no will under the former government, I can tell you that, no will at all—not a thing done. Targets in the plan are considered to be achievable and actionable, as evidenced in the reductions of nutrient discharges into Adelaide's coastal waters already achieved by SA Water and its commitments to further improvements.

I am aware that there has been some criticism over the time it has taken for this plan to come to fruition and that release of documents has been too slow. It is important to understand that this has not compromised actions that have been taken to implement change and improvements. Strategies have been put in place progressively over time, and South Australia can be proud of the work already done and currently being undertaken.

Examples of successes include state government investment in upgrades to wastewater treatment plants and re-use schemes, which have all enabled significant progress in reducing nutrient loads to Adelaide's coastal waters. Progress has also been made on reducing the amount of solids reaching Adelaide's coastal waters through increased stormwater re-use. All these activities are business as usual for government, a competent government getting on with the business of governing. They have been, and will continue to be—

The Hon. J.M.A. Lensink interjecting:

The Hon. I.K. HUNTER: I don't think so. They have been, and will continue to be, progressively implemented. To provide more detail, the Adelaide Coastal Waters Study gave the

EPA and SA Water a scientifically-based target for a sustainable nitrogen discharge load. SA Water has been undertaking continuous reductions in the loads from its plants, generally incorporating them with upgrades for other purposes, such as improvements to peak capacity. SA Water has also focused on re-use as much as possible, as this provides other economic benefits to South Australia, such as the increased growth of our horticultural sector.

The summary of some of SA Water's key actions to reduce nitrogen to Adelaide's coastal waters include:

- in 1993, the removal of sewage sludge discharges from Glenelg and Port Adelaide;
- in 1995, the EPA-endorsed plans for SA Water to upgrade all wastewater treatment plants in Adelaide, including significant nitrogen reduction and re-use of treated effluent;

and there it ends for that government—

- in 2002, SA Water commissioned an upgraded Bolivar Waste Water Treatment Plant, including diversion of high-quality effluent for horticultural use near Virginia;
- in 2004, discharge from the Port Adelaide plant was removed from the Port River and directed to a new facility at Bolivar;
- in 2005, the Willunga Waste Water Treatment Plant was completed, where effluent from the Christies Beach plant is sent for treatment and re-use for horticulture;
- in 2009, construction began on upgrades to the Christies Beach Waste Water Treatment Plant (the licence for this includes conditions to give action to recommendations of the Water Survey Plan); and
- in 2010, the Glenelg to Adelaide Parklands Re-use Project was completed.

SA Water is investigating future works to ensure that they are cost effective, represent value for money, are affordable to our customers and do not cause unacceptable off-target environmental impacts—excessively increased greenhouse gas emissions, for example—and do not deliver improvements in excess of that necessary for ecological health.

SA Water is pursuing a strategy that involves optimisation of wastewater collection and treatment processes, increased recycling of wastewater, monitoring and research. The costs of the short-term actions to progress this strategy were factored into SA Water's Regulatory Business Proposal for 2013-14 and 2015-16 and are reflected in ESCOSA's draft determination.

The pricing impact for longer term actions required to achieve the reduction targets is not yet known; however, the actions will be informed through monitoring and research and will be negotiated with the EPA to focus on ensuring they are affordable. Of course, under economic regulation, any works will have to be approved by ESCOSA as part of its determination of maximum allowable revenue. In many cases they will be implemented as part of upgrades for other purposes, as we have done in the past, such as when capacity upgrades are required for a treatment plant, for example.

SA Water is committed to minimising its impact on the environment and invests prudently in measures to help achieve this. For the Adelaide coastal waters this has been demonstrated by the completion of an initial round of environmental improvement programs which I have just outlined. These have already gone some way towards achieving SA Water's reduction targets, and the cost of these is reflected in our current water and wastewater pricing.

In regard to local government, local councils have done a great deal of work to make South Australia a leader in stormwater recycling schemes. Many stormwater harvesting schemes, operated by local governments with assistance from the state through natural resources management boards and funding from the commonwealth, have been implemented.

Some of the projects currently underway include the Oaklands Park wetlands project, which includes construction of a wetland, aquifer storage and recovery and a distribution network to deliver approximately 170 megalitres per annum; SA Water projects for an aquifer storage and recovery scheme from existing wetlands at the Barker Inlet to yield 350 megalitres of stormwater and the stormwater harvesting and aquifer storage project at Adelaide Airport; the City of Charles Sturt's Waterproofing the West to harvest, recover and re-use up to 2,500 megalitres through a series of projects including Cheltenham and Old Port Road harvesting and re-use projects; and the City of Onkaparinga's projects to store, treat and re-use stormwater through the creation of an

integrated system which is expected to yield 2,200 megalitres. These projects are in addition to the many schemes of stormwater capture, treatment and re-use already in operation.

Additional projects more recently approved but not yet commenced include the Eastern Adelaide Council Alliance re-use scheme. A number of councils including the City of West Torrens and the City of Unley are also making changes in the way they manage their footpaths and roads to enjoy the local benefits of incorporating water sensitive urban design features whilst improving the quality of stormwater that reaches our coast.

With the combined efforts of the state government and local councils, environmental regulators, industry and community, the Adelaide metropolitan coast has seen a reduction of total annual nutrient loads from 2,891 in 2003 to 1,792 in 2008. To put this into context, the long-term target loads for nutrients is 806 tonnes by 2030 and 600 tonnes by 2050 as set out in the Adelaide Coastal Waters Study. This combined effort has also seen Adelaide achieve a reduction in sediment loads which has dropped from 10,999 tonnes in 2003 to 7,525 tonnes in 2008. The target load by 2030 is 4,691 tonnes. It is important to understand that the long-term targets take into account population growth for the Adelaide region, meaning we are looking to reduce outputs while increasing activity levels which, as would be understood, is not a very simple task at all.

In regard to nitrogen—the honourable member asked the question—research undertaken as part of the Adelaide Coastal Waters Study shows that we need to allow light to get to our seagrass which will allow it to grow and recover.

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

The Hon. I.K. HUNTER: Well, it is a very important question and it deserves a considered response.

Members interjecting:

The Hon. I.K. HUNTER: Just another few minutes to go.

Members interjecting:

The PRESIDENT: Order!

The Hon. I.K. HUNTER: Let me go back. Research undertaken as part of the Adelaide Coastal Waters Study shows that we need to allow light to get to our seagrass which will allow it to grow and recover. Nitrogen blocks seagrass leaves by allowing fast growing algae to thrive, and dirty stormwater makes the sea floor too dark for the seagrass to continue to grow. The concentrations that allow these things to happen are too low to show up in any day-to-day effects except for the poor swimming quality that spoils our beaches after a heavy rainfall.

As pointed out by the Adelaide Coastal Waters Study, it will take time for the Adelaide coast to recover from the high levels of discharge in the past. Further, the study points us in the direction of total loads to the coast and points out that the concentrations of nitrogen in receiving waters are not a suitable indicator of water quality in our ecosystem. The EPA has moved to a different report card style of reporting the integrated multiple lines of evidence, including seagrass health, in a much better way. Aquatic ecosystem condition reports from many of our surface water flows have been released and the first of the marine aquatic ecosystem condition reports are due for release later this year.

The draft Adelaide coastal water quality improvement plan is a major driver for implementing changes that will result in improvements to Adelaide's marine environment. We have been taking, and will continue to take, consistent action. Costs will be met in the same way as they always are by prioritising and implementing strategies in a staged and managed way.

COASTAL WATER QUALITY

The Hon. J.M.A. LENSINK (14:49): Can the minister, given he mentioned the Glenelg-Adelaide pipeline, advise how many clients it has and what proportion of its full capacity is actually being utilised?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:50): It is not directly applicable to my original answer, but I will undertake to take that question on notice and bring back the response the honourable member seeks.

COASTAL WATER QUALITY

The Hon. M. PARNELL (14:50): My supplementary question, which does relate to the minister's original long answer, is: does the minister agree that it took the death of thousands of fish being washed up on Adelaide's coastal beaches—

The PRESIDENT: You are seeking an opinion.

The Hon. M. PARNELL: —for the government to get moving on this plan, which has been languishing in draft form since 2011, 10 years after it started?

The PRESIDENT: That is hardly a supplementary and it is seeking the minister's opinion.

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:50): Mr President, the honourable member just does not get it, does he? This report has been in preparation for a number of years. You do not rattle off a report like this in a matter of days, you do not produce a report like this in a matter of five days since the fish have been dying. You need to consider detailed scientific data and bring together a number of experts. If the honourable member wants a typical political report then he can have it, but it will not do any good to our ecosystems.

Members interjecting:

The PRESIDENT: The Hon. Mr Wade.

The Hon. I.K. HUNTER: Mr President, I know I should disregard these interjections, but the draft report was released in 2011 and the full report was due to be released in May. That was always the timetable.

DOMESTIC VIOLENCE

The Hon. S.G. WADE (14:51): I seek leave to make a brief explanation before asking the Minister for the Status of Women a question relating to domestic violence intervention orders.

Leave granted.

The Hon. S.G. WADE: In the context of Police Association concerns about the impact of police budget cuts, Mr Nigel Hunt reported in *The Advertiser* on 29 March 2013 that:

> Domestic violence interventions...can consume a patrol for an entire shift in some cases, but a minimum of 90 minutes if an arrest is made.

SA Police has made it clear that it is struggling to meet its budget cut targets and that initiatives such as the domestic violence intervention orders, though welcomed, do take additional resources. My questions to the minister are:

1. What additional recurrent funding was provided to the police to enable them to take on the responsibility of the new domestic violence intervention orders?

2. Can the minister assure the council that implementation of the orders will not require a winding back of other police operations?

3. Can the minister advise how many arrests and other actions have been made since the introduction of the domestic violence intervention orders?

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) (14:52): I thank the honourable member for his most important questions. Indeed, the legislative reforms that we have made around domestic violence and sexual assault have been very good reforms. We made changes in terms of our rape and sexual assault legislation that ensured that victims were more comfortable giving evidence and found it easier to get through the system, whilst at the same time making sure that perpetrators had to answer for their actions.

In relation to our intervention orders, these have been—as I have outlined in this place—highly successful reforms that have been well supported by not only SAPOL but also right across the board. There are many agencies that are currently involved in providing services and support to the victims of domestic violence, agencies like housing, education, health, etc., as well as corrections and the domestic violence services themselves. So, these reforms have been

supported right across the board and are seen as a very positive way forward to improve the protections made available to victims of domestic violence.

Indeed, the intervention orders have been highly utilised. They have been utilised at a much greater rate than the previous restraining orders they replaced had been used. I have brought figures into this place before (but I do not have them with me today) that show quite clearly that the uptake of these orders has been quite high, which is very encouraging. At the same time, the figures have shown that the rate of breaches of these orders has not grown at the same rate as the uptake, so that has been a very positive trend as well.

The police have indicated that this does take resources. It is basically a new responsibility in some ways. What used to happen under the old legislation was that an incident would occur, typically in a domestic residence, the police would be called out and, if the victim was at high risk, they would be required to remove often the woman and children from that family home, find a safe house for them and wait for the system involving restraining orders to be put in place for the perpetrator.

Now when that scenario occurs, the police have the ability to put an intervention order in place right there and then, basically on the spot, and remove the perpetrator from the family home, and there are now support services that can go in on the same day and secure the family home for the victim to make sure that they are left in a safe environment.

The police have been very supportive of these new responsibilities, and although it has required some new responsibilities and a considerable increase in uptake, nevertheless there are components of activity that are reduced—for instance, having to find a safe house, and follow through with that side of things, has now been replaced.

Also, what the police have said to me in conversations is that one of the reasons they are so supportive of it is that there was the problem that often similar complaints were made over and over from the same people—incidents would continue to occur, the perpetrator would be a repeat offender, the police would go out and, because their restraining order often took a considerable amount of time, within a very short period the woman would decide not to proceed with the complaint. They were often intimidated and there are lots of reasons why that might occur.

It does not take much to see why it would be difficult, still living in the same residence or having access to the perpetrator, and a person's resolve might diminish. The next thing is that in a week's time or two weeks' time the police would be back out again to the same residence, dealing with exactly the same people, and that is a very time consuming thing to do. Although there are new responsibilities with intervention orders, there are also areas where police have less activity and responsibility.

In relation to the funding, the funds were made available in the last budget. I do not have the figures right here in front of me, but new funds were made available for the implementation of intervention orders, and I have outlined those funds here in this place before.

An honourable member interjecting:

The Hon. G.E. GAGO: It may have been training. As I said, there are swings and roundabouts with these, but the police overall speak very highly of the intervention orders. They are very supportive of them and, although they are very early figures, they show us that it appears that they are working very well, that women are accessing them more regularly and that there is less chance of perpetrators breaching them.

FOOD AND WINE EXPORTS

The Hon. CARMEL ZOLLO (15:01): I seek leave to ask the Minister for Agriculture, Food and Fisheries a question about the forthcoming Fujian delegation visit to South Australia.

Leave granted.

The Hon. CARMEL ZOLLO: The minister has spoken before in this place about her commitment to the government's premium food and wine from our clean environment priority and the opportunities presented by the Chinese market. Can the minister tell the chamber about an upcoming visit from Chinese business delegates with an interest in our premium food and wine?

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 her most

important question. With global demand for food to increase by 70 per cent by 2050, South Australia is certainly ideally positioned to respond to this increased demand.

Following my visit to China last year, I was very pleased to announce a memorandum of understanding between the Fujian provincial government and the South Australian government to explore opportunities for collaboration and trade between our regions and to increase exports of premium food and wine from our clean environment.

I am very pleased to advise the chamber that a group of business leaders from Fujian Province in China arrive tomorrow in South Australia with a commitment to purchase an initial $1 million worth of local food and wine for export. This buying trip contributes to the commitment from businesses from the Fujian Province to South Australia and creates a very exciting opportunity to generate increased opportunities for local food and wine exports over the next 12 months.

The buying group, which consists of up to 20 high-profile Fujian business leaders, will visit places such as Port Lincoln, the Barossa Valley, McLaren Vale and Kangaroo Island. They will be here from 10 to 17 April. I am advised that there is a specific interest from the Chinese delegation particularly in meat, wine, seafood, dairy, healthcare products, olive oil, grain and nuts. In addition to these, the delegation will be treated to our fabulous array of fresh fruit and vegetables and also a very diverse range of our processed food production.

China has already grown to be South Australia's single largest export market. I am very pleased to advise that work is now underway in developing South Australian food hubs in the Fujian area to service consumers in the region and the large number of tourists who visit.

In December 2012, I called for an expression of interest from the South Australian food and beverages companies interested in developing trade and business relations with Fujian. Already, more than 60 businesses which believe they are in a position to develop trade and business relations have submitted their expression of interest to PIRSA to be involved in the first phase of the food hub program.

I am advised that most of these Chinese businesses are new buyers of South Australian premium food and wine. In fact, I think that almost all of them have not bought produce from South Australia previously. So, this is a fabulous opportunity. They are willing to retail our products to high-end consumers and corporate markets but are starting with the province of Fujian, an area where they have many interests.

In the future, the objective is for South Australian products to channel through the safe food centre that will be built in Fujian. A number of Chinese journalists will also travel with the group, meaning that this visit will generate, hopefully, very positive coverage for South Australia, promoting our clean and safe products to a large Chinese audience.

South Australia is renowned as a producer of premium food and wine from a clean environment—clean air, clean soil—and we have heard a lot about our clean waters today. I am sure honourable members, if they are keenly interested—

An honourable member: I've got more.

The Hon. G.E. GAGO: I'm sure he has got more. The strong interest from China reinforces how fortunate we are to have access to such diversity in premium, high quality and fresh local products.

With China's middle class expected to double from 100 million to 200 million over the next 10 years, now is a very good time for South Australia to continue to build strong and mutually beneficial trade relationships. Fujian alone has a population of 37 million. It is a fairly small region in China with 37 million people, and it is hard for us to comprehend that.

The development of opportunities with this provincial government is just one of the many ways that the Jay Weatherill government is enhancing and supporting the government's premium food and wine from our clean environment strategic priority. This government looks forward to a continuing engagement with the Fujian provincial government and businesses into the future. I would like to take this opportunity to welcome the business leaders to South Australia.

FOOD AND WINE EXPORTS

The Hon. D.W. RIDGWAY (Leader of the Opposition) (15:06): As a supplementary question, when does the minister expect that the safe food centres will open?

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) (15:06): I have already spoken about that in this place before.

Members interjecting:

The PRESIDENT: Order!

The Hon. G.E. GAGO: Work has already commenced on the tourism hubs, and we continue to negotiate. There is a strong commitment to this. The first phase has already commenced, with a delegation coming here tomorrow with a commitment to purchase $1 million worth of produce—that is just this visit. It is very clear to me that the Chinese have very much honoured their commitment and delivered all they said they would. It has been delightful working with this group and with government officials supporting this as well.

FOOD AND WINE EXPORTS

The Hon. D.W. RIDGWAY (Leader of the Opposition) (15:07): I have a supplementary question. Is there construction required in China and Fujian Province by locals before the safe food centres are constructed and then opened?

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) (15:07): The question doesn't make sense to me at all. What we have said is that they are building tourism promotional food and wine hubs; work on one of those has commenced already. There are quality assurance retail centres, and building hasn't commenced on those, but certainly work has been well advanced in a commitment to progress with them.

DAIRY INDUSTRY

The Hon. R.L. BROKENSHIRE (15:08): I seek leave to make a brief explanation before asking the minister for primary industries a question about South Australia's dairy industry.

Leave granted.

The Hon. R.L. BROKENSHIRE: I also declare, as I always do for the public record, that my family and I are dairy farmers. Recently, in an unprecedented move by dairy farmers across South Australia, there was a March for Milk rally at Murray Bridge and, after that, a very long panel session and conference on the current state of the dairy industry.

The Hon. I.K. Hunter: Were you there?

The Hon. R.L. BROKENSHIRE: Indeed I was, minister.

The Hon. I.K. Hunter: Were you on the panel?

The Hon. R.L. BROKENSHIRE: No, I was doing some other things.

The PRESIDENT: Minister, stop interjecting.

The Hon. R.L. BROKENSHIRE: It is evident that South Australia has an opportunity to either grow a vibrant dairy industry and economic opportunity for the state or, indeed, see the further demise of a large section of the dairy industry in South Australia. I ask the following three questions:

1. Can the minister report to the house on the government's progress with the development of a new dairy plan, given that the last one expired in 2010?

2. Can the minister advise the house whether the government is looking to assist the industry in its time of need so that we can see growth in the industry and not the demise of many dairy farmers?

3. Given that there was a standing ovation and total support for a national summit to address short, mid and long-term strategic problems and opportunities for the dairy industry, would the minister commit to herself and/or members of her agency attending that national summit?

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) (15:10): I thank the honourable member for his most

important question and, indeed, I am acutely conscious that this is an extremely difficult time for the dairy industry for a wide range of reasons. Certainly a poor season has contributed to the stress caused by the high Australian dollar, and poor milk prices and high feed costs have significantly disadvantaged South Australian dairy farmers.

I have met with David Basham and Ken Lyons from the SA Dairyfarmers Association and I have spoken with them at about their issues and concerns and had lengthy discussions on how they see the way forward. I was very pleased to hear the positive strategies they are contemplating, such as collective bargaining with processing companies and supermarkets that are being pursued to help dairy farmers better capitalise on their investment and expertise—whether through developing new premium products or things like improved branding.

The SA dairy industry obviously has historically been a very strong and important contributor to jobs through the supply chain and I certainly look forward to working with the industry where I can to support their long-term viability. I recognise that a number of the issues they are faced with are federal issues, but I have committed to working with the SA Dairyfarmers Association to assist where we can on a number of matters which include things like farmers having access to financial advice and counselling advice where needed. I have also written to the banks and encouraged them to support dairy farmers through the current cash-flow issues in line with a request from the industry, and I am certainly looking at what can be done with the land title divestment issues as well which were raised with me.

The issue at the moment is one of credit which dairy farmers are finding very difficult to access, so I have written to banks to discuss that particular issue. I have also offered to work with the SA Dairyfarmers Association to assist in developing a strategic plan for the industry, a dairy plan for South Australia, to help improve our market share and to develop new value-added milk products and that is a big issue for us. Unfortunately, at this point in time, a lot of our processing is done interstate, which is really incredibly disappointing. We are basically taking a raw product and sending it off interstate and we are not value-adding to the capacity that we could. So we need to look at opportunities to do that and also to add new products—production activities here in South Australia that can value-add dairy products as well.

In terms of the national summit, we certainly give strong support to that going ahead and I would be very pleased if I am able to attend that and to have senior officers attending.

DAIRY INDUSTRY

The Hon. D.W. RIDGWAY (Leader of the Opposition) (15:14): I have a supplementary question. Will the minister ensure that South Australian dairy products are on the shopping list for the Fujian delegation arriving tomorrow?

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) (15:14): As I outlined, an expression of interest process was put in place to invite those people from various businesses and sectors of the industry who were interested in engaging with delegates to come forward. Off the top of my head, I'm unsure whether any dairy producers put their names forward; I doubt it but, as I said, invitations went out—

The Hon. D.W. Ridgway interjecting:

The PRESIDENT: I'm doing planning.

The Hon. G.E. GAGO: —to invite expressions of interest.

The Hon. D.W. Ridgway interjecting:

The PRESIDENT: Order, the Hon. Mr Ridgway!

The Hon. G.E. GAGO: I've already outlined the engagement process that I've undertaken and the sorts of initiatives that I've been involved in to assist and support the dairy industry through this very difficult time.

DAIRY INDUSTRY

The Hon. D.W. RIDGWAY (Leader of the Opposition) (15:15): I have a further supplementary. Did the minister think it wasn't important enough for her to attend—

The PRESIDENT: Seeking opinion, but—

The Hon. D.W. RIDGWAY: —the rally in Murray Bridge some fortnight ago?

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) (15:15): That's simply outrageous. There are many events that I attend that the Hon. David Ridgway does not attend, even though he has been invited. In fact, I've seen his name sitting on an empty chair on numerous occasions but, because I'm a professional and courteous person, I don't come into this place and put on *Hansard* every event the Hon. David Ridgway didn't attend.

I understand how busy members of parliament are. I know all members of parliament, whether they are ministers or backbenchers, whether they are in government or in opposition, are very busy people with many commitments. The demands on our time far exceed the time we have available. We all receive—and I understand this well myself—many more invitations than we are able to attend.

Unfortunately, I was not able to attend that, but if the Hon. David Ridgway wants to play that game, if he wants me to come into this place and give feedback about some of his activity and actions at some public events—

The PRESIDENT: We won't be going down that path.

The Hon. G.E. GAGO: —including those that he doesn't attend, I am happy to share with you some of his activities at events and put those on the record.

The PRESIDENT: No, I don't want to hear that.

The Hon. G.E. GAGO: So, if he wants to play that game, I'm happy to join in, but I have to date conducted myself in a highly professional and courteous way.

The PRESIDENT: Hear, hear! The Hon. Mr Kandelaars.

DESALINATION PLANT

The Hon. G.A. KANDELAARS (15:17): My question is to the Minister for Water and the River Murray. Will the minister advise the council—

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Kandelaars has the call.

The Hon. G.A. KANDELAARS: Will the minister advise the council of the importance of the Adelaide desalination plant?

The Hon. D.W. Ridgway interjecting:

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (15:17): Yes, on you go, David.

Members interjecting:

The Hon. I.K. HUNTER: Some nice desal water for all of us. I thank the honourable member for his most important and very timely question. The Adelaide desalination plant is a key component of this government's commitment to guaranteeing Adelaide's water security to 2050. It is South Australia's insurance policy against future droughts and ensures households and businesses have a reliable water source, regardless of the climatic conditions of the day.

The Adelaide desalination project has delivered us a 100-billion litre plant on time and on budget. The investment of $1.824 billion is a substantial and necessary investment in the future of our state. The plant is an investment in the economic development of our state which is underpinned by improved reliability of our water infrastructure. A growing economy places greater demand on our water supplies, and we are now in a position to meet this.

The project has also provided an immediate benefit to the state's economy. More than 10,000 people worked on the project site, I am advised, and almost 600 businesses played a role in delivering this project. More than 75 per cent of the workforce was sourced from local companies, giving our people and businesses of this state the opportunity to contribute to a large and complex world-class project.

Adelaide has relied on our reservoirs in the Adelaide Hills and the River Murray to ensure that water is there when we need it. However, the recent drought showed us that we can't rely on

these sources. They are dependent on the climate and will not always be able to supply the water we need when we need it. It was only a few years ago that much of the state was under severe water restrictions and, at that time, cabinet was actively considering supplying bottled water to some communities due to the saltiness of the River Murray.

The Adelaide desalination plant was built to ensure our water security. While the easing of the drought has provided a couple of good years of rainfall, this source of water is not guaranteed, as all members know. Water from the desalination plant removes our reliance on climate-dependent sources of water. In addition, the desalination plant means that we are reducing our reliance on the River Murray. South Australia led the charge last year to ensure a healthy future for the River Murray. Without our fight we would not have achieved the return of 3,200 billion litres of water to the Murray, which the scientists tell us—

Members interjecting:

The PRESIDENT: Order!

The Hon. I.K. HUNTER: They would be well advised to hang their head in shame and keep quiet during this debate.

Members interjecting:

The PRESIDENT: The honourable minister has the call.

The Hon. I.K. HUNTER: Their history on the River Murray leaves a lot to be desired. Without our fight we would not have achieved the return of the 3,200 billion litres of water to the Murray, which the scientists tell us is what is needed for a healthy river. Six billion litres per annum will be returned to improve the health of the River Murray as an environmental allocation. In addition, the state government has committed to an environmental reserve that will return up to 120 gigalitres of water to the environment over a 10 year rolling period.

This desalination plant ensures that the future growth of our population and our economy will not mean an increased take from the river; our future needs can be met from the desalination plant. Already this year we have consumed more than 15 billion litres of desalinated drinking water. This is 15 billion litres of water that we have not had to pump from the River Murray during what has been a hot and dry start to the year.

I would like to acknowledge SA Water's delivery team, its advisers and the project contractors involved in the design, the build, the operation and the maintenance contracts associated with the project. The desalination plant was designed and built by multinational consortium AdelaideAqua D&C Consortium, which comprises McConnell Dowell Constructors, Abigroup Contractors and ACCIONA Agua. It is currently being operated under a 20 year operation and maintenance contract by AdelaideAqua Pty Ltd, which is a joint venture equally owned by ACCIONA Agua and TRILITY.

Everyone involved should be proud to have contributed to such an important piece of infrastructure and to be part of South Australia's water history. The desalination plant gives South Australians the water security we need for decades to come.

DESALINATION PLANT

The Hon. J.M.A. LENSINK (15:22): I have a supplementary question. What is the population that the minister says the desalination plant is required for; the number, in millions?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (15:22): As I understand it, the Adelaide desalination plant water delivery will provide water for half of Adelaide's population.

DESALINATION PLANT

The Hon. M. PARNELL (15:22): I have a supplementary question. Will the minister—

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Parnell has a supplementary.

The Hon. M. PARNELL: Thank you, Mr President. Will the minister ensure that the environmental monitoring data collected by the operators of the desalination plant, pursuant to their

EPA licence, will be made public, or does the minister support keeping that important data off the public register?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (15:23): The honourable member is off on a fantasy trip once again. As I understand it, the data collected by the company contracted to do that work is collected every 10 minutes in real time and, as I also understand it, is updated to the EPA and SA Water websites.

DESALINATION PLANT

The Hon. T.A. FRANKS (15:23): I have a supplementary question. How does the minister reconcile his answer with the fact that SA Water has reported to ESCOSA that we are, in fact, projected to take additional waters from the Murray in coming years?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (15:24): As a government we have always said that we will balance our water use and take from the sources we have, dependent on the climatic conditions of the day. We have never said that we will not be taking water from the River Murray: of course we will, when the River Murray is in a healthy state that allows that to happen. However, if there were another drought that usually means there would be less rainfall to fill our reservoirs and less water coming down the river. That is when you will be in here congratulating us for building the desal plant.

HAMPSTEAD REHABILITATION CENTRE

The Hon. K.L. VINCENT (15:25): I seek leave to make an explanation before asking the minister representing the Minister for Health questions about the Hampstead Rehabilitation Centre.

Leave granted.

The Hon. K.L. VINCENT: The council will no doubt be aware by now of the appalling treatment of Anthony Fox, who recently came to the attention of the media after essentially being forced to remain at Hampstead as appropriate services from Disability Services could not be arranged to support his discharge.

Mr Fox's case gained significant media attention; however, it would be foolish for anyone to think that this was the only instance where the great silos of the Department for Communities and Social Inclusion and SA Health proved incapable of working together to meet the needs of people with disabilities. Mr Fox is not alone in having felt the frustration of being stuck in hospital, of wanting to return to his home, to familiar things, of knowing that you were not taking up a bed that someone else desperately needed.

However, today I am concerned with another horrendous case at the other end of the scale, of the situation of another Hampstead client who faces the prospect of being sent home at short notice with very little discharge planning having taken place while staff are apparently unable or unwilling to arrange for them to receive appropriate services in the community.

This constituent, whose family has contacted my office, has been told that there is no funding available for support hours even though a request for these hours is yet to be made. Instead, his partner has been told—not asked but told—to quit their job in order to become this person's full-time carer. When they made the point that this would make it difficult for them to maintain the relationship as a partner, it was suggested that they might ask their friends to come and perform personal care tasks such as showering.

This is the horrifying other side of the coin for South Australians with disabilities. Some find themselves trapped in the health system, unable to leave because of the inability of Disability Services to provide them with a service. Others find themselves facing the harsh reality of discharge into the community when there are no services available to support them in the community. This is an unfair product of an unfair system—a system which has misplaced its goals and now appears to value meeting its own internal reporting requirements and cost-cutting measures over the just economics of caring for the health and wellbeing of the people of South Australia. My questions are:

1. Does the minister believe it is acceptable for SA Health staff to suggest a client's partner quit their job to take on full-time caring responsibilities?

2. Does the minister believe it is acceptable for SA Health staff to suggest that a client's friends might be able to provide personal care services, rather than referring the client to professional disability services?

3. Is the minister concerned about the way discharge planning is being conducted at the Hampstead Rehabilitation Centre or any of the state's other public hospitals?

4. Does the minister accept that the relationship between the state's health, mental health and disability services has become hopelessly dysfunctional?

5. Will the minister undertake to review discharge planning processes in relation to people with a disability, mental illness or chronic illness?

The PRESIDENT: The Minister for Sustainability, Environment and Conservation representing the minister in the other place—but there is a bit of opinion and seeking opinion in those questions.

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (15:28): I thank the honourable member for her most important question, directed to the Minister for Health and Ageing in the other place. I undertake to take that question to the minister and seek a response on her behalf.

PORT AUGUSTA DRUG AND ALCOHOL CENTRE

The Hon. T.J. STEPHENS (15:29): I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation questions about the proposed drug and alcohol centre at Port Augusta.

Leave granted.

The Hon. T.J. STEPHENS: In 2007 the commonwealth announced, in conjunction with the state government, that a drug and alcohol centre would open in Port Augusta. The centre was considered vital to stemming the tide of alcohol and drug abuse in our Aboriginal communities. It was anticipated that the centre would open last year. Instead, in February, it was announced that the tender process had collapsed and the project would not go ahead and the funding would be used to fund two centres, one in the North-West of the state and one in the South-East. These locations remain unspecified and the government is at risk of missing the boat on this. It can hardly be argued that the South-East is at the forefront of these issues. Port Augusta is a prime location aimed at maximising the centre's reach. My questions are:

1. Why was the proposed site for the centre moved from Port Augusta?

2. Has the minister been privy to this process?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (15:29): I thank the honourable member for his most important question. I understand this issue is fairly and squarely a federal one, but I happened to be in Port Augusta recently with minister Macklin opening a function there for Closing the Gap and some other health related activities. This issue was raised with us in the general discussion we had with members of the Aboriginal community and I understood minister Macklin to say that minister Plibersek had considered her position and had announced that she will be opening the centre in Port Augusta, but I am not aware of the time line.

BIOSECURITY

The Hon. R.P. WORTLEY (15:30): I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question about our strong biosecurity measures.

Leave granted.

The Hon. R.P. WORTLEY: The government has announced, as one of its seven strategic priorities, premium food from our clean environment. I am sure all South Australians are proud of our clean environment and want to maintain this competitive edge. My question is: can the minister advise the council of the research project that is helping to maintain our clean 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) (15:30): I thank the honourable member for his most

important question. Indeed, there has been a strong theme of water quality and biosecurity today, and this speaks further to the quality assurance program that came from a question asked by the Hon. David Ridgway earlier on. South Australia has a national and international reputation as a supplier of premium food and wines that are clean, safe and produced in a sustainable and ethical manner.

The commercial fisheries of South Australia are certainly no exception. Some of our shellfish are amongst the world's most highly sought after. One of the factors underpinning the success of the shellfish industry is the world renowned South Australian Shellfish Quality Assurance Program (SASQAP). This program was established as a joint initiative between Primary Industries and Regions (PIRSA) and the shellfish industries 16 years ago, so it has been in place for a very long time and has been very successful.

SASQAP has successfully provided public health protection for the consumption of South Australian shellfish. The program strives to ensure the sustainable development of a shellfish industry capable of exporting shellfish to any country. I am pleased to advise the council that, in recognition of the program's success, PIRSA's SASQAP team leader, Clinton Wilkinson, was recently invited to speak at the ninth International Conference on Molluscan Shellfish Safety, which was held in Sydney in March of this year. This conference brought together more than 210 delegates, including prominent scientists and partners from over 30 different countries, to share in the very important exchange of knowledge and ideas on the latest scientific advances.

Shellfish farming in South Australia is unique to Australia as shellfish are grown in intertidal and subtidal oceanic conditions within shallow embayments around the coast. Shellfish are fed by nutrient-rich upwellings—we have heard a lot about upwellings today as well—originating from the continental shelf and are not impacted by contaminants normally associated with freshwater inputs in estuarine conditions. I am advised that currently, in South Australia, there are 17 shellfish growing areas, consisting of 28 harvesting areas. I understand that Mr Wilkinson's presentation to the international conference focused on how 'risk assessments underpin the effectiveness of the South Australian shellfish program'.

I understand Mr Wilkinson informed the conference that SASQAP, in assessing the risk associated with safe harvest of shellfish, interpret environmental factors that may distribute contaminants, collect and analyse water quality, determine appropriate classification of the shellfish growing area, produce ongoing reviews of the shellfish growing area classification and management strategies, and respond to environmental events and disease outbreaks should they occur.

This state is rightly viewed as a world leader in fisheries management and sustainability, and this is something the government has committed to building on with our premium food and wine from our clean environment initiative. Obviously, I am very proud of the contribution my department makes. I am also informed that earlier on this year, an emergency management response scenario (Exercise Sea Fox) was undertaken with the oyster industry, and the industry was very happy with the preparedness and planning that Biosecurity SA and the industry had in place. Following this emergency management exercise, an emergency response plan is being prepared and Biosecurity SA has advised me that it is well prepared should there be any outbreak. As I said, I commend those officers for their incredible hard work and commitment to this very important policy area.

ANSWERS TO QUESTIONS

GREENHOUSE GAS EMISSIONS

In reply to the **Hon. J.M.A. LENSINK** (10 November 2010) (First Session).

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation): As Minister for Sustainability, Environment and Conservation I am advised that all of the greenhouse gas emissions from ministerial air travel, SA Fleet vehicle usage and electricity and gas use in ministerial offices and electorate offices have been offset. Between 2007-08 and 2011-12, the SA government has purchased nationally accredited carbon offsets equalling 11,800 tonnes of carbon dioxide equivalent costing $78,078. Fieldforce Services, Greenfleet, Low Energy Supplies and Services, and Pangolin Associates have provided these nationally recognised carbon offsets for the government. A number of factors, including volatile carbon offset prices and changing emissions, have created differing purchase costs over time.

NATURAL RESOURCES MANAGEMENT (REVIEW) AMENDMENT BILL

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (15:35): I move:

That the Natural Resources Management (Review) Amendment Bill be restored to the *Notice Paper* as a lapsed bill pursuant to section 57 of the Constitution Act 1934.

Motion carried.

SECURITY AND INVESTIGATION AGENTS (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 19 March 2013.)

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) (15:36): I would like to thank honourable members for their second reading contributions. The Security and Investigation Agents (Miscellaneous) Amendment Bill is obviously an important step towards harmonising the regulation of the private security industry to improve probity, competence and skills of security personnel and mobility of security industry licensees across jurisdictions. While South Australia has long been recognised as a leader in this area, the bill seeks to strengthen the existing stringent probity requirements that we have and aims to improve public confidence in the private security industry as harmonised probity checks and training requirements will apply across all jurisdictions.

Bill read a second time.

In committee.

Clause 1.

The Hon. S.G. WADE: The government advised that they intend to undertake further consultation before commencing the provisions relating to provisional licensing and temporary licences. I wonder if the government could advise the chamber on progress in those consultations?

The Hon. G.E. GAGO: I have been advised that it is anticipated that consultation will occur once the remaining reforms have been implemented.

The Hon. S.G. WADE: I thought from the second reading explanation that they were going to be pursued once the government had the opportunity to consult with other jurisdictions to see whether their probity requirements were sufficiently reassuring to the government that they felt comfortable moving to the provisional licensing and temporary licences. Can we clarify, if that is not the reason for the delay, what is the reason for the delay.

The Hon. G.E. GAGO: I have been advised that, overall, extensive consultation has already occurred on this bill; however, there are two areas where delay has been identified. I am advised that South Australia already meets many of the agreed elements of the reforms, including fingerprinting, most qualifying offences, and national and local criminal history checks.

Delaying the introduction of temporary licences allows for other jurisdictions with lesser probity requirements to fully implement agreed minimum probity standards, such as fingerprinting. This means that, by the time they may be implemented, temporary licence applicants in possession of interstate licences who wish to work temporarily in the state will also be required to meet standards of probity that are similar or equivalent to those applied in Australia.

Delays have also been necessary, given the need to integrate the ICT changes necessary for security reforms, the scheduled work on alterations to Consumer and Business Services' IT licensing infrastructure. This approach has prioritised the implementation of those reforms that would, if deferred, undermine the operation of mutual recognition or delay further work towards national licensing. As I have said, further consultation with industry members will happen before the commencement of those provisions, and that includes those delayed provisions I have just outlined.

Clause passed.

Clauses 2 to 30 passed.

Clause 31.

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

Page 18, line 27 [clause 31, inserted section 23R(2)(a)]—

Delete 'the holder of a security agents licence that' and substitute 'a security agents licence'

This amendment is a minor drafting amendment. The section relates to the cancelling of a licensee's ability to perform duties that relate to carrying a firearm if their related firearm licence is cancelled. The amendment ensures that the reference to the security agents licence is consistent through the subsection and is applied as intended.

Amendment carried; clause as amended passed.

Remaining clauses (32 to 48) and title passed.

Bill reported with amendment.

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (15:45): I move:

That this bill be now read a third time.

Bill read a third time and passed.

ADVANCE CARE DIRECTIVES BILL

Adjourned debate on second reading.

(Continued from 7 February 2013.)

The Hon. J.A. DARLEY (15:45): I rise to speak very briefly to this bill. At the risk of repeating what has already been said by other honourable members, the bill seeks to create a single form of advance care directive to replace the existing enduring power of guardianship, medical power of attorney and anticipatory direction. It will enable competent adults to make decisions and give directions in relation to their future health care, residential and accommodation arrangements and personal affairs. It will also enable a substitute decision-maker to make such decisions on behalf of another person.

At the outset I, too, would like to commend the former minister for health, the Hon. John Hill, for all his hard work in attempting to streamline a number of very complex laws and processes. I appreciate that this task is not without its difficulties especially given the very sensitive nature of the issues that we are dealing with. Indeed, I understand that the government has already indicated that it will be seeking to move amendments to deal with some of the more concerning aspects of the bill as raised by various stakeholders. I note that the Hon. Dennis Hood has also filed a number of amendments on behalf of Family First, dealing with some aspects of the bill.

There does appear to be some difference of opinion amongst honourable members and the wider community as to whether this bill seeks to provide a form of euthanasia. Whilst I have previously indicated my support for euthanasia, I do not support any backdoor means of getting that legislation through. That said, and irrespective of our personal beliefs on the issue of euthanasia, I believe that the bill does have a number of very good aspects and I am supportive of its intent.

Like other honourable members, I also hope that we will be able to make our way past those aspects of the bill that are the subject of criticism and not lose sight of the bigger picture—that is, to respect people's right of autonomy and to assist them to express their views and make decisions about their care and personal affairs while they are still able to do so. As a person who is closer in age to having to think about these matters than any other member of parliament, I am vitally interested in being able to control my destiny, whatever the future may hold. With that, I support the second reading of the bill.

The Hon. R.I. LUCAS (15:47): I rise to speak only briefly at the second reading stage. I, too, indicate that I was contacted by a small number of stakeholders a number of weeks ago who expressed to me significant concerns about the government's original drafting of the bill. In the discussions I had with them I indicated that I had sympathy with some of the issues that they raised but am not perhaps convinced by some others in relation to their concerns about provisions in the bill.

I note now that the government has indicated that it will be introducing very significant amendments to its own legislation. I acknowledge the work of various stakeholders in terms of lobbying for change. I acknowledge the work of my colleague the Hon. Mr Wade who has assiduously advised Liberal Party members of the various proposals for change and amendments to the bill, whilst always acknowledging that for us this is a conscience vote issue. It has been and will always be a conscience vote issue.

I also acknowledge the work and discussions I have had with the Hon. Dennis Hood, who I know has shared some of the concerns and has expressed those concerns to the new Minister for Health. I acknowledge also my understanding that the new minister has shared some of those concerns and, as a result of that, has ensured that the government has introduced very significant amendments to the legislation that is before us.

Again, I acknowledge the work and the importance of the Legislative Council in relation to this legislation. The detailed debate, the detailed improvements in the legislation and the significant amendments moved by the government itself would not have occurred if there had not been an active Legislative Council. The government's positions, as enunciated by the former minister for health, would have prevailed in the House of Assembly and there would have been no opportunity for mature reflection, consideration of the concerns expressed by stakeholders, and a changed position by the government acknowledging the deficiencies in the legislation and the need to ensure that some of those deficiencies were addressed by amendments made by the government itself.

I am sure I do not need to convince any members of this chamber of the value and importance of the Legislative Council. It is a salutary lesson perhaps to members of the media and other public commentators of the worth of the work of this chamber, again demonstrated by what will, hopefully, be improvements in this bill.

My understanding of the Hon. Mr Hood's position is that, whilst he has tabled significant amendments, it is unlikely that he will proceed with all those amendments, although he indicated to me last evening that that was subject to a further meeting he was to have this morning with representatives of the government; I am not aware of the end result of those discussions. He indicated to me that it was possible that he might proceed with a particular amendment, subject to the government discussions he had today.

From my viewpoint, I will support the second reading of the bill, and I will follow with interest the debate in the committee stage. In particular, I will need to note—and I am sure we will all need to note—the final position of the Hon. Mr Hood, as to whether he is proceeding with any or all of the amendments he has placed on file. I will reserve my position on the third reading, although it is my expectation that, if the bulk of the amendments as flagged are passed, it is more than likely I would support the third reading as well as the second reading of the bill.

The Hon. CARMEL ZOLLO (15:53): I also rise to make a short contribution to this bill, which has as its object the consolidation of a number of various laws in relation to competent adults giving directions in relation to their future health care, residential and accommodation arrangements, and personal affairs. I do believe it is appropriate and desirable for people who are not legally trained to be able to take advantage of this intent and achieve peace of mind in relation to their personal wishes.

At the moment, if people choose to go down this path, they have a number of means of achieving their intentions, with various powers of attorney and directions spelling out such matters as who they want decisions to be made by, the agreement of the majority, etc. This legislation is timely. For those who have already made their views legally known, those arrangements remain valid. My husband and I would be an example of including a medical power of attorney in our wills.

Along with other members, I have received a great deal of correspondence in support of this legislation, but I have equally received correspondence and phone calls urging reconsideration in relation to one aspect of this proposed legislation which concerns the act of omission of reasonable care in some unforeseen circumstances and whether that could indeed be considered facilitating the death of a person.

In correspondence received from Doctors Opposed to Euthanasia, their view is that the proposed bill blurs the commonly accepted distinction between medical and non-medical life-sustaining measures. If I can be succinct and quote Dr Timothy Kleinig and Dr Robert Britten-Jones, on behalf of Doctors Opposed to Euthanasia, they write:

In summary, while we applaud the apparent intent of the Bill in codifying the rights of patients to refuse medical treatment, and in encouraging patients to make their wishes explicit, we strongly urge the Bill be amended to prevent 'euthanasia by omission' (in particular by omission of oral hydration and nutrition).

As we know, since the bill now before us passed the House of Assembly, a great deal of discussion and consultation has taken place with members of this chamber and medical associations to ensure that, whilst the intention of this proposed legislation remains intact, the concerns raised have been addressed by drafting amendments which, I understand, are either before us or will be shortly, and I understand that some consensus has been reached. I would particularly like to acknowledge the work of the Hon. Dennis Hood in driving this important discussion and his willingness to work with the government on proposed amendments for this important piece of legislation.

In relation to future health care, I acknowledge that death is as individual as the life we lead, but the Advance Care Directives Bill will assist in providing enhanced choice and autonomy for patients and, in particular, their families as well—those who are left behind. I add my support to this important piece of legislation.

The Hon. A. BRESSINGTON (15:57): I rise to speak to the Advance Care Directives Bill. This bill has come about after a review by the Advance Directives Review Committee and a long, tireless push by the medical fraternity to have patients' care requests legally enforceable. That being said, I have it on good authority that there are provisions within the current legislative framework which effect this already.

I believe that the right to self-determination is necessary in most circumstances. However, that being said, any attempt to introduce backdoor euthanasia or assisted suicide by relaxing legislation in such a way that a patient can choose to end their life at any stage is something that I strongly disagree with.

I am a supporter of the current process in which a living will can be implemented. I have a living will and have had for some years. It is important to me and to many others out there that, when a serious life-threatening situation occurs or an illness overtakes them to the point that their only option is palliative care, suitable arrangements can be made. People should have a choice whether they want to be kept alive by artificial means or not.

That being said, if we had focused more on tightening and improving the current provisions in line with best practice, then I believe we would have probably had a more productive debate on this issue. I recognise the need for people at the end of their days to have things put in place to allow safe passage onwards. However, I have grave concerns that this bill does not create the appropriate safeguards to protect the patients and their doctors and healthcare practitioners.

I am also aware of a number of amendments that have been put forward by the government and also the Hon. Dennis Hood. I would just like to say that I also commend the Hon. Dennis Hood for the effort he has put into this, ensuring that at least a safe bill for the sick and vulnerable will be passed in this place.

There is one particular area that I will seek clarification on; that is, where someone has an advance care directive and they attempt suicide, a doctor who is aware of the directive may be prevented from doing the very thing that they are paid to do, which is save a life. It is an easy way for people to euthanase themselves within the law.

Healthcare practitioners have a legal and ethical obligation to act in the best interests of their patients and to follow the directions given them. However, the medical practitioners still have some discretion as to when treatment is in the best interests of the patient and when it is not. I am concerned that limiting the medical practitioner's discretion will mean that this Advance Care Directives Bill actually favours death, especially in those times where a misdirection is given or where it is not clear what a directive was actually intended to mean. The current provisions that are working within our South Australian system are 'when in doubt, favour life', which I believe is the appropriate response. Given the submissions that have been made to my office, it appears that a large number of constituents also hold this view.

Whilst I recognise the value of the right to self-determination when one is facing a terminal illness or injury, I consider that there are some very significant deficiencies in the drafting of this bill which I hope will be addressed by the amendments that will be tabled.

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

(16:00): I would like to thank all honourable members in this place for their considered comments and their indications of support for the bill and the interested parties who provided feedback on this bill. I would also like to take this opportunity to address some of the issues raised by members during the second reading debate, and I apologise in advance that this will take some time (so if you need to go for a break, off you go).

An honourable member: See you tomorrow?

The Hon. I.K. HUNTER: Yes. In response to the issues raised and feedback received on the bill during the parliamentary process, the government intends to move a number of amendments to the bill. These amendments do not change the policy intent of the bill and are consistent with the bill's objects and principles.

First, there is some concern that binding provisions may have unintended consequences and therefore should only apply if a person is in a terminal phase of a terminal illness or a persistent vegetative state. Under the bill, only refusals for health care which are relevant and specific to the current situation are considered to be binding provisions. All other provisions for health care, residential accommodation and personal matters must be taken into account when decisions are made for the person by others, but such provisions are not binding.

Under current legislation, and at common law, a competent adult can refuse medical treatment or health care either themselves or in advance through a medical power of attorney or enduring power of guardianship. Under these instruments, a medical agent or an enduring guardian must follow any lawful instructions written by the person if specific and applicable to the current circumstances. Refusals of health care or medical treatment under these instruments do not necessarily apply only when a person is in the terminal phase of a terminal illness, or in a persistent vegetative state, but can apply to other situations or circumstances as specified by the person.

With a few exceptions—such as mental health involuntary treatment orders or emergency situations—medical treatment, including life-sustaining measures, cannot be provided without the consent of the person or, if they are incapable of making their own decision, their legal representative, which currently includes a medical agent, an enduring guardian, a guardian, a relative or, in some cases, the Guardianship Board.

I would like to remind members that it is the Consent to Medical Treatment and Palliative Care Act 1995 that regulates consent to medical treatment, and not this bill. The Advance Care Directives Bill simply enables competent adults to write down their directions, preferences and wishes for their future health care, residential accommodation and personal affairs.

The principle that a competent adult is not obliged to consent to medical treatment has been established in all major common law jurisdictions, including the South Australian, the New South Wales and Western Australian Supreme Courts in the following cases:

- H Ltd v J & Anor (2010) SASC 176;
- Hunter and New England Area Health Service v A (2009) NSWSC 761; and
- Brightwater Care Group (Inc.) v Rossiter (2009) WASC 229.

These judgements reflect that competent adults have the right to autonomy and self-determination over their own bodies. In balancing the right of a competent adult to control his or her own body and the interests of the state in protecting and preserving the lives and health of its citizens, the common law precedent is that, where such a conflict arises, the right of the individual must prevail.

The relevant principles include that a person may include in an advance care directive a statement that they do not wish to receive specific medical treatment. If that advance care directive was made by a competent adult, and it is clear and unambiguous and extends to the situation at hand, it must be respected. It would be a battery to administer medical treatment to the person of a kind prohibited by the advance care directive.

For a provision of an advance care directive to be valid, it is not necessary that the person giving it should have been informed of the consequences of deciding in advance to refuse specified kinds of medical treatment. Nor does it matter that the person's decision is based on religious, social or moral grounds rather than upon, for example, some balancing of risk and benefit. Indeed, it does not matter if the decision seems to be unsupported by any discernible reason as long as it was made voluntarily and in the absence of any mitigating factor such as misrepresentation by a

capable adult. I am referred to the Hunter and New England Area Health Service v A (2009) 761 case.

The bill reflects these principles. To limit a person's ability to refuse health care only if they in the terminal phase of a terminal illness or a persistent vegetative state is inconsistent with the principles in the bill and with common law and contrary to the Advance Directives Review Recommendations and the National Framework for Advance Care Directives.

The advance care directive form will be designed to allow people to write down their values and goals of care, what is important to them when decisions are being made for them by others, what levels of functioning would be intolerable, and where and how they wish to be cared for when they are unable to care for themselves. The guidelines accompanying the form will highlight the serious consequences of refusing specific medical treatments without being clear about the circumstances in which they apply as well as advising people to seek medical advice to ensure that their instructions will achieve the desired results.

If anyone has concerns regarding an advance care directive or action proposed to be taken under an advance care directive, the Public Advocate can provide advice, mediate a matter and issue a declaration. If a person is not satisfied with the Public Advocate's advice, mediation outcome or declaration, or requires greater certainty about a matter, they can apply to the Guardianship Board for a review.

Moving to another provision, the natural provision of food and liquids by mouth, there is clear legal and medical distinction between the natural provision of food and liquids by mouth (i.e. eating and drinking) and artificial nutrition and hydration. Under the Consent to Medical Treatment and Palliative Care Act 1995, artificial nutrition and hydration is considered medical treatment and a life-sustaining measure. Provision of food and fluids by mouth is not considered to be either of these things.

There has been some suggestion that a binding refusal of health care under the bill would also include a refusal of food and liquids by mouth and that, as a result, such a provision would be binding on health practitioners. I am advised this is not correct. Only refusals of health care are binding and all other provisions must be taken into account as far as reasonably practicable. The natural provision of food and water is not health care and therefore is not a binding provision. If a person expressed a wish to eat and drink, it would be unacceptable and inhumane not to offer them food and liquids by mouth—that is, something to eat and drink despite a refusal in an advance care directive.

Turning to the issue of voluntary euthanasia, this bill does not facilitate or permit euthanasia. The bill makes it clear that a provision in an advance care directive which is unlawful, which would require an unlawful act to be performed or to require a health practitioner to breach a professional code or standard is void and of no effect as at clause 12(1)(a).

The refusal, withdrawal and withholding of health care or medical treatment including life-sustaining measures is not legally or ethically considered voluntary euthanasia or assisted suicide. Euthanasia, voluntary euthanasia and assisted suicide involve an intended act to cause death—for example, administering drugs for the intended purpose of causing the person's death. Section 18 of the Consent to Medical Treatment and Palliative Care Act 1995 (the consent act) explicitly provides that euthanasia or assisted suicide is not permitted under that act.

There has been some concern that an unintended consequence of the bill may be that suicide attempts will be facilitated by doctors. This is not correct, I am advised. As I have already stated, the bill provides that a provision is void and of no effect if acting on it would be unlawful or require an unlawful act to be performed.

Aiding or abetting a suicide is a criminal offence under the Criminal Law Consolidation Act 1935; therefore, if it is suspected to be a suicide attempt, any relevant provision in the advance care directive has no effect and consequently there is no requirement to comply with the relevant refusal, and treatment can be provided. The provisions of the Mental Health Act 2009 may apply if the person attempting suicide is suspected of having a mental illness and therefore treatment can be provided under that act.

Turning to the issue of unprofessional conduct, I would like to clear up any confusion in relation to clause 36 of the bill which relates to unprofessional conduct and provides as follows:

For the purposes of the Health Practitioner Regulation National Law (South Australia) Act 2010 and the Health Practitioner National Law (South Australia), and for any other Act declared by the regulations to be included in the ambit of this subsection, a contravention of subsection (1) will be taken to amount to unprofessional conduct.

That is at clause 36(4). Some medical practitioners believe this means that if they do not follow a binding provision, and override a clear relevant refusal of health care, this will automatically result in them being found guilty of professional misconduct. I am advised that this is not the case. The national law defines unprofessional conduct to include a number of actions, but does not include actions relating to advance care directives. Clause 36(4) adds not abiding by advance care directives to the list of actions considered to be unprofessional conduct for the purposes of national law.

There can be no investigation of a health practitioner until a notification to the responsible board or the South Australian Health Practitioners Tribunal has occurred. After the investigation, the board or tribunal will determine whether or not the practitioner has in fact breached the law and, if so, what consequences should flow. This may include: no action, a caution, through to cancellation of a practitioner's registration. The tribunal would apply whatever action is considered commensurate with the actions of the practitioner based on the facts in each case. Section 36(4) deems a contravention of clause 36(1) to be professional misconduct. It does not deem the conduct of a particular health practitioner to amount to a contravention of subsection (1).

Turning to the definition of medical treatment, the bill amends the definition of medical treatment in the Consent to Medical Treatment and Palliative Care Act 1995 (consent act) and the Guardianship and Administration Act 1993 (guardianship act) to be consistent with the definition contained in the bill. The new definition of medical treatment includes medical examination and assessment.

The South Australian Salaried Medical Officers Association has indicated that it does not support the inclusion of assessment in the definition of medical treatment as part of the bill. It believes its inclusion may have unintended consequences for other sections of the consent act, for example, the provision of emergency treatment and for capacity assessment. Therefore, the government intends to amend the definition of medical treatment proposed for the Advance Care Directives Bill, the consent act and the guardianship act, to remove examination and assessment from the definition. These amendments would have no substantive impact on the bill itself, I am advised.

Turning to iatrogenic complications, an iatrogenic event is an illness or condition associated with or stemming from the illness or condition itself or from the treatment for the illness or condition. It is believed that, as clause 5(2) provides that such events are included in references to health care there may be potential unintended or unanticipated consequences for the person. For example, if a person had refused cardio pulmonary resuscitation in their advance care directive and they had surgery for another medical condition and their heart stopped during the operation, under this clause a medical practitioner would be unable to provide CPR, even if the person could make a full recovery. As a result of feedback on this issue, the government will be moving an amendment to remove this clause from the bill. This will allow health practitioners to treat iatrogenic complications or conditions unless the person themself specifies otherwise in their advance care directive.

The bill is based on substitute decision-making. The principles make this clear, as do the provisions relating to substitute decision-makers (clause 35). The provisions relating to substitute decision-makers allow for some flexibility to enable them to make decisions on behalf of a person in light of current circumstances. This may be the case if the person's advance care directive has not been updated for quite some time and the substitute decision-maker knows the person had changed their mind but did not update their advance care directive.

The government intends to move an amendment to the emergency provisions in the Consent to Medical Treatment and Palliative Care Act 1995 (consent act) to provide for the lawful administration of medical treatment in an emergency and where the refusal in the advance care directive is unclear or ambiguous. However, this amendment to the consent act does not apply to non-emergency situations and in cases where there is no appointed substitute decision-maker. For example, 20 years ago a person may have refused all blood interventions in their advance care directive because of their religious beliefs; however, the person has subsequently changed their religion, or taken up no religion, but did not update their advance care directive and now has impaired decision-making capacity.

Under subclause (1) a health practitioner must comply with a binding provision; that is, they must not provide the relevant treatment if the person had refused it in their advance care directive. The government intends to move an additional amendment to provide that a health practitioner may refuse to comply with a refusal of health care if they believe, on reasonable grounds, that the person did not intend the refusal to apply in relation to the particular health care, or the provision does not reflect the current wishes of the person who gave the advance care directive and there is no appointed substitute decision-maker.

In practice, a health practitioner would need some evidence that this was the case to fulfil the requirement on reasonable grounds. It would not be enough to override a refusal just because they or family members did not agree with the provision. If there was a dispute about the provision, an eligible person can apply to the Public Advocate for advice and to mediate the matter. The Guardianship Board, upon application, can also determine the matter.

The intent of this amendment is not to permit the wilful override or ignoring of a person's instructions in their advance care directive; rather, it is to provide for some flexibility in the rare event that there is some evidence that the person's specific refusal no longer applies to the current circumstance. This is consistent with the bill's objects and principles. The amendment would permit a health practitioner not to comply with the refusal in very specific circumstances. Consent for the proposed treatment must still be sought from a person responsible in accordance with the consent act. The person responsible must make a decision they believe the person would have made in the current circumstance.

Turning to the issue of conscientious objections, the bill provides that a health practitioner may refuse to comply with a provision of an advance care directive on conscientious grounds (clause 37). Having refused to comply with a provision, there is then a requirement under the bill that the health practitioner refer the patient or their substitute decision-maker to another health practitioner (subclause (2)).

The requirement by law to provide the name and contact details of another health practitioner was viewed in feedback as being overly prescriptive, and the government agrees. I note that the Hon. Dennis Hood has lodged a similar amendment to remove the requirement for a health practitioner to refer a patient to another health practitioner willing to comply with the advance care directive, and the government supports this amendment. We believe conscientious objection is adequately addressed by the professional codes and standards which govern the practice of registered health practitioners, such as 'Good medical practice: a code of conduct for doctors in Australia', published by the Medical Board of Australia.

However, it must be made clear that an objection to complying with an advance care directive on conscientious grounds does not mean that the health practitioner can then go on to provide the health care. A conscientious objection means that the health practitioner can object to being the treating health practitioner in this circumstance and should refer the patient on or hand over their care to another health practitioner in accordance with their own professional standards or codes.

With protections from liability under clause 41 of the bill, a health practitioner, substitute decision-maker or other person, such as an aged-care worker, incurs no criminal or civil liability for an act or omission done in or made in good faith without negligence and in accordance with an advance care directive. However, as presently drafted, this may not cover situations where a person thinks they are acting in accordance with the advance care directive but may have misinterpreted a provision. As a result, the government will move an amendment to this clause to protect those who believe in good faith and without negligence that they are acting in accordance with the advance care directive.

Turning to the issue of penalties for convictions of fraud or undue influence, the bill provides for an automatic penalty of forfeiting an interest in the person's estate for anyone convicted or found guilty of an offence of fraud or undue influence under clause 55. In their feedback, the Law Society of South Australia suggested that this penalty is excessive. The government will move amendments to this clause to remove the automatic penalty provided for in subclause (3). The court itself could decide the forfeiture of an interest in the estate on a case-by-case basis.

Going to the issue of resolutions of disputes by the Guardianship Board, the government will be moving a number of amendments to division 3 of the bill which relate to the Guardianship Board's responsibilities when resolving disputes in relation to advance care directives. Clause 10 of

the bill sets out principles which must be taken into account in relation to the administration, operation and enforcement of the bill, including that in the event of a dispute the wishes of the person who gave the advance care directive are of paramount importance and should, as reasonably practical, be given effect.

Those who choose to complete an advance care directive do so to make sure that their wishes and preferences about future decisions are known in advance and respected when the time comes. People often complete advance care directives to prevent Guardianship Board intervention into their private lives, which can often be a daunting and formal legal process. Currently a number of cases end up before the Guardianship Board because of aggrieved family members.

For example, mum may have appointed her eldest son, Johnny, as her enduring guardian for health care and personal decision-making because she always felt Johnny understood her best. However, the youngest daughter feels hurt by this and believes that she should have been appointed. At present, in these circumstances the board would usually appoint someone neutral to the role of guardian because it believes that due to family conflict Johnny would not be able to perform this role effectively for his mother. We do not want to see this current practice continue in relation to advance care directives and substitute decision-making appointments under the new advance care directives scheme.

It was always intended that the Guardianship Board would be a dispute resolution mechanism of last resort where mediation or advice by the Public Advocate did not resolve the issue or was not wanted. The amendments to this section make it clear that, when the Guardianship Board is considering a matter under an advance care directive, the person's wishes must be paramount, and the board must ensure that it limits its intervention to the minimum necessary in the circumstances of the case. Currently under the bill, the Guardianship Board can, on the application of an eligible person, revoke the appointment of a substitute decision-maker if the board considers it not appropriate for that person to be a substitute decision-maker.

To minimise vexatious applications to the Guardianship Board about inappropriate substitute decision-makers, it is intended that the Public Advocate be the gatekeeper for such applications to the board. This means that the applications can proceed to the Guardianship Board only if the Public Advocate believes, after investigation, that the substitute decision-maker is no longer appropriate to act in that role. It is anticipated that this amendment will provide another layer of protection for the person who gave the advance care directive by ensuring that only non-vexatious applications about substitute decision-makers can be put to the Guardianship Board for consideration.

In relation to other amendments, the government also intends to move a number of other amendments to the bill, largely of a clarifying nature, I am advised. These are a direct result of further consultation on the bill during the parliamentary process.

Referring to ambiguous provisions in an emergency (amendment to the consent act contained in schedule 1), section 13 of the Consent to Medical Treatment and Palliative Care Act 1995 (consent act) provides for the lawful administration of medical treatment in an emergency where consent cannot be obtained. Under this section, the medical practitioner must be of the opinion that there is an imminent risk to life or health, they are not aware that the patient had previously refused the particular treatment and there is no-one close to the patient to provide consent.

The Australian Medical Board Association (SA Branch) and the South Australian Salaried Medical Officers Association (known as SASMOA) believe that, as currently drafted, the emergency treatment provisions may be problematic for medical practitioners in cases where a refusal of health care in an advance care directive is ambiguous or uncertain. As an example, a difficult situation could arise if the refusal is ambiguous, there is no time to ascertain the condition of the patient or to determine whether the refusal was intended to apply to the current situation. To address this, the government has prepared an amendment to section 13 of the consent act.

The intent of the amendment is to enable medical practitioners acting in an emergency to lawfully provide treatment despite a refusal of particular medical treatment in the advance care directive. This amendment would not permit a medical practitioner to wilfully override or ignore a clear and relevant refusal but provides authorisation to treat in an emergency where there is ambiguity or uncertainty. The AMA has indicated its support for this amendment, and it believes that it will strengthen the bill and protect patients and medical practitioners in ambiguous or uncertain emergency situations.

In regard to implementation, the Advance Care Directives Bill is only the first part of the reform process. As was stated in the second reading explanation of the bill, the implementation of the new act will be critical to its effectiveness and application in practice. This bill adopts only the Advance Care Directives Review stage 1 report, 'Recommendations for changes to law and policy'. The stage 2 report makes 31 recommendations for implementation and communication strategies to support the implementation of the act. The act's implementation plan will be based on these recommendations.

The development of the new advance care directive form, in consultation with relevant parties, will ensure that it is easy to complete and apply. Guidelines with the form will ensure that all parties are aware of their rights and responsibilities. It will be important to raise community awareness about the new advance care directive. Professional education across the health, aged-care and legal sectors will be critical to ensure its effectiveness in practice and to reduce existing confusion. Policies and protocols in the public health system will also need to be developed to support the new act.

In conclusion, the bill adopts the majority of the Advance Care Directives Review stage 1 recommendations, aligns with the National Framework for Advance Care Directives and is consistent with common law. The bill was informed by extensive consultation, including with consumers, health practitioners, doctors, lawyers, ethicists, intensive care and emergency medicine specialists, as well as the aged, community and institutional care sector. I thank all those who provided constructive feedback on the bill.

I would like to reiterate that this bill is not a radical policy shift. This bill does not permit voluntary euthanasia or assisted suicide, a view which is strongly supported by the AMA (SA Branch) and many other people. The AMA, in its letter of support for the bill to all members in this place, makes its position in relation to the bill very clear. This bill is not just about medical treatment decisions at the end of a life but allows competent adults to write down their preferences, their directions, wishes and values for their future health care, residential accommodation and personal matters and/or appoint one or more trusted substitute decision-makers to make such decisions on their behalf.

The bill extends the same common law rights to competent adults to be able to direct what happens to them in the future or to have someone they choose and trust to stand in their shoes when they are unable to personally make their choices and decisions known. As is currently the case, any instructions or directions contained in an advance care directive must be relevant to the current circumstance or condition before they take effect.

The move away from the law requiring people to list specific treatments consented to or refused, often in advance of illness, has been welcomed by many, particularly those in the medical and nursing professions. This approach will also limit or reduce people writing medical instructions—for example, 'I do not want CPR'—in advance of knowing what the circumstances or condition may be that they are facing.

The new form will encourage people to specify their values, what is important to them in terms of functional ability and quality of life, and what is important to them when others are making decisions for them. The guidelines will point out the serious consequences of refusing specific medical treatments without specifying the circumstances under which they apply and will encourage people to seek medical or legal advice if they think the circumstances warrant it.

The government amendments strengthen the bill and also provide greater certainty for health practitioners who are acting in an emergency and who are presented with an ambiguous or uncertain provision in an advance care directive. This bill will enable competent adults to protect their own rights in advance of impaired decision-making capacity. It will enable those who choose to, to have some control and say over their future health care, residential accommodation and personal decisions when they cannot speak for themselves. I welcome honourable members' support for this very important bill.

Bill read a second time.

In committee.

Clause 1.

The Hon. S.G. WADE: I would like to make some comments on clause 1. Back in early February—and at that stage I was expressing concern that the government had engaged stakeholders extensively but had not brought the Legislative Council into its confidence in terms of

the form of those amendments—it was my view that, first of all, we were getting assurances from stakeholders that their concerns had been significantly addressed, and at that stage the bill was basically the Hill bill with some amendments being discussed with stakeholders.

It was my view that, even at that stage, the government had the numbers to get this bill through the house in spite of the fact that for our party it is a conscience vote and therefore the government could not presume on any vote of any Liberal member. Liberal whips often have the same fear, but in relation to this bill, I am just making the observation that, even at that point, I think the passage of the bill through this house was assured. In that context, the work that has been done by the incoming minister, minister Snelling, the Treasurer, and by the Hon. Dennis Hood, as the Hon. Robert Lucas has highlighted, is an example of the Legislative Council at its best.

This is such a highly contentious bill, a bill in relation to which I am sure honourable members have received numerous representations, and yet, when this council sits down to talk about it in chamber, if you like, there are no amendments to be put. I think that is a tribute to both minister Hill and the Treasurer and other honourable members in the chamber who have engaged constructively in the process.

I believe that the work that has been done since I made my second reading contribution is to be significantly valued. Of course, the government could have gone out with a bill that still left significant community concerns in place and implemented it. But I would hate to think that people would feel reticent about using advance care directives under this legislation because of some lingering concern that it was, for want of a better phrase, a Trojan Horse for euthanasia. So I commend the Hon. Dennis Hood and the Treasurer, in particular, for taking the opportunity to remove—

Members interjecting:

The Hon. S.G. WADE: —the former treasurer, thank you; the minister for health—whatever he is doing now.

Members interjecting:

The Hon. S.G. WADE: The problem with these part-time treasurers and various ministers is that, when you get to the C team, you have to keep shuffling. The Chair is asking me to come back to the bill and I will. I keep forgetting—we will call him minister Snelling. Let me stress that I think the prospects of the success of the initiative as a whole are enhanced by the amendments that will be put today, and I look forward to considering them.

The Hon. D.G.E. HOOD: I would like to make a few brief comments, if I may, about the bill before us. Members may be aware that, in my second reading speech, I was quite concerned about a number of aspects of this bill. I outlined them in some detail during my speech and I tabled fairly extensive amendments many weeks ago. During that time, we have had extensive consultation with the government, particularly minister Snelling and his staff, and the member for Taylor, Leesa Vlahos. I must say they really have been as good as you could have hoped. I think the Hon. Mr Wade said it well.

My calculations were that the government had the numbers for this bill to pass in its previous form in this chamber, regardless of Family First's position, and I think in my second reading speech I indicated that we would strongly oppose the bill as it was in its previous form. Despite that (and this is a credit to them), minister Snelling engaged in consultation with Family First and other members, as well—not just Family First, of course—and did so willingly and in a spirit of cooperation in order to reach a mutually agreeable position, and that is, in fact, what has happened. I would like to place on the record our thanks to the minister for his willing engagement and willingness to try to find middle ground. We are genuinely grateful and, indeed, impressed with that approach.

The Hon. R.P. Wortley: Have to remember that when we talk preferences.

The Hon. D.G.E. HOOD: I do not think there are any problems with us preferencing the minister; we have a strong record of that. I would also like to place on record the thanks of Family First and my personal thanks to the member for Taylor, Leesa Vlahos, who has been very decent and forthright throughout this whole process and willing to listen and listen and listen and engage in debate, which has been good.

An honourable member interjecting:

The Hon. D.G.E. HOOD: It will be your turn one day on the other side and we will thank you as well. I would also like to thank Annabel Digance for her very constructive role in this process. She has been as good as we could have hoped for and have really enjoyed our discussions.

The Hon. R.P. Wortley: She is a great adviser.

The Hon. D.G.E. HOOD: Indeed. Martyn Evans has played a great role in this whole process, and for several months we have been engaging with him. His passion for the topic is admirable and he is one that I have really enjoyed the debate with.

I would like to say that we have also had communication with Paul Russell—for those members who are familiar with him, and I am sure most people would be—the person who heads the HOPE organisation here in South Australia. He has also given his tick to the bill as it currently stands.

I just have a couple of final comments, if I may. I would like to thank Rick Schroeder in my office, who has been outstanding on this. If it were not for him, I do not think we would have got the result we have before us today. That leads me to my final comment: I will be withdrawing all my amendments on this bill. Family First are, as I said, pleased with the way the government will seek to amend the bill, as we will undertake in the committee stages in just a few moments. Again, I thank not only the government but, of course, other members who have played their role in this process. I think it has been an excellent example of really genuine consultation, and I do not think there is anyone upset with the way this has turned out.

Clause passed.

Clause 2 passed.

Clause 3.

The Hon. I.K. HUNTER: I move:

Page 6, lines 30 to 35 [clause 3(1), definition of *medical treatment*]—Delete the definition and substitute:

> *medical treatment* means the provision by a medical practitioner of physical, surgical or psychological therapy to a person (including the provision of such therapy for the purposes of preventing disease, restoring or replacing bodily function in the face of disease or injury or improving comfort and quality of life) and includes the prescription or supply of drugs;

The bill contains a definition of medical treatment which reflects contemporary practice. Schedule 1 of the bill inserts this new definition into the Consent to Medical Treatment and Palliative Care Act 1995 and the Guardianship and Administration Act 1993.

It is important that the definition of medical treatment is consistent across these three acts. This new definition recognises that medical treatment is more than treatment or procedures administered or carried out by medical practitioners in the course of medical or surgical practice but, rather, includes disease prevention, restoring or replacing bodily function and improving the comfort and quality of life. The definition retains the prescription or supply of drugs and also includes examination and assessment.

The South Australian Salaried Medical Officers Association (SASMOA) has since raised concerns with the inclusion of examination and assessment in the definition, as it believes it may have unintended consequences, as I mentioned in my speech. Not all forms of assessment or examination are invasive, of course, such as asking a person if they have pain or looking into their eyes to see if their pupils are dilated. If this was included in the definition of medical treatment, consent may be needed, as well as explaining the risks and benefits for simple non-invasive assessment examination.

This amendment simply removes examination and assessment from the definition of medical treatment in the bill. The removal of examination and assessment does not impact on the operation of the bill nor on the other two acts. To ensure its consistency across the three relevant acts, the amendment will be moved to remove examination and assessment from the definition of medical treatment proposed for the Consent to Medical Treatment and Palliative Care Act 1995 (amendment No. 16) and the Guardianship and Administration Act 1993 (amendment No. 18).

The Hon. S.G. WADE: The minister makes a point that not all examinations and assessments of patients are invasive, but many of them are. Will the consent of a person be required for invasive examination or assessment?

The Hon. I.K. HUNTER: My advice is that current practice will not be changing. Consent is currently required if you are about to touch someone's body, and often that consent is obtained when a medical practitioner asks a patient, 'Can I provide some service to you? Can I help you in any way?'

The Hon. S.G. WADE: Is that current practice a result of the legislative provisions which you are now proposing to remove?

The Hon. I.K. HUNTER: My advice is that the practice that currently exists is not going to be changed. Consent is required if you are going to undertake an invasive practice. If, for example, you ask someone, 'Can I give you an injection?' and they put their arm out, that can be taken as being implied consent.

Amendment carried; clause as amended passed.

Clause 4 passed.

Clause 5.

The Hon. I.K. HUNTER: I move:

Page 7, lines 22 to 27 [clause 5(2)]—Delete subclause (2)

I mentioned in my speech that this amendment deals with an iatrogenic event, which is an illness or condition associated with or stemming from the illness or condition or from the treatment for the illness or condition, such as nausea from chemotherapy, for example, or cardiac arrest during renal dialysis. Clause 5(2) in the bill automatically includes these events in the ambit of health care.

Feedback from the medical profession suggests that this may have potential unintended or unanticipated consequences for the person; for example, a person may die when they could have been treated and the complications reversed. If a person had refused all treatment related to their cancer in their advance care directive, for example, and if, as a result of their cancer, they were suffering nausea and had lost decision-making capacity, under this clause a medical practitioner would not be able to provide medical relief for the nausea and the patient may suffer unnecessarily.

This amendment removes clause 5(2) from the bill. If passed, this will mean that health practitioners will be able to treat iatrogenic complications or conditions unless the person has specified otherwise in their advance care directive. This is consistent, as I understand it, with common law.

Amendment carried; clause as amended passed.

Clauses 6 to 9 passed.

Clause 10.

The Hon. I.K. HUNTER: I move:

Page 9, line 36 [clause 10(e)]—Delete 'autonomy can be exercised' and substitute:

a person can exercise their autonomy

This amendment is, in an abundance of caution, seeking to clarify the intent of the current clause. During consultations it appeared that there may be some confusion as to whose autonomy principle 10(e) refers. By rephrasing principle 10(e) it makes it clear that it is the person who wrote the advance care directive who is exercising their autonomy. This amendment does not change the substance of the clause but rather removes any possible ambiguity.

Amendment carried; clause as amended passed.

Clause 11 passed.

Clause 12.

The Hon. I.K. HUNTER: I move:

Page 12, lines 7 to 9 [clause 12(2)]—Delete subclause (2)

As I understand it, this clause is identical to the amendment that the Hon. Mr Hood is no longer moving. Section 12 sets out what cannot be included in an advance care directive and that if such provisions are included in an advance care directive that particular provision is void and has no effect. Subclause (2) simply acts as a clarifying clause identifying that a provision in an advance care directive directing the withdrawal or withholding of health care is not a provision which would be captured by clause 12. I am advised it is not a substantive clause, and this amendment removes this subclause.

Currently, competent adults have a right to refuse health care, including in advance, even if it results in their death. Removing this clause does not mean that that person cannot include such a provision in an advance care directive as this is not illegal; however, as this clause does not add anything to this section, the government moves this amendment to avoid any confusion on this matter.

Amendment carried.

The Hon. S.G. WADE: In relation to subclause (5), it defines mandatory medical treatment in paragraph (b) as including 'any other medical treatment of a kind prescribed by regulations for the purposes of this definition'. The first element is medical treatment under the Mental Health Act and then there is this open-ended provision by way of regulation. Is the government contemplating any treatments under this subclause?

The Hon. I.K. HUNTER: My advice is there is nothing anticipated at the moment but it is there to take in case of any particular treatment that may be ordered by a court, for example, such as possibly medical castration.

Clause as amended passed.

Clauses 13 to 20 passed.

Clause 21.

The Hon. S.G. WADE: Clause 21 relates to the requirements in relation to the appointment of substitute decision-makers. If you like, the two tent poles of this bill are the advance care directives and the substitute decision-maker and the interaction between those two elements. In my view, the act in many ways is very flexible and I welcome that, but I believe in this particular aspect it is too narrow. The presumption of the government and the drafters has been that the people who are coming to advance care directives and substitute decision-making are involved in traditional and stable family and friendship patterns.

It is assumed that because of those established family and friendship patterns, the values and opinions of the person who has written the advance care directive and appointed the substitute decision-maker will be respected, but we all know that increasingly people will be approaching their end of life without close family and friends. People may have close friends and family but they may not have the confidence that those persons understand or would be effective in putting those values and opinions into effect in terms of substitute decisions.

In those circumstances they may want to appoint a person as their substitute decision-maker by reference to an office or position. Let me give you three examples where I anticipate that might happen. For example, I could be a devout follower of the Catholic teachings. I might have little confidence in my children's understanding of those values; they may not even be adherents of the same faith. I may want to nominate my local Catholic priest. If I am a parishioner of, say, the parish of St Dominic's, the person I most trust to make substitute decisions might be the priest of St Dominic's. The government and the drafters would say, 'Just name him.' The reality is, particularly as one ages and the priest might be advancing in years as well, you do not want to run the risk of losing the access of that input by using a specific name. You may actually want to identify the person by the position.

Alternatively, somebody might come to the appointment of the substitute decision-maker concerned about advocacy skills. Somebody might be very confident that they have put into their advance care directives all the relevant information that is required to discern the outcome in most circumstances, but they might be concerned about the advocacy skills of their loved ones. Let's say I am a recent arrival in Australia. English is my second language. I can use the support of my supporters to write a very good advance care directive which will be useful for medical personnel but I might have no confidence in my kids, for whom English is also their second language, in being able to advocate.

I may be a person with a disability and I might have a very well-established relationship with a specific person or a system-based advocacy network and it might be that I would like a person from that organisation. A lot of these organisations have their own culture, have their own values, and I might be very keen that a person with the values of that organisation is there ready when they are needed.

In terms of quality assurance, in terms of, if you like, the capacity to effectively understand and utilise advance care directives, it might be that a person wants to appoint a person from the Office of the Public Advocate, it may be that they want to say, 'My substitute decision-maker shall be the public advocate.' It is true that the current bill does provide some scope, if you like, for this third-party engagement. On one reading of clause 21(1) you could actually appoint a person by reference to an office or position. Let me read you that clause. Clause 21(1) provides:

> Subject to this Act, a person giving an advance care directive may appoint 1 or more adults to be substitute decision-makers in respect of the advance care directive.

On one reading, that does not preclude identifying that adult by reference to an office or position. It would be fair to say that it might be legally risky, on the one hand. The appointment needs to be of a specific person and it may be difficult in terms of the uncertainty of who might hold a particular appointment at any one time, whether they in fact qualify to be an SDM and whether they want to be one.

On the other hand, it is clearly the intention of the bill that these arrangements have as much flexibility as possible. If a person wants to accept the uncertainty of a position-based appointment then that may well be a risk that they are willing to take and should be accorded. Let us remember they can appoint one or more. They could appoint two or three by name, they could appoint others by reference to office or position. The point about clause 21(1) is that it is not clear how the courts would interpret it and I certainly would not want, as a person writing an advance care directive, to have to rely on the future judgements of the court.

There is also the capacity for the contents of the advance care directive to apply. In this respect, I am not going to ask a question, but let me put it this way: if I have misunderstood the bill, I would appreciate the government clarifying it because I certainly would not want to be progressing on a misapprehension. My understanding is that the contents of an advance care directive can include conditional instructions.

In other words, the advance care directive provides guidance to your substitute decision-maker, but it could actually say, as I understand it, to the SDM, 'When you approach decisions of a certain class you need to get advice from X moral source.' For example, I presume it is permissible, and as I said I would appreciate correction if that is needed, it might be that your advance care directive states that, 'In any situation involving a threat to life then I want you to consult, again, the priest at St Dominic's.'

As I understand it, that can happen now; that does not have to struggle with the uncertainties of section 21(1). Personally, that is probably the course I would take. If you like, it gives you that flexibility, the flexibility to allow for those who come and go from some of these key positions. I do not think we should be blind to both the flexibility of the private sector or the flexibility of faith communities in our state to respond to need. I would expect that there would be documents produced by faith communities, such as the Catholic community, that will, perhaps, find their way into schedules to the information kits that are going to be available to people writing advance care directives.

Also, there may well be demand for substitute decision-makers of a particular religious community. For example, the Catholic community might have people who are willing to take on that role, either on a named basis or, if it was through a reference in an ACD, it might be that a person is required to consult that person and, depending on how you read clause 21(1), perhaps even appoint them as a substitute decision-maker. I believe it is consistent with the overall philosophy of the act, but I believe that the bill would be enhanced by making it clear that a substitute decision-maker can be appointed by office or position.

I have tabled and distributed an amendment in my name, which I do not intend to move because I appreciate that it has not had the benefit of the wide consultation which the rest of the bill has received, but I have tabled it for the consideration of the committee, particularly moving forward. Very few bills do not get revisited more than once and this may well be something that we look at in the future. I believe that we need to make sure that our laws are flexible for people in very diverse circumstances, and I would commend the issue to those people who are implementing

these very important reforms. It may well be that the parliament has cause to consider them in the future.

The Hon. I.K. HUNTER: I thank the honourable member for his very considered comments. There are some concerns that may possibly arise from his suggestion. One is, of course, that if you elect to appoint a person from a certain class who might not be occupying the position right now the problem under the legislation is that that person still has to be competent to carry out the duties, they must also accept their role and they need not have a conflict of interest in the carrying out of their function. These are things that would be difficult to ascertain in the future if you do not know who is carrying out that role when you go to set up your advance care directive.

The honourable member is quite right: you can actually write some of that into your advance care directive; giving instructions to your substitute decision-maker is probably the way forward. There is also the additional paragraph 21(2)(d), which allows 'any other person of a class prescribed by regulations for the purposes of this section', and I thank the honourable member for bringing this up because it may well be something the government will give consideration to when it comes to construct regulations.

Clause passed.

Clause 22 passed.

Clause 23.

The Hon. I.K. HUNTER: I move:

Page 16, line 19 [clause 23(4)]—Delete 'Subject to an express direction to the contrary in the advance care directive' and substitute:

Despite any provision of an advance care directive to the contrary

Clause 23 sets out the powers of substitute decision-makers appointed under an advance care directive, including what types of decisions substitute decision-makers can and cannot make. Clause 23(4) provides that, unless a person specifies otherwise in their advance care directive, a substitute decision-maker cannot refuse the administration of drugs to relieve pain or distress or the natural provision of food and liquids by mouth.

The amendment being proposed by the government will effectively mean that, despite a provision refusing the person's advance care directive, a substitute decision-maker is not authorised to refuse either on the person's behalf. The administration of drugs to relieve pain or distress—that is, palliative care at the end of life—does not represent an effort to cure or even modify a disease or a condition. It is directed at the fundamental humanitarian purpose of relieving pain or distress during the dying process. Such a purpose is a fundamental right, not only of the patient but also of those around them, be they health practitioners, family friends or fellow patients.

Other medical situations in which treatment can be refused impose a burden only on the patient, although others may empathise with that patient. However, a situation which cannot be ignored is the case of a person in serious pain which, if untreated, may cause them to writhe and scream in agony, for example. It is unlikely that many of us can predict in advance or imagine the extent or level of pain or suffering which may be experienced in many terminal conditions. The actual impact of the pain at the time may not have been anticipated.

These are matters which must be assessed at the time by reference to the external condition of the patient and their response to pain medication. It would not be a humane response to leave the patient writhing and screaming out in serious pain or distress on the basis of a decision they made at some previous time. If a person specifically requested in their advance care directive that pain medication be limited to maximise their lucidity, but provided sufficient pain relief, then that would be an appropriate course and could be honoured.

A provision in an advance care directive refusing food and liquids by mouth is not considered a binding provision of the bill, as I mentioned earlier, as the natural consumption of food and liquids is not health care; it is simply eating and drinking, for example, lunch, dinner or afternoon tea. Therefore, if a person expressed a wish to eat and drink, it would be unacceptable and inhumane not to offer them food and liquids by mouth (that is, something to eat and drink), despite a refusal in an advance care directive. An appointed substitute decision-maker should not be able to refuse the natural provision of food and liquids on another person's behalf.

Amendment carried; clause as amended passed.

Clauses 24 to 35 passed.

Clause 36.

The Hon. I.K. HUNTER: I will not be moving Amendment No. 6 [SusEnvCons-1]; instead, I move amendment No. 1 [SusEnvCons-2]:

Page 21, after line 28—Insert:

(1a) Despite subsection (1), a health practitioner may refuse to comply with a provision of an advance care directive if the health practitioner believes on reasonable grounds that—

(a) the person who gave the advance care directive did not intend the provision to apply in the particular circumstances; or

(b) the provision does not reflect the current wishes of the person who gave the advance care directive.

Note—

This subsection does not, however, authorise a health practitioner to provide health care. If health care is to be provided, consent must be given in accordance with the *Consent to Medical Treatment and Palliative Care Act 1995*—see, for example, Part 2A of that Act.

The Advance Care Directives Bill is based on substitute decision-making, as outlined in the principles of the bill. The provisions in clause 35 relating to substitute decision-makers allow for some flexibility to enable them to make a decision on behalf of the person in light of current circumstances. This may be the case if a person's advance care directive has not been updated for quite some time and their substitute decision-maker knows the person had changed their mind but did not update their advance care directive.

Cases may arise when there is no substitute decision-maker but there is a refusal of health care in non-emergency situations which may no longer reflect that person's wishes. For example, 20 years ago, a person may have refused all blood interventions in their advance care directive because of their religious beliefs. The person subsequently may have changed their religion but did not update their advance care directive and now has impaired decision-making capacity.

Under clause 36(1), a health practitioner must comply with a binding provision; that is, they must not provide the relevant health care if the person had refused it in their advance care directive. This amendment provides that a health practitioner may refuse to comply with a refusal of health care if they believe, on reasonable grounds, that (1) the person did not intend the refusal to apply in relation to the particular circumstances, or that (2) the provision does not reflect the current wishes of the person who gave the advance care directive and there is no appointed substitute decision-maker.

The intent of this amendment is not to permit the wilful override or the ignoring of a person's instruction in their advance care directive but to provide for some flexibility in the rare event that there is some evidence that the person's specific refusal no longer applies to the current circumstance or particular health care. This is consistent with the bill's objects and principles and contemporaneous substitute decision-making.

In practice, a health practitioner would need some evidence that this was the case to fulfil the requirement on reasonable grounds. It would not be enough to override a refusal just because they or family members did not agree with the provision. This amendment would permit a health practitioner not to comply with a refusal in very specific circumstances and therefore relieve them of being in breach of the law.

However, consent for the proposed treatment must still be sought from the person responsible, in accordance with the consent act. The person responsible must make a decision they believe the person would have made in the current circumstances. If there was a dispute about the provision, an eligible person can apply to the Public Advocate for advice and to have the matter mediated. The Guardianship Board, upon application, can also determine the matter. This approach is still consistent and respectful of the person's autonomy and will ensure that, as far as is practicable, health care is delivered in accordance with the person's wishes.

The Hon. S.G. WADE: Just to clarify, presumably it would also apply the other way. If somebody was making nonreligious directions which related to refusal of treatment and then they developed religious inclinations—say they became a Jehovah's Witness in the meantime—it would also have the same effect; it would update their directions. Is that the case?

The Hon. I.K. HUNTER: It makes it pretty plain, I think, that if a person has not updated their advance care directive for some time, their life circumstances have changed in some way (religion being one of them, one way or the other), then a substitute decision-maker who has reasonable grounds or a medical practitioner who has reasonable grounds to believe that that change in their circumstances has happened that would impact on their earlier decision then, yes, that would be the case.

Amendment carried; clause as amended passed.

Clause 37.

The Hon. I.K. HUNTER: I move:

Page 22, lines 6 to 18—Delete clause 37 and substitute:

37—Conscientious objection

Despite any other provision of this Act, a health practitioner may refuse to comply with a provision of an advance care directive on conscientious grounds.

This goes to the issue of conscientious objection which I outlined in my second reading contribution. After the amendment, section 37—Conscientious objection would read:

Despite any other provision of this Act, a health practitioner may refuse to comply with a provision of an advance care directive on conscientious grounds.

Currently, under clause 37(1), a health practitioner may refuse to comply with an advance care directive on conscientious grounds. The second part of this clause provides that the health practitioner must take reasonable steps to provide the person or their substitute decision-maker with the name and contact details of another health practitioner they believe will not refuse to comply with the advance care directive.

Feedback from the medical profession suggests that this legal requirement to refer on is considered too prescriptive. This amendment removes the legal requirement for a health practitioner to refer a person to another health practitioner willing to comply with the advance care directive. The government believes that conscientious objection is adequately addressed by the professional codes and standards which govern the practice of registered health practitioners.

It should be made clear that the conscientious objection to complying with a binding refusal of health care does not mean that the health practitioner can provide the health care because they disagree with the refusal. Providing treatment without consent in most cases would be considered assault and battery under common law. It does mean, however, that a health practitioner can object to being the treating health practitioner. In this circumstance, and in accordance with their own professional standards or codes, they should refer the person on or hand over their care to another health practitioner. This is particularly important for people who have lost decision-making capacity and, therefore, would not be able to find another health practitioner themselves.

The Hon. S.G. WADE: Could I clarify whether it is the government's belief that what is being removed under clause 37(2) is already within the professional obligations of a health practitioner in any event and all we are doing is removing a prescriptive restatement of those obligations?

The Hon. I.K. HUNTER: My advice is that, yes, that is the case.

Amendment carried; clause as amended passed.

Clauses 38 to 40 passed.

Clause 41.

The Hon. I.K. HUNTER: I move:

Page 23, line 10 [clause 41(1)]—After 'in accordance with' insert:

, or purportedly in accordance with,

It has been brought to light through consultation with the AMA (SA Branch), the South Australian Salaried Medical Officers Association and the Law Society that this clause may not cover situations where a health practitioner, substitute decision-maker or another person, such as an aged-care worker, believes that they are acting in accordance with an advance care directive but may have misinterpreted a provision.

For example, they may believe that they are providing care in accordance with the advance care directive, but it may come to light after speaking with those close to the person that person did not intend the provision to apply to that particular situation. As a result, the government is amending this section to protect health practitioners and substitute decision-makers and others, such as aged-care workers, who believe in good faith and without negligence that they are acting in accordance with the advance care directive.

Amendment carried; clause as amended passed.

Clauses 42 to 46 passed.

New clause 46A.

The Hon. I.K. HUNTER: I move:

Page 25, after line 33—Insert:

46A–Guardianship Board to give priority to wishes of person who gave advance care directive

Without limiting Part 2, the Guardianship Board must, in performing a function or exercising a power under this Division—

(a) seek, as far as is reasonably practicable, to give full effect to the wishes of the person who gave the relevant advance care directive; and

(b) without limiting paragraph (a), to limit the intervention of the Guardianship Board as far as is reasonably practicable in the circumstances.

Clause 10 of this bill sets out principles which must be taken into account in relation to the administration, operation and enforcement of the bill, including dispute resolution. Principle (h) states that in the event of a dispute:

the wishes...of the person who gave the advance care directive are of paramount importance and should, insofar as is reasonably practicable, be given effect;

Those who complete advance care directives will do so to make sure that their wishes and preferences about future decisions are known in advance and respected when the time comes. People often complete advance care directives to prevent Guardianship Board intervention into their private lives, which can often be a daunting, emotional and a formal legal process.

Currently, a number of cases end up before the Guardianship Board because of aggrieved family members, and I gave an example earlier in my speech and I will not repeat it now. So we are keen to ensure this current practice does not continue in relation to advance care directives and subsequent decision-making appointments under this new scheme. It was always intended that the Guardianship Board would be a dispute resolution mechanism of last resort where a mediation or advice by the Public Advocate did not resolve the issue or was not wanted.

New clause inserted.

Clauses 47 to 49 passed.

Clause 50.

The Hon. I.K. HUNTER: I move:

Page 27, line 21 to page 28, line 3 [clause 50(1)]—Delete subclause (1) and substitute:

(1) If, on the application of an eligible person in respect of an advance care directive, the Guardianship Board is satisfied that a person appointed as a substitute decision-maker under the advance care directive—

(a) is a person who cannot be a substitute decision-maker pursuant to section 21(2); or

(b) is no longer willing to act as a substitute decision-maker under the advance care directive; or

(c) has been negligent in the exercise of his or her powers under the advance care directive; or

the Guardianship Board may—

(d) revoke the appointment of the substitute decision-maker; or

(e) if the person who gave the advance care directive is competent—with the consent of the person, make any variation to the advance care directive the

Guardianship Board thinks appropriate (including by appointing another substitute decision-maker); or

(f) if the person who gave the advance care directive is not competent, and if no other substitute decision-maker was appointed under the advance care directive—revoke the advance care directive.

(1a) If, on the application of the Public Advocate, the Guardianship Board is satisfied that, because of a change in the personal circumstances of—

(a) the person who gave the advance care directive; or

(b) a substitute decision-maker under the advance care directive,

it is no longer appropriate that a particular person be a substitute decision-maker under the advance care directive, the Guardianship Board may make any of the orders contemplated by subsection (1)(d), (e) or (f).

Currently under the bill, the Guardianship Board can, on the application of an eligible person, revoke the appointment of a substitute decision-maker if the Guardianship Board considers it is not appropriate for that person to be the substitute decision-maker. For example, if the substitute decision-maker no longer has a relationship with the person, such as a former partner, this may happen if the person has not updated their advance care directive and is no longer competent to complete a new one.

Some matters end up before the Guardianship Board because of family disputes about who was appointed as substitute decision-makers, and currently in such cases the board generally appoints a neutral person as guardian to prevent continued family dispute. However, this neglects the person's original wishes about who they trusted to make decisions for them when they could not. This bill places the wishes of the person as paramount.

To minimise vexatious applications to the Guardianship Board about inappropriate substitute decision-makers, it is intended that the Public Advocate be a gatekeeper for such applications. This means that applications can only proceed to the Guardianship Board if the Public Advocate believes, after investigation, that there is a case to be heard. It is intended that this amendment will provide another layer of protection for the person who gave the advance care directive by ensuring that only non-vexatious applications about substitute decision-makers can be put to the Guardianship Board for consideration. Amendments Nos 11 and 12 are consequential to this amendment, I am advised.

The CHAIR: Therefore you will be moving 11 and 12. So we will be dealing with amendment No. 10, and amendments Nos 11 and 12.

The Hon. I.K. HUNTER: Accordingly, I move:

Page 28—

Line 14—Delete 'subsection (1)(e)' and substitute 'this section'

Line 21—Delete 'subsection (1)(e)' and substitute 'subsection (1)(f)'

The Hon. S.G. WADE: I would like to put on the record that I welcome amendment 10 and the related amendments. It is a concern that I expressed to the government in earlier discussions and I think it does reinforce the point I was making earlier in relation to clause 21. We need to make sure that people do have advance care directives and appointments of substitute decision-makers that are respected by the authorities. I think that this set of amendments reminds the Guardianship Board of the respect that should be accorded to those decisions, and I welcome the amendment.

Amendments carried; clause as amended passed.

Clauses 51 to 54 passed.

Clause 55.

The Hon. I.K. HUNTER: I move:

Page 30—

Lines 8 to 10 [clause 55(3)]—Delete subclause (3)

Line 17 [clause 55(4)(c)]—Delete paragraph (c)

Lines 18 and 19 [clause 55(4)(d)]—Delete 'in relation to the advance care directive'

For the offence of fraud or undue influence under clause 55(3) of the bill, there is currently an automatic penalty of forfeiting an interest in the person's estate. The government has received feedback suggesting that this penalty may be excessive. This amendment removes clause 55(3) from the bill, which will remove the automatic penalty from the bill.

Amendment No. 14 is consequential to this amendment and removes subclause (4)(c). The courts could use their discretion extended by amendment No. 15 to apply such a penalty if it thought fit, on a case-by-case basis, under subclause (4)(d). I commend the amendments.

Amendments carried; clause as amended passed.

Clauses 56 to 62 passed.

Schedule 1.

The Hon. I.K. HUNTER: I move:

Page 34, lines 10 to 19 [Schedule 1 clause 3(6), inserted definition of *medical treatment*]—Delete the definition and substitute:

> *medical treatment* means the provision by a medical practitioner of physical, surgical or psychological therapy to a person (including the provision of such therapy for the purposes of preventing disease, restoring or replacing bodily function in the face of disease or injury or improving comfort and quality of life) and includes the prescription or supply of drugs
>
> Note—
>
> See also section 14, which extends this definition for the purposes of Part 2A to include other forms of health care.

This amendment seeks to extend the definition of medical treatment in the bill to the Consent to Medical Treatment and Palliative Care Act 1995 at clause 4. I do not think I need to belabour the point. I made it well in my second reading speech, I am sure.

The Hon. S.G. Wade: If you do say so yourself.

The Hon. I.K. HUNTER: Yes, and it will save time.

Amendment carried.

The Hon. I.K. HUNTER: I move:

Page 37, after line 33—Insert:

(3a) Section 13—after subsection (1) insert:

(1a) Subject to this section, a medical practitioner may lawfully administer medical treatment to a person (the *patient*) despite a provision of an advance care directive given by the patient comprising a refusal of medical treatment if—

(a) the patient is incapable of consenting (whether or not the patient has impaired decision-making capacity in respect of a particular decision); and

(b) the medical practitioner who administers the treatment is of the opinion that the treatment is necessary to meet an imminent risk to life or health and that opinion is supported by the written opinion of another medical practitioner who has personally examined the patient; and

(c) the medical practitioner who administers the treatment reasonably believes that the provision of the advance care directive is not intended to apply—

(i) to treatment of the kind proposed; or

(ii) in the circumstances in which the proposed medical treatment is to be administered; and

(d) it is not reasonably practicable in the circumstances of the case to have the matter dealt with under Part 7 of the *Advance Care Directives Act 2012*.

(3b) Section 13(2)—delete 'subsection (1)' and substitute:

subsection (1)(b) or (1a)(b)

This refers to the lawful administration of medical treatment. Section 13 of the consent act sets out provisions for the lawful administration of medical treatment in an emergency when there is

imminent risk to life or health and a patient is unable to consent and the medical practitioner is not aware of a prior refusal of treatment.

Whilst the bill amends terminology in section 13, the substance of the section remains the same. If time permits, consent for the medical treatment should be sought from a substitute decision-maker or person responsible under the new arrangements proposed for the consent act in schedule 1.

Medical practitioners have raised some concerns about this section and believe the emergency provisions may not protect them in situations of emergency where there is an advance care directive in place refusing medical treatments but where the circumstances of refusal of medical treatment are ambiguous, or where there is no time to ascertain the condition of the patient to determine whether the refusal applies to the current situation and there is no-one close to the patient to seek consent from or with whom to clarify the advance care directive.

The intent of this amendment is to enable medical practitioners to lawfully provide treatment in an emergency, despite a refusal of the particular medical treatment in the advance care directive, only if the medical practitioner is of the opinion that the refusal was not intended by the person to apply to the current condition or circumstance. This may be the case if the refusal is ambiguous and there is no time to clarify the advance care directive provisions or the patient's condition.

This amendment does not permit a medical practitioner to wilfully override or ignore a clear, relevant refusal but provides authorisation to treat, unless there is a clear refusal of consent for the treatment in the prevailing circumstances. I understand this amendment is supported by the Australian Medical Association and the South Australian Salaried Medical Officers Association.

Amendment carried.

The Hon. I.K. HUNTER: I move:

Page 47, lines 28 to 34 [Schedule 1 clause 16(7), inserted definition of *medical treatment*]—Delete the definition and substitute:

> *medical treatment* means the provision by a medical practitioner of physical, surgical or psychological therapy to a person (including the provision of such therapy for the purposes of preventing disease, restoring or replacing bodily function in the face of disease or injury or improving comfort and quality of life) and includes the prescription or supply of drugs;

Similar to my earlier amendment, this amendment takes the definition of medical treatment in the Guardianship and Administration Act 1993, section 4, to be congruent with the existing definition in this bill. I do not believe I need to speak to it any further.

Amendment carried; schedule as amended passed.

Title passed.

Bill reported with amendment.

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (17:21): I move:

That this bill be now read a third time.

Very briefly, I have been advised that I need to clarify something I said in relation to the Hon. Mr Wade's amendment to clause 21, which he did not move. I spoke about a paragraph under clause 21(2)(d), talking about a class of prescribed person. I just want to make it clear that I was not speaking about that clause when I was talking about making regulations: when I was talking about making regulations, I was referring to the suggestions made by the Hon. Mr Wade.

Bill read a third time and passed.

SECOND-HAND GOODS BILL

Adjourned debate on second reading.

(Continued from 5 March 2013.)

The Hon. T.A. FRANKS (17:23): I rise to speak on behalf of the Greens in regard to the Second-hand Goods Bill 2012 and indicate from the outset that, while we are generally supportive of the bill and will certainly support it into the second reading stage, we do have questions, which I

will put on notice for the government to bring back a response at this stage of the second reading debate. We will be most interested in following a robust committee system on this bill.

The bill is intended to regulate second-hand dealers and pawnbrokers and will repeal and replace the Second-hand Dealers and Pawnbrokers Act 1996. The bill would see licensing of all pawnbrokers and second-hand dealers who deal in goods deemed class 1. This would include goods considered commonly stolen such as jewellery, electronic goods, tool sets, CDs and DVDs. Other goods regularly stolen but not in as great a number or that are deemed to be not as portable are motor vehicles and components, bicycles, caravans, trailers and watercrafts and, most of note in relevance to my questions later on in this second reading speech, musical instruments, will be deemed to be class 2.

Dealers in class 2 goods will require registration as under the existing act and will have similar obligations as currently exist in terms of regarding recording details of sellers or pawnbrokers, recording an accurate description of all the goods, retaining the goods for a prescribed period—and I note that there is a rise of four days in that prescribed period from 10 days to 14 days—labelling the goods with a unique code and notifying the police if they suspect the goods are stolen. Additionally there will be a minimum age limit of 16 years imposed for sellers, and dealers will be prohibited from dealing with an intoxicated person.

Other safeguards include 100 points of ID to be required for sellers, noting that those are not as stringent as those used by the banking system but they are certainly something that I think most citizens would welcome, including details of the items, and sellers being forwarded to SAPOL through an electronic transaction management system (TMS).

Importantly, this bill will not regulate online sites such as eBay or Gumtree nor is it intended to cover garage sales, school fetes, charity shops or situations where trade-ins are offered. I know that there has been some extensive background to this bill and it is not the first time this bill has attempted to be passed into law in this state, that there have been several rounds of consultation to it and that modifications on two previous incarnations of the bill have been made. On that, I thank Chief Superintendent Michael Cornish, Acting Senior Sergeant Jeff Hack, Acting Sergeant Rob Malone, Mr Graham Close (senior project officer, Consumer and Business Services), Mr Kaes Cillessen (ministerial liaison officer, office of minister O'Brien), and minister O'Brien for ensuring that our office has been briefed on this bill, although I know that is only a recent occurrence. I also thank the minister's office for ensuring that we received a copy of the SAPOL consultation report which detailed the consultation processes around this particular incarnation of the bill.

That consultation report details that a public consultation notice was published in *The Advertiser* on Saturday 30 April 2011. It advertised the proposed bill and invited submissions. I also note that consultation process report document indicated that letters were sent out to 1,572 affected companies and businesses which were registered with SAPOL under the existing Second-hand Dealers and Pawnbrokers Act. I note that 281 of those letters were returned to the project team and, to quote the report, were most commonly marked 'unknown' or 'not at this address'. Now, 281 out of 1,572 is more than one in six; that raises some alarm bells with me because not all of those letters that may not have reached their rightful recipient may have been returned through the postal system. For one in six to be returned most commonly marked 'unknown' or 'not at this address' when these are the constituencies that are registered with SAPOL under the existing act raises some concerns.

The same letter was also sent to industry peak bodies, stakeholders and interested parties including the Law Society of South Australia, Motor Trade Association, Recyclers Association of South Australia, offices of fair trading in New South Wales and Queensland, as well as Western Australia, New South Wales and the Queensland police services. Other invitations to provide submissions and feedback were also placed online via the SAPOL and OCBA websites.

Formal meetings were held with industry stakeholders and peak bodies such as the South Australian Metal Recyclers Association, Motor Trade Association, Insurance Council of Australia, Law Society of South Australia, Pawnbrokers Guild of South Australia, Society of Auctioneers and Appraisers (SA) Incorporated, Jewellers Association of Australia, Caravan and Camping Association of SA, as well as EB Games Australia and Cash Converters (SA) Head Office.

I am informed that while there were 17 submissions received in total, along with another 80 contacts by email or phone, no responses were received from any specialist music stores, industry bodies or stakeholders with regard to representing the views of South Australian musicians or music retailers in response to these legislative proposals. In fact, there is no indication that the

consultation specifically looked to actively contact a specific group of stakeholders, and certainly the Australian Music Association would have been an appropriate body given that it represents music retailers and can easily be contacted.

In recent days, I have made contact with both the Musicians Union and Music SA about this issue. Certainly, the knowledge does not seem to have been out there about the impact and the decisions made about class 1 and class 2 goods under this bill and why musical instruments are considered a class 2 good, but CDs, DVDs, amps and effects are a class 1 good. The instrument, which is in fact many more times valuable and, indeed, likely to be stolen, I would contend, is not treated with the same seriousness as CDs, DVDs, amps and effects.

I have spoken previously in this place about the value and benefit of the live music scene in South Australia and the contribution it makes to the state in terms of not only the social fabric and culture, but of course its economic importance. I note and commend to the government that there has been a recent audit of the Victorian live music scene and that has proven to bring significant benefits to the city of Melbourne.

Unfortunately, as anyone who is familiar with the live music industry would be aware, the theft of musical instruments is an all too frequent and disturbing downside to the cultural vitality that the live music scene provides. In recent days, the conversations I have had with organisations, individuals and industry bodies around this issue who are involved in the live music scene, or indeed music instrumental retailing, is that they were not aware of this legislation. In fact, while they support the overall intention of the bill to reduce property crime, they remain concerned that as it stands they are, apparently, not being afforded the highest level of protection for their members and stakeholders.

The Greens are supportive of the general intent of the bill. We believe it is worthwhile to consider, before we move further, how the various goods that are proposed to be classified under the regulations are being assessed. In a nutshell, the Greens believe that opportunities for property thieves to be able to convert their ill-gotten gains into cash should be reduced, and this bill will certainly go a long way to ensuring that, but we are unconvinced that the current proposal to classify musical instruments as class 2 goods is the appropriate classification. Indeed, we would consider that they should be a class 1 category under the regulations rather than class 2, as is currently proposed.

I note that, in consultation with the minister's office, we have also raised concerns about why CDs are considered a class 1 good when in fact literally they are a dime a dozen these days. Certainly, the indication we have had in informal discussions has been an acknowledgement that it is probably not reflective of the current contemporary nature of that particular item and they possibly should be moved into class 2.

The current rationale for categorising a class 2 good is that they are regularly stolen but not at high volume or portability compared to class 1 goods. Guitars, anecdotally, are understood to be the most commonly stolen instrument in terms of musical instruments and are extremely portable, often coming with their own carry case, and may (commonly) be worth up to $5,000, or even more. There are countless stories, as I am sure the President is well aware, of bands losing entire van loads of all of their instruments. Certainly, there is—

The PRESIDENT: They forgot where they parked the truck. Order—I am calling order on myself!

The Hon. T.A. FRANKS: I do believe that the President truly does understand how common it is for musicians, particularly those engaged in the live music scene, to have their equipment and instruments stolen. Indeed, it is not just the rock music industry, for want of a better genre specification; of course, concert violins can be worth $20,000 or more, and they are certainly very portable, transportable, and the trade in stealing them would bring a lot more than a CD or a DVD collection.

Including musical instruments as class 1 goods would ensure that a higher level of scrutiny applied to transactions involving these items, as transactions would indeed have to be conducted or supervised by a fully licensed and/or approved person who has to comply with the rigorous licensing regime the act will provide if passed, and this includes a fit and proper person test administered by Consumer and Business Services. As it currently stands, operators conducting only class 2 transactions do not require this.

We believe that including musical instruments as class 1 goods in the regulations would provide a stronger disincentive to would-be thieves, meaning that anyone who stole a musical instrument would find it harder to easily dispose of it or convert it into cash through these outlets. As it currently stands, the anomaly exists around musical instruments, where amplifiers for an electric guitar, or an effects pedal for an electric guitar, would currently be considered a class 1 good and, as such, would require the licensed and/or approved person to conduct or supervise any transaction involving those particular items, but somebody wanting to sell the guitar would not have to comply with that.

If somebody wanted to go and sell a guitar and an amplifier, they could only do so together if, in fact, they went through a pawnbroker or a second-hand dealer who was licensed to handle the class 1 prescribed goods anyway. One would imagine that those who are selling such items for legitimate purposes would indeed usually be looking to sell the lot and so would use retailers who are able to handle the class 1 goods anyway.

Anecdotal evidence suggests there is not a large number of music stores that deal with second-hand instruments in the first instance, but any store taking instruments as part of a trade-in or other instruments would of course be exempted from this legislation. Information we have gathered from other states indicates that South Australia is currently unique in its two-tier classification proposal, falling somewhere in the middle of other jurisdictions, such as WA, which has quite stringent reporting requirements, and/or indeed New Zealand, across the ditch, where all second-hand dealers are captured by the relevant legislation there. I understand that it is contended that Victoria is not nearly as rigorous as South Australia proposes to be.

Whilst the use of regulations to determine where various goods sit does allow flexibility if required as fashions change or technological advances reduce the attractiveness or resale value of a previously sought-after or profitable item—one only has to remember the video recorder and, as we have now switched to digital from analog, the analog TV, which has a far lesser value than it had only a decade ago—it is likely that musical instruments, however, will continue to be valuable and highly sought after well into the future and, sadly, they are frequently stolen.

Any move to reduce the opportunity for thieves to convert their ill-gotten gains into a profit is welcomed, and I believe that, with a little more discussion with musical retailers and musicians, what the Greens are proposing in terms of musical instruments being in the class 1 category will indeed be supported. My questions to the government before the Greens are willing to proceed further with this bill are: why were stakeholders representing the South Australian live music industry, such as Music SA, the Musicians Union and the Australian Music Association (the industry body for the music product sector representing wholesalers, manufacturers, retailers and associated services for musical instruments) not consulted directly around this bill in the way that other stakeholders were by being invited to meetings etc.? Was there due diligence to try to get across the diversity of opinion from all the second-hand dealers captured by this proposed bill?

How many specialist musical instrument stores did SAPOL contact as part of its process, and how many of those stores deal in second-hand instruments? What feedback, if any, was sought or received from any of the specialist instrument stores that are in South Australia, and how was that feedback collated and fed into the final drafting of the bill? On what basis was the decision made to include items such as guitar amplifiers and effects pedals as class 1 items, whilst leaving the musical instruments and the guitars themselves as class 2 items? What is the rationale for including compact discs as class 1 goods, given the minimal and declining value that this media format currently has? What number of musical instruments have been reported stolen in the last reporting period, and what have been the most commonly stolen instruments?

I note that we had sought some of that information from SAPOL prior to the debate now before the council, but at this stage we have not received that information. I commend the second reading of the bill to the council, and I look forward to the committee stage of the debate.

Debate adjourned on motion of Hon. G.A. Kandelaars.

STATUTES AMENDMENT (REAL ESTATE REFORM REVIEW AND OTHER MATTERS) BILL

Adjourned debate on second reading.

(Continued from 7 March 2013.)

The Hon. T.J. STEPHENS (17:42): I rise to speak on behalf of the Liberal Party with regard to this bill. I acknowledge the member for Goyder in another place for his assistance and ongoing work on this bill; he really has been tireless in his efforts. It has been difficult to make sure

that we have been quite steady in our resolve to support the industry with this bill, given that at different times there have been conflicting opinions.

Can I say from the outset, so that I am not accused of any conflict, that I have a son who has a real estate salesman's licence, recently obtained. I can indicate that I took no advice from him with regard to this bill. I would like that on the record so that I am not accused of not declaring that.

We on this side wish to make the real estate market as fair as possible for all parties, namely, the vendor, the purchaser and the agent acting on behalf of the vendor. The member for Goyder outlined the Liberal Party's position in regard to this bill in the other place. We have several concerns about the implications of the government's bill. Fundamentally, the Liberal Party wants less regulation and red tape where possible and necessary. In this case, some of the provisions in the government's bill would burden agents unnecessarily when, in practice, the provisions would do nothing for consumer protection which, according to the minister, is the raison d'être for this bill.

I flag that I will be moving amendments during the committee stage of this debate on behalf of the opposition, and they include removing the provisions covering the proposed nexus between the selling price and the reserve. These provisions imply that there is a collusion between vendor and agent to deliberately dupe an unsuspecting buyer. This is a rare occurrence at best and, when it does occur, it is bad practice and should be prosecuted under current provisions, but the opposition does not believe that the entire industry should be forced into a narrow 10 per cent range when pricing. As pointed out by the member for Goyder, the worth of the property to the vendor may be higher than the price range recommended by the agent. After auction, it is up to the vendor whether they wish to sell a property at a price lower than the reserve.

I would like to read into *Hansard* a very good letter I have received (and I think a number of members have received) from Steve von der Borch, who is a principal at Harcourts Aqua. I think that he describes very well what I think is very much a consistent opinion from the real estate industry. It states:

> How Auction pricing legislation will affect you.
>
> In November 2012 legislation passed the South Australian State Parliament with the effect of limiting reserve prices for properties to be sold at auction. The legislators have had concerns about 'bait pricing' but how will the legislation impact the various parties. What price is to be paid for 'transparency'?

It seems a very high one. It continues:

> The essence of the legislation involves the vendor committing to a maximum reserve price at the point the property is listed. The reserve on the day of Auction will now be limited to an amount of 110% of the price quoted by the agent as a single figure and as authorised by the vendor.
>
> Previously the vendor was required to declare an amount that was acceptable to them but with no obligation to accept any price whatsoever. This system worked well insofar as to a large degree it encouraged the vendor to authorise an advertised price but often they did so because they had no commitment to it. Occasionally, as their motivation and perspective on value changed, so did the vendors reserve price. Sometimes it changed to a degree that the reserve bore no relation to the price quoted.
>
> At the point of listing the property for sale most vendors are not certain of what they will eventually require. We all would love to achieve a great price and most will eventually agree to meet the market. The problem more often than not is that we just don't know how much that amount of money is because we have no market feedback and the day is so far away. Now the legislation requires otherwise.
>
> What we need to arrive at a final decision about what a property is worth is market feedback and all the facts that will impact value. This legislation presumes that before assessing the response of the market, before receiving the searches, before understanding the full impact of engineering aspects, pending approvals etc. the agent and the vendor will know the maximum amount of the reserve.
>
> As an example: A vendor urgently needs to sell land with clear capacity within planning guidelines to accommodate two homes. An application for planning approval of three properties has been lodged by the vendor but there is no approval as yet and they can't wait for it.
>
> The agent and the vendor forge ahead with the auction sale on the basis of what they know is possible and the prices are set accordingly. A week after commencing the marketing, to their surprise the vendor receives an approval for three homes. The property is now worth significantly more.
>
> In this scenario the vendor and agent must wait until the agency expires (up to 90 days) before the reserve of a new auction campaign can be commenced. Alternatively the agent (who did not wrong) and the vendor can agree to part company by cancelling the agency and a new agent can be appointed to sell the property with a new reserve price.

2nd Example: An agent (A trusted friend of the family), in the course of appraising a property outside of their normal area, makes an error when arriving at his/her recommendations about the worth of the property to be auctioned by assessing the value significantly lower than the real market worth. The vendor, trusting the agent's advice records their acceptable price accordingly. Shortly after, as the official searches arrive the agent discovers the error and reassesses the property to be worth significantly more than the original opinion as recorded on the agency.

In this scenario the still trusted family friend who is their agent and the vendor must wait up to 90 days so that the price can be recorded correctly in a new agency and the auction conducted in circumstances fair to the vendor. Alternately the agent can agree to release the vendor and a new agent appointed without the existing restriction on the reserve price.

The agent is punished for being honest and the vendor loses time or a trusted advisor.

An agent could be encouraged by the legislation in such circumstances to withhold their best advice.

3rd Example: It is the day before the auction of a property where the vendor has authorised a price of $500,000 with every intention of setting a reserve within 110% of that. That morning the rear neighbour knocks on the owners door and makes a conditional offer of $585,000 subject only to finance. The vendor prefers a definite sale but the neighbour has made an impressive offer that has changed the vendor's perspective on the acceptable price at auction that may or may not match the pre-auction offer with bidding.

If the vendor could have had their way they would obviously now have set the reserve higher on the day and perhaps sell at a little lesser amount at auction to achieve the better conditions or if the bidding falls well short, take the conditional offer at far superior money.

However the new legislation won't allow that to occur. In this scenario there are a number of alternative courses of action open to the vendor.

The first is to cancel the auction and commence negotiations with all parties.

Secondly; the agent could run the auction with the auction reserve price at the legislated limit and then instruct the auctioneer to refuse bidding at or above the reserve price (which is a right of the vendor) causing the property to be passed in. Subsequently the agent would speak to the bidders and interested parties. Explain how the legislation doesn't aid in this situation and encourage all to submit offer.

Thirdly; the vendor could wait until the expiration of the existing agency or cancel the existing agency appoint another agent and auction the property with a new price statement.

4th Example: Imagine for a moment we are in the early phases of a boom market. The agent can only look backwards at the market evidence, which suggests a market worth for the...property of $500,000. History tells us that in Adelaide in boom conditions we can experience a rise in prices of 25 per cent in as little as four or five months.

As the subject property is listed all the comparable sales support the agents estimation and the vendors requirements and the agency is formed accordingly. For a month after the formation of the agency the property is being prepared for sale. All the time market evidence is immerging casting doubt on the original estimation and vendors requirements as being far too conservative.

As the property commences its marketing campaign two properties with exactly the same essential elements are about to be auctioned. Both achieve prices that prove the value of the subject property to now be in the low to mid $600,000s.

As in all the previous examples, the vendor is stuck with the advice and the anchor of the price they declared on the agency at the time of listing. Either they part way with the agent who did no wrong and be able to quote a new price or they risk the auction with the reserve price legislated to be $50,000 below the current proven worth of the property.

In summary: This legislation has admirable aims but is obviously seriously deficient in addressing the consumer rights of the vendor while disproportionally boosting that of the buyer.

The driving concern of legislators has been to address the perception of deliberate bait advertising that occurs from time to time and the consequential disappointment of buyers who have possibly waisted time and money preparing for an auction. However, so often, what appears to be deliberate deception is simply the normal cycle of events that effect value of property, the agent's advice and the vendor's position on price as circumstances dictate.

This legislation has the potential to cause the agent to withhold valuable advice from the vendor because the legislation could put in jeopardy their agency for being honest.

A simple solution:

It seems to the writer that there is a much simpler solution that is fair but not without risk. It is one that involves preserving the logical rights the seller must have to determine without restraint at any time what price they will sell at and in what circumstances.

At the same time it is essential that any potential buyer is fully aware of the vendors rights and understands that there is a risk in participation in an auction process.

When the price statement is issued at the point of inspection the potential purchaser should be issued with written advice that would include statements to the following effects:

- The buyer should seek independent advice about the estimated worth of the property and not rely upon any representation by the agent or auctioneer.
- The Vendor has the right to sell or not sell at any price and is not bound by the price statement to set their reserve price at any level.

Fair warning of the circumstances surrounding price is appropriate as it encourages the purchaser to make an informed decision on their participation in any auction or auctions in general. If a buyer objects to auction because they perceive the risk to be too high then they need not feel compelled to participate. That is there right. It seems inequitable that because the buyer has not taken the opportunity to obtain independent advice on the worth of a property that the vendors rights be curtailed to the point of possible severe financial impact.

There it ends. Can I say that that letter is quite reflective of a number of concerns that individual agents have contacted me with and I think their concerns are well placed.

The Minister for Business Services and Consumers, during his diatribe in the other place, carried on about how this protects consumers, i.e. buyers, against the unscrupulous activities of agents and vendors but the reality is that in all business transactions, the monetary sum exchanged must be agreeable to all parties. The purchaser must be willing to pay and the vendor must be willing to accept—this is basic.

It seems the government has been carried away with its interpretation of consumer protection and forgotten that we operate within a free market system. While the consumer should have access to all the information, the consumer must also remain vigilant; hence the old adage 'buyer beware'. This does not mean, however, that any illegal behaviour on behalf of vendors or agents should not be prosecuted to the full extent of the law.

The point is that the opposition believes amendment of the current provisions is unnecessary; however, I understand that the industry is indifferent to the new wording. It occurs to us that the government's major incentive here is to score political points by feigning support for the consumer. However, there are three parties in most real estate transactions and all should be protected and dealt with fairly by the law. These provisions do not significantly increase protection for the purchaser while inhibiting the agents and vendors. It needs to be understood that buying and selling a property are not the same as buying a fridge, despite the misguided thoughts of the Attorney-General.

Moving to other provisions covered by this bill, the opposition supports the amended definition of small business, that is, those businesses worth $300,000, excluding GST. It strikes me as somewhat bizarre that the government seems confident enough to define small business in this situation but not in the case of the Small Business Commissioner Act. It obviously suits their interests to do so here.

This bill addresses sales agreement extensions which I will seek to amend should this bill reach the committee stage. The bill allows for extensions but requires both the vendor and agent to sign an extension, and the agreement may not be extended more than once. Why is this the case? If a property is not selling in a depressed or slow market, yet the sales agreement is still amenable to both parties, why should it not be able to be extended in perpetuity on the same provisions as before? We think it should, and I will seek to clarify the opposition's position on this during the committee stage.

The signing of agreement after agreement can become burdensome, not to mention tedious, if a vendor lives in a regional or remote area. The requirement to drive a few hours to sign exactly the same document over and over again is ridiculous and inflexible. The opposition will also seek to remove this red tape.

Finally, I wish to note the opposition's concern with single-price quoting and strict advertised price ranges. It is the government's intention to protect consumers, i.e. purchasers, from the big bad agent, yet in doing so it overburdens the vendor. I use 'big bad' facetiously here, as it is abundantly clear that the government is unnecessarily demonising the real estate agents of this state due to the unsavoury actions of a select few. This is not a smart way to legislate.

The bill states that an agent must give a genuine estimate of the selling price, which then forms the basis of the prescribed minimum advertised price. For a start, if this figure is an opinion, there should be room for error, which the existing legislation allows in the form of a range. This bill allows only for a single price. Secondly, if this flawed opinion is then used as the basis for an advertised price range, surely this price range will be flawed also.

It is my understanding that, although agents have knowledge of the real estate market, they are not experts in valuation. The bill allows a maximum penalty for a breach of the section just referred to of $20,000 or one year's imprisonment. This is pretty serious, considering the section is flimsy at best. I also question how effective enforcement will be, given that the existing legislation has provision for prosecution of unscrupulous conduct of agents and yet the number of prosecutions remains negligible. I will ask the minister in her summing up to tell us exactly how many agents have been prosecuted over the last few years, or how many agents they have even attempted to prosecute.

While there are merits to parts of this bill, much of it is typical of this government—all hat and no cattle—and therefore we look forward to the committee stage of this debate, when I will outline the opposition's preferred provision. With this in mind, we urge support of the second reading.

The Hon. R.P. WORTLEY (17:57): I rise for a few moments to endorse the remarks of my colleagues, particularly those of the Hon. Gail Gago, who introduced the bill to this chamber. The government has always supported the 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. It is essential that the government gets this balance right.

The government has identified continuing concerns about the practices of bait advertising and underquoting, and it is these concerns that underpin the bill we have before us today. In essence, the bill proposes to augment and strengthen consumer rights, foster more transparency in property transactions—especially auctions—and reduce administrative encumbrances on agents and auctioneers.

Buying a dwelling for ourselves and for our families is not only a significant financial decision but it is also an emotional one that takes into account deep needs to shelter and nurture our loved ones in a secure, happy and comfortable environment. Our homes are expressions of our lifestyles, our values and our aspirations. They are our stake in the future.

So, it is regrettable that bait advertising and underquoting are techniques we have become all too familiar with, if not by virtue of direct experience then through the accounts of our family, friends and constituents or in the media. As an example, if the price of a property is deliberately underquoted, prospective purchasers can be placed in a position where they secure finance to a particular amount, spend money in good faith on building inspections, pest inspections and the like, and still find on auction day that they have nowhere near the sufficient funds to secure the property. At the same time, the majority of ethical agents are being tarred with the brush of suspicion due to the actions of an unscrupulous few.

This bill aims to alleviate these problems by introducing a number of important measures that have been arrived at through extensive consultation and the preparation of a review report. In summary, these are as follows:

- the sales agency agreement will provide details of comparable sales on which agents rely in arriving at a price estimate;
- the sales agency agreement will be extendable for a single further period of 90 days if certain conditions are satisfied;
- more flexible time limits will apply to the provision of a copy of the verification of the vendor's statement certificate and the sales agency agreement to the vendor;
- auctioneers will no longer be obliged to announce each auction condition prior to the commencing of bidding;
- the bidder identifier modes will be expanded to include letters, colours and other such features as well as numbers; and
- the definition of what is a representation of the likely selling price for residential land will become more stringent.

In addition:

- the definition of small business will be expanded;
- the delivery of a cooling-off notice by email will be allowed, as long as the vendor agrees;

- when buying residential land, body corporates will be able to avail themselves of the cooling-off period;
- agents and auctioneers will be obliged to take all reasonable steps to advise potential purchasers of opportunities to inspect the vendor's statement; and
- the display of the prescribed notice for collection at the open inspection of a dwelling, rather than its distribution to each individual potential purchaser, will be allowed.

Other applicable amendments relating to the quantum of the reserve price and to the disclosure by an agent to a potential purchaser of offers made by other potential purchasers have also been incorporated in the bill, as have certain sanctions for compliance failure.

In concluding these brief remarks, I note that Adelaidenow reported on 1 February this year that house values across the capital cities increased by an average of 1.2 per cent over January. This recovery trend is, of course, welcome, but it is an environment in which these necessary reforms—reforms that will enhance transparency and increase confidence for all parties to a real estate transaction—are even more crucial. I commend the bill.

Debate adjourned on motion of Hon. K.J. Maher.

RESIDENTIAL TENANCIES (MISCELLANEOUS) AMENDMENT BILL

The House of Assembly agreed to amendments Nos 1 and 3 to 16 made by the Legislative Council without any amendment and disagreed to amendment No. 2.

MOTOR VEHICLE ACCIDENTS (LIFETIME SUPPORT SCHEME) 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) (18:04): I move:

That this bill be now read a second time.

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

Leave granted.

This Bill represents an historic package of reforms which are designed to deliver a better system for people who suffer injuries in motor vehicle accidents and the motoring public of South Australia.

The Bills introduces reforms to improve the affordability of the South Australian Compulsory Third Party (CTP) insurance scheme while at the same time providing better care and support for those who suffer serious injuries in vehicle accidents and as a result require lifetime treatment, care and support.

It is an important piece of social policy reform.

It is an important piece of economic policy reform.

It will deliver a fairer scheme for injured motorists.

It will deliver a more efficient way of supporting those with serious injuries.

And it will deliver a more cost effective and affordable arrangement for all South Australian motorists.

Every year, approximately 1.3 million CTP insurance policies are taken out by South Australians when they register their vehicles. These policies are required by Part 4 of the *Motor Vehicles Act 1959*. The insurer under our CTP insurance scheme is the Motor Accident Commission, a State Government instrumentality established by the *Motor Accident Commission Act 1992*. The Commission has outsourced its claims management functions to Allianz Australia Limited and currently claims are directed through Allianz.

The CTP insurance scheme is fully funded by premiums paid by motor vehicle owners and income on the investment of those premiums. The Government must balance how much vehicle owners can afford to pay and the flow on effects to the cost of goods and services against the amount of compensation payable to people who are injured in motor vehicle accidents.

A CTP insurance policy insures the owner of a registered motor vehicle and any person who drives it, or is a passenger in or on it, against their liability to pay compensation (damages) in respect of the death or bodily injury of any person caused by or arising out of the use of the vehicle. Such liability arises under the common law of torts when the death or injury is caused by the negligence of another person.

All Australian States and Territories have some special rules for motor vehicle insurance and accidents. All have Compulsory Third Party personal injury insurance schemes (CTP schemes). However these schemes vary considerably.

South Australia's fault based scheme, is most similar to the schemes that operate in Queensland, Western Australia and the ACT. Victoria and Tasmania on the other hand have no-fault schemes, while NSW has a no fault care and support scheme for those who suffer catastrophic injuries, with compensation otherwise remaining fault based. The New South Wales Government has recently announced a proposal to extend its no-fault scheme beyond those who are catastrophically injured.

The payment of compensation under our Scheme is out of step with other schemes and our premiums are unacceptably high compared with other States. Since 2000, South Australia's premiums have grown at a rate of over 5 per cent per annum, more than anywhere else. Without action, they will continue to rise significantly.

South Australia has more than double the rate of claims per vehicle as Queensland and Western Australia and our scheme pays significantly more for both economic and non-economic loss.

Last year, minor injuries accounted for around 90 per cent of claims. Statistics published in the Government's CTP Green Paper indicate that around a third of compensation payments each year (in excess of $100 million a year) goes to claimants who have had little or no time off work.

Another drain on the CTP Fund is legal costs which have risen about 50 per cent since 2005.

At the same time, the proportion of payments that are paid directly for the benefit of accident victims or their dependants has been declining—from 85 per cent in 2006-07 to below 80 per cent recently.

Our CTP insurance scheme is becoming unaffordable.

At the same time there are people who suffer terrible injuries in vehicle accidents who receive no benefit from the scheme. That is because the accident was entirely the injured person's own fault or because no one was at fault. Examples of people who would have no entitlement to compensation are a driver who swerves to avoid an animal and collides with a tree or rolls, a person whose vehicle is hit by another vehicle the driver of which had an unexpected heart attack, and a rider whose motorbike slipped on a wet road.

The mother of one accident victim is now vice-chairperson of the Brain Injury Network of South Australia which is an advocacy organisation for people with acquired brain injuries. She believes that most South Australians don't understand that they are uninsured in these circumstances and that this reform is badly needed. When her daughter was injured the physiotherapist said that she would have had this cover if her accident had happened in the right State.

She was a 25 year old woman who was travelling on a country dirt road. It is thought that dust created from a passing car contributed to her inability to negotiate a corner properly. She veered onto the other side of the road and was struck by a car coming in the other direction. She suffered catastrophic permanent brain injury and is unable to walk and talk, has little upper limb mobility, and suffers severe eating and swallowing issues. Her promising career as a teacher of Japanese in a private girls' school was cut short that day. 10 years after her accident she also developed severe epilepsy as a result of the brain injury.

She requires 24 hours care in all activities of daily living, but was not entitled to CTP compensation as the accident was deemed entirely her fault. Her family has had to build specialised living spaces and modify their home, including purchasing a spa, and her mother has given up working so that she is able to help care for her.

A young girl on P plates driving in the Riverland was startled when a bird swooped in front of her car. She over-corrected and her car flipped. On her nineteenth birthday she was brought out of an induced coma to be told she was a quadriplegic. No other vehicle was involved so there was no one for her to sue. 'It came as a huge shock to discover the insurance you pay for with car registration does not cover you in a case like this,' her mother said. 'I doubt virtually anyone who has not been involved in an accident like this would be aware they are not insured if no one else is at fault.'

Her mother has sold her home and cleaning business to become her daughter's full-time carer. They have moved to Adelaide to be closer to rehabilitation services. Her mother says people do not believe them when they explain what has happened to their lives.

It is estimated that in South Australia about 40 per cent of catastrophically injured accident victims are left without compensation from the CTP scheme each year. Some of these injuries are caused by people doing foolish things—like a young person speeding on a country road to get home late at night. Speeding is against the law, however, when that act causes an accident which leads to a serious brain injury that young person and their family are affected for the rest of their lives.

Currently, for those cases where someone is catastrophically injured and another driver is found to be wholly or partly at fault, the compensation from CTP insurance is paid to the injured person as a one-off lump sum, which is intended to cover all future needs. The compensation might not be enough to fund a lifetime of care. There are several reasons for this including that it is impossible to predict accurately a person's future needs, large sums might be mishandled or mismanaged, economic conditions affecting investment of the money might change. The amount awarded might be reduced by legal, medico-legal and other costs of litigation that are not covered by the award of party-party costs, or the amount may be reduced because of the person's contributory negligence. On the other hand, because of the difficulty of predicting the future, the amount might be too much.

The Productivity Commission has concluded that no fault schemes are superior to fault-based schemes for dealing with the care and support of those who suffer catastrophic injuries. They concluded that:

- existing fault-based insurance arrangements for catastrophic injury do not meet people's care costs efficiently—court outcomes are uncertain, people's future needs are unpredictable and poorly captured by a once-and for-all lump sum, compensation is often delayed, and there is a risk that lump sums are mismanaged;
- adversarial processes and delay may hamper effective recovery and health outcomes;
- no-fault arrangements on the other hand provide consistent coverage across injured parties according to injury related needs and provide much more predictable and coordinated care and support over a person's lifetime.

The Commission's report into Disability Care and Support was the catalyst for the National Disability Insurance Scheme (NDIS) and the National Injury Insurance Scheme (NIIS) proposals. Last December the Council of Australian Governments signed an Intergovernmental Agreement for the first stage of the NDIS which involves launch sites in some States (including South Australia). Under this Intergovernmental Agreement all States will endeavour to agree minimum benchmarks for a scheme for no-fault lifetime care and support for people who are catastrophically injured in motor vehicle accidents. This Bill is consistent with that commitment.

The Lifetime Support Scheme

The Bill would establish a Lifetime Support Scheme that would benefit people who are catastrophically injured in motor vehicle accidents occurring in South Australia, irrespective of who was at fault. It is proposed that the Scheme will commence on 1 July 2014.

The Bill would establish a Lifetimes Support Authority to administer the Scheme. The Authority would be a government instrumentality. Its role would be to ensure that the injured people who participate in the Scheme receive the treatment, care and support they need. The Authority, or people or organisations it engages, would develop long term relationships with participants. The approach will be different from that of an insurer, whose primary business involves declining, settling or litigating claims and paying the agreed or awarded amount in a lump sum.

A person would be eligible to participate in the scheme if they suffer a bodily injury in a motor vehicle accident, the scope of which is set out in the Bill, and the injury satisfies criteria set out in the Bill and Lifetime Support Scheme Rules. These Rules will be based on the Rules for the New South Wales Lifetime Care and Support Scheme and the criteria contained in the minimum benchmarks being agreed through COAG. People who will be eligible will include those who have suffered serious spinal or brain injury, multiple amputations, severe burns or blindness. The Rules will be made by the Governor on the recommendation of the Lifetime Support Authority. They will be laid before both Houses of Parliament and be disallowable.

There will be two categories of participants in the Lifetime Support Scheme—interim and permanent. This will allow for people to receive treatment, care and support before it is known whether they will need it for life and be eligible to participate in the scheme for life.

People who have been injured catastrophically in motor vehicle accidents before the commencement of the Scheme will be able to apply to participate in the Scheme on payment of a contribution determined by the Authority.

The Authority will provide necessary and reasonable treatment, care and support of the following types: medical treatment, pharmaceuticals, dental treatment, rehabilitation, ambulance transportation, respite care, attendant care and support services, aids and appliances, prostheses, educational and vocational training, home and transport modifications, workplace modifications and such other kinds of treatment, care, support or services as are determined by the Authority either generally or for a class of people or for a particular person.

Besides eligibility criteria, the LSS Rules will provide criteria for assessing the necessary and reasonable treatment, care and support needs of the individual participant. The Government will consult with local medical and disability experts in preparing the Rules. It is intended that the scheme operate in a manner that puts the participant, so far as is possible, in the centre of the decision making process as to the support they need, and the way in which it is delivered so that their independence and dignity is maximised. The Bill makes provision for agreed self-managed budgets where appropriate.

The Bill also contains dispute resolution mechanisms for participants and potential participants regarding eligibility and assessments of treatment, care and support needs. These are set out in Part 5 of the Bill.

The new scheme will not provide financial support to participants. It would not prevent a participant from making a common law claim for damages such as non-economic loss and economic loss or for damages other than losses associated with their care, treatment and support.

The Scheme will be funded by a new levy paid on registration of a motor vehicle. The amount for a Class 1 vehicle is currently estimated to be $105 before inflation, commencing in 2014. The levy will be set to ensure that the Scheme is fully funded.

At the same time the premium payable to the CTP scheme will fall. While this is partly the result of the shift of some existing CTP Scheme liabilities to the Lifetime Support Scheme, it is also the result of the remaining provisions in this Bill which put in place tighter restrictions and thresholds to address the escalating financial pressure on the system from the impact of compensation for minor injury claims.

Compulsory Third Party Insurance Scheme

Claims for compensation under the CTP insurance scheme are fault based common law claims as modified by statute law. A person is entitled to damages (financial compensation) only if he or she can prove on the balance of probabilities that his or her injury was caused by the fault of some other person. Common law rules are used to

determine whether a loss suffered is compensable. Then the amount of damages is determined according to common law principles as modified by statute.

The amount of damages is determined on the basis that the person at fault should be required to put the injured person or dependants of a person who dies in the same position, so far as is possible, as they would have been in but for the injury or death. Because this became unaffordable, some legislative modifications have been made to common law rights both in this State and in other Australian States and Territories: in South Australia by the *Civil Liability Act 1936*. This Bill would make some further changes for cases in which the death or injury is caused by a motor vehicle accident.

Currently the threshold for payment of damages for non-economic loss, that is, pain and suffering, loss of enjoyment of life, loss of expectation of life and disfigurement, is very low. If the person establishes that their ability to lead a normal life was significantly impaired for 7 days or medical expenses of at least the prescribed minimum are reasonably incurred they are entitled to damages for non-economic loss (assuming liability has been established) and the court is required to assign a number on a scale of 0 to 60 and calculate an amount according to an indexed scale set out in the Act. However, the Act provides little guidance about how to fix a number on the scale other than to require proportionality between the injury sustained and an injury of the gravest conceivable kind—i.e. 60 on the scale.

The amendments to be made by this Bill to the Civil Liability Act would introduce a 100 point scale for motor vehicle accident claims only. The scale is known as the Injury Scale Values (ISV) and it will align injuries within a point range of severity. Objective medical evidence will be used to place the injury within a severity point range while consideration of the differing impact of an injury on the particular individual will determine the final ISV within the range. The ISV table provides a mechanism for the court (or the respective parties pre-court) to determine the impact of an injury on an individual following a medical impairment assessment by an accredited medical expert. The ISV table uses a 100 point scale to classify injury severity. Damages for non-economic loss will be available when an injury exceeds 10 on the ISV. The amount to be awarded will be determined by a scale set out in the Bill.

The scale would be indexed according to CPI.

There will be changes also to compensation for past and future economic loss.

A person will not have to meet an injury severity point score threshold for past economic loss, but will be entitled to damages for loss or impairment of future earning capacity only if their injuries are assessed at more than 7 points on the ISV scale. It is expected that this will save a substantial amount that is currently paid out to people who have suffered minor injuries without much evidence of impairment of future earning capacity.

Assessing damages for loss or impairment of future earning capacity is notoriously difficult because it is not possible to predict what a person's future would have been if they were not injured and what it will be now that they have been injured. It is particularly difficult when the injured person is young and the predictions must be made for a very long period, and additionally difficult if the person is too young to have set a course in life.

The method of approaching this problem is basically that the court must first decide whether it has been proved on the balance of probabilities that the person's future earning capacity has been lost or impaired. If there is a residual earning capacity, the court must assess the extent of the impairment. Then an assessment must be made of what that means in terms of loss of future income. Sometimes there is evidence of possibilities or probabilities that would have either increased or decreased the persons' future earning capacity. These are also to be taken in to account in reaching a final figure, which might turn out to be too much or too little.

Assessments of damages may take into account chances that have only a remote chance of occurring, for example, something that has a 1 or 2 per cent probability of occurring. This has resulted in damages being awarded in some cases even though, at the time of assessment of damages, the person has not lost any time from work and might not lose any time in the future.

The Bill would make some changes to the way in which the quantum of these damages is assessed. The Bill is also intended to encourage a more methodical approach and greater rigour in assessing these damages.

The courts would take in to account the usual discount for vicissitudes of life, but would be required to not take in to account anything that has less than a 20 per cent chance of occurring and anything for which the court cannot evaluate the chance of it occurring. When the court has reached a figure, it will apply a discount rate that is currently 5 per cent, as is currently required, (because the injured person will be receiving these damages now in a lump sum instead of over coming years) and make any other deductions required by the Act or common law, for example for contributory negligence, and then discount the result by 20 per cent. These changes will ease the financial burden on the system while still ensuring people receive reasonable compensation for losses. The Bill also contains provisions which will encourage the courts to set out in detail how the amount for this component of an award of damages has been arrived at.

The policy intent is to ensure that awards or settlements for loss or impairment of future earning capacity must be linked to a specific rationale. It is anticipated that this will lead to some litigation once this policy is applied to offers of settlement from the insurer. The Government will carefully monitor the case law associated with these changes and if the interpretation applied does not reflect the Government's intention further amendment may be necessary.

The effect of loss or impairment of earning capacity on superannuation would be capped by limiting the amount that may be awarded to the contributions an employer would have been required to pay (currently 9 per cent), as is the case in NSW, Queensland and Tasmania.

The same approach for the assessment of pecuniary loss will be required in claims by dependants of people who die as a result of a motor vehicle accident.

There will be a change to damages for gratuitous services; that is damages for services provided on a voluntary basis by family members for which the injured person would otherwise have to pay. An injury severity score threshold of greater than 10 points will apply and these damages will be awarded only if the injured person requires the services for six or more hours a week for at least six consecutive months. There will also be limitations in relation to participants in the Lifetime Support Scheme.

Damages for loss or impairment of consortium will also be subject to a 10 point threshold.

The Bill would introduce no fault compensation for medical and ongoing care costs for children who were under the age of 16 years at the time of the accident. The RAA raised this proposal in response to the Green Paper and the Government is pleased to support it. This provision will ensure that children receive immediate support for their medical and care needs following a vehicle accident without having to determine fault or contributory negligence. This will lead to better recovery and health outcomes.

The Bill also contains provisions for a new medical assessment and accreditation process for CTP insurance claims. These are intended to reduce bias, avoid excessive numbers of costly reports, and increase quality and objectivity of reports. Regulations will be made to supplement this part of the Act which will include limiting the number of medical assessments to establish the quantum of a claim. A suitable body would be appointed by the Minister to administer a register of experts and be responsible for the training and accreditation of experts. Requests for medical reports would be randomly allocated to the next appropriately qualified and available expert on the register. Guidelines would be issued to assist experts to produce useful reports and the quality of reports would be monitored for compliance with the guidelines. If there is disagreement about any aspect of a medical assessment, either party may request a maximum of 1 further assessment by a specialist of the same discipline, each.

Motor Vehicles Act 1959

Legal fees are a significant part of Compulsory Third Party costs.

The Bill provides that no costs will be awarded if the amount of damages awarded is $25,000 or less and will be capped at the Magistrates Court scale if the award is between $25,000 and $100,000 regardless of the court in which the proceedings are issued. These limitations on costs awards will apply to both the claimant and the insurer. It is also the Government's expectation that the Motor Accident Commission should act as a model litigant in defending claims. The court will retain a discretion as to costs in exceptional circumstances and there is an exception for costs directly related to seeking the approval of the court of a settlement of the claim of a child or person under legal disability for an amount of $25,000 or less.

There will be some procedural changes in relation to making a claim. A claimant must provide details of the claim, a certificate or opinion of a medical practitioner as to the nature and probable cause of the death or injury, any police report number, any prescribed information and an authority to obtain access to information relevant to the claim. The Bill requires the insurer to establish practices and procedures designed to assist claimants to comply with these requirements.

The *Motor Accident Commission Act 1992* would be amended to include among its objects encouraging early and appropriate treatment and rehabilitation of people in respect of whose injuries the Commission bears financial responsibility.

The results of the reforms will be monitored. If CTP insurance premiums exceed a prescribed percentage of State Average Weekly Earnings then the Minister would be required by the Bill to have Part 4 of the Motor Vehicles Act reviewed and the report laid before both Houses of Parliament.

The first stage of reforms will take effect from 1 July 2013 so that the reduction in CTP premiums can flow through to motorists as soon as possible. The reforms will not apply retrospectively.

It is estimated that the typical passenger vehicle (Class 1) CTP premium will fall by more than $100 in 2013-14. When the new Lifetime Support Scheme is introduced in 2014-15 it is estimated that motorists will still benefit from a net saving of over $40 before inflation.

The changes represent a major overhaul of Compulsory Third Party insurance in South Australia and a beneficial cultural change will be integral to their success.

The Government has engaged in an open consultation process regarding these reforms. In March, 2012, a Green Paper invited public debate about possible changes. More than 100 responses were received and considered. In November 2012 the Government announced its proposed reforms and released a booklet explaining them along with consultation drafts of what was then three Bills. Since that time further consultations have occurred, particularly with the legal profession who have held some reservations regarding the proposals.

As a consequence of those consultations a number of changes have been made to the proposals and these are now incorporated in this one consolidated Bill. The main changes that have been incorporated are:

- the threshold for claiming damages has been changed from above 15 points on the Injury Scale Value (ISV) to above 10 points for non-economic loss, voluntary services and loss of consortium; and to above 7 points for loss or impairment of future earning capacity;
- the limits on party-party costs awards have been varied;

- a right for an injured person to appeal to the District Court from a decision of an expert review panel that they are ineligible to participate in the scheme has been added.

In developing these reforms, the Government has consulted widely and listened. These reforms now incorporate proposals from many groups including health practitioners, disability experts, the RAA and the Law Society, Bar Association and Australian Lawyers Alliance.

The system will be fairer and more broad-based, more affordable for motorists and financially sustainable.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

The measure will be brought into operation by proclamation.

3—Interpretation

This clause provides definitions of words and terms for the purposes of this measure.

4—Treatment, care and support needs

This clause requires the Authority to pay the reasonable expenses incurred by or on behalf of a participant in the Scheme in providing for the treatment, care and support needs of the participant as are necessary and reasonable in the circumstances. The clause lists the treatment, care and support needs covered by this obligation.

5—Application of Act

This clause provides for the application of the measure and, in particular, limits its application to motor vehicle accidents occurring in the State on or after the measure comes into operation, and in limited circumstances, to motor vehicle accidents occurring before the commencement of this clause where the person who suffered the injury is accepted into the Scheme. Subclause (3) limits the application of the measure to a participant's injuries arising wholly or predominantly related to the motor vehicle injury or other injuries covered under the LSS Rules.

6—Persons injured before commencement of Scheme can 'buy in'

This clause makes provision for a person who has suffered an injury prior to the commencement of the measure, to apply to the Authority for acceptance into the Scheme. Applicants accepted into the scheme under this clause will be required to pay a contribution, determined by the Authority after applying any principle or criteria specified in the LSS Rules, to fund the treatment, care and support needs of the person as a lifetime participant. The clause prohibits approved insurers from making applications for entry to the scheme in respect of persons with pre-commencement injuries.

Part 2—Lifetime Support Authority of South Australia

Division 1—Establishment of Authority

7—Establishment of Authority

This clause provides for the establishment of the *Lifetime Support Authority of South Australia*, the body that will administer the Scheme.

8—Ministerial control

This clause provides that the Authority is subject to the general control and direction of the Minister.

Division 2—Board of directors

9—Board of directors

This clause establishes a board of directors to be the governing body of the Authority.

10—Composition of board

The board is to consist of at least 3 but not more than 10 persons with such qualifications and experience as are necessary to enable the board to carry out its functions effectively, appointed by the Governor on the recommendation of the Minister.

11—Conditions of membership

12—Allowances and expenses

13—Validity of acts

14—Proceedings

Clauses 11 to 14 are standard provisions in respect of boards and their membership.

15—Delegation

This clause provides for the delegation of the board's functions.

Division 3—Functions and powers

16—Functions

This clause provides for the functions of the authority which are:

- to monitor the operation of the Scheme;
- to provide advice to the Minister about the administration, efficiency and effectiveness of the Scheme;
- to provide support and funding for research, education and programs related to services provided to participants in the Scheme;
- to disseminate information about the Scheme;
- to keep the LSS Rules under review;
- to be responsible for the Fund;
- any other functions conferred on the Authority by or under this measure or an Act.

17—Powers

This clause provides that the Authority has all the powers of an individual to do anything necessary or convenient to be done in the exercise of its functions.

Division 4—Other matters

18—Staff and facilities

This clause makes provision for the Authority to engage staff, and to use the services, facilities or staff of a government department, agency or instrumentality.

19—Advances by Treasurer

This clause allows the Treasurer to advance money to the Authority (by way of grant or loan) from the Consolidated Account on conditions and terms determined by the Treasurer in consultation with the board.

20—Borrowing and security for loans

The Authority may not borrow money or give security for the repayment of a loan except as approved by the Treasurer.

21—Accounts and audit

The Authority must keep proper accounts of its financial affairs and its accounts and financial statements will be audited by the Auditor-General.

22—Annual report

This clause makes provision for the annual report of the Authority which must be tabled in the Parliament by the Minister.

23—Code of conduct

This clause provides that the Authority must develop and maintain a code of conduct, which is to be published in the Gazette and laid before both Houses of Parliament. The code of conduct must include—

- the procedures that will be adopted by the Authority to assist people to assess whether they are eligible to be participants in the Scheme; and
- the procedures that will be adopted by the Authority to assess the needs of participants in the Scheme and to ensure that participants are appropriately assisted under the Scheme; and
- other steps that will be taken by the Authority to ensure that the Authority interacts with people in a constructive and supportive manner; and
- a process for receiving and managing any complaints that may be made to the Authority about how the Authority has exercised a function or power under this measure; and
- any other material that the Minister considers should be included in the code.

Part 3—Participation in Scheme

24—Eligibility for participation in Scheme

A person is eligible to be a participant in the Scheme if—

- the person suffers a bodily injury; and
- the injury is regarded as being caused by or arising out of the use of a motor vehicle; and

- the relevant motor vehicle accident occurred in South Australia; and
- the coverage of this measure is not excluded under this clause ; and
- the injury suffered by the person satisfies the criteria specified by the LSS Rules for eligibility for the Scheme provided by this measure.

Participation in the Scheme may be as a lifetime participant or as an interim participant and a person is not eligible to be a participant in relation to an injury if the person has been awarded damages, pursuant to a final judgment entered by a court or a binding settlement, in respect of the future treatment, care and support needs of the participant that relate to the injury except where the person has applied to be accepted into the Scheme under clause 6.

The coverage of this measure is excluded in relation to a motor vehicle injury suffered by a participant in a road race or that is also a compensable injury under the *Workers Rehabilitation and Compensation Act 1986*.

25—Application to participate in scheme

This clause makes provision for how and by whom an application for a person to become a participant in the Scheme is to be made.

26—Acceptance as a participant

A person who is eligible for acceptance into the Scheme must be accepted if an application for acceptance into the Scheme is duly made. An interim participant must be accepted as a lifetime participant if the person becomes eligible for lifetime participation. A person accepted as a lifetime participant in the Scheme remains a participant for life.

The clause further provides that any period for which a person is an interim participant in the Scheme will be added to the period of 3 years applying under section 36 of the *Limitation of Actions Act 1936* (and that section will be taken to have been modified accordingly).

Part 4—Benefits under scheme

Division 1—Extent of benefits

27—Assessed treatment, care and support needs

This clause requires the Authority to pay for all the necessary and reasonable expenses incurred by or on behalf of a person in relation to the assessed treatment, care and support needs of the person while the person is a participant in the Scheme. The LSS Rules may contain criteria relating to determining which treatment, care and support needs of a participant in the Scheme.

As an alternative to paying the expenses for which it is liable under this clause as and when they are incurred, the Authority may pay those expenses by the payment to the participant of an amount to cover those expenses over a fixed period pursuant to an agreement between the Authority and the participant for the payment of those expenses by the participant (and this will satisfy any liability that would otherwise arise in relation to the matters to which the agreement relates).

28—Payment not required in certain circumstances

This clause provides that the Authority is not required to make payment in relation to any of the following:

- any treatment, care, support or service provided to a participant in the Scheme on a gratuitous basis;
- in the case of a child—any treatment, care, support or service that would ordinarily fall within the ordinary costs of raising a child (as defined in the clause); and
- any treatment, care, support or service that is required to be provided by an approved provider but is provided by a person who is not, at the time of provision, an approved provider; or
- any treatment, care, support or service that is provided in contravention of the LSS Rules.

However, the Authority may elect to make a payment in relation to any treatment, care, support or service referred to in above if the Authority is of the opinion that special circumstances exist that justify such a payment.

29—Approved providers

This clause provides for the Authority to approve specified persons or persons of a specified class to provide the treatment, care, support or services under the Scheme that are to be provided by an approved provider. The LSS Rules may also make provision for or with respect to the standards of competency of approved providers. Approvals by the Authority are granted on conditions or limitations determined by the Authority and it is an offence for approved providers to breach a condition or limitation of the approval without reasonable excuse. The maximum penalty for such an offence is $10,000.

Division 2—Treatment, care and support needs assessments

30—Assessment of treatment, care and support needs

This clause provides for the Authority to make an assessment of the treatment, care and support needs of a participant in the Scheme.

31—Cooperation by participant

This clause requires a participant in the Scheme to comply with any reasonable request in connection with the assessment of the participant's treatment, care and support needs.

32—Requirements under LSS Rules

This clause authorises the LSS Rules to make provision for or with respect to the assessment of treatment, care and support needs.

Part 5—Disputes and reviews

Division 1—Disputes about non-medical matters

33—Preliminary

This clause contains definitions for the purposes of this Division.

34—Resolution of disputes

This clause sets out the procedure for resolving a dispute about a relevant determination by the Authority. An interested party may apply (in a manner and form prescribed by the LSS Rules) to a review officer to have the dispute reviewed.

35—Appeals to District Court

This clause provides an appeal right to the District Court against a determination of a review officer and sets out the appeal procedure.

Division 2—Disputes about eligibility

36—Disputes about eligibility

This clause provides that, if there is a dispute—

- about whether an injury results from a motor vehicle accident or is attributable to some other condition, event, incident or factor; or
- about whether an injury suffered by a person satisfies the criteria specified by the LSS Rules for eligibility for the Scheme provided by this Act; or
- about the relationship between 2 or more injuries, including whether an injury is wholly or predominantly related to a motor vehicle injury; or
- without limiting a preceding paragraph—about whether an injury falls within, or is excluded from, the coverage of this Act under the LSS Rules; or
- about a matter prescribed by the regulations,

the dispute may be referred to an expert review panel. The panel's determination is final and binding (although that does not apply to any proceedings for judicial review). The costs of any proceedings before an expert review panel under this measure are payable by the Authority, excluding representation costs.

37—Appeals to District Court

This clause provides an appeal right to the District Court against a determination of an expert review panel and sets out the appeal procedure.

Division 3—Review of assessments

38—Review of assessments

This clause provides for a participant in the Scheme to apply to have an assessment of the Authority about treatment, care and support needs of the participant reviewed by an expert review panel. This clause lists grounds for review, as well as time frames for review. The decision of the expert review panel is final and binding (although that does not apply to proceedings for judicial review) and costs are to be payable by the Authority.

Part 6—Medical and other treatment or care costs

39—Bulk billing arrangements

This clause provides for the Authority to enter into bulk billing arrangements with the Minister for Health, service providers or others acting on their behalf for payment by the Authority of the expenses of participants in the Scheme for hospital treatment, ambulance services and other treatment expenses.

40—Payment of certain expenses not covered by bulk billing arrangements

This clause makes provision in relation to the rates at which the Authority is required to pay the expenses of hospital treatment, ambulance services, medical and dental treatment and rehabilitation services that are not covered by bulk billing arrangements.

41—Maximum fees payable for services not provided at public hospitals

This clause provides for the Minister, by notice in the Gazette, to set amounts to be paid by the Authority for certain treatment, care and support services to a participant in the Scheme provided at a hospital other than a public hospital and for which payment is required to be made to the hospital and not to the treatment or service provider .

Part 7—The Fund

Division 1—Establishment of Fund

42—Lifetime Support Scheme Fund

The Lifetime Support Scheme Fund (the *LSS Fund*) is established under this clause from which payments for which the Authority is liable in respect of the Scheme under this measure are to be made.

Division 2—Contributions associated with motor vehicle injuries

43—Determination by Authority of amount to be contributed to Fund

The Authority is to determine, before the beginning of each relevant period, an amount that the Authority considers is required to be contributed to the Fund—

- to fund the present and likely future liabilities of the Authority under Part 4 in respect of persons who become participants in the Scheme in respect of motor vehicle injuries suffered during that period; and
- to meet the payments required to be made from the Fund (other than excluded payments or payments under Part 4) during that period (to the extent that liability for any such payment has not been covered under the previous paragraph); and
- to satisfy the requirement to make any payment of duty under Part 3 Division 11 of the *Stamp Duties Act 1923* in relation to the relevant period; and
- to make provision for such other matters as the Authority should, in all the circumstances, make provision for under this Division in connection with any liability of the Authority under this measure.

The Authority's determination in respect of a relevant period is to be made—

- in accordance with a report of an independent actuary engaged by the Authority after consultation with the Treasurer to report to the Authority on the amount required to be contributed to the Fund; and
- after applying any principle or requirement specified by the Minister by notice in the Gazette for the purposes of this proposed section; and
- after taking into account any other payments that may be made by another body or person in connection with the operation of this measure.

The Minister will, after receiving a report of the Authority's determination, and after consultation with the Treasurer, determine an amount that should be paid to the Authority for contribution to the Fund for the relevant period.

44—LSS Fund levy

The required fund contribution for a relevant period is to be made by payment to the Authority of a levy (the *LSS Fund levy*) that is imposed on all persons who apply for any of the following under the *Motor Vehicles Act 1959*:

- the registration of a motor vehicle;
- an exemption from registration in respect of a motor vehicle;
- a permit in respect of a motor vehicle.

The LSS Fund levy will be an amount calculated under a scheme determined by the Minister after consultation with the Treasurer and the Authority, and the amounts to be recovered will be collected by the Registrar of Motor Vehicles at the time an application referred to above is made. The Registrar will pay to the Authority the LSS Fund levies collected with the exception that the Registrar may retain such administration expenses as are determined by the Treasurer for the purposes of this proposed section.

45—Recovery of payments in respect of vehicles not insured under State law

This clause entitles the Authority to recover from the appropriate person the present value of its treatment, care and support liabilities in respect of the motor vehicle injury of a participant in the Scheme if the injury was caused by the fault of the owner or driver of the motor vehicle and, at the time of the accident, the vehicle was not insured in accordance with the requirements of Part 4 of the *Motor Vehicles Act 1959*. Any amount the Authority may recover is to be reduced in proportion to any contributory negligence by the participant. The clause sets out who the *appropriate person* will be and provides for a defence in any proceedings to recover under this proposed section and contains the proviso that the Authority is not permitted to recover the present value of its treatment, care and support liabilities in respect of injuries to a participant in the Scheme if the participant paid an amount to the Authority under clause 6 in respect of those injuries.

46—Recovery in respect of persons in default

This clause provides that if an approved insurer or the nominal defendant has a right of recovery against a person (the *relevant person*) under a designated section and the person who suffered a bodily injury in relation to which the right of recovery applies becomes a participant in the Scheme, the Authority may exercise the same right

of recovery against the relevant person for the present value of its treatment, care and support liabilities in respect of the participant in the Scheme as the approved insurer or nominal defendant has under the designated section. Sections 116 and 127A of the *Motor Vehicles Act 1959* are the *designated sections*.

Part 8—Miscellaneous

47—No contracting out

This clause provides that this measure will apply despite any contract to the contrary.

48—Release of information

This clause authorises the Authority to disclose and release information to parties the Authority thinks fit or to persons prescribed by the regulations. It also authorises insurers to disclose information obtained under *Motor Vehicles Act 1959* in relation to potential or current participants in the Scheme.

49—Immunity

No personal liability will attach to an assessor, a review officer or a member of a panel under this measure for an act or omission by the person in good faith and in the exercise or purported exercise of powers or functions under the Act.

50—Treasurer's guarantee

This clause provides that the Treasurer will guarantee the liabilities incurred or assumed by the Authority in pursuance of this measure.

51—False or misleading information

This clause makes it an offence to provide false or misleading information under this measure, the penalty for which is $10,000.

52—Absence of participant from Australia

If a participant in the Scheme is to be absent from Australia, the participant must, at least 28 days before leaving Australia, give the Authority notice of the proposed absence in accordance with the LSS Rules. If the Authority considers such action is justified, the Authority may—

- waive or reduce the period of notice that applies under this clause in relation to a particular person in a particular case;
- suspend the participation of a person in the Scheme while the person is absent from Australia (whether or not notice has been given in accordance with this clause).

53—Extraterritorial operation of Act

This clause makes express provision for the operation of the legislation in relation to the following:

- things situated in or outside the territorial limits of this jurisdiction;
- acts, transactions and matters done, entered into or occurring in or outside the territorial limits of this jurisdiction;
- things, acts, transactions and matters that would, apart from this measure, be governed or otherwise affected by the law of another jurisdiction.

54—Authority to act on behalf of participant

This clause provides that, without limiting any other provision, any authorisation or step that may be given or taken under this measure by a participant in the Scheme may be given or taken by a person with lawful authority to act on behalf of the participant.

55—Agreements with WorkCover Corporation

This clause allows the Authority to enter agreements with the WorkCover Corporation for the provision of treatment, care, and support needs to persons with compensable injuries whom WorkCover considers may benefit from those services.

56—LSS Rules

This clause deals with the making, varying, revoking or substitution of the LSS Rules by the Governor on the recommendation of the Authority. The *Subordinate Legislation Act 1978* (other than section 10AA and Part 3A) apply to the LSS Rules.

57—Regulations

This clause makes provision for the Governor to make regulations for the purposes of the measure.

Schedule 1—Expert review panels

Schedule 1 makes provision for the establishment, constitution, procedures, functions and powers of expert review panels for the purposes of this measure.

Schedule 2—Related amendments and transitional provisions

Part 1—Related amendments

1—Amendment provisions

This clause provides that in Schedule 2, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Civil Liability Act 1936*

2—Amendment of section 3—Interpretation

This clause proposes to amend the definition in the principal Act of *motor accident* to mean an incident in which personal injury is caused by or arises out of the use of a motor vehicle. This will better align with the *Motor Vehicles Act 1959*. A definition of *MVA motor accident* is also to be inserted and is defined as a motor accident where the motor vehicle is a motor vehicle as defined in the *Motor Vehicles Act 1959*. A new subsection is to be inserted to provide that, for the purposes of the principal Act, personal injury will arise from a motor accident if the personal injury is caused by or arises out of the use of a motor vehicle.

3—Amendment of section 52—Damages for non-economic loss

Current section 52 provides for compensation in respect of non-economic loss, which may include pain and suffering, loss of amenities of life, loss of expectation of life and disfigurement. This clause amends the way that awards for damages for non-economic loss are calculated for personal injury arising from an MVA motor accident. The clause inserts an *injury scale value* system where non-economic loss is assessed on a scale running from 0 to 100. A person may only be awarded damages for non-economic loss where the relevant injury exceeds 10 on the injury scale. The amendments also provide for the adjustment annually of indexed amounts of damages that may be awarded under this section.

4—Insertion of section 56A

56A—Additional provisions relating to motor vehicle injuries (economic loss)

New section 56A sets out the principles that apply to how a court is to determine damages for economic loss in relation to personal injury arising from an MVA motor accident.

5—Amendment of section 58—Damages in respect of gratuitous services

It is proposed to amend section 58 so that damages for gratuitous services in relation to personal injury arising from an MVA motor accident may only be awarded if the injury scale value for the injury exceeds 10. The clause makes further provision relating to persons who are participants in the Lifetime Support Scheme.

6—Insertion of sections 58A and 58B

58A—Limitations on damages for participants in lifetime support scheme

New section 58A provides that no award of damages may be made to participants in the Lifetime Support Scheme (to be established under the measure) for treatment and care needs in relation to the relevant injury, regardless of whether the treatment and care needs are included or excluded by the Scheme, and regardless of whether the person is an interim or lifetime participant in the Scheme.

58B—Additional provisions relating to death on account of a motor vehicle injury

New section 58B provides that any entitlement to damages for loss of financial support in respect of the death of a person arising from an MVA motor accident (a *relevant loss of financial support claim* applies subject to this new section. Under new section 58B(3), damages awarded in relation to a relevant loss of financial support claim must, after applying a discount rate (if any), and any other principle arising under the principal Act or at common law, be discounted by a further 20%.

7—Amendment of section 65—Spouse or domestic partner may claim for loss or impairment of consortium

This clause is consistent with other changes instituted by the measure. Damages in relation to loss or impairment of consortium, which is deprivation of the benefits of a family relationship due to injuries, on account of personal injury arising from an MVA motor accident may only be awarded if the injury scale value exceeds 10.

8—Insertion of Part 9 Division 13

Division 13—Regulations

76—Assessment of motor vehicle injuries

New section 76 provides for the making of regulations with respect to any claim, entitlement or award of damages in respect of personal injury arising from an MVA motor accident and for the establishment of an accreditation scheme in respect of health professionals.

77—Regulations—general provisions

New section 77 contains a general regulation making power in the usual terms.

Part 3—Amendment of *Motor Accident Commission Act 1992*

9—Amendment of section 14—Functions and objectives of Commission

This clause inserts as an objective and function of the Commission the encouragement of early and appropriate treatment and rehabilitation for people who suffer road accident injuries.

Part 4—Amendment of *Motor Vehicles Act 1959*

10—Amendment of section 5—Interpretation

This clause proposes to insert a definition of *LSS Fund levy*.

11—Amendment of section 20—Application for registration

Current section 20 requires that at the time of making an application for the registration of a motor vehicle, the applicant must pay to the Registrar a prescribed fee, the appropriate insurance premium and the stamp duty payable on the application. This clause requires that applicants also make payment of the appropriate *LSS Fund levy*.

12—Amendment of section 24—Duty to grant registration

It is proposed to amend current section 24 so that in addition to payment of the prescribed fee, insurance premium and stamp duty, as is the current situation, payment of the LSS Fund levy by an applicant for motor vehicle registration is required for the Registrar to register a motor vehicle under the principal Act.

13—Amendment of section 118B—Interpretation of certain provisions where claim made or action brought against nominal defendant

This clause is consequential.

14—Insertion of section 126A

This clause inserts a new section.

126A—Claim for compensation

New section 126A makes provision for how and by whom a claim for compensation can be made.

15—Amendment of section 127—Medical examination of claimants

These are related amendments.

16—Amendment of section 127A—Control of medical services and charges for medical services to injured persons

This proposed amendment inserts an additional subsection which provides that, in addition to the matters currently included in the current section, the Minister may, in relation to a particular case or class of case, increase a limit or charge that applies for the purposes of this section (and the prescribed limit or prescribed scale will, in that case, then be taken to be increased to the extent allowed by the instrument).

17—Insertion of sections 127B and 127C

This clause inserts two new sections.

127B—Liability of insurer to pay treatment, care and support costs

New section 127B requires the Authority to pay the reasonable expenses incurred by or on behalf of a participant in the Scheme in providing for such treatment, care and support for the participant as are necessary and reasonable in the circumstances. The clause lists the treatment, care and support needs covered by this obligation.

127C—Control of legal costs

New section 127C makes provision for the control of legal costs payable in respect of proceedings brought in respect of a claim for which a person is insured under this Part of the principal Act.

18—Insertion of section 134A

134A—Review of scheme

New section 134A makes provision for a periodical review, and report on the operation, of Part 4 of the principal Act.

Part 5—Amendment of *Stamp Duties Act 1923*

19—Insertion of Part 3 Division 11

This clause inserts a new Division.

Division 11—LSS Fund levy

82B—Interpretation

New section 82B inserts a number of definitions required for the purposes of the measure.

82C—Lodgement of statement and payment of duty

New section 82C requires the Authority to pay duty to the Commissioner in respect of each LSS fund levy paid to the Authority. It also requires the Authority to lodge a statement to the Commissioner with the levies received, and obligates the Authority to pay duty equivalent to 11% of the total.

Part 6—Transitional provisions

20—Civil Liability Act—transitional provisions

21—Motor Vehicles Act—transitional provisions

22—Contribution to liabilities of Authority—transitional provisions

These 3 clauses make provision for transitional arrangements following the enactment of this measure.

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

CO-OPERATIVES NATIONAL LAW (SOUTH AUSTRALIA) 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) (18:05): I move:

That this bill be now read a second time.

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

Leave granted.

This Bill will give effect to an intergovernmental agreement under which all States and Territories have committed to replace their existing legislation regulating co-operatives with a new national law, the Co-operatives National Law.

Currently, all States and Territories in Australia have legislation which enables a co-operative to register and to become incorporated as a legal entity. It is an alternative form of incorporation to that under the Corporations Act and other legislation, tailored to the distinct attributes of co-operatives.

Existing co-operatives legislation is similar, but not uniform, across jurisdictions and is based on a set of standard provisions developed in 1996 by the Standing Committee of Attorneys-General.

The co-operatives legislation in most jurisdictions has not been comprehensively reviewed since the mid 1990s. A recent review of the existing legislation has identified impediments to the operation of co-operatives that potentially place them at a competitive disadvantage to other types of incorporated body.

The new Co-operatives National Law to be implemented by this Bill will provide a more level playing field for co-operatives by:

- ensuring that legislative measures for the oversight of co-operatives are no less favourable than measures in place for other forms of corporate body, including companies registered under the *Corporations Act 2001*; and
- ensuring that a registered co-operative can operate on a national basis, equivalent to the manner in which a company can operate on a national basis.

History of co-operatives

Co-operatives have existed in Australia since the mid nineteenth century. Producer co-operatives became a common form of organisation in the dairying and wheat industries in the late 19th Century. This extended to the sugar, cotton and rice industries in the mid part of the 20th Century. Consumer co-operatives became more numerous in the years between the First and Second World Wars—and in some rural communities became the principal source of consumer goods. Other forms of mutual organisation have also played an important role in Australian society. Friendly societies which provided medical services and income support were common in the early part of the twentieth century. Credit unions and building societies became a feature of Australian society from the 1950s.

In current day Australia, the number of co-operatives has declined. This reflects changes such as the restructuring of rural industries and markets, the concentration of retail markets around national enterprises such as supermarkets as well as changes in medical insurance and the financing of health care.

There are now around 1,700 co-operatives registered across Australia. About three quarters of these co-operatives are established as non-profit entities and have rules which prevent them from distributing any surplus to their members. The remaining quarter distribute surpluses to their members and are known as distributing co-operatives or trading co-operatives. Co-operatives tend to be concentrated in the eastern states, with between around 600 to 700 co-operatives each in NSW and Victoria, respectively but less than 60 in South Australia.

Most co-operatives in Australia are small organisations in terms of turnover and assets. Approximately 98 per cent of co-operatives have annual revenue of less than $25 million and 99 per cent have assets of less than $12.5 million. There are a very small number of co-operatives that have assets in excess of $100 million.

Distinguishing features of co-operatives

Co-operatives are organisations that are owned, controlled and used by their members. A co-operative's main purpose is to benefit its members. Rather than maximise profits, co-operatives aim to offer their members better prices and lower costs. Co-operatives are also distinguished from other business enterprises and organisational structures because they operate according to internationally agreed co-operative principles developed by the International Co-operative Alliance.

Existing co-operatives legislation

States and Territories regulate general co-operatives. The Commonwealth regulates financial co-operatives such as building societies, credit unions and friendly societies under the Corporations Act 2001. Co-operatives incorporated under State and Territory co-operatives legislation are excluded from the operation of the Corporations Act, although many Corporations Act provisions are applied or mirrored in the co-operatives legislation.

In South Australia, the Co-operatives Act 1997 currently provides for the formation, registration and management of co-operatives. Consumer and Business Services (CBS) is responsible for administering the Act.

Reasons for replacing the existing scheme with the National Law

Existing co-operatives legislation in most jurisdictions has not been comprehensively reviewed since the mid 1990s. A recent review of the existing legislation has identified impediments to the operation of co-operatives that potentially place them at a competitive disadvantage to other types of incorporated body. Examples of these barriers include approvals that must be obtained to carry on business in another State or Territory, limited means of external fundraising and financial reporting requirements for small co-operatives that are more extensive than those in place for small companies.

In light of this, the COAG Legislative and Governance Forum on Consumer Affairs (formerly Ministerial Council on Consumer Affairs), agreed to replace the existing State and Territory legislation with a new Co-operatives National Law.

To address identified deficiencies in the existing legislation, the new National Law will:

- remove the requirement for co-operatives operating across borders to register in more than one jurisdiction and reduce costs to co-operatives operating in multiple jurisdictions from complying with inconsistent State and Territory legislation;
- adopt a more risk sensitive financial reporting regime for co-operatives that will reduce financial reporting and auditing requirements for small co-operatives in line with similar relief provided to small proprietary companies under the Corporations Act. Under this regime, small co-operatives whose activities pose comparatively little risk to consumers will not need to lodge audited financial reports with regulators, although there will be obligations to report to members, who generally have the greatest stake in small co-operatives;
- update directors' and officers' duties to reflect modern standards of corporate governance integrated with co-operative principles and reduce director and officer liability for corporate fault matters in accordance with the mandated COAG principles and guidelines;
- update and standardise interactions between co-operatives legislation and the Corporations Act (noting that the co-operatives legislation applies many Corporations Act provisions, modifying them to suit co-operatives);
- provide nationally for a new co-operative-specific form of security, a 'Co-operative Capital Unit', to improve access to capital by co-operatives; and
- introduce cost effective supervisory tools for regulators such as civil penalty provisions and enforceable undertakings.

Otherwise, the new National Law is substantially similar to the existing SA Co-operatives Act 1997.

The proposed Co-operatives National Law will have a positive economic impact in that it will reduce financial reporting and auditing requirements and costs for small co-operatives as well as registration and compliance costs to co-operatives that operate in multiple jurisdictions. As at January 2013, eight of the 57 co-operatives registered in SA were based interstate.

Consultation

There has been both extensive consultation at the national level on the template National Law as well as a brief period of consultation on the South Australian Bill with local co-operatives and the professions that advise them. The co-operatives sector around Australia, including in South Australia, is supportive of the Co-operatives National Law.

The draft Co-operatives National Law and national Consultation Regulatory Impact Statement (RIS) were released by the Ministerial Council on Consumer Affairs for public consultation from 4 December 2009 to 26 February 2010.

24 written submissions, including submissions from the national co-operatives representative body and five state based co-operative federations (including the Co-operative Federation of SA) were received. That national consultation process resulted in changes to the exposure draft of the Law, in particular to:

- clarify definitions and terminology;•clarify disclosure requirements;
- ensure consistency with the Corporations Act;
- outline specific voting requirements; and
- establish minimum standards of reporting to members by small co-operatives in the wake of the proposed relaxation of the requirement to report to registration authorities.

The draft South Australian Bill was released for a short period of consultation with local interested parties between 25 October and 9 November 2012. This was limited to a brief period because of the previous extensive consultation on the National Law at a national level, bearing in mind that the South Australian Bill essentially reproduces the National Law, with additional supporting provisions to ensure the Law will operate properly in this State.

The Government wrote to all South Australian co-operatives, plus the Law Society and SA Joint Legislative Review Committee of the three accounting bodies in their capacities as advisors to co-operatives, offering them an opportunity to comment.

The one concern raised by the SA Joint Legislative Review Committee of accountants would be appropriately considered for the national regulations currently under development and has been referred to the relevant officer managing that process.

No comments on the South Australian Bill were received from co-operatives. The Co-operative Federation of SA, representing a number of SA co-operatives, had made submissions during the national consultation and changes were made to the draft National Law in response to their concerns.

South Australia's implementation of the Co-operatives National Law

By entering into an intergovernmental agreement via the Legislative and Governance Forum on Consumer Affairs, States and Territories committed to implementing the Co-operatives National Law, either by enacting application of laws legislation to apply the New South Wales law as amended from time to time as a law of their State or Territory or by enacting alternative consistent legislation.

Under this Bill, the NSW Act will not automatically be applied in South Australia from time to time as amended, rather amendments could be adopted by the making of a South Australian regulation, which will be subject to disallowance by Parliament in the usual way. This model is favoured as it maximises the ongoing consistency of the law of South Australia with the other jurisdictions, thus delivering the benefits of the Co-operatives National Law, while maintaining South Australian Parliamentary sovereignty.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Name of Act

This clause sets out the short title of the measure.

2—Commencement

The measure will be brought into operation by proclamation.

3—Definitions

This clause sets out various definitions that are relevant to the operation of the measure. It will also be the case that terms used in the measure and also in the National Law text have the same meanings in the measure as they have in the text.

Part 2—Application of National Law and Co-operatives National Regulations

4—Application of Co-operatives National Law

This clause applies the *Co-operatives National Law*, as set out in the Schedule to the measure, as a law of the State.

5—Amendments to Schedule to maintain national consistency

This will allow the Governor, by regulation, to amend the Co-operatives National Law, as set out from time to time in the Schedule to the Act under the scheme established by this measure, for the purposes of the law of the State if the Governor is satisfied that the amendment corresponds, or substantially corresponds, to an amendment made by the Parliament of New South Wales to the national law.

6—Application of Co-operatives National Regulations

The National Regulations under the Co-operatives National Law are to apply for the purposes of the *Co-operatives National Law (South Australia*, subject to any modifications that may be made by the Governor for the purposes of the legislation as it applies in South Australia. The Minister will be required to ensure that any regulations made under the national law are tabled in both Houses of Parliament and these regulations will be subject to disallowance in the same way, and within the same period, as regulations made under an Act of this jurisdiction.

7—Meaning of certain terms in Co-operatives National Law for purposes of this jurisdiction

This clause defines certain words and expressions used in the *Co-operatives National Law (South Australia*.

8—Exclusion of legislation of this jurisdiction

This clause excludes the operation of the *Acts Interpretation Act 1915* from applying to the *Co-operatives National Law (South Australia)*, the *Co-operatives National Regulations (South Australia)*, the *Co-operatives National Regulations* or other instruments made under that Law. The clause makes it clear that it does not affect local regulations made under the proposed Act.

Part 3—Some matters referred to in *Co-operatives National Law (South Australia)*

9—Designated authority, designated instrument and designated tribunal (Co-operatives National Law section 4)

This clause specifies for this jurisdiction the meaning of certain terms used in the *Co-operatives National Law (South Australia)*. These terms are *designated authority*, *designated instrument*, and *designated tribunal*.

10—Disposal of consideration for shares compulsorily acquired (Co-operatives National Law section 436)

These provisions will allow for the continuation of certain accounts and arrangements relating to money held in South Australia.

11—Deregistration (Co-operatives National Law section 453)

This clause results in certain property of a deregistered co-operative vesting in the State of South Australia. This clause achieves this by providing that the specified entity referred to in section 453(d) of the *Co-operatives National Law (South Australia)* is the State of South Australia. By way of explanation, section 453 of the national law applies provisions of the Corporations Act that refer to the Commonwealth, and clause 11(1) has the effect of substituting the State of South Australia for this purpose. Clause 11(2) replaces references to a Special Account under the Commonwealth legislation with references to an account established or approved by the Treasurer.

12—Costs of inquiry (Co-operatives National Law section 530)

This clause provides that the costs of an inquiry required to be paid under section 530(3) of the national law must be paid to the Corporate Affairs Commission.

13—Secrecy (Co-operatives National Law section 537)

This clause provides that information obtained in the course of administering the *Co-operatives National Law (South Australia)* or the *Co-operatives Act 1997* may be divulged to certain specified persons.

14—Pecuniary penalty orders (Co-operatives National Law section 556)

This clause provides that a pecuniary penalty ordered to be paid in the State is a civil debt payable to the Corporate Affairs Commission on behalf of the State, and is recoverable accordingly.

15—Stamp duty (Co-operatives National Law section 620)

This clause provides that stamp duty is not payable on certain instruments associated with co-operatives, and stamp duty already paid is to be taken into account in respect of certain other instruments associated with co-operatives.

16—Registration fees (Co-operatives National Law section 620)

This clause provides that registration fees are not chargeable under any Act in respect of certain instruments associated with co-operatives.

Part 4—Regulations

17—Local regulations

This clause authorises the Governor to make regulations (*local regulations*) for the purposes of the proposed Act or as contemplated by the Co-operatives National Law as applying in this jurisdiction.

Part 5—Miscellaneous

18—Non-application of Co-operatives National Law to housing co-operatives and other bodies

This clause provides that the *Co-operatives National Law (South Australia)* does not apply to certain co-operative housing bodies.

19—Orders and other instruments published in Gazette

This clause contains evidentiary provisions relating to the making of orders, notices, exemptions and other instruments published in the Gazette.

20—Proceedings for offences

This clause provides for the procedure for the prosecution of offences under the proposed Act and the *Co-operatives National Law (South Australia)*.

21—Proceedings for recovery of fines or penalties under co-operative's rules

This clause provides for the recovery of fines and penalties imposed by the rules of a co-operative.

22—Particular officials protected from liability

This clause gives protection from civil liability to certain persons.

23—Registrar of Co-operatives

The Corporate Affairs Commission is to constitute the Registrar of Co-operatives under the legislative scheme.

24—Repeal

The *Co-operatives Act 1997* is to be repealed.

Part 6—Savings and transitional provisions

25—Definition

26—Local regulations for savings or transitional matters

27—General savings

28—Registration of co-operatives

29—Entitlements of former members of trading co-operatives (Co-operatives National Law Schedule 3, clause 1)

30—Entitlement to distribution from business or reserves of co-operative

31—Minimum paid up amount of shares (Co-operatives National Law section 78(4))

32—Personal property security interests

These clauses contain some specific transitional provisions.

Schedule 1—Co-operatives National Law

This Schedule sets out the Co-operatives National Law. It is divided into Chapters and Schedules, which are briefly summarised as follows.

Chapter 1 Preliminary

This Chapter sets out the principles used by a co-operative organisation. The principles are those agreed by the International Co-operative Alliance and incorporated into Recommendation 193 of the International Labour Organization. The Chapter contains interpretation provisions and also sets out the relationship between the Co-operatives National Law and the Corporations Act. The provisions of the Corporations Act that are applied throughout the Co-operatives National Law are collected in a note and cross-referenced in tabular form along with relevant modifications for ease of reference.

Chapter 2 Formation, powers and constitution of co-operatives

This Chapter provides the mechanism for incorporating a co-operative and specifies the legal powers of the incorporated body as well as the legal assumptions that underpin a co-operative's dealings with third parties. It identifies the matters that must be included in the rules of a co-operative and authorises the Registrar of Co-operatives to publish model rules that a co-operative can adopt. The Chapter also sets out the nature of share capital of a co-operative and establishes the legal notions of membership and active membership. Member rights and obligations as well as the circumstances in which membership is cancelled and any rights accompanying cancellation are dealt with in the Chapter.

Chapter 3 Management and operation of co-operatives

This Chapter deals with corporate governance of a co-operative. Matters such as the board as the managing organ, directors and their duties and meetings are included. Matters relating to financial reporting and auditing are contained in the Chapter along with provisions governing fundraising from members and the public.

Chapter 4 Structural and other events for co-operatives

This Chapter deals with corporate structural events such as external administration, mergers, schemes of arrangement and transfers of incorporation. Relevant provisions of the Corporations Act are applied and modified to achieve consistency of treatment in most external administration processes. Special provisions for caretaker-type administration and administrative powers of the Registrar of Co-operatives leading to a winding up are also located here.

Chapter 5 Participating co-operatives

This Chapter replaces the existing system of multiple registration to enable cross-border trade by co-operatives with a mutual recognition scheme for co-operatives from jurisdictions that participate in the Co-operatives National Law scheme.

Chapter 6 Supervision and protection of co-operatives

This Chapter establishes the powers of the Registrar of Co-operatives, inspectors and special investigators and the procedures that must be used when conducting an investigation. The Co-operatives

National Law will introduce consistent powers and procedures across jurisdictions. If necessary, however, a particular jurisdiction will be able to modify provisions in this Chapter to account for local circumstances.

Chapter 7 Legal proceedings and other matters

This Chapter establishes nationally consistent provisions for offences, civil penalty provisions, appeals against administrative decisions, and the use of evidence in proceedings.

Chapter 8 General

This Chapter deals with administrative and other miscellaneous matters such as those relating to the office of Registrar of Co-operatives, the service and filing of documents, and the making of National Regulations.

Schedules

Schedule 1 sets out the matters that must be addressed in the rules of a co-operative.

Schedule 2 defines terms used in provisions that regulate interests and control in shares of a co-operative.

Schedule 3 contains savings and transitional provisions.

Schedule 4 sets out interpretation provisions that are nationally consistent and are used in place of the interpretation legislation in each jurisdiction.

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

STATUTES AMENDMENT (ATTORNEY-GENERAL'S PORTFOLIO) (NO. 2) BILL

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

At 18:07 the council adjourned until Wednesday 10 April 2013 at 14:15.