LEGISLATIVE COUNCIL

Tuesday 30 April 2013

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

The PRESIDENT: We acknowledge that this land that we meet on today is the traditional lands for 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.

SECURITY AND INVESTIGATION AGENTS (MISCELLANEOUS) AMENDMENT BILL

His Excellency the Governor's Deputy assented to the bill.

STATUTES AMENDMENT (ATTORNEY-GENERAL'S PORTFOLIO) (NO. 2) BILL

His Excellency the Governor's Deputy assented to the bill.

ADVANCE CARE DIRECTIVES BILL

His Excellency the Governor's Deputy assented to the bill.

PAPERS

The following papers were laid on the table:

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

Claims Against the Legal Practitioners Guarantee Fund—Report, 2010-11
Criminal Law (Forensic Procedures) Act 2007 Report on Annual Compliance dated February 2012 to January 2013
Regulations under the following Acts—
- Development Act 1993—
  - Private Certification
  - Schedule 8—Referrals and Concurrences
- Liquor Licensing Act 1997—General—Small Venue Licences
- Primary Industry Funding Schemes Act 1998—Pig Industry Fund—Exchange of Information

Rules of Court—
- District Court—District Court Act 1991—
  - Civil—Amendment No. 22
  - Criminal—Amendment No. 1
- Industrial Relations Court—Fair Work Act 1994—Industrial Proceedings Rules—Training and Contract Disputes
- Magistrates Court—Magistrates Court Act 1991—Civil—Amendment No. 44
- Supreme Court —Supreme Court Act 1935—
  - Amendment No. 21
  - Listening and Surveillance Devices Rules—Amendment No. 1

By the Minister for Water and the River Murray (Hon. I.K. Hunter)—

Water Industry Act 2012—Plumbing Standard by the Technical Regulator

QUESTION TIME

GREAT AUSTRALIAN BIGHT MARINE PARK WHALE SANCTUARY

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:28): I seek leave to make a brief explanation before asking the Minister for Regional Development a question regarding air space on South Australia's West Coast.

Leave granted.

The Hon. D.W. RIDGWAY: Next month, southern right whales will begin to gather at the Head of Bight on the Nullarbor to give birth. It is a spectacular sight—between 80 and 100 whales just off the ochre red cliffs as they breach, relax and nurse their young. The mothers are 15 metres long and can weigh almost 50 tonnes. From the Nullarbor Roadhouse, Chinta Air offers a

30-minute scenic flight over the Head of Bight marine park to view whales and fly along the Bunda Cliffs. The flights take off from the Nullarbor Roadhouse and they land at the Nullarbor Roadhouse. They fly—as planes often do—through the air. They do not fly through the marine park, it being water and the planes not being submarines.

Nevertheless, Chinta Air is required to pay a fee to the government, a tax to pass through the air if it takes tourists to view the whales. It is a government imposed fee to fly over a park in, as I say, the sky. My question to the minister is: does the minister think this tax helps regional development in South Australia and, if so, is the government planning fees and charges to pass through air in other parts of the state to spread Labor's newly discovered stimulus to economic prosperity?

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) (14:30): I thank the honourable member for his most important question. I believe that, if it is to do with national parks, it would be a fee pertaining to the minister responsible for the environment, water and natural resources. I am happy to refer the question to the appropriate minister. If it is not that minister, I will make sure that it is referred to the appropriate minister.

CHINA DELEGATION

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) (14:30): I table a ministerial statement made today by the Premier, the Hon. Jay Weatherill, on his China trip outcomes.

DISABILITY SERVICES

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) (14:30): I table a ministerial made today by the Premier, the Hon. Jay Weatherill, on South Australia's commitment to disability services.

QUESTION TIME

MOOROOK ANIMAL SHELTER

The Hon. J.M.A. LENSINK (14:30): I seek leave to make a brief explanation before asking the Minister for Sustainability, Environment and Conservation a question in relation to the Moorook Animal Shelter.

Leave granted.

The Hon. J.M.A. LENSINK: As the minister may be aware, there has been a significant amount of controversy surrounding the so-called no-kill Moorook Animal Shelter and the RSPCA intervention. On 6 March RSPCA inspectors, an animal behaviourist and an independent veterinarian attended the Moorook Animal Shelter with a warrant. Eight dogs and a kitten were removed from the shelter, and I am advised that three of the dogs and the kitten were later euthanased.

The shelter was also issued with a number of animal welfare notices with compliance requirements within a period of six weeks. On 4 April the RSPCA returned to the shelter to check on the progress of these orders and offer assistance if required. My questions to the minister are:

1. Can he advise what the outcome has been?

2. Did the government provide any assistance to the Moorook Animal Shelter in meeting the orders made by the RSPCA?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:31): I thank the honourable member for her very important question and her ongoing interest in these matters. I am advised that inspectors employed by the RSPCA executed a primary enforcement function prescribed under the Animal Welfare Act 1985 and its subordinate legislation in relation to the Moorook Animal Shelter. I have been advised that since 2009 the RSPCA has received a number of complaints regarding the welfare of animals at the Moorook Animal Shelter.

RSPCA inspectors have attended the Moorook Animal Shelter on several occasions in the past and have given directions in accordance with their powers under the act. I understand that after receiving a complaint recently the RSPCA inspectors sought and obtained an unrestricted warrant to access the Moorook premises. As a result of the inspection conducted by the RSPCA inspectors under warrant, I am advised that a number of animals were surrendered and the owner of the Moorook premises was provided with five animal welfare directions in relation to all the animals on the property, which must be complied with by 24 April 2013.

I have been further advised by my department that follow-up inspections were carried out by the RSPCA inspectors to ensure that the directions they issued were being met. I am advised that no animals were removed on these occasions and further directions were issued, which must be complied with by 25 April 2013. I understand that the RSPCA will continue to monitor this matter very closely and will work with the shelter and persons impacted to get an outcome that is beneficial to the animals concerned.

STATE/LOCAL GOVERNMENT RELATIONS

The Hon. S.G. WADE (14:33): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations a question relating to the State/Local Government Relations Agreement.

Leave granted.

The Hon. S.G. WADE: On Tuesday 9 April 2013 the minister advised this council that the Department of the Premier and Cabinet is now responsible for the Local Government Forum and the State/Local Government Relations Agreement in order to reflect 'an across government strategic role'. This government has a stunning record of ignoring the State/Local Government Relations Agreement.

I previously highlighted to the council that, since the Local Government Relations Agreement was signed in 2012, two key bills impacting on local government were not consulted on in accordance with the agreement. The Development (Private Certification) Amendment Bill and the Independent Commissioner Against Corruption Bill both significantly affected local government, and both were tabled in parliament without consultation with local government and its peak body, the Local Government Association. Here comes another one. The Major Events Bill is currently progressing through this parliament. It significantly impacts on local government's role and it has not been the subject of prior consultation with local government. I remind the Legislative Council that the whole aim of the protocols is to ensure that there is 'regular and effective communication, consultation and negotiation on the formulation and implementation of key policies, legislative programs and significant programs/projects that affect the other party'.

It has been a longstanding role of the cabinet office and the Department of the Premier and Cabinet to coordinate the whole of government consideration of cabinet submissions. The government clearly thought that was not working for local government and established a specific legislative protocol, overseen by the local government minister under the state-local government agreement. Clearly that did not work. The government now wants to transfer the oversight role back to the Premier's department. My questions to the minister are:

1. Why is the government repeatedly committing to legislative processes it will not comply with?

2. Under the new arrangements is the government proposing any oversight of the legislative protocol above and beyond the oversight of cabinet office?

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) (14:35): I thank the honourable member for his most important questions. Indeed, the State/Local Government Relations Agreement is a very important document and this government places a high degree of value on it. It is an agreement that articulates the aspirations of the two spheres of government with the aim of delivering greater benefits to South Australia and, of course, the communities which we serve, and it aims to cultivate a more strategic collaboration between those two spheres of government. It sets out a set of principles for engagement and also a schedule of priorities, and these are usually updated annually.

The government does seek to consult with the local government sector wherever and whenever it can. We very much value and acknowledge the local government as an extremely

important sphere of government and, as I said, we attempt to involve that level of government in consultation wherever and whenever we can. That does not mean that from time to time it is unavoidable that sometimes the consultation occurs once a draft bill is presented, but we have a process through parliament that allows for full community consultation and participation so really local government is, in effect, consulted with and does have an opportunity to input and give feedback, albeit sometimes in a later stage rather than a former stage.

In terms of the movement of the responsibility for the intergovernment agreement over to Premier and Cabinet, the changes of government that were recently announced are proposed to be put in place before the end of the financial year so at present the responsibility still rests with me, but we are in the process of identifying the range of different responsibilities, the resources associated with that and transferring those to appropriate agencies. There are new agencies, so that is in a state of transition. In the meantime, it is business as usual, so that rests with me.

In terms of the general overall responsibilities, Premier and Cabinet will take responsibility for the strategic across-government responsibilities associated with not just local government but it will be part of its overall responsibilities, and that will include responsibility for the agreement. My understanding is that it has not been formalised yet, but the preliminary feedback has been that the LGA seems very pleased indeed and sees it as appropriate to have the responsibility for that agreement resting with Premier and Cabinet.

As I said, they are yet to formalise their position. I think that it is a very strategic move. That office is very much equipped to coordinate overall government strategic alliances and across-government responses to various positions. As I said, at least in a preliminary way, it has been well met by the LGA.

BIOSECURITY

The Hon. G.A. KANDELAARS (14:40): I seek leave to ask the Minister for Agriculture, Food and Fisheries a question about biosecurity.

Leave granted.

The Hon. G.A. KANDELAARS: South Australia has a proud record of excellent biosecurity. For example, it is the only mainland state which is free of fruit fly and one of the few places in the world which is free of the vine-destroying pest phylloxera. We have a heritage of vines producing fantastic wines. Can the minister advise of a recent award which supports research into biocontrol measures?

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) (14:41): I thank the honourable member for his most important question. The member is correct that South Australia has an excellent track record in relation to biosecurity threats, particularly to our wine industry, but across many of our sectors. We do not rest on our laurels. We are working through our premium food and wine and clean environment priority to build on that strength. In 2011-12 alone, we exported over 400 million litres of wine, worth over $1.1 billion. South Australia accounts for over 75 per cent of Australia's premium wine production sourced from some of the oldest grapevines in the world.

As the Minister for Agriculture, Food and Fisheries and Minister for the Status of Women, I am very pleased that the University of Adelaide PhD student Mary Retallack, also the 2012 award winner, has been awarded the 2013 SARDI Science Bursary. Ms Retallack will use the bursary for her University of Adelaide studies exploring the value of native plants to boost populations of beneficial insects which contribute to the control of common vineyard pests such as light brown apple moth.

Ms Retallack is looking at the capacity of a range of native plants, including those found in stands of remnant vegetation adjacent to local vineyards which have the capacity to support arthropods, such as insects, spiders and centipedes which prey on common wine grape pests. Ms Retallack is also an Adelaide Hills vineyard consultant and SA wine industry leader. The project is focusing on expanding existing knowledge of biocontrol measures by encouraging greater use of native plant species which attract, or end up being home to, insect species in and around vineyards, to provide food, shelter and alternative prey for beneficial arthropods.

The light brown apple moth alone is estimated to cost the Australian winemaking industry up to $18 million a year in yield losses, insecticide costs and also lower grape quality. I understand that Ms Retallack hopes to come up with recommendations on which native plants will assist

growers to produce quality wine grapes that are fit for purpose with lower insecticide inputs, particularly at key times in the growing season.

This type of scientific research into biocontrol measures for one of our most valuable industries is exactly the type of research I believe can help boost our wine industry in any field of agriculture. Reducing production costs and increasing production is the aim, and doing this by reducing the use of agricultural chemicals while benefiting the environment is obviously the most sustainable way to achieve that aim and obviously a win-win for everybody.

Ms Retallack, in addition to her wine consultancy, is studying with the University of Adelaide's School of Agriculture, Food and Wine. This school of Adelaide University complements SARDI research on biological control and is part of a strong Waite campus research program on integrated management of viticulture pests and diseases.

SARDI and the Waite campus partners are national leaders in oenology and viticulture research. The annual SARDI Science Bursary was established in 1994 to commemorate the SA Women's Suffrage Centenary (1894-1994)—a great way to encourage women who continue to excel in science and a great way to encourage science as well and, obviously, encourage those people undertaking studies in the fields of agriculture, fisheries, forest science, etc., to continue through to postgraduate education and qualifications.

The South Australian government is committed to providing opportunities to increase women's participation in science, technology, engineering and maths subjects in particular in higher education and to providing support to women who enter these growth industries associated with those, all of which are currently male dominated. Awards such as these are just one way that we can recognise women's participation and support their professional growth in these sorts of fields.

I am very pleased that this award has been made to such a worthy recipient and look forward to hearing more about the results of this work. I'm very pleased that this award has been made to such an impressive person. Mary Retallack is quite an amazing person and a wonderful ambassador for women in this state and also the agriculture sector.

NEONATAL HEALTH

The Hon. K.L. VINCENT (14:46): I seek leave to make a brief explanation before directing questions to the minister representing the Minister for Health on the subject of neonatal health.

Leave granted.

The Hon. K.L. VINCENT: In 2011, hospitals around the UK began to use the Bedside Assessment, Stabilisation and Initial Cardiorespiratory Support Trolley, better known as the BASICS trolley. I'm sure Hansard, as well as myself, are all very glad of that. The BASICS trolley is an innovative, award-winning device invented by retired medical consultant David Hutchon. It is essentially a mobile version of the technology more commonly used to resuscitate and stabilise infants, immediately after their birth.

At present, because the more commonly used machine is not mobile and much bigger than the BASICS trolley, if an infant needs resuscitation immediately after birth, medical staff have no choice but to cut the umbilical cord in order to take the infant over to the machine. This is very unfortunate since there is a growing amount of evidence to suggest that leaving the newborn attached to the mother by the umbilical cord for even a short time after birth can, in many cases, have significant health benefits for that infant, including a reduced incidence of intraventricular haemorrhage and late-onset sepsis in very premature babies, and an increased blood volume in general, just to name a few.

With the use of the BASICS trolley, doctors are able to leave the baby attached to the umbilical cord and still resuscitate if necessary. This could be particularly important in helping weak and preterm infants fight off disease and health complications that could have long-term impacts on a child's life, on a family's life and perhaps even on the state's health budget. There may be, of course, the added emotional benefits for mothers who may otherwise be distressed and anxious when their baby is taken away from them for resuscitation and they have a limited ability to know what is happening. My questions to the minister are:

1. How many births occur in South Australia each year and how many of these require the use of resuscitation intervention or similar health measures in the minutes after birth?

2. Have the minister and his department investigated the use of BASICS trolleys within the state's birthing units?

3. Are BASICS trolleys currently being used in any South Australian hospitals and, if not, why not?

4. Will the minister commit to funding the important BASICS trolley in all South Australian birthing units?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:49): I thank the honourable member for her most important four questions about medical equipment and neonates. I undertake to take that question to the minister in the other place—the Minister for Health and Ageing—and seek a response on her behalf.

CURRENCY CREEK REGULATOR

The Hon. CARMEL ZOLLO (14:49): My question is to the Minister for Water and the River Murray. Will the minister update the chamber on plans for the removal of the Currency Creek regulator?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:49): I thank the honourable member for her most important question. I also thank her for her commitment and dedication to the region. The government has fought hard for the River Murray, as you know. We fought on the basis of the best available science for a better deal for the Murray-Darling Basin Plan.

The decision to build the Currency Creek regulator was made at the height of the drought and is another example of how this government has fought for a healthy river. It was a decision made under dire circumstances, where widespread degradation and perhaps permanent damage to our unique water system of the Coorong and Lower Lakes was on the very imminent horizon. It was also a decision made with the best available science to hand to preserve and protect the environment and to manage the risk of acid sulphate soils in the lower reaches of Currency Creek.

The Currency Creek regulator was part of the broader Goolwa Channel Water Level Management Project, which also included the construction of the Clayton regulator. The state required commonwealth approval to construct the regulators, with the approval also specifying the triggers for the removal of those regulators. These triggers, which were reached in 2011, led to the Clayton regulator being removed in October last year.

Thanks to the recent signing of the State Priority Projects schedule with the commonwealth government, the Currency Creek regulator decommissioning component has been able to proceed. The $1.97 million directed to that project has been funded through a mixture of funding from the Murray-Darling Basin Authority, the commonwealth Department of Sustainability, Environment, Water, Population and Communities and the South Australian government. The contractor, Maritime Constructions, was appointed on 20 February 2013, I am advised, with work on site having commenced on 8 April.

The removal of the regulator represents a significant milestone in the recovery of the River Murray. It is something that the community, including the Ngarrindjeri, has been eagerly awaiting. I acknowledge the role that the Ngarrindjeri have played in this very important project; in particular, I must acknowledge the contribution of Mr Tom Trevorrow.

Sadly, the recent passing of Tom means that he was not able to see the project completed and the removal of the regulator. Tom was a very strong advocate for the health of the River Murray. His support was integral in the campaign to fight for a Murray-Darling Basin plan that put the health of our rivers first. He acted with integrity and always with the interests of the Ngarrindjeri people at heart. He was passionate in sharing his knowledge of culture and tradition and his legacy will live on through his teachings.

I am heartened to know that at least Tom was aware that the project was finally able to proceed. Consultation between the government and the Ngarrindjeri has been ongoing, the Ngarrindjeri also playing an important role on site. The Ngarrindjeri have given a cultural induction to the contractors, Maritime Constructions, and cultural heritage monitors have continued to oversee the project on site. I am pleased to report that the project is progressing well, and it is expected that the decommissioning of the regulator will be complete by the end of June 2013.

SHACK LEASES

The Hon. J.A. DARLEY (14:53): I seek leave to make a brief explanation before asking the Minister for Sustainability, Environment and Conservation questions regarding shacks on crown land.

Leave granted.

The Hon. J.A. DARLEY: In answer to my question on 10 April the minister said that the rate of return used to calculate the rents for shack sites was set at 4 per cent based on independent advice from the New South Wales Valuer-General and a New South Wales valuer in private practice. In his report, the New South Wales Valuer-General stated:

> The Carter report lacks the appropriate level of valuation rationale, valuation calculations and comparable market evidence to properly determine current market rental values of the Life Tenure Shacks situated on Crown land.

Whilst the report did not stipulate an appropriate rate of return, it did state:

> Typically returns on residential investments are at the lower end of the range.

The independent private valuer from New South Wales stated in his report:

> I do not have first-hand knowledge of all the leases, the lease (shack) sites, the respective locations or the local market.

He also said that he was 'not familiar with the South Australian market or the market in the locality of the subject land' before making recommendations of what an appropriate rate of return should be in the location of crown land. My questions are:

1. Whilst I acknowledge the decision to set the rate of return was not made by the current minister, does the minister still support the decision not to apply the reduced rate of return retrospectively, given the comments made above were contained in the reports which were used as the basis to set the 4 per cent rate of return?

2. On what basis can the minister justify not correcting an error that was first raised nearly four years ago?

3. What did the department pay for the independent New South Wales valuer's flawed 40-page report?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:55): I thank the honourable member for his most important questions. My answers to his three questions are as follows:

1. Yes.

2. Given that, question No. 2 does not apply. There was no error.

3. I will take this question on notice and bring back a response at a later stage.

PENOLA WAR MEMORIAL HOSPITAL

The Hon. R.I. LUCAS (14:55): I seek leave to make a brief explanation before asking the minister representing the Minister for Health a question on the subject of the Penola hospital.

Leave granted.

The Hon. R.I. LUCAS: Members will be aware of the concerns expressed by the Penola community about the loss of their GP and the impact of that loss on the services provided by the local Penola hospital. I am advised that SA Health and the government had tenders for an expression of interest process for those medical services to be provided in the Penola community, and I am advised that that closed at the end of March this year.

I am further advised that the community is aware of at least one response to that expression of interest process—there may well have been more—and that the particular application the community was aware of was from a general practitioner who manages a business already providing medical services to a range of regional communities in South Australia. I am further advised that upon the closure of that expression of interest process at the end of March there was no contact from SA Health with that particular applicant, who had made their expression

of interest. I am further advised that SA Health have now reopened the expression of interest process and extended the closure date by a further six-week period.

As I am sure you would be aware, Mr President, there is great concern being expressed by people in the Penola community about the reasons that the government and SA Health have further delayed the consideration of the provision of medical services in the local community. Certainly there has been a very strong concern expressed to me from members of that community that these delays may lead to the possible closure of the Penola hospital—something the local community strongly opposes. My questions to the minister are:

1. How many applications were submitted in response to the expression of interest process that closed at the end of March, who considered those particular applications and what was the process of consideration of those applications?

2. What were the reasons for the six-week extension of the expression of interest period in relation to the provision of services at Penola?

3. Why was there no contact with individual applicants prior to the decision being taken to extend the expression of interest 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) (14:58): I thank the honourable member for his most important questions on the subject of medical services at Penola. I undertake to take those questions to the Minister for Health and Ageing in the other place and seek a response on his behalf.

FISH AND MARINE ANIMAL DEATHS

The Hon. R.P. WORTLEY (14:59): I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question about the fish and marine animal deaths in South Australia.

Leave granted.

The Hon. R.P. WORTLEY: In response to the fish and marine animal deaths in South Australia, the government has set up a team of experts to investigate the reasons for these deaths. Will the minister update the chamber on recent developments identified by this team of experts?

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) (14:59): I thank the honourable member for his most important question. As I have previously advised honourable members in this place, a team of experts has been working extremely hard to get to the bottom of the fish and marine animal deaths in South Australian waters—this fishy problem, Mr President.

I am pleased to advise that recently-obtained satellite images sourced from NASA have confirmed that the fish kills across South Australian waters are most likely caused by increased water temperatures and naturally occurring algal blooms. Scientists who formed part of the team of experts sourced these images to confirm their original theory based on satellite imagery from the CSIRO.

The NASA satellite data confirms the presence of unusually warm water and high chlorophyll levels, which indicates the presence of algal blooms, and it identified those in both gulfs during March, coinciding with fish deaths. In addition, the government's expert team has advised me that analysis of sea surface temperature indicated that the water is 3° to 5° warmer than climatologically average for March.

Working from their preliminary data, the government's expert team continued to persist in narrowing down the causes of these fish and marine deaths, and all reports of fish and marine animal deaths were investigated. Where possible, fresh fish were collected for diagnostic testing, with samples sent to the state's veterinary lab at Glenside (VETLAB) for pathology and histology testing.

The pathologist looked for evidence of disease and pathogens such as bacteria, parasites and viruses that may explain the deaths. The diagnostic tests for the fish samples collected have ruled out infectious fish diseases. Further to this, pathology results have indicated gill irritation consistent with unusually high water temperatures and algal blooms. Water samples were also

collected by staff from Primary Industries and Regions SA (PIRSA) at each fish kill location to gain more information on water quality and phytoplankton.

I understand that no known toxic alga have been identified; however, a well-known algae that is harmful to fish, *Chaetoceros*, has been observed in water samples, and I am advised that this is a known cause of fish kills around the world. Apparently it attaches to the gills, particularly of small fish, and irritates the tissue. The tissue then inflames, and the effect that it has is that the fish suffocates.

Mr President, we do know that the majority of the dead fish are bottom-dwelling small-bodied species which are unlikely to be able to move out of their territory when water conditions deteriorate. Scientists have also been able to rule out that these fish and dolphin deaths are related to a point source pollution event. This is due to the geographical spread of mortalities and the fact that the deaths have been ongoing over several weeks over a very wide range of areas.

I am advised that any pollution event associated with this activities would likely dilute to the point where they have no impact before travelling any significant distance, let alone the hundreds of kilometres over which these kills have taken place. In addition, the EPA has categorically ruled out—categorically ruled out—any link to the desal plant. The outlets of the desal plant and surrounding water are monitored multiple times of the day, and the results demonstrate full compliance with EPA licence conditions. In fact, I don't think it is just the day; I think it is over a 24-hour cycle every single day. I am advised that this data is publicly available on the EPA website.

In relation to the death of other marine animals, I can advise that most of the dolphins that have been recovered have received a post mortem at the South Australian Museum by a collaborative group of pathologists, veterinarians and biologists. The dolphins examined at the museum are photographed and measured, and then undergo a full post mortem. Many samples are collected, including liver, kidney, brain, muscle, heart, etc. The samples are collected for pathology and are studied immediately using a variety of tests such as histology, bacteriology and toxicology.

The results received to date show that the cause of death in five cases was a virus called the morbillivirus, which is specific to dolphins. I understand that this is a natural virus and outbreaks occur from time to time, with surviving animals developing immunity. Obviously, the young animals are particularly vulnerable because their immune systems are not as highly developed as adults', and of course most of these deaths have in fact been babies or juveniles.

I am advised that this virus is transmitted by close contact between dolphins, particularly between mothers and newborns, and this virus cannot be transmitted to humans. I am further advised that it is unlikely that the disease would be able to survive in the environment outside of an animal for any significant length of time. PIRSA and DEWNR advise that this virus has previously been found in overseas dolphin populations and in Queensland and Western Australia. Further test results will be returned in batches over this week and next, and the results obviously will be made public as they become available.

I would like to take this opportunity to thank the government's team of experts, led by chief executives of PIRSA and DEWNR, who through their extreme hard work and dedication over this last month or so have been working tirelessly to get to the bottom of these fish and marine deaths. I would also like to make some special thanks to Vic Neverauskas, a fellow who has spent more of his time under the water in these last number of weeks than above it. He is the manager of aquatic health at Biosecurity SA, and I want to thank him very much for his extremely valuable contribution.

Since the first fish deaths were reported, Vic has been out there collecting samples right across the state. He has been in the water, diving to collect evidence of fish behaviours and responding wherever he possibly could to public concerns. In addition, in conjunction with my parliamentary colleague the Hon. Mr Hunter, I would also like to thank the SA Museum and the University of Adelaide for their contribution and all their agencies and organisations who have contributed to the work of the government's expert panel.

FISH AND MARINE ANIMAL DEATHS

The Hon. J.M.A. LENSINK (15:07): As a supplementary, has the EPA and the task force ruled out any contribution to marine deaths from stormwater and/or wastewater treatment plants?

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 advice that I have received is that the most

likely cause of the fish deaths relates to the warm water temperatures and the algal blooms. The water quality has been tested in a number of places around where fish deaths occurred, and the water quality, I am advised, was within normal parameters. So, there was no evidence that there were any toxins or pollutants that were contributing to those events. Obviously, the testing has been done as broadly as it possibly can and we have tried to, as I said, do those tests where there have been fish killed.

HOUSING TRUST

The Hon. M. PARNELL (15:08): I seek leave to make a brief explanation before asking a question of the Minister for State/Local Government Relations about government plans to dispose of more Housing Trust homes.

Leave granted.

The Hon. M. PARNELL: It has been reported that the government is proposing to lease an additional 1,000 Housing Trust homes to community housing organisations on top of the 600 homes that were shifted to community housing organisations last year. The Local Government Association and a number of mayors have expressed their concern about this scheme because they see it as a cost-shifting exercise in which local government will be the losers financially. According to an article in InDaily this morning:

> The mayors are concerned by the move because houses transferred to Community Housing Associations enjoy a 75 per cent discount on council rates—which would equate to millions in lost revenue for local councils.

My questions of the minister are:

1. What impact will the move of public housing to community housing associations have on local government rate revenue?

2. If there is shown to be a negative impact, will the government compensate local councils for the rate revenue foregone?

3. Have the Local Government Association or any individual councils raised their concerns with you, and if so, what was your response?

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. My understanding is that this comes under the Minister for Housing, the Hon. Tony Piccolo, and I am happy to refer the questions to him and bring back a response.

My understanding is that there have been no final decisions about this matter as yet, so obviously the issues around that are still being considered. No final decision has been made and consultation is still occurring. I am trying to recall whether any individual council or the LGA has specifically raised this issue; to the best of my recollection they have not, but I can take that on notice and bring back a response. If they have, they certainly did not raise it in any great detail, but if they have I will make sure I bring that back.

CITRUS GREENING DISEASE

The Hon. J.S.L. DAWKINS (15:11): I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question regarding the government's response to the threat of citrus greening disease.

Leave granted.

The Hon. J.S.L. DAWKINS: Citrus greening, also known as huanglongbing (or HLB), is one of the worst biological problems facing the citrus industry worldwide. It is a bacterial disease which has no cure, meaning any infected citrus trees must be removed and replaced, causing massive income and job losses for commercial plantations. Citrus greening has been discovered literally on our national doorstep in countries as close as Indonesia and Papua New Guinea.

Through the illegal importation and planting or grafting of trees from infected areas overseas, citrus greening can spread to entire orchards, turning the canopy of trees yellow, mottling their leaves and eventually causing them to die. The importance of ensuring this disease is quarantined outside Australia's borders cannot be overestimated, particularly for the welfare of the South Australian citrus industry. My questions to the minister are:

1. What strategy does PIRSA have to deal with the potential threat of citrus greening to citrus crops in South Australia?

2. Is the state government working with the Australian Quarantine and Inspection Service to mitigate as far as practicable the risks posed by citrus greening to South Australia's significant citrus industry?

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) (15:11): I thank the honourable member for his important question. There are many biosecurity threats or potential threats to our primary industries, and this is one which potentially could impact on our citrus industry, which is why our biosecurity protection and monitoring systems are so important to this state.

In relation to this particular pest, HLB, I am advised there are three recognised strains of the pathogen—an Asian strain, an American strain and an African strain. The bacterium is spread between trees by sucking insects or by grafting. Current evidence suggests that all species and varieties of citrus are likely to be susceptible to HLB but to varying degrees. A pest risk review by Plant Health Australia and Citrus Australia concluded that HLB could cause a significant and potentially unrecoverable decline in the Australian citrus industry over 10 to 20 years.

The effects of the disease on productivity are often severe, particularly for sweet oranges, mandarins and the like. The Australian government has implemented quarantine arrangements to minimise the risk that the disease may be introduced into Australia. Biosecurity SA is actively monitoring for HLB as part of their national plant health surveillance program, and in the event of an outbreak in Australia, surveillance and early detection will be critical to any eradication effort.

HLB is classified as an emergency plant pest under the Emergency Plant Pest Response Deed. The disease is category 2 which means that the cost of eradication would be shared as 80 per cent by governments and 20 per cent by industry. Citrus Australia has put a research proposal to Plant Health Australia to look at prevention and eradication measures should the disease become established in Australia. The key issue in the proposal is establishing facilities to maintain a bud wood scheme to supply growers with disease-free citrus varieties in the event of an outbreak, and obviously we continue to remind growers to be vigilant in monitoring their orchards for symptoms of HLB.

CITRUS GREENING DISEASE

The Hon. J.S.L. DAWKINS (15:16): A supplementary question: given that it can be very hard to recognise citrus greening because it can look like the tree just has a lack of nutrients, will the minister ask SARDI to conduct specific research into this disease in cooperation with Plant Health Australia?

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) (15:16): I thank the honourable member for his question and his suggestion. I am happy to raise that with SARDI and seek their advice as to how worthwhile that sort of project would be. I am happy to raise it with the experts and see whether it would be a useful thing to do.

GREAT ARTESIAN BASIN

The Hon. K.J. MAHER (15:17): My question is to the Minister for Sustainability, Environment and Conservation. Will the minister inform the chamber about the recent discoveries in the science relating to the Great Artesian Basin?

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): Another remarkable question from the Hon. Mr Maher. Where does he get them from? Fortunately I happened to be at the launch of the Great Artesian Basin researchers forum, so I can give him some advice in this matter. The Great Artesian Basin is one of our nation's most important environmental assets. Living in South Australia—the driest state in the driest inhabited continent—we understand that managing such a vast supply of reliable fresh water wisely is of critical importance, particularly to our state.

I am pleased to advise that on 27 March I, together with the recently appointed Parliamentary Secretary for Sustainability and Urban Water, Ms Amanda Rishworth MP, the

member for Kingston, had the pleasure of launching two important research projects. These projects will provide government, industry and communities with important science and knowledge to ensure the sustainable management of the Great Artesian Basin. The Great Artesian Basin Water Resource Assessment and the Allocating Water and Maintaining Springs in the Great Artesian Basin research projects were funded by the federal government. The projects were delivered by the SA Arid Lands NRM Board, in partnership with a number of agencies and research organisations, including my Department for Environment, Water and Natural Resources. The reports provide the most comprehensive study of the basin since 1980, and the findings will help ensure its sustainability into the future.

Key points include that the western range of the basin (which is predominantly within South Australian borders) received the majority of its recharge water over 10,000 years ago during the wet periods of the Pleistocene period and since then there has been minimal recharge. This means that the Western Great Artesian Basin is in a state of natural long-term pressure decline, or more simply, the current discharge of water is greater than the recharge. This does not mean that the basin and its springs will dry up in the near term. What it does mean, however, is that we must continue to use the best science and best knowledge when it comes to managing such a critical resource for central Australia.

South Australia has always been a strong advocate for using the best science to inform policy and decision-making when it comes to matters of water, and it should come as no surprise to anyone in this chamber that the Weatherill government takes these matters of water very seriously. What we also take very seriously when managing the Great Artesian Basin is collaboration with our neighbours.

The basin, and indeed many of our water resources, is not restricted by our state's boundaries. Its flow does not begin or end with a state border and nor do the consequences of a single state's decisions. We know that South Australia cannot achieve the outcome we want—sustainability of water resources—without the support of our neighbours. That is why we are looking forward to using these reports to inform collaborative decision-making for the governments of Queensland, New South Wales and the Northern Territory, to ensure that the basin is managed wisely.

I want to congratulate the various project partners performing this incredibly important research. As I said earlier, the South Australian Arid Lands Natural Resources Management Board and the National Water Commission were key drivers behind the research. We also received significant support from senior scientists and researchers from Adelaide University, Flinders University and the CSIRO. On behalf of the South Australian government, I want to thank them for all their support and acknowledge their critical role in helping our state and our nation learn more about this vital water resource, the Great Artesian Basin.

FARM FINANCE PACKAGE

The Hon. R.L. BROKENSHIRE (15:21): I seek leave to make a brief explanation before asking the Minister for Agriculture a question regarding the federal government's new $420 million national farm loan scheme.

Leave granted.

The Hon. R.L. BROKENSHIRE: The federal government announced yesterday that it would be introducing a concessional loan program that now lifts the off-farm income threshold to $100,000 from $65,000. The Victorian Farmers Federation welcomed the package, saying farmers across the nation are struggling due to market failure, drought and the impact of the high Australian dollar. Each state is eligible to receive up to $60 million in funding from the loan scheme. The PIRSA website lists in its history on the Rural Assistance Branch of the Department of Agriculture the history of state-based loans to farmers in the 1970s, 1980s and then in more limited ways in the 1990s. My questions are:

1. Has the minister received and read, if received, a letter from minister Ludwig outlining this program, given that Mr Ludwig was encouraging all state ministers and governments to get behind this program this morning?

2. When was this first raised with the minister, to her knowledge, and who raised it?

3. Will the South Australian government push for the full $60 million entitlement for South Australia?

4. How will the South Australian government administer its $60 million component of the scheme and can the minister assure the house that there will be no siphoning off of that money as cost recovery back to the agency?

5. Can the minister assure the farming community that the government will ensure that $60 million is mobilised as early as possible within the two-year period and not held up due to bureaucratic nitpicking?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (15:23): On 26 April the Australian government announced the Farm Finance package, which builds on the ongoing financial resilience of farmers, who obviously are currently struggling with, amongst other things, high levels of debt. As part of a drought program reform, the Australian state and territory primary industry ministers agreed to the framework for a new package to better support farmers and their families to prepare for future challenges. That was back on 22 October 2012. The focus is on helping farmers to prepare for and manage business risks. The Australian state and territory primary industry ministers have agreed that the new package will support farmers without the need for exceptional circumstances declaration.

The South Australian government supports initiatives that focus on building preparedness of the farm sector to manage businesses through droughts and other adverse periods. The Australian government's Farm Finance package has the following four measures:

- short-term assistance in the form of concessional loans for productivity enhancement projects or debt restructuring;
- funding for up to 16 additional full-time counsellors with the Rural Financial Counselling Service;
- increasing the non-primary production income threshold for farm management deposits (FMDs) from $65,000 to $100,000 and allowing consolidation of existing FMD accounts; and
- establishing a nationally consistent approach to farm debt mediation.

The other component involves concessional loans. The Australian government is committing up to $30 million each year for the next two years to each state and, obviously, the Northern Territory to provide concessional loans to farmers in need, so each state receives that, I have been advised.

The Australian government will work with each state and territory wishing to participate in the loans measure on delivery mechanisms, and we are currently in discussions with the federal government around those delivery mechanisms. Concessional loans of up to $650,000 will be available to eligible farm businesses in need of short-term financial assistance.

In relation to the rural financial counsellors, Farm Finance will provide an additional $5.6 million over the next two years to fund around 16 additional full-time rural financial counsellors in regions experiencing acute debt stress and where recent natural disasters have had a heavy impact on farm businesses. South Australia currently has 10 financial counsellors located across our regions, and the Australian and Northern Territory governments have agreed to provide additional funding to Rural Financial Counselling Service South Australia to deliver a 12-month trial of services in the Northern Territory under the Rural Financial Counselling Service program.

In relation to the farm management deposits (FMDs), the FMD scheme is designed to assist primary producers to become more self-reliant, deal more effectively with fluctuations in cash flow and manage financial risk. Approximately $550 million is currently held in farm management deposits by South Australian farmers. The scheme's non-primary production income threshold will be increased from $65,000 to $100,000.

The Hon. R.L. Brokenshire: How much, sorry?

The Hon. G.E. GAGO: The threshold will be increased from $65,000 to $100,000, and I think that's been generally fairly well received. Primary producers will be able to consolidate their FMD accounts that have been held for 12 months. So, that's the non-primary production income threshold that's been increased.

The Hon. R.L. Brokenshire: That's a good move.

The Hon. G.E. GAGO: It is a good move. There are some really good elements in this. One of the real challenges in putting assistance packages together is not to impact in the marketplace in such a way that all it does is instantly increase the cost of everything so that the benefits are absorbed almost overnight through increased costs. We can see that the federal government have thought through this very carefully and chosen targets and measures that minimise that adverse impact.

Continuing on, primary producers will be able to consolidate their FMD accounts that have been held for 12 months. The National Rural Advisory Council (NRAC) report on the effectiveness of the FMD schemes was released on 26 April 2013. Amongst its findings, the NRAC recommended that the threshold on non-primary production income should be phased out by 2020.

In relation to farm debt mediation, the Farm Finance measures include pursuing a nationally consistent approach to farm debt mediation. This will help farmers and their bankers access a simpler, more consistent system that delivers results for all involved. The government will work with the banking and agriculture sectors as well as the states and territories to progress a consistent approach to this much-needed service.

The commonwealth is obviously working very diligently to negotiate the details of this with each state, and those negotiations are well underway. With respect to the low interest loans scheme, the Australian government has stated that it will work with state and territory governments to make these loan products available across the country via appropriate delivery agencies. We are currently working through what the most suitable agency would be here in South Australia, so that detail is yet to be finalised.

The South Australian Dairyfarmers Association obviously wants governments to act quickly to ensure that low interest loan schemes are rolled out as soon as possible so that many farmers who have made a loss this year because of low global milk prices and suchlike can actually access these funds as soon as possible. They are in need now. The South Australian government is working with the Australian government this week to ascertain the details of this measure, including implementation arrangements, so that we can support specific needs of resilient South Australian farm businesses in a really timely way.

I agree with the Hon. Robert Brokenshire that it is important to expedite this, and we are doing everything we can to do that. Just to put in a plug for the Rural Financial Counselling Service, it provides a free service. It is a very important service and it can often assist primary producers early in the piece. I would urge those businesses that are in trouble to avail themselves of that service. Early intervention just might be able to ward off significant disaster. This service is free. Whilst the Australian government has not initially provided any additional resourcing, it is obviously a very important area.

The FMD scheme is a valuable tool for farmers in managing fluctuations in their income. It allows greater access to the scheme by raising the non-primary income threshold, which I have spoken about. This is a wonderful package of assistance that has been released. I believe it was announced on 26 April, and I was advised of that announcement and provided with the details of that. I think I was advised via text or email. I will have to check that but it was electronically, anyway.

I note that the Hon. Robert Brokenshire in his urgency to gain detail about this package forgot to acknowledge his gratitude to the federal government for providing this assistance package to our primary producers. I agree with him that it is a wonderful initiative, and we are very pleased that the federal government has assisted in this timely way.

ANSWERS TO QUESTIONS

PASTORAL LEASE RENTS

In reply to the **Hon. R.L. BROKENSHIRE** (27 March 2012).

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

Pending the outcome of any rent reviews being considered by the Valuer-General, an additional $325,726 should be collected as a consequence of the increase in 223 pastoral lease rents.

RESIDENTIAL TENANCIES (MISCELLANEOUS) AMENDMENT BILL

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

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

That the Legislative Council do not insist on amendment No. 2 but make the following alternative amendment in lieu thereof:

New clause, page 8, after line 9—After clause 5 insert:

5A—Amendment of section 13—Presiding and Deputy Presiding Members

Section 13—after subsection(1) insert:

(1a) Before a member of the Tribunal is appointed (or reappointed) as the Presiding Member or a Deputy Presiding Member of the Tribunal, the Minister must consult confidentially about the proposed appointment with the Law Society of South Australia.

On 21 March 2013 the government agreed to all but one of the amendments made to the bill in the Legislative Council. The bill has been returned for members to reconsider clause 5A.

Clause 5A of the bill was an amendment moved by the Hon. Mark Parnell incorporating an amendment moved by the Hon. Stephen Wade, that required the minister to consult with a panel before a member of the Residential Tenancies Tribunal is appointed or reappointed. The panel must consist of a nominee of the Law Society of South Australia, the Attorney-General, the House of Assembly, the Legislative Council and the Commissioner for Public Sector Employment.

This amendment seeks to amend clause 5A of the bill so that the minister must consult only with the Law Society of South Australia before appointing the presiding member or the deputy presiding member of the tribunal. This is considered appropriate since the presiding member and the deputy presiding member are the only tribunal members required to be legally qualified.

I encourage members to support this amendment in the interest of preventing the appointment process for tribunal members from becoming unnecessarily complex. I am advised that listing times for tribunal matters fluctuate according to the complexity, urgency and number of applications received. Currently, applications to the tribunal are being listed for hearing in a timely manner; however, as members may be aware, last year the listing time for some matters was up to 90 days. At that time the government was able, on short notice, to appoint new tribunal members to quickly clear the backlog.

Clause 5A of the bill will limit the government's capacity to manage such a backlog in the future, and I do not think that is to anyone's benefit. It is noted that the Real Estate Institute of South Australia expressed concern about the impact of clause 5A on the bill. This amendment is essential to retain that flexibility around operational requirements for the tribunal.

The Hon. S.G. WADE: As the minister rightly explained, this is, if you like, the remaining part of a two-part clause that the Hon. Mark Parnell raised. The opposition did not support, and nor did the chamber, the proposal to treat tribunal members like judicial officers and give them security of tenure to the age of 65.

However, the opposition was sympathetic to the concerns the Hon. Mark Parnell raised in terms of lack of transparency in the process of appointments to the tribunal. I then, on behalf of the opposition, moved an amendment, which was supported by the committee, to retain that portion. What the government has done in response is to come back with an alternative amendment.

The Hon. Mark Parnell's concern, in terms of the transparency of the process, in our view, is well founded. This government, over the last decade, has a well established pattern of making appointments both to tribunals and other bodies that lack transparency. This council very resolutely stood for the independence and transparency of the process in relation to the ICAC commissioner last December, and I think that was another reflection of this council's ongoing concern for transparency in appointment processes, so it was hardly surprising that the council was inclined to support that element of the Hon. Mark Parnell's amendment.

Personally, I do not find valid the government's justification for the opposition to the proposed clause 5A, in terms of it being overly time consuming in a situation where the government needs to rapidly appoint tribunal members to clear a backlog.

This state, under this government, has endured court and tribunal backlogs year after year. We do not suddenly appoint Supreme Court or District Court judges and tribunal members to

handle short-term fluctuations; the government's response is to grin and bear it. So, in the 10 years that we are dealing with backlogs, perhaps it would not be too much to go through the panel process suggested by the Hon. Mark Parnell. It would be fair to say that the opposition is attracted to the issue; in other words, we want to promote transparency in appointment processes. We were not wedded to the model the Hon. Mark Parnell submitted.

The government has provided an alternative, a compromise. It is a very limited compromise. First of all, it withdraws from all tribunal appointments other than that of the presiding member and the deputy presiding member, and it only requires consultation with the Law Society. Nonetheless, the opposition believes that the compromise amendment is an improvement on the original bill.

We commend the Hon. Mark Parnell for raising the issue before the council, and the opposition indicates that, while recognising it is a limited attempt to address the issues raised, we will be supporting the government's alternative amendment.

The Hon. M. PARNELL: I would like to ask a couple of questions of the minister before I move on to our position. I want to ask the minister about the number of people affected by the government's version of this amendment and by my version. By that, I mean that we know there is only one presiding member; how many deputy presiding members and total members are there on the Residential Tenancies Tribunal?

The context is that my amendment picks up the appointment or reappointment of all members, whereas the government's amended provision only refers to the presiding member or a deputy presiding member. How many fall into each of those categories?

The Hon. G.E. GAGO: I have been advised that there is currently one presiding member and, we believe, one deputy presiding member. In total, there around 13 members, including both the presiding member and deputy presiding member, so there are about 11 other members.

The Hon. M. PARNELL: I thank the minister for her answer, and it draws our attention to the fact that the vast bulk of the work of this tribunal will be undertaken by members who will no longer fall within the ambit of the provision I first moved in terms of a new clause 5A. So, only two out of 13 will have any form of formal vetting process at all, and the only formal action the minister need take, other than choosing the person him or herself, is that a confidential discussion takes place with the Law Society of South Australia. I think that is an unsatisfactory way to proceed.

As the Hon. Stephen Wade pointed out, this clause in many ways is a proxy for a much larger debate about the way the government handles important appointments to statutory bodies and, in particular, statutory bodies of a judicial or quasi-judicial nature that affect the rights and responsibilities of individuals.

The minister makes the point that the procedure that I had put forward, which involved a range of people who needed to be consulted, was unnecessarily complex. Well, it is certainly more complex than the present system, which is that ministers pick mates. They pick mates to take these jobs. No application process, no interview process; the minister picks a mate to take an important statutory role. That is what I am trying to overcome with this amendment.

The minister referred to the difficulties with the listing of cases and backlogs of cases that can arise, and she mentioned that the backlog got up to 90 days. The question, I think, for this council is, why should administrative incompetence in the running of a statutory tribunal be remedied by the appointment of mates to do the jobs of work that might help relieve that backlog? I think it is no answer to say that we quickly need to fill positions in order to relieve backlogs, because, as the Hon. Stephen Wade pointed out, that is not the position that has been taken in the courts at any level. They do not just rush out and say, 'We are having a busy week; let's find another judge.' Certainly, these things can be managed and can be managed properly, and that includes managing them in a way that the appointments to these most important positions go through some formal process.

I do not support the government's alternative amendment, and I would urge the council to continue to support the original amendment, which provided that all these decision-making jobs go through at least some minor statutory process; that is, before a person is appointed or reappointed, the minister is to consult confidentially with a nominee of the Law Society, a nominee of the Attorney-General, parliamentary representatives as well as the Commissioner for Public Sector Employment. It is not such a difficult group of people, and you do not even need to get them all together in the one spot. There is certainly nothing to prevent either house of parliament in advance

appointing the persons to fill those roles. There is no reason why the process envisaged in my clause 5A could not be undertaken in a matter of days.

It is never going to be a situation where it is a life or death matter that a mate be appointed immediately to fill an important job of work. So, whilst this particular motion only relates to this one tribunal, really what members should be thinking about is the whole range of statutory appointments that are made under legislation and whether it is appropriate for those positions to effectively be the spoils of war, the plaything of the government in office where they can appoint people without going through any Public Service process and without going through an application or interview process. I think that is a very poor way to administer legislation in this state, and I will be urging all members to continue to support the original amendment.

The Hon. G.E. GAGO: I just have to get to my feet and make a comment on some of these outrageous assertions. The reason that it is only the presiding and deputy presiding members that are required to be consulted is because they are the only two that are required to have a legal qualification. In relation to 'jobs for mates', it is just outrageous—absolutely, absolutely outrageous. It is a combination process that is used and has been used by the former Liberal government, and after all, we took over the staff that they appointed when we got into government—their so-called 'mates'. It is outrageous. It is an outrageous allegation.

A number of processes are used, and it is a combination of both advertising positions and also making appointments. I know that ministers think and put a great deal of diligence into the selection of these most important positions and they take those responsibilities very seriously. All those people who have been appointed have been extremely competent and highly qualified people, and I would challenge either the Hon. Ann Bressington or the Hon. Mark Parnell to name one—just name one—either now or historically who was not highly qualified and highly competent and conducted themselves in an extremely high calibre way in their office. I challenge them to name one who was not an extremely competent, qualified officer and who did not operate with the highest integrity at all time. Our tribunal has a longstanding history of attracting very high calibre people.

The main premise behind the amendment we have put forward is that of flexibility. This is all about flexibility and being able to ensure we have in place processes that enable us to respond in a timely and highly flexible way. It is interesting to note that the Greens, along with the former Democrats, will never have to worry about managing and administering these statutory offices. They can sit there and espouse all sorts of theoretical and high notions of how these offices should be managed. They have never run one of these offices and they never will.

The CHAIR: The Hon. Mr Lucas.

The Hon. T.A. Franks: Does the minister actually talk to the Tasmanian ministers at COAGs or what happens—they just pretend the Greens don't exist there?

The CHAIR: The Hon. Mr Lucas, you are starting to sound like the Hon. Ms Franks. The Hon. Mr Lucas has the call.

The Hon. R.I. LUCAS: I did not intend to participate in the debate, but the minister's outrageous and inflammatory comments during the committee stage have prompted a brief response from me. As I understood her comments, she was challenging anyone to stand up in the chamber and name particular officers. Some two or three years ago—I will check the record and I am happy to send a copy—I named Ms Karen Hannon and her connections to the Labor Party and to the minister. I asked a series of questions of the minister, and for two or three years she has refused to respond to the questions. I am delighted that the minister has issued that particular challenge, because let me issue the challenge to her. The record of my questions are on the *Hansard*. I am happy to forward another copy to the minister if she wishes.

I named the particular officer and her association with the minister and the claims that were made at the time, and this minister has, for a period of a couple of years or so, steadfastly refused to respond to those particular questions. I invite the minister, given the claims she has just made, to stand up in this chamber during this particular debate and respond to the questions I put to the minister at that particular time.

The Hon. G.E. GAGO: I again throw open the challenge: if there is anyone in this chamber who believes that any of these appointments were not people of the highest calibre, highest qualification and highly competent people to get to their feet and name them, and no-one has stood to the challenge.

The Hon. R.I. Lucas: I just did.

The Hon. G.E. Gago: That is not what you said.

The CHAIR: The Hon. Ms Franks.

Members interjecting:

The CHAIR: Order!

The Hon. G.E. Gago interjecting:

The Hon. J.S.L. DAWKINS: On a point of order, the minister is defying your call.

The CHAIR: As are members of the opposition, and you can join them. We could challenge everyone to make their nominations outside of this place, outside of parliamentary privilege. The Hon. Ms Franks had the call.

The Hon. T.A. FRANKS: In response to the minister's comments, I ask: what does the minister do when she meets with the ministers of the Greens-Labor government in Tasmania, minister Nick McKim and minister Cassy O'Connor? Does she ignore their existence or does she accept that the Greens do have ministers this government works with?

The Hon. G.E. GAGO: We consult is the answer. I have a question for the Hon. Mark Parnell in relation to his amendment: how would that work if the five members do not agree?

The Hon. M. PARNELL: I am happy to answer the question: because it is not a decision-making body. What it says clearly in the amendment is that before a person is appointed or reappointed a member of the tribunal, the minister must consult confidentially about the proposed appointment with a panel.

I did say before they did not necessarily all have to be in the same place, but perhaps they do if it is a panel, so I will just correct the record there. But it certainly does not say 'and the minister must do what that panel says'; it just says 'consult confidentially'. So, having ascertained the views of those people, the minister can then make a choice, including the appointment of a mate if they want to.

The Hon. G.E. GAGO: The question still remains, though: what if they do not agree?

Members interjecting:

The CHAIR: The minister decides. That is the point.

The Hon. G.E. GAGO: What is the point?

The Hon. S.G. WADE: Considering that the government's clause contains exactly the same phrase, could I ask the minister: what happens when the minister consults confidentially about the proposed appointment of the Law Society and they do not agree?

The Hon. G.E. GAGO: They are legally qualified, so that is the difference.

Members interjecting:

The CHAIR: You are missing the point though. My understanding is that the amendments are there for the consultation, but finally the decision rests with the minister.

The Hon. M. PARNELL: Thank you, Mr Chair.

The CHAIR: As you should.

The Hon. M. PARNELL: You are clearly on top of this legislation.

Members interjecting:

The CHAIR: Order!

The Hon. M. PARNELL: I guess the point that comes out of this exchange in committee is that, whilst the ultimate decision does rest with the minister, it is a principle. You are putting some checks and balances into legislation that effectively make it harder for the minister to make really bad decisions because it would be a very brave minister who, having consulted under my model with a range of people, then went against their recommendations.

Similarly, under the minister's own model, if consulting the Law Society and the Law Society said, 'Minister, you've got to be joking. This person is quite inappropriate to be appointed,' I

think it would be a brave minister to proceed regardless. Nevertheless, legally they have the power to do that, so what we are doing in legislation is we are making it harder for ministers to make bad decisions, and I think that makes for good law.

I will make one other point. The minister said as justification for her amendment that the only two people who need to be consulted are the presiding member and the deputy presiding member because they are the only people who need to be legally qualified. My point is: there are 11 others who have to make legal decisions every single day whether they are legally qualified or not. Their job is to apply the Residential Tenancies Act. Whether they are lawyers or psychiatrists or someone else, they still need to be able to understand legislation and to be aware of precedents including the decisions of appeal courts.

So, whilst they might not technically need to be legally qualified, in some ways there is even more reason for having legally qualified people vetting them so that these non-lawyers are at least adjudged to be capable of making legal decisions because that is the job that has been given to them when they are appointed as a member of the Residential Tenancies Tribunal.

Motion carried.

MOTOR VEHICLE ACCIDENTS (LIFETIME SUPPORT SCHEME) BILL

Adjourned debate on second reading.

(Continued from 9 April 2013.)

The Hon. CARMEL ZOLLO (16:01): I rise to make a short contribution to the Motor Vehicle Accidents (Lifetime Support Scheme) Bill 2013. I support this bill because I am aware of the need for reforms to compulsory third-party insurance to ensure that people who have been in accidents or crashes where they were at fault or where no-one was at fault have access to the financial support that they need. As a former minister for road safety, I am particularly aware of the need for this legislation.

For rural and regional South Australians, this bill is essential and has been a long time coming. As upper house members, we regularly travel to rural areas and all of us would be familiar with the amount of road kill that can litter the sides of our country roads. When I travel to regional South Australia, most people I meet have a tale to tell about hitting a kangaroo or swerving to miss another animal. Under our current scheme, people who are seriously injured as a result of these sorts of unavoidable crashes do not receive any compensation to help with their medical costs.

At the same time that those people are suffering, other motorists are being compensated, regardless of the fact that they may not have suffered any financial hardship as a result of their injuries but simply because another driver caused their crash. The system as it stands is simply unfair. Many regional and rural drivers of all levels of experience have lost control of their vehicle on a dirt road or misjudged wet or foggy weather conditions. If these people are seriously injured, they currently receive no support and their families are left to carry the burden of their recovery.

Drunk and hoon drivers are a cause of great danger to other road users as well as themselves. This does not mean that their loved ones should have to suffer the financial hardship of caring for them if they are seriously injured. I was pleased to see that, within the no-fault part of this bill, people who have engaged in illegal behaviour will receive compensation for their care and medical bills but not for their loss of income. I am pleased to support this bill because not only does it help create a fairer compensation scheme but it also makes compulsory third-party insurance cheaper for all South Australians. It would be fair to say that we all appreciate cost of living pressures and this proposed legislation would assist with those pressures.

Because of these changes, South Australian motorists will save up to $145 over the next two years on their class 1 compulsory third-party premium. As members would be aware, country motorists are already treated differently and they will receive a proportionate reduction, meaning they will still financially benefit from these changes. I believe a great balance has been struck where those who are severely injured receive help while, at the same time, financial relief is offered to those people in the community who are doing it tough.

I commend the government for working to ensure that this important legislation has the support of the legal profession, the RAA and others. I would urge all honourable members to support this bill.

The Hon. T.A. FRANKS (16:07): I rise today on behalf of the Greens to speak to the Motor Vehicle Accidents (Lifetime Support Scheme) Bill before us. I will not labour on the contents

of the bill too much because I think it is certainly no surprise that this bill is before us. It has been very extensively and widely publicised and consulted on. Certainly, at the outset, I thank the government for the enormous amount of information that they have provided for us in coming to debate this bill and, in particular, for the briefing held with my staff, provided by Lois Boswell and Sam Runnel with Dianne Gray and Stuart Hocking from the MAC Reform Group.

The bill, of course, proposes to reform South Australia's compulsory third-party scheme and would introduce a no-fault scheme for catastrophically injured people. It would retain at fault provisions for less serious injuries and reduce payouts for minor injuries. In general, this brings South Australia into line with some other states across Australia.

I note that much of the media around this bill and certainly the promotion from government has been that these reforms are intended to make the motor registration premiums cheaper. I am not sure that that should necessarily be the goal of the bill. I find it sad when debates focus on the amount of savings to be made rather than the way we can improve people's lives. Certainly, the Greens are hoping that we can see this bill give better outcomes for those who are injured.

It will also ensure that motorists who are catastrophically injured in a motor vehicle accident will, in fact, be adequately cared for over their lifetime. Unfortunately, as it currently stands, approximately 40 per cent of people injured catastrophically are not covered by our CTP compensation. This is a devastating fact and I think we in this parliament should be ashamed that that is the case in our state. I commend those who have sought to reform it.

The reforms are intended to improve the fairness of the system—and the Greens accept that—and also reduce legal costs that are, in fact, disproportionately high in our state compared to other states. It is no surprise that we are debating it, having had such extensive consultation, and I believe that the government has provided a rationale for the reforms.

The green paper released on these proposals last March received more than 100 submissions, and certainly the Greens have been grateful for those community groups and others who have had input into this debate, in particular groups such as the AMA of South Australia, the RAA, PARAQUAD South Australia, cycling groups, Business SA and the like. There was, of course, a diversity of views represented. Any issues such as this will in fact have a robust argument. I commend the government for engaging in that and not being afraid of real consultation and, in fact, being prepared to have the debate in order to come up with what I think is a bill worthy of support.

The review brought out some criticism that in fact this scheme would in fact benefit those who are engaged in illegal activities, such as driving under the influence or drag racing. The view that those people should in fact be afforded compensation is a contentious one and it is certainly a contentious part of this debate, but I draw members' attention to the submission made the Australian Medical Association of South Australia, which I believe put forward a very strong case when it said that it recognised the United Nations Declaration of Human Rights and that it would, 'prefer that it does not discriminate delivery of health care based on such considerations as causation'. The AMA continues:

> The posing of the question suggests that different health outcomes should be considered for victims based upon causation and fault.

The AMA of South Australia did not support such an approach and neither do the Greens.

The South Australian Council of Social Services (SACOSS) has also highlighted a number of concerns for possible amendments to this bill and certainly the Greens have been sympathetic to those concerns. SACOSS and in particular Hannah Corbett and Greg Ogle have put in quite extensive work, drawing our attention to what I would consider to be fine-tuning amendments to the bill and certainly enabling a review mechanism so that we cannot just look at the cost implications of this bill, but also the social impact. The Greens will be moving for a review of this legislation, should it come into law, three years after that takes place. Also, they have raised concerns regarding the injury scale not necessarily sitting in the legislation itself and the transparency and safeguards around that and also the cumulative nature of some injuries.

However, what I will discuss in detail today is an amendment that the Greens will be moving with those aforementioned ones, which is flexibility for exceptional cases outside the injury scale. In other words, the Greens will move to allow the courts some discretion in special cases. We have circulated amendments to this bill on those four areas, but I will only address the

exceptional circumstance clause at this stage of the debate because I think it will be helpful for members to have time to consider it, and I certainly hope that the government will also consider it.

The cited justification for limiting the rights of those who fall below the threshold has been to reduce the cost of compensating those people who are what is termed barely impacted by their injury, and I quote from the second reading speech: 'claimants who have had little or no time off work'. The injury scale values will be assessed according to the injury itself, with little scope to consider the impact on an individual's particular circumstances. The Greens' amendment will aim to give some protection to those people who suffer an injury that is assessed as not serious enough to meet the threshold but who in fact are so seriously impacted by that injury that it would be unjust to exclude their common law rights to compensation for future economic loss.

The purpose of the legislation is not to push victims of motor vehicle accidents into financial hardship, but I believe—and SACOSS has certainly convincingly put—that this would be an unintended consequence if those who are severely impacted are indeed prevented from covering their loss. Take the example of a person who suffers what would be termed as a moderate eye injury. It is described as a minor but permanent impairment of vision in one eye, which is assessed as having an ISV of seven. In most cases it would be quite reasonable that this person be excluded from seeking any future loss of income because they would still be able to perform their job, although they may have to adjust for that inconvenience. However, what if that person were already blind in their other eye and relied fully on the newly injured eye for their work? The consequence of that injury on that person would be exceptional, because it would be their pre-existing condition.

Alternatively, what if the person were a pilot or a surgeon and was required to have good vision to perform their work? The consequence of a moderate eye injury to that pilot or surgeon would be quite different to most other occupations, and that would be what would make it an exceptional case. It would then be necessary to consider whether the particular circumstances of the case would mean it would be harsh and unjust to exclude the person from claiming future economic loss.

It is a question of impact, and if the result of the injury is that the person is generally unable to work either permanently or for a significant period of time, then we believe it is unnecessarily harsh and unjust for them to be prevented from recovering that loss. It would up to the court to weigh the particular circumstances and the potential future job possibilities and impacts in that individual case, but we think this is preferable to a blanket prevention of compensation if the legislation were passed unamended.

Similarly, there are certain professions that require constant use of the hands and where hand dexterity is central to the job function. If an average person suffers a moderate hand injury—described as a crush injury, a penetrating wound or deep laceration requiring surgery and resulting in moderately serious tendon damage—they would be expected, after a period of recovery, to be able to return to work and adjust to using their hand in a more limited way. However, such an adjustment might be impossible for a hairdresser or a typist, for example. Indeed, it would be reasonable to say that any minor injury that has the effect of ending a person's career could be considered exceptional.

In conclusion, and with those few words, I indicate that the Greens will be supporting the second reading of this bill, and we look forward to the committee stage. However, I have one final question. In correspondence we have received in just the past few hours it has been indicated that minister Snelling has communicated with members of parliament today stating that the Australian Lawyers Alliance, and also other groups of the legal profession (for the sake of the minister I point out that I do not have the exact group names in front of me), will not be seeking any further amendments to this bill. I ask: does that commitment they have made to government not to seek any further amendments preclude them from supporting, endorsing or opposing further amendments to this bill made in this place? With that, I commend the bill.

The Hon. R.L. BROKENSHIRE (16:17): I rise to advise the house that after quite a lot of deliberation and initial concern (and still some concern), but having also read and consulted with a broad cross-section of people who will be affected one way or another by this proposed legislation, the Motor Vehicle Accidents (Lifetime Support Scheme) Bill, Family First will support the concept of the scheme. However, we reserve our right to consider amendments that have been put up in this place by a number of members.

We always had concern about the fact that we were, in effect, seeing a proposal that is robbing Peter to pay Paul. By that I mean that the low-scale injured are being removed from the opportunity to receive compensation for those whose injuries were catastrophic, with very serious injuries. We still express concern about the spin the government is putting forward regarding reducing premiums in year 1 by cutting out the low-scale injuries but then introducing a new levy in a later year. Registration and CTP combined is just too expensive in this state as it is. With an average motor vehicle costing around $650 to $700 to insure with compulsory third-party right now, it is just too much for most families to afford, and we are cynical when it comes to the promise that there will be ongoing reduced premiums. However, having said that, we hope there will be.

I commend the stakeholder groups for their work on getting some of the lower scale injuries reinstated. I think that was important, because whilst we know that some people have always attempted to rort the scheme, as we see in many situations, there are genuine situations where people have a lower scale of injury and who, notwithstanding that, should be entitled to some compensation.

When it comes to lifetime support, I like this proposal. In the past, I have seen lump sums paid out to people who were severely injured and who then had to rely on the good management of the trustees or family members to appropriately invest that money to ensure that that person could have the best possible quality of life. I know that has been very difficult for some families, especially when they have enough of their plates just trying to manage the serious injuries and ongoing support of their loved ones, some of whom have incredibly serious injuries.

In fact, I recently met with a constituent, and I do not want to go into too much detail on this because it would easily identify all of the people involved in this incident, including, tragically, one fatality. I am aware of the families involved, and have met with a constituent whose husband hit a kangaroo and, as a result of that, was catastrophically injured. This accident also involved a fatality.

Knowing how difficult it is for that family to be able to manage, my constituent strongly supported this concept as a scheme that would be of far greater help to her family than the situation she that she is in at the moment. When my constituent's husband hit the kangaroo, the current law meant that he was not in a position to receive any financial support other than the general medical care that he had to go through. Whilst I admire him, his wife and their children, this scheme would certainly be advantageous to their entire family.

We have been considering that the scheme will need to be designed to harmonise with the NDIS, in light of the Prime Minister's recent announcement. I note today the federal debate about a Medicare levy to fund the NDIS, and I will put on notice that during the committee stage I will ask the minister to advise what the funding structures will be, if any, for linking this in with the NDIS in the future.

I also put on notice that I will ask the minister to table the actuarial figures on the scheme as they are structured. Having had a very intense debate in here a few years ago on WorkCover, and now seeing the dilemmas that we have with WorkCover, where we are looking at $1.2 billion of unfunded potential liability and incredible premiums, thus making it more difficult for employers to employ employees, you might say I am once bitten, twice shy.

I will place on the public record that while, after a lot of deliberation, Family First now supports the general principles of the bill, we are still concerned about PricewaterhouseCoopers and the work they have done. We support the principles of this bill based entirely on what the government has told us, because at this point in time we have no other way of considering any potential financial blowouts.

If this becomes another financial difficulty for this state in the future, we will not be accepting any blame for that; we will be blaming it fairly and squarely on the Labor government, because we have had to take their word as being accurate on this occasion. I am always nervous when we have to make a decision based on that when there could potentially be a significant amount of pressure on a forward estimates budget.

Having said that, I again just want to reiterate that we reserve our position on amendments that will be moved at the committee stage, and have not yet made up our mind on some of those. Some of those were only tabled by the Hon. Tammy Franks and the Hon. Rob Lucas today, so we need time to consider those amendments. However, we are generally supportive of the intent of the bill.

We do agree that those who are catastrophically injured need to be covered, although we need to have our eyes wide open to the possibility that we are now also compensating some people who have brought their injuries upon themselves by deliberate or negligent behaviour. We hope that the government has also considered that in their deliberation. With those few words, we support the second reading of the bill, and we look forward to listening to the debate during the committee stage this week.

The Hon. R.I. LUCAS (16:25): I rise on behalf of Liberal members to express support for the second reading of the legislation. As some members will be aware, the member for Davenport has carriage of this particular bill for the Liberal Party, and his most comprehensive contribution to the second reading was made on 19 March this year. Members will be delighted that I do not intend to repeat all the detail of his contribution, but I will just address some key aspects that remain unresolved and key aspects of the Liberal Party's position on the legislation.

This legislation reforms the compulsory third-party scheme, which currently operates under the Motor Accident Commission. It sets up a lifetime care authority for those people who are catastrophically injured in motor vehicle accidents, as defined under the Motor Vehicles Act, and, as the member for Davenport indicated, it is our understanding that it meets some of the requirements from the federal Labor government in relation to the conditions for the National Disability Insurance Scheme.

As the member for Davenport outlined, the agreement the federal Labor government has with the state Labor government is that South Australia has been nominated as a trial site for the national disability scheme and that part of the COAG agreement, in relation to the setting up of the trial sites for the national disability scheme, was that the states had to have in place a process to deal with the catastrophically injured under the motor vehicle accident scheme and that, if they did not, there would be a significant financial penalty for the states. I think somewhere else in the contribution he may refer to a figure of $20 million a year, but I will stand corrected on what that penalty was.

The position the member for Davenport outlined was that the states had agreed to a process whereby they had to introduce this legislation along these lines if they were going to continue to have the costs for the trial site for the national disability scheme met by the federal government, as opposed to being a cost to be met by the state government.

The legislation sets up a new entity, a lifetime care entity, and the actuarial advice in part that has been provided to the government is that for a cost of approximately $105 a year the government claims that it will fully fund the scheme. I pick up on that issue because the Hon. Mr Brokenshire has addressed some brief comments to it, and I want to, as well.

I think it is fraught with danger that we accept the position the government has outlined in relation to the claim that this is a fully funded scheme. As the Hon. Mr Brokenshire has rightly commented, the dilemma for non-government members is that we do not have access to alternative information in relation to the claims being made by the government. We obviously do not have our own actuaries we can consult to provide either alternative or independent costing of the scheme.

The cynics amongst us and in the South Australian community would have a fair degree of evidence to back their cynicism that one should not just accept the claims made by this government in particular in relation to either the funding of their budget requirements or the funding of scheme arrangements, such as WorkCover. We see significant debt and deficit in the state's finances, we see a $1.4 billion unfunded liability in relation to WorkCover, and the government uses its eerily familiar claims in relation to WorkCover and this particular scheme. It says that it is the government's policy to fully fund WorkCover, but, as we know through its own financial mismanagement over more than a decade, it has run up an unfunded liability of $1.4 billion, and the concern many of us will have is that, as well intentioned as is this scheme, the parliament is being asked to accept the claims being made by a government which has no record of competence in terms of financial management on any front.

As the Hon. Mr Brokenshire has indicated, to accept the claims by the government that the particular levy or levies that are proposed will fully fund the scheme, I have to go on the record as well and say that I certainly am cynical about the claims being made by the government and am in a similar position, I guess, to the Hon. Mr Brokenshire in indicating that the responsibility for the structure, the administration and the funding of the scheme at this stage is wholly in the hands of

the government and its advisers, because they are the only ones who have access to the detailed information to make these sorts of judgement calls.

The problem of course is that this government is anxious to do politically palatable things prior to March of next year, as the federal government has been seeking to do politically palatable things prior to September of this year, and both governments are unconcerned about the long-term financial implications of the decisions they are taking. On the one hand they say, 'Well, if we are fortunate to be re-elected, then we'll address the financial problems at that particular stage, but if we are not going to be elected, too bad, it is going to be the problem of an incoming Liberal government federally or an incoming Liberal government on a state basis to sort out the mess that we suspect we will leave to them.' This would just add to the financial mess if they have not been honest with us in terms of the financial viability of the scheme under the proposed current arrangements.

The situation may well be, in relation to the funding of these schemes, that you can fully fund the scheme, but you will just have to increase the premium or levy rate. Again, that will be an issue where the government will say that if it is re-elected it will address it, but if it is not re-elected that will be an issue that an incoming government will have to address when there are potentially very significant increases in levy rates to fully fund the scheme.

We all would wish to do wonderful things right across all portfolio areas, and there is no doubting that the NDIS and the management of catastrophic injuries are laudable goals and targets, but ultimately someone has to pay for all of them. We can only hope that, in terms of the financial projections that this government has undertaken for this particular scheme, they are more accurate and more competent than their financial performance in virtually every other area of financial management of the state.

The member for Davenport went on in his contribution to talk about the number of individuals who potentially might be covered by the scheme. He has used figures of potentially 20 to 30, based on advice from the government. He has talked about the 20 or so persons who suffer catastrophic injuries in incidents that will not be covered by the NDIS, WorkCover or medical insurance arrangements. I certainly seek, having looked at the debate in the House of Assembly from the government, some sort of clarification from the government as to their understanding of the arrangements in the future for persons who are injured in those general circumstances, such as falling off a horse, a skateboard or something like that and being catastrophically injured and not being covered.

Towards the end of the member for Davenport's contribution he does indicate that his understanding is that, at some stage in the future, the NDIS will cover persons catastrophically injured through examples such as the falling off a horse example and that at that stage, if the states do not have an alternative scheme to cover those particular individuals, then the state will be responsible for the costs within the NDIS of covering those 20 or so individuals.

The member for Davenport hastened to say in his contribution that he too was seeking clarification and, having looked at the debate, I would like a clarification from the government as to what their understanding is of the current agreements that they have with the commonwealth in terms of the future handling of individuals who are catastrophically injured through circumstances such as falling off a horse.

One other aspect of this scheme I wanted to take up was this issue of the establishment of a second lifetime care authority. In essence, as we understand it, we are going to have the Motor Accident Commission, which will continue in an altered fashion obviously as a result of this legislation, with its separate board and separate staff and will report either to the Treasurer or, currently, the Minister for Finance. As I understand it, and I stand to be corrected, this new lifetime care authority will again be a separate individual board and I seek some guidance from the government as to the size of the board, any board fees that might be paid to the board and the staffing arrangements.

It will have its own separate staffing arrangements from the MAC and will also report to a different minister, but I seek guidance from the minister as to whether that is correct or not. Does the lifetime care authority report to a different minister? If it does, one of the concerns that has been raised with me is that, in essence, what we are going to have are two parallel and separate structures—two separate boards, two separate staff reporting to two separate ministers—which raises the issue of the potential for both demarcation issues and differing interpretation issues in relation to how that is managed.

I am interested to know what the experience is in other states. The minister for Davenport referred to the fact that our system is modelled on the New South Wales system; that is two separate authorities. Can I ask the minister whether that is still the case and whether there has been any suggestion in New South Wales that, because of any demarcation problems, New South Wales might be looking at merging the two authorities? Secondly, can the minister advise what are the circumstances in the other states?

I am told that in some other states there have been concerns about having the two authorities and, as a result of that, the MAC equivalent in those states has been given the responsibility for managing the total scheme; that is, in some other jurisdictions they have decided not to proceed with a second board and a separate second set of staff reporting to different ministers. I seek from the minister, prior to our proceeding to the committee stages, some detail on the structure arrangements.

Can I also ask the minister: has the government received any concerns from any of the stakeholders in relation to the two separate bodies? In particular, I ask: what is MAC's current position in relation to this notion of two separate bodies? Has MAC put a view to the government that it makes no sense to have two separate authorities, with the increased costs of two separate authorities, and that the model ought to be one body and one set of staff that manages the scheme? If MAC has put that view to the government, can the minister indicate why the government has rejected the expert advice of MAC, if it was given, in relation to this particular issue?

It is my understanding that the impetus for this legislation started with MAC. Two or three years ago, they initiated the discussions, based on concerns about legal costs exploding and premiums rising at a significant rate, and it was on their initiative that this general issue was first raised. The government, after a period of time of consideration and consultation, decided to proceed with a version of the legislation. I am interested to know what MAC's view is on the two separate bodies, the two separate sets of staff and, potentially, two separate ministers, and what problems MAC might envisage in relation to that sort of structure.

As members are aware, the government, having introduced its proposed scheme, engaged in a period of confidential discussion or negotiation with a number of legal groups in South Australia, after which a number of significant changes were made to the government's proposed scheme. My first questions to the minister are these. After the government negotiated the deal with the legal groups such as the Law Society and the Lawyers Alliance (or whatever it is called), etc., they, as we understand it, withdrew their opposition to the bill.

After that deal was negotiated, I asked the minister whether MAC expressed concern to the government in relation to the deal that had just been done with the legal groups in South Australia. If MAC did express concern to the government about the deal, can the minister indicate what was the nature of the concerns that MAC raised with the government about the deal that had been done with the legal groups in South Australia? In particular, did they express any concerns about the impact of the deal that had been done on claims that the government was making in relation to the financial viability of the scheme and claims the government was making about the level of legal costs under the government scheme, or about claims the government was making about the level of premiums that would sustain the funding of the scheme?

I am interested to know, given that MAC is the repository of expert advice to the government on this particular scheme. They have had many years of experience in terms of managing the scheme. As the Hon. Mr Brokenshire said, and I reflect that view, we in the parliament have to listen to what the government claims in relation to this, but I believe that we are entitled to know what the expert advisers to the government—an independent board such as MAC and its staff—have said in relation to the deal the government has done with the legal groups in South Australia.

If the experts within MAC have expressed concerns about that deal, have raised concerns with ministers or the Premier, for example, or senior departmental officers or Treasury officers in relation to the scheme, surely this chamber (the Legislative Council) and the parliament are entitled to know what the experts' concerns are. It is certainly the prerogative of the government to indicate why they believed they should ignore the advice and why we should ignore the advice of the experts in relation to this particular area. Of course, if MAC has not expressed any concerns, then everything is hunky-dory in relation to that particular aspect of the scheme and we will not need to unduly delay that particular aspect of the committee stage of the debate.

So that we give the government and the minister plenty of warning, I want to indicate at the second reading that we see MAC's current position on the deal the government has done as being crucial to a proper understanding of the implications of the scheme. Therefore, we want to give the minister fair warning that we would like to see a comprehensive reply at the second reading and then some opportunity between the reply at the second reading and the committee stage of the debate to consult further with stakeholders to more properly inform members of this chamber in relation to potential amendments that are to be moved.

I think that could be assisted if, given that this is the first day that we have had the opportunity to debate the second reading of this bill, the minister's advisers were able to provide written responses to members sometime tomorrow. Certainly, that would then enable at least some hurried consultation overnight before commencing some committee debate on Thursday of this week. That really is, I think, a very fair invitation to the government and their advisers to assist members in this chamber in relation to the debate. If they want to proceed expeditiously with the consideration of the bill, then, to do so, early responses to the questions that members raise today would certainly, I think, assist the committee stage. Otherwise, as I said, if a response is read at the start of the committee stage and then the government wishes to proceed with the committee stage, it provides no opportunity for the consideration of the government's response or, indeed, any consultation with stakeholders in relation to that.

In relation to this deal that has been dudded—and as I said, I have raised questions about MAC—I have to say that whilst enjoying, as I do, time at the local football, at a South Australian National Football League football game recently I was approached by a senior member of the legal fraternity who had some close interest in this particular legislation and the deal that had been done with the government. This particular member of the legal fraternity said to me in most un-legal terms that he had—and I will not use the terms he used but I will paraphrase it—grave concerns that they had been dudded by the government in relation to the deal.

When I asked, in between watching the football, 'Pray tell, what exactly do you mean by being "dudded by this government"? I can't imagine that this government would dud lawyers such as yourself,' he said that the deal that had been done with the government on this had been based on certain assurances in the legislation. However, their concern was specifically in relation to the schedules and the regulations that they had only just seen a draft of and that the assurances that they had been given in the legislation were subverted or significantly amended by the schedules and the—perhaps let me put it this way—regulations that they had seen, and they were outraged at some of the provisions in the regulations which they believed were contrary to the terms of the deal that they had done with the government. I said to my lawyer friend, 'Well, get in a long line of people who think they have been dudded by this government and its ministers'—

The Hon. K.J. Maher: Who won the footy?

The Hon. R.I. LUCAS: Westies won. It was a very good win. I am delighted that you asked the question. I said, 'Get in line. There's a long list of people who have been dudded and believe that they have been dudded by this government on a whole range of issues. If you are concerned then clearly you need to raise those concerns with the government, but at some stage you are going to need to raise those concerns publicly.'

One of my colleagues tells me that there are ongoing negotiations between representatives of the legal fraternity and the government about this particular issue as we speak. I think that is intriguing, because we are being asked to process this bill, as I am told, before the end of the week. I am sure that if it is not done by the end of the week, the ministers will be jumping up and down and saying, 'This is an outrage. We gave the Legislative Council three sitting days to process this bill and it hasn't been processed.' Yet I am being told that negotiations are still going on in relation to key aspects of the bill from the legal fraternity's viewpoint relating to a deal which they believe they did with the government which meant that they were silenced; that is, they withdrew their public opposition to the bill and indicated that the bill could proceed with their support.

I think there are some significant concerns from both ends of the argument, if I can put it that way. I have raised questions in relation to any concerns that MAC may have expressed and, clearly, there are some members of the legal fraternity who believe this government has dudded them, or is in the process of dudding them, in the deal through specific provisions in the draft regulations—which, evidently, they have seen.

The other aspect which the member for Davenport outlined, and which I need to outline at this stage, was in an amendment he moved on behalf of the Liberal Party in the House of

Assembly which, unsurprisingly, was defeated by the government. I will move the same amendment during the committee stage of this legislation. The member for Davenport outlined the simple rationale for it in his second reading contribution. He said:

> The opposition is going to support this legislation, but we are also going to move amendments to bring forward the catastrophic care component so that it starts on 1 October this year. We accept the government's argument that the catastrophic care scheme needs to be improved. We accept the government's argument that there are 20 to 40 people a year who fall through the cracks and are catastrophically injured in motor vehicle accidents that would be better served under this lifetime care model.
>
> We accept that argument, but we see no reason at all why those catastrophically injured should not have this scheme as early as possible. We see no reason to delay the scheme. The government is setting up an independent commission against corruption within six months. We see no reason why they cannot set up this authority within six months. They have been over to New South Wales numerous times. It is essentially a photocopy of the New South Wales model. They have extensively negotiated with New South Wales about a whole range of procedures and how this works. It is not that difficult to set up this authority.
>
> The Liberal Party will be moving an amendment that the Lifetime Care Authority, the catastrophic care component, is brought forward nine months to 1 October 2013 so that the care that is going to be given to the catastrophically injured under this particular provision is brought in as early as possible. Our amendment actually says that it be no later than 1 October, which means if the government can get it ready earlier, then let's bring it on earlier.

Further on in his contribution the member for Davenport says:

> The opposition knows exactly what catastrophic care we are talking about in relation to the faults with the CTP scheme and that is why we are genuine and sincere in bringing forward the date for the operation of this scheme; there is simply no argument as to why the scheme should wait until 1 July 2014. Why should another 10, 15 or 20 people fall through the cracks when we all know that if the government really wants to it could have this scheme running a lot earlier than 1 July 2014?

The member for Davenport is putting a pretty simple point; that is, in essence, the government wants—for whatever reason, and I invite the minister to try to explain why—to have two separate starting points. The government wants, this year, to be able to make adjustments to the CTP premiums from 1 July 2013. Cynics in the parliament may well think that has something to do with the fact that the government has an election coming up in March 2014—

The Hon. A. Bressington interjecting:

The Hon. R.I. LUCAS: The Hon. Ann Bressington says no. There are cynics in this chamber, I am sure—and I would probably count myself as one of those—but the government probably thinks that, as a result of 11 years of financial mismanagement, the people of South Australia are concerned about that financial mismanagement and its impact on their cost of living, so the government is desperate to see that aspect of the scheme start prior to the election. However, it is quite comfortable for the real purpose of this scheme, which is to assist the catastrophically injured, to be left until after the election, until 1 July.

The government wants the bill jammed through this week because it wants to be able to make the adjustments to the premiums for 1 July this year so that it can send out a note saying, 'What good people we are in relation to CTP premiums,' pre the election. They are desperate to do all that very quickly this week, and they will jump up and down if it does not happen this week. But, as for the purpose of the scheme, which is to assist the catastrophically injured, they are quite comfortable about putting that off to 1 July next year, until after the election.

The government is not even interested in talking about an amendment that the member for Davenport has floated. They did not even come back and say, 'Hey, if you gave us another two months to 1 December, we think we could get it up by then, or by 1 January.' They were not even interested in talking about whether they might introduce the scheme earlier than 1 July next year; they are not worried about that.

As the member for Davenport points out, if you accept the government's position, another 10, 15, or 20 people will be catastrophically injured between now and 1 July next year. But, that is not the major issue for this government. They do not want to look at an amendment from the member for Davenport or from the Liberal Party that might bring forward the operation of this scheme that everyone is supporting.

That might actually put a cattle prod up the backside of some bureaucrats to say, 'Hey, if you can get an ICAC up and going in six months, surely to goodness you can get a lifetime care authority up and going in six months.' So, why not put a cattle prod up the backside of a couple of bureaucrats, ministerial advisers and maybe a couple of ministers as well, and get the thing up and

going earlier, rather than leaving it until 1 July and after the state election? I am disappointed that the members of the Labor caucus would so willingly be party to such a blatant politicisation of the exercise. Why not genuinely look at the amendment from the member for Davenport—the amendment that I will move in this chamber—and bring forward the date of the operation of the scheme?

I am sure the minor parties and Independents are going to be belted by the government, its advisers and bureaucrats saying, 'Woe is we; this is impossible, we can't do it, it's all too hard, it is administratively difficult. Some of us might actually have to work after 5 o'clock on an afternoon. Some of us might actually have to work over a weekend. Some of us ministers might have to stop politicking and actually do something in relation to implementing a policy reform. This is all too hard. Please, Independents and minor parties, don't impose this awful load on us in relation to the operating date of the scheme.'

I can see it now—I can hear the line that the government will be running in relation to that. I will certainly be arguing passionately in the committee stage for this particular amendment. From our viewpoint, as I said, even if the government came back to us or the Independents and said, 'Hey, give us another month or two months,' or whatever it is—surely to goodness, we should be able to get this scheme up and operating much, much earlier than the projected 1 July 2014.

I could raise a number of other issues, but I will leave those to the detailed debate during the committee stage. I note that the government has tabled three or four pages of amendments, the Hon. Tammy Franks has tabled three pages of amendments, and I have tabled half a page of amendments, so we are going to have a considerable debate in committee. We will reserve our consideration of other members' amendments until we have heard their explanations during the committee stage and will indicate our position in relation to those amendments during that stage.

The Hon. K.L. VINCENT (17:04): I would like to briefly put on the record today my concerns about the Motor Vehicle Accidents (Lifetime Support Scheme) Bill. Whilst I appreciate that many other people are terrified of public backlash if seen not to be backing a $110 saving on 12-month car registrations, I think it is important that I put on the record some very grave concerns that I have about how this is going to work, or not going to work, as the case may be.

As far as I can tell, the government's campaign on this bill and the new scheme comprises of three parts basically. One, spruiking to the media compulsory third-party insurance savings on all of our car registration expenses. 'You will save $110 on your car registration' seems to have been yelled pretty loudly from the rooftops for more than 12 months now. Two, let's do the money-hungry lawyers out of a job and set up a compensation scheme that, in the main, excludes them; and three, ensuring people not covered for lifetime care in catastrophic accidents where no-one is at fault will henceforth be covered.

Point 3 of the above is indeed a very meritorious aim. Those in catastrophic accidents that have only a kangaroo, poor lighting or some other non-insured entity to claim against have been and still are a problematic feature of our car accidents compensation system, and I commend the government for reforming this particular area. This will have an immeasurably positive impact on the small number of South Australians this affects each year, so this aspect of this system I certainly support, but in relation to the other points, I will canvass some very sincere concerns that I hold.

Firstly, I find it more than a coincidence that, nine months out from a state election on 1 July this year, the government will be giving South Australians a $110 discount on their CTP insurance aspect of their car registration. Then, three months after the election, from 1 July 2014, with the establishment of a new bureaucracy, car registration will increase in cost. The government may say this is unavoidable. I believe this could be managed differently, and would like the minister to explain why the ending of the current system and the establishment of a new body could not go ahead on 1 January 2014, for example.

Secondly, we all know that bashing an ambulance-chasing lawyer is bound to be generally a publicly popular move, even if some of the people doing it are former lawyers and now politicians. However, like any other profession, there are those who are good at their job in the legal profession and those who are not, those who are sincere and genuine, and those who are not. Whilst the government seems very keen to repeatedly tell us that the Law Society, Bar Association and Lawyers Alliance have now agreed to a negotiated position on this bill, I would hardly say that there is a gushing show of appreciation for this compromise.

I know that many in legal circles are deeply concerned about the impacts that this could have on many people. These are not lawyers who are advocating for their own bank balances. These are people who genuinely care about how someone's life will be affected by a car accident. Lawyers are effectively advocates within the legal system, and they do not want to see the rights of the injured and maimed negated or removed, and nor should anyone in this chamber, I believe.

Working from an injury table in percentages is not necessarily a method that is going to work in all cases. How, for example, would a wrist injury that affects the income of a 40-something-year-old hairdresser, who is a single mother, be measured with these new tables? It is going to be a very different effect to that on a 65-year-old male office worker, for example, or a 20 year old. How are those nuances going to be taken into account under these new systems? I am afraid they will not be. I am afraid that is the answer, and I do not accept that.

Percentage limits and particularly labels are very risky to say the least. I would have thought the one thing the implementation of the National Disability Insurance Scheme, or Disability Care as it is now being labelled (and I cannot fathom for the life of me why), would have made us realise is that just assuming that a certain injury, disability or illness equals X does not work and it is not the case. How something affects someone's life is different from individual to individual. Assuming X equals Y does not work when looking at the way that injury and illness affects people's lives, so we need to look at functionality—how things really impact on someone's day-to-day life, and work in particular.

I know that the New Zealand and Queensland systems have given us some shining examples of where we should be aiming with our South Australian scheme. However, it is my understanding that, while the New Zealand scheme might be no lawyers' picnic, it is also a nightmare for victims, a bureaucratic nightmare. What about the Tasmanian system? To that end I have a few questions I would like answered. I will certainly put them to the relevant minister. Why are we not using the latest ISV chart and regulations on this new scheme? I would have thought that it would make sense to use the latest tables available. Secondly, why are we not adapting the narrative test as part of this legislation?

The final point I would like to make relates to why we need to completely remove the current system. We could make changes in relation to lifetime care for catastrophic accidents without throwing out the entire system. We could surely make some amendments. Unlike WorkCover, our current car accident insurance scheme seems sustainable, workable and runs without a loss. It is not an unfunded liability, as with some other schemes, and therefore I really do not know why we have to be throwing the baby out with the bathwater in this case.

To make a final point, there is a little proverb of which I am very fond and it goes something like this: to retain your self-respect it is better to displease the people by doing what you know is right than to temporarily please them by doing what you know is wrong. And this is wrong: this is duping people out of lifetime care that could make an enormous difference to their life. This is not taking into account the true nuances, the true effect, that serious injury could have on people's lives.

I understand that I may be making myself somewhat unpopular—hopefully, temporarily—by making this decision, but I have that proverb Blu Tack-ed to the back of my door in large print for a very good reason—because I will not stand by any legislation that I see as being sold as a short-term gain to South Australians when I know it will be at a very long-term heavy cost. I cannot stand by that, and for that reason I will not support this bill at this stage.

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

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

Adjourned debate on second reading.

(Continued from 9 April 2013.)

The Hon. J.A. DARLEY (17:13): I rise to speak on the Statutes Amendment (Real Estate Reform Review and Other Matters) Bill. The bill implements the recommendations of the review into the Land and Business Sale and Conveyancing Act 1994 and addresses other issues raised during the consultation process. It also incorporates a number of additional changes on related grounds that the government considers necessary for inclusion in the bill. The bill has three main objectives, namely, to strengthen the rights of consumers, to increase the level of transparency of real estate transactions, particularly auctions, and to reduce the administrative burden on real estate agents and auctioneers.

The most significant changes involve bait advertising and underquoting of price ranges by real estate agents. The bill addresses this issue by creating a nexus between the selling price sought by or acceptable to the vendor and the reserve price set by the vendor. The bill requires an agent's genuine estimate of the selling price to be expressed in the sales agency agreement as a single figure, as opposed to a price range. In the case of auctions, it restricts the reserve price to 110 per cent of the selling price sought by or acceptable to the vendor as stated in the sales agency agreement. According to the government, the benefit of this is said to be that it will provide a greater level of certainty by meeting the expectations of prospective purchasers where the auction of a property is based on advertising that reflects the genuine selling price of the vendor.

In terms of marketing, if an agent makes a representation as to a likely price for the property, the price must be expressed either as a single figure or two single figures in combination—with the first figure constituting the lower limit of the range and the second, the upper limit. The upper limit will not be allowed to exceed 110 per cent of the lower figure. The bill also provides that a sales agency agreement for the sale of residential land by auction may not be varied by increasing the amount specified in the agreement as the selling price sought by, or acceptable to, the vendor. This last measure is aimed at ensuring that the vendor's price is not set low for the duration of the marketing campaign to entice potential purchasers and then suddenly increased just before an auction.

Other provisions of the bill include: requiring agents to provide details of sales of comparable land, or other information on which the agent will rely, in support of the estimated selling price which must be included in the sales agency agreement; allowing agents to extend a sales agency agreement for a further period of 90 days provided that the vendor agrees to an extension within 14 days of the expiration of the original agreement; providing agents with more flexible time frames for delivering copies of the verification of vendors statement certificate and sales agency agreements; limiting what auctioneers are required to audibly announce at an auction; permitting auctioneers to use a unique identifier when taking bids from purchasers; amending the definition of small business to include businesses to the value of $300,000, excluding GST; allowing cooling-off notices to be delivered by email; providing bodies corporate with access to cooling-off periods when purchasing residential land; enhancing disciplinary action against agents who are found guilty of offences, including breaches of marketing requirements; and increasing associated penalties and expanding payments from the indemnity fund to include the cost of compliance and prosecutions.

I agree with the government's objectives in terms of strengthening the rights of consumers and increasing the level of transparency of real estate transactions, but I am concerned about the approach being taken to achieve these goals.

Firstly, the proposed legislation provides no protection for the vendor. The only way they can protect their interest is to provide a highly inflated figure, which is equally misleading. Worse still, you could end up with agents convincing vendors that the property is worth a lot more than it actually is worth by marketing the property at an inflated price. What is more, a purchaser could unwittingly pay that figure when it was never anticipated that the property would sell for that much in the first place.

Secondly, providing a single figure in sales agency agreements as opposed to a price range does not achieve what is intended by the government. As a former valuer-general, I can tell you, valuation is not a precise science. In fact, I would defy any valuer, anywhere, at any time, to be able to determine an absolutely precise figure on a given property on a given day. It is virtually impossible. There are a number of variables which affect valuations, including rising markets, falling markets and static markets. In addition, you can never be sure who the prospective purchasers are and what their reasons are for wanting to buy. These are all factors that play a role in determining the value of a property.

In terms of advertising, you will inevitably end up with agents trying to overcome these provisions by refusing to provide any sort of price guide whatsoever during the marketing stage, something which is becoming more and more common, even today. In terms of auctions, you will inevitably end up with vendors providing an over-inflated figure to ensure that they are not locked in to a decision they are not comfortable with.

Furthermore, I am advised that once a reserve is set, there is actually no legal requirement on the auctioneer to pause and consult with the vendor. It may be good practice, but it is not a requirement. After speaking to the auctioneers, I understand that the usual protocol is that, once a person has indicated they are willing to accept a given price, the auction will continue until that

price is reached or exceeded. Given that under the bill the vendor's only ability to withdraw from the sale once it passes the reserve is by withdrawing the property from the market, you would think that auctioneers would be required to consult with the vendor before the hammer actually falls, irrespective of whether or not the reserve has been exceeded.

There are many instances where a property will spark a lot more interest than first anticipated. If this occurs, vendors better hope and pray that the buyers are registered at auction, because if they are not, sales agency agreements will not be able to be adjusted upwards to reflect the mood of the prospective purchasers. In terms of comparable sales, there are also a number of variables that need to be considered when assessing them. Factors such as the contract date of sale, the date of settlement, the details of the purchaser and vendor, and any conditions of sale are highly relevant to the comparability of sale prices.

To my knowledge, the commissioner's staff are, with respect, not qualified valuers and do not possess the requisite knowledge to be able to adequately interpret comparable sales and make valuations of properties. It would make much more sense for the commissioner to refer any disputes to the Valuer-General's office for consideration, because for one the Valuer-General has much more information available to them than the commissioner and indeed real estate agents, including the names and addresses of purchasers and vendors.

Secondly, the Valuer-General has the requisite knowledge required in undertaking these sorts of assessments. They do it every day. For this reason, I foreshadow that I will be moving an amendment that would require any complaints made to the commissioner regarding bait advertising to be referred to the Valuer-General for consideration. The Valuer-General will be able to make a determination based on all the circumstances, including taking into account comparable sales and market conditions.

As with other matters that the Valuer-General currently considers, this would include implementing a policy for dealing with such referrals. I would go so far as to say that the Valuer-General's involvement in this process also eliminates the need for a single figure in sales agency agreements. To that end, I foreshadow that I will be moving amendments with regard to both the single price and the 110 per cent concept.

As with many of the bills we debate in this place, much of what the government is trying to achieve through this bill comes down to adequate policing. The feedback I have is that at present policing is being limited to very minor breaches, such as not wearing an identity badge or not quoting registration numbers on marketing and advertisements. There is not, as I understand it, a lot being done to police those who are knowingly and rather unashamedly luring prospective purchasers in, sometimes at considerable expense, under false pretences.

Like the Hon. Terry Stephens, I too was curious to know how many agents have been prosecuted, or how many attempts have been made to prosecute agents, for bait advertising over the last few years, particularly since the implementation of the last raft of legislative reforms in 2008. To that end, I asked the minister's office to provide me with details regarding the number of agents who have been prosecuted, or the number of attempts made to prosecute agents, for bait advertising over the last few years, particularly since the implementation of the last raft of legislative forms in 2008.

The information provided by the minister's office provides as follows. In the last five years, the following actions were taken by Consumer and Business Services specifically on the issue of underquoting: one verbal warning; 13 written warnings; two assurances. The difficulties in taking action for underquoting are due to the constraints of the current legislation, in particular the enormous difficulties in proving that an agent's estimate is genuine; the ease with which an agent can cite external factors and selectively manipulate RP Data to justify their estimate; the likelihood of collusion between the agent and the vendor and the vendor's pleasure at the eventual price received; and the right of the vendor to change their reserve price at any time during the auction process.

During the last five years, CBS has received a total of 572 complaints relating to real estate agents and salespersons and the Land and Business Sale and Conveyancing Act 1994. During the last five years, CBS has received 43 written complaints in relation to allegations of under quoting by agents. A list of those complaints has also been provided.

It includes instances of properties being passed in at prices higher than the advertised price, alleged breaches of advertising provisions regarding underquoting, allegations of unfair and

misleading bait advertising, allegations of misrepresentation of price, and allegations of collusion between the vendor and agent, amongst others.

The information goes on to provide that CBS does not track verbal complaints: it asks the complainants to put their concerns in writing. In addition, CBS officers, who conduct regular inspections and monitoring of auctions, also advise that during this period they have received approximately 100 verbal and written—predominantly verbal—inquiries and complaints from agents, auctioneers and members of the public concerning alleged underquoting practices.

The information goes on to provide that it is vital to note that members of the public typically do not complain about underquoting because they are aware that the vendor has the right to change the reserve at any time. So, if a property is advertised at $500,000 and then passed in at $550,000, the frustrated purchaser knows this is legal, albeit misleading to their expectations.

As I understand it, the actual number of agents said to deliberately and regularly adopt the practice of underquoting is no more than a handful. Based on the information provided—and I stand to be corrected—there have been no prosecutions over the last five years. I would question whether the situation will be any different under the provisions of the new bill insofar as they relate to the use of a single price.

As I said at the outset, I agree that something needs to be done to better protect consumers from practices such as bait advertising. It is unacceptable that some purchasers are being put to considerable expense only to find that they have nowhere near the sufficient funds to secure the property. As it currently stands, however, the bill focuses primarily on purchasers and ignores any possibility of disadvantaging vendors.

It is also unfortunate that the majority of agents are being tarred with the brush of suspicion due to the actions of a handful of agents who flagrantly disregard the law. In my view, however, this is reliant more so on better policing than restricting agents in terms of their ability to appropriately price a property. Using the indemnity fund to subsidise more appropriate levels of compliance and prosecutions and actually prosecuting those agents who do the wrong thing is definitely a step in the right direction.

In closing, buying or selling a home is probably the single biggest financial decision that most people will make in their lifetime. As such, it is also a very emotional time for many people. It is extremely important that all parties to such a transaction are equally protected. Having spoken at length to the chief executives of both the REI and the Society of Auctioneers and Appraisers, it is clear that they are divided over the core amendments relating to the single price and the reserve price. I think it is equally important that the bill have unanimous support from within the industry, rather than they agree to measures they do not like in exchange for having other measures in the bill passed. With that, I support the second reading of the bill.

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

STATUTES AMENDMENT (DIRECTORS' LIABILITY) BILL

In committee.

Clauses 1 to 3 passed.

Clause 4.

The Hon. S.G. WADE: As I raised during my second reading contribution, the opposition and key stakeholders in the industry have serious concerns that this bill imposes criminal liability by regulation. This clause is the first clause that does that in proposed section 34(5). It is currently a matter of debate as to whether the law allows this to occur already, so there are two choices in terms of the way the legislation could go: to clarify that the regulations can impose liability or to clarify that they cannot. The government and the opposition have divided on each side of that question. The government believes that the regulation should be able to impose criminal liability but we in the opposition do not.

At this point, I advise the committee, as I have advised the government, that I will be moving to report progress at this point in the bill. In that context, I was concerned to hear the suggestion that we might be moving to an amendment because, as members would know, the fact that I am moving to report progress will mean that there is no capacity to debate that and it will be a matter as to whether the committee is inclined to accept my argument for reporting progress.

The reason I am proposing that we report progress is that this question of reporting progress could be a test vote for whether or not the committee wants to consider a set of amendments that would remove the possibility of establishing criminal liability by regulation. Parliamentary counsel is in the process of drafting regulations to that effect but they have not been made available to me and therefore have not been made available to the council. I suppose we could save parliamentary counsel as well as this committee time and expedite the bill if in fact we find that the committee is not attracted to removing that capacity, in which case the bill could progress without amendment. So I am proposing that members might treat this vote on reporting progress as a test clause, for want of a better word, on the issue of whether or not they want to consider amendments that would make it clear that we want to remove the capacity to establish criminal liability by regulation. If members could be interested in removing that opportunity to create criminal liability by regulation, I would urge them to support the motion to report progress.

Let me briefly explain why the opposition has come to its view and why members, if they share our concerns, should support progress being reported. When the committee resumes consideration of the bill, even if members support reporting progress, it can, of course, still oppose the amendments. The opposition's view is that the imposition of criminal liability is a serious matter and has a serious effect on people's lives. Accordingly, it should be decided by parliament. We have not simply come to this conclusion because we think it is fundamentally unfair that criminal liability can be imposed on directors at the sole whim of a Labor cabinet issuing a regulation. We have also come to this view because we have listened to stakeholders.

We have listened to major stakeholders who have contributed to our consultation on this bill and urged us to have criminal liability spelt out in the act, not by regulation. If we leave it to the regulations, it is our view that we are saying to industry that we are prepared to avoid our responsibility to ensure appropriate parliamentary oversight of the imposition of criminal liability. The Law Society is one such stakeholder that opposed the imposition of criminal liability by regulation. It stated, in a letter to me:

> The society opposes the imposition of criminal liability by regulation. Although regulations are subject to the scrutiny of parliament, the society suggests that in practice that scrutiny is less than is afforded to a bill. Criminal liability, and especially derivative liability, deserves the full attention of parliament.

The Australian Institute of Company Directors is another key stakeholder that opposes liability by regulation. It says:

> We are fundamentally opposed to director liability provisions (particularly those that may reverse the onus of proof and which are contrary to fundamental principles of criminal law) being made by way of regulation making. If further director liability provisions are to apply in South Australia, their insertion should be the subject of rigorous parliamentary scrutiny and debate. We recommend that these provisions be removed as a matter of priority.

We have heard from the Joint Legislation Review Committee of the CPA Australia Chartered Accountants and Institute of Public Accountants. They too have expressed their concern, saying:

> While the bill seeks to ensure consistency in the acts themselves, in many cases, it paves the way to inconsistency in the regulations being similar to the very flaw that the legislation proposes to remedy.

Parliamentary counsel is drafting amendments on behalf of the opposition as we seek to remedy this inconsistency in this flawed policy. So I ask members, if they support the opposition's view, the view of the Law Society, the view of the AICD and the view of the CPA, Chartered Accountants and Institute of Public Accountants that criminal liability should not be imposed by regulations, that they support my motion to report progress. I ask members, even if they are yet to be convinced on this issue, that they support the reporting of progress to give the appropriate time to receive and consider the opposition amendments.

I understand the government would like to comment on these suggestions, so I therefore propose to pause before I move my motion to report progress.

The Hon. G.E. GAGO: I am sympathetic, to a certain degree, with the Hon. Stephen Wade. He has indicated for quite some time that he wanted to table amendments, but we still have not seen those amendments. I think for the last two lots of parliamentary sittings the government has indicated that this is a priority bill, yet we still fail to be able to progress it.

The government will not be able to progress the bill this afternoon. We will support a motion to report progress, but not as indicative of any support to the proposal that the Hon. Stephen Wade is putting before us. We do not indicate in any way, shape or form support for his proposed amendments, but rather that we need to see the detail of those amendments and the Attorney-General needs an opportunity to consider those.

Again, I can only express disappointment at the failure of this house to keep up with government business, even given the extraordinary amount of notice we give honourable members in terms of indicating our priorities, to enable members to come prepared to do the job we are paid so well to do.

The Hon. S.G. WADE: I will only briefly allude to the fact that the government has tabled amendments at 3.22 this afternoon to a bill that it wanted to rate as a higher priority to this one. I will not engage in that debate.

I thank the minister for the indication of government support for reporting progress. I assure the house that we are doing everything we can to expedite matters; that is why we actually proposed a test clause. I appreciate the minister's comments that the government will be supporting the reporting progress but they would not want that to be misinterpreted, so in that context, could I suggest to the Chair that the government may wish to report progress so that it cannot be misinterpreted. So, if you report progress, then there is no implication—

The Hon. G.E. Gago: You're playing games.

The Hon. S.G. WADE: Okay, I withdraw the offer.

Members interjecting:

The CHAIR: We are in robust agreement over reporting progress.

Progress reported; committee to sit again.

CO-OPERATIVES NATIONAL LAW (SOUTH AUSTRALIA) BILL

Adjourned debate on second reading.

(Continued from 9 April 2013.)

The Hon. S.G. WADE (17:41): I rise on behalf of the Liberal opposition to indicate our support for the Co-operatives National Law (South Australia) Bill 2013, but I do so with some caution: I might get another slap from the minister. The Hon. Michael O'Brien, Minister for Finance, introduced the Co-operatives National Law (South Australia) Bill 2013 in the House of Assembly on 20 February 2013.

The bill is intended to give effect to an intergovernmental agreement under which all states and territories committed to replacing their existing cooperatives legislation with a new national law. All Australian jurisdictions permit the incorporation of cooperatives as legal entities, as an alternative to incorporation under the Corporations Act and in a way that is tailored to the distinct attributes of cooperatives. Current legislation is based on the 1996 standard provisions developed by the Standing Committee of Attorneys-General. The legislation differs slightly in each jurisdiction.

It is intended that the cooperatives national law will create a level playing field for the industry by ensuring that legislative oversight is no less favourable than measures in place for other corporate bodies and ensuring that registered cooperatives can operate on a national basis in an equivalent manner to a corporation. Producer cooperatives (for example, dairy co-ops) are the most common examples of cooperatives in Australia, and I understand there are fewer than 60 cooperatives currently in South Australia.

The New South Wales parliament has enacted the Co-operatives National Law. Under the intergovernmental agreement, South Australia may either enact application of laws legislation to apply the New South Wales law as amended from time to time as the law of South Australia or to enact mirror legislation. I welcome that approach at a ministerial agreement, as we have discussed in the context of other legislation.

There has been a growing trend in ministerial councils to usurp the powers of state parliaments by requiring that ministers give commitments in ministerial agreements that they will enact legislation by reference; in other words, a piece of legislation enacted in one jurisdiction is taken to be the law of another jurisdiction. This house has, on a number of occasions, expressed its disquiet at that, so I welcome the fact that that option has apparently been given in the context of an intergovernmental agreement and pose the question: if that is workable in the context of this agreement, then why should it not be available more generally?

I do appreciate, as we have discussed in the context of national law legislation, that there will be some pieces of legislation that do need to be uniformly and rapidly updated. I think one of the examples given there was electricity regulation. If you have a set of safety rules being applied

around Australia, the legislation by reference may well by appropriate, but it is the exception rather than the rule.

The Legislative Review Committee does have a reference from this house to consider the matter, but I note that in the context of this intergovernmental agreement at least, the option was given to the government. In that context, we welcome the fact that the government has chosen not to cede the South Australian parliament's legislative power to New South Wales by enacting laws of application legislation. That means that this parliament is considering this legislation. Like the Western Australian government, we will be enacting mirror legislation. As I said, we welcome that approach.

The Co-operatives National Law (South Australia) Bill 2013 provides a framework for the national law as enacted by the New South Wales parliament to be adopted in South Australia as regulations made under the bill once it has been assented to. So, in other words, as a change is needed to be made to the legislation, it will be put into the form of regulations. Either house of the parliament can object to that through the process of disallowance.

This method means that the adoption of national law is subject to the same process and restrictions as the making of regulations under any other South Australian act. I commend the government for both choosing that option and for introducing the bill using that technique. This approach allows the government to adopt the national law and comply with its obligations under the agreement and still respect the role of this parliament.

The government put the bill out for a brief period of consultation as there had been extensive consultation on the national law. We do not disagree with that. The government has indicated that the South Australian Joint Legislative Review Committee provided submissions on the bill which are being considered with respect to the national regulations.

I would like to take the opportunity to repeat the concerns raised by the Liberal opposition in the other place. As with other national law reforms, the government claims that the bill will improve the regulatory framework for cooperatives so that they are no less at a disadvantage than other incorporated bodies, but the Liberal opposition is alert to ensure that these reforms do not in fact mean that cooperatives will merely be subject to the same level of over-regulation as other parts of industry. On behalf of the Liberal opposition, I support the bill before the council.

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

MARINE SAFETY (DOMESTIC COMMERCIAL VESSEL) NATIONAL LAW (APPLICATION) BILL

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

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (17:49): 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.

I am pleased to introduce the Marine Safety (Domestic Commercial Vessel) National Law (Application) Bill 2013.

In 2009, the Council of Australian Governments (COAG) agreed to a national system for regulating the safety of domestic commercial vessels in Australia; 'domestic' referring to the commercial vessels involved only in coastal voyages, not overseas voyages.

In August 2011, COAG agreed to establish a single National Regulator—the Australian Maritime Safety Authority (AMSA). AMSA as the National Regulator will replace eight existing federal, state and territory regulators.

This national system for domestic commercial vessels is the culmination of over three years of dedicated collaborative effort between South Australian Department of Planning, Transport and Infrastructure and other state and territory marine safety authorities, AMSA and the Commonwealth Department of Infrastructure and Transport.

The Commonwealth *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* passed by the Federal Parliament, and received Royal Assent on 12 September 2012, and will commence by proclamation on 1 July 2013. On proclamation, the Commonwealth National Law Act applies to the extent to the Commonwealth's Constitutional reach.

This Application Bill is South Australia's contribution to the delivery of a single, nationally consistent marine safety regime for all domestic commercial vessels.

This Bill applies the Commonwealth National Law as the law of South Australia and extends coverage of the National Law to cover any gap in the Commonwealth's Constitutional reach. The Commonwealth arguably has the Constitutional powers to regulate a substantial proportion of the State's domestic commercial vessels. These powers are however largely untested by the courts and may not apply to vessels owned by sole traders, partnership or family trusts operating only within the waters of the Gulf St Vincent, Spencer Gulf, historic bays, the River Murray and inland waters, and that do not engage in interstate trade. In light of this legal uncertainty of the total coverage of commercial vessels by the Commonwealth's Constitutional power, the States and Northern Territory are to apply the National Law in order to ensure a consistent and seamless single maritime safety regime.

If the Application Bill is not passed, this will result in two regulatory schemes for commercial vessels in South Australia—one for Commonwealth regulated commercial vessels and one for South Australian gap vessels. This will result in inefficiencies and inconsistencies in standards, administration, certificate regimes, enforcement and penalties.

There are approximately 2,000 domestic commercial vessels operating in South Australia and a total of over 28,000 commercial vessels throughout Australia.

The Intergovernmental Agreement which underpins the National Law requires that the Commonwealth, States and Northern Territory agree not to submit a Bill that would be inconsistent with, or alter the effect of, the National Law; and that the States and Northern Territory discontinue their commercial vessel safety regulation to the extent that it is inconsistent with the National Law.

The National Law (both Commonwealth and State) confers regulatory powers and functions on the National Regulator (AMSA) which:

- will be responsible for the development of standards and regulations;
- will delegate powers and functions under both the State and Commonwealth laws to State officers (if agreed by the State) and Commonwealth officers;
- will enter into service level agreements with the States;•will appoint State officers as marine safety inspectors under both the State and Commonwealth Acts.

In keeping with the requirements of the Intergovernmental Agreement, the Application Bill amends the South Australian *Harbors and Navigation Act 1993* to remove provisions related to matters covered by the National Law.

The National Law and supporting subordinate legislation will enable vessels and seafarers to be certificated for work in any Australian waters. This flexibility will maximise business opportunities through minimising different jurisdictional regulatory requirements. Consistent and efficient regulation of commercial vessel operations will reduce regulatory burden and administrative costs on business.

The National Law will apply to vessels used for commercial, government or research activities, subject to some exclusions. It will not apply to recreational vessels, foreign vessels, defence vessels, vessels regulated under the Commonwealth *Navigation Act 2012* or vessels owned by primary or secondary schools or community groups.

The development of the national marine safety regulatory reform has been the subject of extensive consultation since 2009 and has received support from the maritime industry.

Existing vessels and crew will be able to continue operating as they do now. Current certificates will be recognised until they expire or until 2016, whichever is the soonest. As South Australian certificates expire, new national certificates will be issued, with grandfathering provisions to ensure current requirements apply, provided there are no changes to operations (including area) which increase the level or risk or modifications of the vessel which will require reassessment against standards.

Vessels not currently regulated as a commercial vessel in South Australia, which include those of the State Emergency Services, volunteer marine rescue organisations, the Crown (excluding primary and secondary school vessels), small hire vessels, and vessels used by yachting clubs to train persons for a recreational qualifications, will be able to continue to operate as they do now under transitional provisions in the National Law. These stakeholders will be consulted in relation any new requirements that may apply to them within three years from commencement. In South Australia, there will be approximately 230 Crown Vessels and approximately 50 industry vessel operations that will be newly captured under the national system. The Department of Planning, Transport and Infrastructure is working closely with these organisations to endeavour to minimise impacts while ensuring that a risk-based safety system is maintained.

Domestic commercial vessel marine safety services are to continue to be provided by State employees under delegation from the National Regulator. South Australia will continue to collect fees for these services.

South Australia will retain responsibility for regulating South Australian waterways, ports, harbors and moorings and will continue to enforce speed limits and drug and alcohol offences on the water.

This Bill also addresses several pressing matters affecting the administrative efficiency of the Harbors and Navigation Act. These amendments will:

- provide the ability to determine, by regulation, compulsory pilotage areas outside harbors for large laden vessels with limited under keel clearance transiting our Gulf waters, which could create high navigation risks if no pilot is used;

- devolve the power from the Minister to the Chief Executive (the marine authority in South Australia) to cancel a Boat Operator's Licence when a court has convicted the person of an offence showing the holder to have been incompetent or guilty of misconduct or failing in navigation duties; or where the holder has been disqualified from holding a certificate in another jurisdiction; or where the holder has been shown to have suffered from a mental or physical incapacity. This cancellation is a reviewable decision;
- remove the requirement for a port operator to manage a port in a way that avoids unfair discrimination against or in favour of any particular user of the port or port facilities, as this is intended for multi-user ports which are already regulated by the Maritime Services (Access) Act 2000 and monitored by the Essential Services Commission of South Australia. This will also remove uncertainty for the management of shipping safety in a harbor that is subject to an Indenture (eg. Whyalla) or a single user facility;
- clarify the expiation fees applying when a vessel is marked but not registered, and when a vessel is neither registered nor marked;
- increase the maximum court imposed penalties for seven provisions of the Harbors and Navigation Act from $2,500 to $5,000 to bring the penalties into line with the penalties for offences with similar potential consequence; or to reflect the seriousness of the offence.

I trust honourable members will lend their support to this Bill and I commend the Bill to the House.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

3—Purposes of Act

This clause sets out the purpose of this measure, namely to adopt in this State a national approach to regulation of marine safety in relation to certain commercial vessels.

4—Interpretation

This clause defines key terms used in this measure.

Part 2—Applied provisions

5—Application of Commonwealth laws as laws of this State

This clause extends the operation of the *Marine Safety (Domestic Commercial Vessel) National Law* of the Commonwealth and associated subordinate legislation to this State.

6—Interpretation of Commonwealth domestic commercial vessel national law

This clause provides that the *Acts Interpretation Act 1901* of the Commonwealth applies as a law of this State in relation to the interpretation of the applied provisions, and accordingly disapplies the *Acts Interpretation Act 1915*.

Part 3—Functions and powers under applied provisions

7—Functions and powers of National Regulator and other authorities and officers

This clause provides that the National Regulator under the national law, as well as other authorities and officers, have the same functions and powers under the extended national law as they do under that law as it applies as a Commonwealth law.

8—Delegations by the National Regulator

This clause provides that effect of any delegation done by the National Regulator under the national law as it applies as a Commonwealth law will extend to the national law as it applies as a State law.

Part 4—Offences

9—Object of Part

This clause sets out the object of proposed Part 4, namely to ensure that an offence against the national law as it applies as a State law will be treated in all respects as if it were an offence against the Commonwealth law.

10—Application of Commonwealth criminal laws to offences against applied provisions

This clause provides that an offence against the national law as it applies as a State law will be treated in all respects as if it were an offence against the Commonwealth law and not an offence against the laws of this State.

11—Functions and powers conferred on Commonwealth officers and authorities relating to offences

This clause provides that functions and powers relating to offences conferred on a Commonwealth officer etc under the national law as it applies as a Commonwealth law will extend to the officer etc in respect of the national law as it applies as a State law.

12—No double jeopardy for offences against applied provisions

This clause prevents a person from being punished twice for the same offence under the national law as it applies both as a Commonwealth law and a State law.

Part 5—Administrative laws

13—Application of Commonwealth administrative laws to applied provisions

This clause applies the Commonwealth administrative laws (as defined in clause 4) to the operation of the national law as extended to this State in substitution for the equivalent State laws.

14—Functions and powers conferred on Commonwealth officers and authorities

This clause provides that administrative functions and powers conferred on a Commonwealth officer etc under the national law as it applies as a Commonwealth law will extend to the officer etc in respect of the national law as it applies as a State law.

Part 6—Fees and fines

15—Fees payable in relation to officers or employees of State

This clause is a regulation-making power, enabling the Governor to set fees and charges for things done under the national law (as it applies both as a Commonwealth and a State law).

16—Infringement notice fines

This clause requires amounts received by the State in relation to an infringement notice to be paid into the Consolidated Account.

17—Fines, fees etc not otherwise payable to State

This clause requires fees payable under the national law (other than fees contemplated by clause 15) to be paid to the Commonwealth.

Part 7—Miscellaneous

18—Things done for multiple purposes

This clause provides that things done under the national law as it applies as a Commonwealth law will not be invalid (in respect of the national law as it applies as a State law) merely because they were done under the Commonwealth law and not the State law.

19—Reference in Commonwealth law to a provision of another law

This clause clarifies references to provisions of Commonwealth laws in sections 10 and 13 of the measure.

20—Regulations

This is a regulation-making power, enabling the Governor to make regulations under the measure.

Schedule 1—Marine Safety (Domestic Commercial Vessel) National Law

This Schedule comprises the *Marine Safety (Domestic Commercial Vessel) National Law* of the Commonwealth, extended in its operation to this State by virtue of this measure.

Schedule 2—Related amendments and transitional provisions

This Schedule makes amendments to the *Harbors and Navigation Act 1993* that are consequential to the enactment of the national law by the Commonwealth, and comprise, in general terms, the removal from the *Harbors and Navigation Act 1993* of provisions relating to domestic commercial vessels, since those vessels will now be covered by the national law (either the Commonwealth law or that law as it is extended by this measure).

The Schedule makes some cognate amendments to the *Harbors and Navigation Act 1993* that:

- provide the ability to determine, by regulation, compulsory pilotage areas outside harbors;
- allow the Chief Executive to cancel a Boat Operator's Licence in specified circumstances;
- remove the requirement for a port operator to manage a port in a way that avoids unfair discrimination against or in favour of any particular user of the port or port facilities;
- increase certain expiation fees applying when a vessel is marked but not registered, and when a vessel is neither registered nor marked;
- increase the maximum court imposed penalties for seven provisions of the Harbors and Navigation Act from $2,500 to $5,000.

The Schedule also makes a transitional provision, continuing in force certificates of competency to operate recreational vessels issued under the *Harbors and Navigation Act 1993*.

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

ADELAIDE WORKERS' HOMES BILL

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

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (17:50): 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.

I introduce this Bill in order that the Adelaide Workmen's Homes Incorporated ('the Association') has a legislated Constitution and to clarify that the Association may exercise certain powers and functions to give effect to its purpose. This Bill will enable the Board to borrow money, acquire and dispose of real or personal property, to enter into joint ventures and to receive donations and testamentary dispositions. The Bill also provides that the Association is taken to have always had the powers and functions set out in the Constitution.

The Association takes the opportunity to rename the Association to Adelaide Workers' Homes to reflect the original intent to house workers of either sex and to keep abreast of contemporary linguistic practice.

The Association has provided subsided rental accommodation to lower income workers for over a century through two previous Private Acts of Parliament known as the *Adelaide Workmen's Homes Incorporated Act 1933* and the *Adelaide Workmen's Homes Incorporated Amendment Act 1966*. The original Deed of Trust was established by the Will of the late Sir Thomas Elder to provide workmen and workwomen suitable dwellings at reasonable rental.

The benefit to South Australia lies in strengthening a private provider of affordable housing for low income workers in the metropolitan area.

I commend the Bill to Members.

Explanation of Clauses

1—Short title

2—Commencement

These clauses are formal.

3—Interpretation

This clause inserts definitions for the purposes of the Bill.

4—Name of Association

This clause relates to the change of name of the Association.

5—Constitution of Association

This clause provides for the Constitution of the Association and its variation. It also contains a validation provision.

6—Application of this Act

This clause relates to the application of the Act.

Schedule 1—Constitution

Schedule 1 sets out the Constitution of the Association.

Debate adjourned on motion of Hon. S.G. Wade.

SECURITY AND INVESTIGATION AGENTS (MISCELLANEOUS) AMENDMENT BILL

The House of Assembly agreed to the amendment made by the Legislative Council without any amendment.

LEGAL PRACTITIONERS (MISCELLANEOUS) AMENDMENT BILL

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

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (17:52): I move:

That this bill be now read a second time.

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

Leave granted.

The Legal Practitioners (Miscellaneous) Amendment Bill 2013 seeks to modernise the regulation of the legal profession in South Australia and provide greater harmonisation for South Australian practitioners than otherwise exists. The Bill makes substantial improvements to the disciplinary system, with a view to improving the system for both consumers and practitioners. Particular focus has been given to increasing the protections available for consumers of legal services in South Australia.

The Bill makes amendments to the *Legal Practitioners Act 1981* to include relevant elements of the Legal Profession Bill 2007, which became deadlocked and lapsed during the last Parliament. This includes dealing with cost disclosure, trust accounts, incorporated legal practices, community legal centres and the Court's power over practising certificates.

Substantial amendments are made to the disciplinary system, including replacing the present Legal Practitioners Conduct Board with a Legal Profession Conduct Commissioner, with increased powers. It is also intended to enact a system of mentoring to provide early intervention in practices where there are signs of trouble, without waiting for formal complaints to arise. As proposed in the 2007 Bill, it is intended to establish a Register of Disciplinary Action, a public database of practitioners who have been disciplined for professional misconduct.

Discipline of lawyers

Using provisions that were proposed in the 2007 Bill, the draft Bill provides a new procedure for the Supreme Court to deal with practitioners who pose an immediate risk to the public. The Court, if satisfied that a ground exists, may decide to amend, suspend or cancel a practitioner's practising certificate. An application can be made to the Court by the Law Society, the Legal Profession Conduct Commissioner or the Attorney-General. Further, the Bill identifies certain events, including bankruptcy or being convicted of a serious offence, which trigger an obligation on a practitioner to explain to the Court why he or she is still a fit and proper person to practise law, failing which the certificate may be amended, suspended or cancelled. In addition, in a case where the Supreme Court believes it necessary in the public interest to immediately suspend a practitioner's certificate, it can do so of its own motion (or on application of the Society, Commissioner or Attorney-General) for up to 56 days.

Consistently with these new powers, section 15 of the Act is amended to make clear that it is a requirement for admission that the person must be fit and proper to practise the law.

The Bill replaces the current definitions of unsatisfactory conduct and unprofessional conduct with the definitions from the 2007 Bill of *unsatisfactory professional conduct* and *professional misconduct* (apart from a slight change of wording which does not affect the meaning). These definitions are already in use around Australia. They are also the definitions proposed in the new National Law which is under discussion.

The definitions capture a wider range of conduct than do the present provisions. In particular, it is made clear that conduct that is not connected with the practitioner's practice can still amount to professional misconduct, even if it is not a criminal offence or a particular type of criminal offence. Instead, the test is whether the conduct shows that the person is not fit and proper to practise law.

The Bill proposes to abolish the present Legal Practitioners Conduct Board and the position of Director. In their place, there is to be a Legal Profession Conduct Commissioner. As well as taking over the powers and duties of the present Board, it is proposed that the Commissioner have new powers to make binding decisions imposing sanctions without the consent of parties in some cases, and to impose a wide range of disciplinary sanctions with the consent of the practitioner. This is expected to reduce the demand on the Tribunal and to avoid the need for Tribunal proceedings where there is no dispute that the practitioner has acted wrongly.

In any case where it appears to the Commissioner that there is evidence that someone may have committed a criminal offence, the Commissioner must notify the Crown Solicitor as soon as possible.

Also, in recognition that practitioners sometimes get into trouble through mental illness or substance abuse, provision is made for the Commissioner, in a disciplinary matter, with the practitioner's consent, to impose a requirement for the practitioner to be medically assessed and to undergo treatment.

The Commissioner is also given the power to make binding determinations in overcharging complaints where the amount in dispute is no more than $10,000.

It is proposed to broaden the range of matters that may be dealt with by the Tribunal constituted of one member. The Commissioner may, in laying a complaint of professional misconduct, specify that he or she does not seek to have the practitioner struck off and does not seek a suspension longer than three months or a fine greater than $10,000. In that case, as well as where the proceedings before the Tribunal allege only unsatisfactory professional conduct or on appeal from a determination of the Commissioner under section 77K, the Tribunal can be constituted of a single member.

It is proposed that Tribunal be able to stay any charge or proceeding for good reason, including where the practitioner cannot adequately take part in the proceedings, for example, serious ill health. During a stay, the practitioner's right to practise is suspended until either the completion of disciplinary proceedings or the Supreme Court orders that their right to practise be restored. This recognises that there might be some situations where it is not reasonably practicable to complete the proceedings for some time and the public can be adequately protected by preventing the practitioner practising in the meantime.

Maximum penalties for disciplinary infractions are to be increased. The present maximum fine that may be imposed by the Tribunal of $10,000 becomes $50,000, except in the case of a former practitioner, where it is

increased from $5,000 to $25,000. The maximum suspension of a practising certificate is to be increased from 6 to 12 months.

In addition, as a preventative measure, new provision is made for a system of professional mentoring. The Society or the Commissioner can enter into an arrangement with a practitioner that he or she receive mentoring from a suitably experienced practitioner for up to six months, with the possibility of extension. It is intended that the mentor will have access to the practitioner's files and will provide advice and guidance to the practitioner so as to both improve the practitioner's skills and protect his or her clients. Failure to comply with a mentoring agreement would, itself, be conduct capable of constituting unsatisfactory professional conduct or professional misconduct.

As proposed in the 2007 Bill, there is to be a public register of disciplinary action taken against lawyers.

Further, the Legal Profession Conduct Commissioner will be able to apply directly to the Supreme Court to have a practitioner struck off the roll on the ground of an indictable offence or for some other reason. Also, it is made clear that the Commissioner, the Society or the Attorney-General may move the Court in its inherent jurisdiction over legal practitioners, for disciplinary action.

Community legal centres

It is proposed to insert into the Act the provisions of the 2007-Bill which dealt with community legal centres. This will make clear that a practitioner who is employed in such a centre is nonetheless subject to all the professional obligations and retains all the privileges of a practitioner. Consequently, it is to be an offence for anyone to attempt to induce a practitioner employed at a community legal centre to act contrary to his or her professional obligations.

Fidelity fund

The Bill renames the guarantee fund as the Fidelity Fund and permits payments to be made in advance in a case of hardship where there is a reasonable prospect that the claim will ultimately be paid, but subject to a right of recovery if the claim in fact fails. The Bill also permits the fund to be applied to the expenses of the Board of Examiners and the Tribunal as well as the payment of honoraria to members of LPEAC, along with other amendments to reflect the changes made by the Bill.

Incorporated legal practices

The Bill permits incorporated legal practices to operate in South Australia but restricts the practice so that it may not provide any service, or conduct any business, that does not involve engaging in legal practice. Unlike company practitioners under the current Act, incorporated legal practices will not be required to hold a practising certificate.

Any incorporated legal practice wishing to engage in legal practice in South Australia must give notice to the Supreme Court of its intention to do so. Company practitioners currently operating in South Australia will be required to give notice to the Supreme Court of their intention to continue to engage in legal practice in South Australia as an incorporated legal practice. This will ensure the Supreme Court has a comprehensive register of companies providing legal services in this State.

An incorporated legal practice must have at least one legal practitioner director at all times, who is responsible for the management of legal services in the practice and must ensure appropriate management systems are implemented and maintained so that legal services are provided in accordance with professional obligations of legal practitioners and other obligations in the Act or regulations, or the legal profession rules.

It is an offence for an incorporated legal practice to be without a legal practitioner director and the practice must not provide legal services while in default of this provision. It is also an offence for a person to cause or induce or attempt to cause or induce a legal practitioner director or another legal practitioner providing legal service on behalf of the incorporated legal practice to contravene the Act, regulations or any other professional obligations.

The Society may conduct an audit of the compliance of the practice with the requirements in the Act, regulations and legal profession rules as well as the management of the provision of legal services. This maybe conducted whether or not a complaint has been made. The Society, the Commissioner and the Attorney-General will also have the power to apply tho the Supreme Court to ban a corporation from providing legal services in this jurisdiction.

Trust money and trust accounts

The Bill introduces the provisions proposed in the Legal Profession Bill 2007 dealing with trust money and trust accounts. The new provisions introduce the concept of 'controlled money' and 'transit money', allowing a practice to deal with trust money in accordance with instructions of the client other than depositing the money into the general trust account. Other provisions deal with protection of trust money, prohibition on intermixing, prohibition on deficiencies, reporting irregularities and keeping of trust records. The provisions also introduce more detailed provisions for investigations and examinations of trust records and activities.

The Bill allows the Society to make a determination that money is not trust money for the purposes of the Act and sets out the obligations on a practice to notify a client that their money is not to be treated as trust money.

As well as ongoing audit requirements, practitioners will be required to report trust account irregularities to the Society, even if giving such notice may incriminate the practitioner.

Costs disclosure and adjudication

The Bill inserts into the Act the provisions that were proposed in the Legal Profession Bill 2007, specifying what lawyers must tell their clients about the cost of their work. At the moment, there are professional conduct rules

about this but they do not have the force of law. The proposed provisions are similar to those in use around Australia. They seek to ensure that clients engaging legal practitioners will be properly informed about what costs they will have to pay, to the extent that that is possible at the outset of a matter. The Bill provides a safe harbour whereby the practitioner can be assured that they have met certain of the costs disclosure requirements by using a standard form. These provisions are designed chiefly to protect more vulnerable clients and do not apply, for example, where the client is the government or a large company or partnership, or where the firm has tendered for the work.

The provisions also seek to ensure that clients know of their rights to negotiate a costs agreement, receive a bill, request an itemised bill, be notified of substantial changes, receive progress reports and avenues available to challenge a bill.

The Bill covers the making and setting aside of costs agreements. It also makes clear that conditional cost agreements are lawful but contingency fees, that is, where the lawyer shares in the award, are not.

The Bill also sets out the processes for making an application for adjudication of costs to the Supreme Court, including the powers of the Court, the criteria for adjudication and the cots of adjudication.

Investigatory powers

The Bill includes new extensive investigative powers for the conduct of complaint investigations, trust account investigations and examinations and compliance audits of incorporated legal practices.

There are powers to require production of documents and giving of information as well as entry and search powers for trust account and complaint investigations. The provisions also set out additional powers of investigators when conducting an investigation or audit in relation to incorporated legal practices.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Legal Practitioners Act 1981*

4—Amendment of section 5—Interpretation

A definition of *associate* is added in connection with the insertion of proposed new section 5A, which defines the terms *associate*, *legal practitioner associate* and *principal* in relation to law practices.

The definition of *Board* is deleted because of the proposed replacement of the Legal Practitioners Conduct Board with the Legal Profession Conduct Commissioner. A definition of *Commissioner* is also inserted in connection with this amendment.

The existing definition of *community legal centre* is amended to make it clear that the definition includes the Aboriginal Legal Rights Movement but does not include the Legal Services Commission.

The deletion of the definition of *company* and the insertion of a definition of *corporation* reflect a simple change in terminology. In connection with these changes, definitions of *Director* and *officer* are also inserted, reflecting the terminology used in the *Corporations Act 2001* of the Commonwealth. A definition of *related body corporate* is also included.

The definition of *guarantee fund* is to be deleted because of the proposal to rename the fund as the *Fidelity Fund*.

The definition of *fiduciary or professional default* is amended to make it clear that the term applies in relation to incorporated legal practices in addition to firms.

The measure amends a number of clauses relating to legal practice, and inserts related definitions of *law practice*, *incorporated legal practice*, *legal practitioner* and *practitioner* and *legal practitioner director*. The definition of *practise the profession of the law*, *legal practice* or *practise* is amended to ensure that it extends to an incorporated legal practice. A definition of *legal services* is inserted, and defined as meaning work done, or business transacted, in the ordinary course of engaging in legal practice. A definition of *sole practitioner* is introduced and defined as a legal practitioner who practises the profession of the law on his or her own account.

A proposed definition of *jurisdiction* defines the term to mean a State or Territory of the Commonwealth.

A definition of *legal profession rules* is also inserted. The term is defined as meaning the professional conduct rules of the Law Society of South Australia, and any other rules prescribed by the regulations for the purposes of the definition.

A new definition is introduced to clarify the *professional obligations* of legal practitioners and incorporated legal practices, which are not defined under the current Act. These are defined to include—

- duties to the Supreme Court; and
- obligations in connection with conflicts of interest; and
- duties to clients, including disclosure; and
- ethical rules required to be observed by legal practitioners.

A definition of *professional misconduct* is inserted to reflect the proposed new regime for defining professional misconduct. The terms *unprofessional conduct* and *unsatisfactory conduct* are to be deleted. The term *unsatisfactory professional conduct* is defined by reference to new section 68. A definition of a *show cause event* is also inserted to clarify the provisions relating to practising certificates under proposed new Part 3 Divisions 2A to 2C. The term *unrestricted practising certificate* is inserted consequential on amendments relating to practising certificates.

A definition of *professional mentoring agreement* is inserted. The definition refers to new section 90B of the principal Act, which provides for the entering into of professional mentoring agreements.

A new definition of *Regulator* is to be added. *Regulator* is defined to mean, in relation to this jurisdiction, the Commissioner, and in other jurisdictions, a person or body corresponding to the role of Commissioner in this jurisdiction. The definition of *regulatory authority* is amended to replace the reference to the Board with a reference to the Commissioner, consequential on the establishment of the office of Legal Profession Conduct Commissioner. The introduction of the new defined term *corresponding disciplinary body* is consequential on the proposed amendments to Part 6 of Division 1, which relates to unsatisfactory professional conduct and professional misconduct, and Part 6 Division 6, which relates to the publicising of disciplinary action.

A definition of *serious offence* is introduced consequential on the insertion of new provisions relating to unsatisfactory professional conduct and professional misconduct. *Conviction* is defined as to include a formal finding of guilt.

The terms *trust account* and *trust money* have been replaced with definitions contained in proposed new Schedule 2 of the principal Act.

The section as amended will also provide that nothing in the Act or the legal profession rules affects the exercise by the Director of Public Prosecutions, the Crown Solicitor or a prosecutor instructed by the Director of Public Prosecutions or the Crown Solicitor of any discretion in the context of a prosecution.

5—Insertion of section 5A

Proposed new section 5A, inserted into the principal Act by this clause, contains definitions of terms relating to associates and principals of law practices. The proposed provision defines the terms *associate*, *legal practitioner associate* and *principal* in connection with law practices.

6—Amendment of section 6—Fusion of legal profession

This clause makes a minor amendment to section 6 of the principal Act so that reference is made to 'King's Counsel' and 'Senior Counsel' in addition to 'Queen's Counsel'.

7—Amendment of section 8—Officers and employees of Society

8—Amendment of section 12—Minutes of proceedings

The amendments made by these clauses are consequential on the change in designation of the Executive Director of the Society to Chief Executive.

9—Amendment of section 13—Society's right of audience

The first amendment made by this clause is consequential on the proposed insertion of sections 68 and 69 into the principal Act by clause 41 of this measure.

The section as amended will also require the Society to notify the Attorney-General if it appoints a legal practitioner to appear before a court, commission or tribunal.

10—Amendment of section 14AB—Certain matters to be reported by Society

The amendments made by this clause are to some extent consequential on the deletion of Part 3 Division 5 of the principal Act, relating to trust accounts and audits. A new Division has been substituted. Proposed new Division 5 states that the provisions in Schedule 2 apply to law practices in respect of trust money and associated matters.

Section 14AB of the principal Act outlines the Law Society of South Australia's reporting obligations. The proposed amendment substitutes a reference to the appointment of an inspector under Division 5 of Part 3 (relating to trust accounts and audits) and replaces it with a reference to 'an investigator or external examiner under Schedule 3' (which contains provisions related to investigations and external examinations).

The provision is also amended to replace references to the Board with references to the Commissioner.

References to 'unprofessional or unsatisfactory conduct' are also replaced with references to 'unsatisfactory professional conduct or professional misconduct'.

11—Amendment of section 14B—Establishment of LPEAC

This clause amends section 14B of the principal Act to add two additional positions to the Legal Practitioners Education and Admission Council, being the Dean or acting Dean of the faculty of the school of law at the University of South Australia and the presiding member of the Board of Examiners.

12—Amendment of section 14C—Functions of LPEAC

Under section 14C as amended by this clause, LPEAC will be permitted to prescribe categories of practising certificates and the limitations on the practise of the profession of the law that apply in relation to the prescribed categories.

13—Amendment of section 14E—Procedures of LPEAC

This clause is consequential on the proposed amendment to section 14B. It increases the quorum of LPEAC from 7 to 8.

14—Amendment of section 15—Entitlement to admission

This clause amends section 15 of the principal Act, which outlines a person's entitlement to admission to the profession. The current provision states that a person must satisfy the Supreme Court that he or she is of good character and that he or she has complied with the rules of the Supreme Court relating to admission and the rules made by LPEAC with respect to admission. The proposed amendment replaces the good character requirement with a requirement that the person be a 'fit and proper person to practise the profession of the law'.

This clause also inserts a new subsection (1a), which states that the Supreme Court must refer each application for admission by a person whose name has been removed from the roll of legal practitioners to the Attorney-General, the Commissioner and the Society. Each of theses bodies is entitled to be heard by the Court on the application.

15—Amendment of section 16—Issue of practising certificate

This clause amends section 16 of the principal Act by deleting subsections (2) to (4) and subsection (6). Subsections (2), (3) and (4) relate to applications by companies for practising certificates. The section as proposed to be amended will state only that where an admitted and enrolled legal practitioner applies to the Supreme Court for a practising certificate, the Court will issue such a certificate, subject to the Act.

The section as amended will also permit a person to apply for a particular category of practising certificate (if LPEAC has made rules prescribing different categories).

16—Amendment of section 18—Term and renewal of practising certificates

This clause inserts a new subsection (2a) into section 18 of the principal Act. The provision relates to the term and renewal of practising certificates. The proposed new subsection provides that if the Supreme Court is satisfied that any particulars appearing on a practising certificate are incorrect, the Court may cancel the practising certificate and issue a replacement.

17—Insertion of Part 3 Divisions 2A to 2C

This clause inserts proposed new Divisions 2A, 2B and 2C into Part 3 of the principal Act. These Divisions include provisions relating to the amendment, suspension and cancellation of practising certificates.

Division 2A—Amendment, suspension or cancellation of practising certificates

20AB—Application of Division

Proposed new section 20AB states that Division 2A does not apply in relation to matters referred to in new Division 2B.

20AC—Grounds for amending, suspending or cancelling practising certificate

Under proposed section 20AC, the following are grounds for amending, suspending or cancelling a practitioner's practising certificate:

- the holder of the certificate is not a fit and proper person to hold the certificate;
- if a condition of the certificate is that the holder is or has been limited to legal practice specified in the certificate—the holder is engaging in legal practice that he or she is not entitled to engage in.

20AD—Amending, suspending or cancelling practising certificates

Proposed section 20AD sets out the circumstances in which the Supreme Court may, on application by the Attorney-General, the Law Society or the Commissioner, make an order amending, suspending or cancelling a practising certificate.

Subsection (2) sets out the procedure by which an application must be made, including setting out the order sought, the grounds for making such an order, giving the holder of the certificate an opportunity to make written submissions to the Court, and the Court's duty to give the holder written notice of the terms of and reasons for the order.

20AE—Operation of amendment, suspension or cancellation of practising certificate

This proposed section applies where there has been an amendment, suspension or cancellation of a practising certificate. It provides that the change in the certificate takes effect either on the day that

notice is given to the holder, or at a day specified in the notice, whichever is later. If the change in the certificate occurs because the holder has been convicted on an offence, the holder may apply to the Supreme Court for a stay of the order until the time to appeal against the conviction expires, or if an appeal is made, until the appeal is resolved. If the conviction is then quashed, the amendment or suspension ceases to have effect, and for a cancellation, the certificate will be restored as if it had been suspended.

20AF—Revocation of amendment, suspension or cancellation of practising certificate

Proposed new section 20AF provides that the holder of a certificate that has been amended, suspended or cancelled may make written representations to the Registrar of the Supreme Court and the Court must consider those submissions. This proposed provision also gives the Supreme Court the power to revoke the amendment, suspension or cancellation whether or not such written representations have been made.

Division 2B—Special powers in relation to practising certificates—show cause events

20AG—Applicant for practising certificate—show cause event

Proposed new section 20AG applies where a show cause event has happened in relation to an applicant for a practising certificate after the person was first admitted. If a show cause event has happened in this way, the applicant must provide the Supreme Court with a written statement setting out the particulars of the event and explaining why, despite the show cause event, the applicant considers him or herself to be a fit and proper person to hold a certificate. Subsection (4) provides that the written statement must also be served by the applicant on the Commissioner and the Law Society, who are in turn empowered to make submissions to the Court.

20AH—Holder of practising certificate—show cause event

This proposed provision is similar to proposed new section 20AG, but applies if a show cause event occurs in relation to a holder of, rather than an applicant for, a practising certificate. The holder must provide a notice and written statement to the Supreme Court within a specified time frame. It also provides that a notice and written statement provided under the section must be served by the holder on the Commissioner and the Law Society.

20AI—Refusal, amendment, suspension or cancellation of practising certificate—failure to show cause

This proposed provision provides that the Supreme Court may refuse to issue or renew, or may amend, suspend or cancel, a practising certificate if an applicant or holder has failed to provide a written statement as required, or where the applicant or holder has provided the required statement but the Court does not consider that the applicant or holder has shown that he or she is a fit and proper person to hold a practising certificate in spite of the show cause event. The Supreme Court is required to provide the person with written notice of this decision.

Division 2C—Further provisions relating to practising certificates

20AJ—Immediate suspension of practising certificate

Despite Divisions 2A and 2B, the Supreme Court may, on application by the Attorney-General, the Commissioner or the Law Society, immediately suspend a practising certificate if it considers the suspension to be necessary in the public interest. The suspension may be made on any of the grounds on which the certificate could be cancelled under Division 2A, on the ground of the happening of a show cause event in relation to the holder or on any other ground that the Court considers warrants an immediate suspension.

The proposed provision also sets out requirements in relation to giving notice of the suspension to the holder of the certificate and states that the Court must consider any written representations made by the holder to the Court.

20AK—Surrender and cancellation of practising certificate

This proposed provision provides that a holder of a practising certificate may surrender the certificate and that the Supreme Court may cancel the certificate.

18—Amendment of section 21—Entitlement to practise

This clause substitutes subsection (1) and removes the reference to a company that holds a practising certificate, as well as circumscribing the application of the section to local and interstate legal practitioners. Subsection (2) is also amended. Subsection (2) provides an inclusive list of activities which, if the practitioner is acting for a fee or reward on behalf of another person, constitute the practice of the profession of law. The clause deletes the reference to the preparation of 'a memorandum or articles of association...of a body corporate' and replaces it with a reference to the constitution of a body corporate.

An evidentiary provision is also inserted, so that in proceedings for an offence against subsection (1) of section 21, a certificate purporting to be signed by the Chief Executive of the Society and stating that a person is not a local legal practitioner or not an interstate legal practitioner is, in the absence of proof to the contrary, prima facie evidence of that fact.

19—Amendment of section 23AA—Employment of disqualified person

This clause makes a minor amendment to section 23AA by replacing references to the Board with references to the Commissioner.

20—Amendment of section 23B —Limitations or conditions on practice under laws of participating States

This clause amends section 23B(4), which currently states that a contravention or non-compliance with the section is unprofessional conduct. The clause as amended will refer instead to professional misconduct.

21—Amendment of section 23D—Notification of establishment of office required

This clause makes a minor amendment to section 23D(4) by deleting the reference to Board and replacing it with a reference to the Commissioner.

22—Insertion of Part 3 Division 3B

This clause inserts a new Division 3B into Part 3. The proposed new Division contains a number of provisions relating to community legal centres.

Division 3B—Provisions relating to community legal centres

23E—Community legal centres

Proposed new section 23E provides that a community legal centre does not contravene the Act merely because it employs legal practitioners to provide legal services or has a contractual relationship with a person to whom such legal services are provided. The regulations may modify or exclude provisions of the Act from applying to community legal centres or the legal practitioners employed by them.

23F—Obligations and privileges of practitioners who are officers or employees

Proposed new section 23F makes it clear that legal practitioners who provide legal services on behalf of community legal centres are not excused from their professional obligations, and retain their professional privileges. It also states that the regulations may make further provisions in connection with this.

The new section also provides that the law relating to client legal privilege and other legal professional privilege is not affected by the fact that the services are provided on behalf of a community legal centre.

New subsection (4) states that a legal practitioner may disclose matters to the officers of the centre for any proper purpose, and this will not affect the operation of legal privilege.

23G—Undue influence

New section 23G prohibits a person from causing or inducing, or attempting to cause or induce, a legal practitioner who is providing legal services on behalf of a community legal centre to contravene the Act, regulations, legal professional rules or professional obligations. It imposes a maximum penalty of $50,000.

23H—Application of legal profession rules

This proposed new section makes it clear that the legal profession rules apply in the same way to legal practitioners providing legal services on behalf of community legal centres.

23I—Costs

This proposed new section states that if legal assistance is provided to a person by a community legal centre, the centre is subrogated to the rights of the assisted person to costs in respect of that legal assistance.

23—Substitution of Part 3 Division 4

This clause substitutes Division 4 of Part 3, which currently contains provisions regulating legal practice by companies. Under the Act as proposed to be amended, this Division is substituted for a Division with the same heading containing a section stating that the provisions set out in Schedule 1 (relating to incorporated legal practices) apply in relation to a corporation that engages in legal practice in South Australia.

24—Substitution of Part 3 Division 5

This clause substitutes Division 5 of Part 3 of the Act, which currently contains provisions relating to trust accounts and audits. This Division is to be replaced with a Division entitled 'Provisions regulating trust money and trust accounts', which will contain substituted section 25. The section states that the provisions set out in the Schedule, which regulate trust money and trust accounts, apply in respect of trust money and associated matters, as specified in clause 4 of that Schedule.

25—Amendment of section 39—Delivery up of legal papers

This clause amends section 39 by substituting a new subsection (1). The subsection currently states that a legal practitioner could be ordered by the Supreme Court, on application by any person, to deliver up legal documents. The proposed new subsection (1) extends the power to make the order to any court and also extends the application of the subsection to incorporated legal practices.

This clause also amends subsection (3) of the provision consequential on the changes to subsection (1).

26—Substitution of Part 3 Division 8

This clause substitutes Division 8 of Part 3 of the Act, relating to recovery of legal costs. This Division is to be replaced by a new Division 8 entitled 'Costs disclosure and adjudication'. New section 41 states that the provisions set out in Schedule 3 apply in relation to the recovery of legal costs and adjudication of legal costs.

27—Amendment of section 43A—Interpretation

This clause amends section 43A (which sets out definitions of terms for Division 9, relating to the appointment of supervisors and managers), so that the definition of legal practitioner includes an incorporated legal practice.

28—Amendment of section 48—Remuneration etc of persons appointed to exercise powers conferred by this Division

This clause amends section 48(3) of the principal Act, which states that where a supervisor or manager is appointed under the Act, he or she will be entitled to remuneration, allowances and expenses, subject to those being taxed and settled by the Supreme Court, if an application is made by the Attorney-General. This clause replaces the term 'taxed' with 'adjudicated'.

29—Substitution of heading to Part 3 Division 10

This clause changes the heading to Division 10 of Part 3 from 'Restriction on practice by bankrupts etc' to 'Restriction on practice if corporation wound up'.

30—Amendment of section 49—Supreme Court may grant authority permitting director to practise

This clause amends section 49 by deleting paragraph (a) of subsection (1), which provides that a person who has become bankrupt must not practice the profession of the law without the permission of the Supreme Court. Paragraph (b) of subsection (1) applies in the same way to a person who is or has been a director of an incorporated legal practice during the winding up of the company. This clause amends that paragraph to reflect the change in terminology to corporation and to change the reference to 'incorporated legal practitioner' to 'incorporated legal practice'.

This clause also amends subsection (1a) of the section, which relates to the grant of an authority to practice on application by the legal practitioner. The proposed amendment removes the reference to a practitioner who 'is or is about to become bankrupt' so that the subsection applies to a legal practitioner who has been 'a director of an incorporated legal practice', and to change the reference to 'incorporated legal practitioner' to 'incorporated legal practice.'

This clause also proposes to insert new subsection (1b) into section 49, providing that an application for an authority under the section must be served on the Commissioner and the Society, each of whom is entitled to be heard by the Supreme Court on the application in accordance with the rules of Court.

31—Amendment of section 50—Supreme Court may authorise personal representative etc to carry on legal practice

This clause makes a minor consequential amendment to section 50 by replacing the reference to 'a company that is a legal practitioner' with a reference to an incorporated legal practice.

32—Amendment of section 51—Right of audience

Section 51 outlines the classes of persons who are entitled to practise in South Australian courts and tribunals. This proposed amendment makes minor changes, making a consequential amendment by deleting the reference to a legal practitioner employed by the Board and replacing it with a reference to 'the Commissioner and a legal practitioner employed by the Commissioner'.

33—Amendment of section 52—Professional indemnity insurance scheme

Currently, under section 52, a professional indemnity scheme established by the Society may operate for the benefit of legal practitioners. Under the section as amended by this clause, a professional indemnity scheme may also operate for the benefit of law practices. This clause also amends section 52 by adding to the definition of legal practitioner in subsection (5) an 'interstate legal practitioner'.

34—Substitution of section 52AA

This clause substitutes section 52AA, relating to professional indemnity insurance required by interstate practitioners, which states that the person or practice must not engage in legal practice unless there is an approved professional indemnity insurance in force. The penalty for interstate legal practitioners remains at $10,000, but a new penalty of $50,000 is added to apply to other cases. The section is also amended so that it applies to incorporated legal practices.

The new section defines *approved professional indemnity insurance* and also *prescribed practitioner or practice*.

35—Substitution of section 53

This clause inserts a new section 52B into the principal Act. Under the new section, the regulations may provide that specified provisions of Part 4 Division 1, and any other provisions of this Act, the regulations or the legal profession rules relating to that Division, do not apply to incorporated legal practices (or a specified class of incorporated legal practices) or apply to them with specified modifications.

New section 53, dealing with the obligation to deposit trust money in the combined trust account, applies to law practices rather than, as is the case under the current section, legal practitioners.

36—Substitution of heading to Part 4 Division 3

Division 3 of Part 4 of the principal Act relates to 'the legal practitioners' guarantee fund'. The heading to the Division is to be changed to 'Legal Practitioners Fidelity Fund' to reflect the proposed change of the name of the fund.

37—Amendment of section 57—Fidelity Fund

Minor consequential amendments are made to this section. The term 'guarantee fund' is replaced with 'Fidelity Fund', and 'Board' is changed to 'Commissioner'. In addition, subsection (4), which outlines the purposes for which money in the Fidelity Fund may be applied, is substituted.

The changes are mainly consequential, including references to the Commissioner, the new processes for investigating complaints, conducting audits and bringing proceedings, investigations and examinations, processing claims, and the appointment of a supervisor or manager. The purposes are also extended to expenses incurred by the Board of Examiners in addition to expenses incurred by members of LPEAC, the Board of Examiners and the Tribunal. The substituted provision will also authorise application of money in the Fidelity Fund for the purpose of the payment of honoraria, approved by the Attorney-General, to members of LPEAC.

38—Amendment of section 60—Claims

Section 60 is amended to make it clear that, in determining whether there is a reasonable prospect of recovering the full amount of a loss for the purposes of the section, potential action for the recovery of the amount that would not be taken by an ordinarily prudent, self-funded litigant is to be disregarded. Subsection (5) is consequentially amended so that it applies to incorporated legal practices as well as to interstate legal practitioners.

39—Insertion of section 64A

This clause inserts new section 64A into the principal Act. The new section provides that the Law Society may, in its absolute discretion, make payments to a person making a claim against the Fidelity Fund on advance of the determination of the claim, provided that it is satisfied that the claim is 'likely to be allowed' and that 'payment is warranted to alleviate hardship. The remaining subsections outline the process for making advance payments under this provision.

40—Amendment of section 66—Claims by legal practitioners and incorporated legal practices

This clause makes consequential amendments to section 66(1), making it clear that the application of the section extends to claims by incorporated legal practices in addition to claims by legal practitioners.

41—Substitution of Part 6 Divisions 1 and 2

Part 6 of the Act deals with investigations, inquiries and disciplinary proceedings. This clause amends the Part by replacing provisions relating to the Legal Practitioners Conduct Board with provisions establishing the office of Legal Profession Conduct Commissioner. The new provisions also provide definitions of the terms 'unsatisfactory professional conduct' and 'professional misconduct'.

Division 1—Preliminary

68—Unsatisfactory professional conduct

Proposed section 68 provides a definition of 'unsatisfactory professional conduct'. Under the proposed definition, unsatisfactory professional conduct includes conduct of a legal practitioner occurring in connection with the practice of law that falls short of the level of competence and diligence that a member of the public is entitled to expect of a reasonably competent legal practitioner.

69—Professional misconduct

Proposed section 69 provides a definition of 'professional misconduct'. Professional misconduct includes—

- unsatisfactory professional conduct of a legal practitioner, where the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence; and
- conduct of a legal practitioner whether occurring in connection with the practice of law or occurring otherwise than in connection with the practice of law that would, if established, justify a finding that the practitioner is not a fit and proper person to practise the profession of the law.

70—Conduct capable of constituting unsatisfactory professional conduct or professional misconduct

Proposed section 70 provides examples of conduct capable of constituting unsatisfactory conduct or professional misconduct. The matters encompassed by the proposed new section include the following:

- contraventions of the Act, the regulations or the legal profession rules;
- the charging of excessive legal costs;
- convictions for serious offences, tax offences and dishonesty offences;

- the insolvency of a legal practitioner;
- disqualification of a legal practitioner from being involved in the management of a corporation;
- failure to comply with a compensation order;
- failure to comply with the terms of a professional mentoring agreement entered into with the Society.

Division 2—Legal Profession Conduct Commissioner

Subdivision 1—Legal Profession Conduct Commissioner

71—Legal Profession Conduct Commissioner

Proposed new Division 2 of Part 6 contains provisions relating to the creation of the new office of Legal Profession Conduct Commissioner. Subdivision 1 of the proposed new Division sets out clauses relating to the office of Commissioner, establishing the position of Commissioner, and stating that the Commissioner will be appointed by the Governor and is an agency of the Crown. The new section also sets out the eligibility requirements for the appointment of a Commissioner.

72—Functions

Proposed new section 72 sets out the functions of the Commissioner, which are to—

- investigate suspected unsatisfactory conduct and professional misconduct; and
- take action against a practitioner following an investigation or to lay charges before the Tribunal; and
- receive and deal with complaints of overcharging; and
- arrange for the conciliation of complaints; and
- commence disciplinary proceedings against legal practitioners in the Supreme Court on the recommendation of the Tribunal; and
- carry out other functions assigned to the Commissioner under the Act.

73—Terms and conditions of appointment

Proposed new section 73 sets out the terms and conditions of employment of the Commissioner. The Commissioner is to be appointed for a term not exceeding five years, with eligibility for reappointment after expiration of that period. Subsections (2) and (3) of the new clause set out the grounds on which the appointment of a Commissioner may be terminated and subsection (4) specifies the circumstances in which the Commissioner may resign.

74—Acting Commissioner

Proposed new section 74 specifies the circumstances in which the Minister may appoint a person to act as the Commissioner during a period for which the Commissioner is absent from or unable to discharge additional duties, and gives the Minister the power to specify the terms and conditions of such an appointment.

75—Honesty and accountability

Proposed new section 75 makes it clear that the Commissioner and Acting Commissioner are senior officials for the purposes of the *Public Sector (Honesty and Accountability) Act 1995*.

76—Staff of Commissioner

This proposed section states that the Commissioner may appoint staff to assist in carrying out the Commissioner's functions.

77—Delegation

Proposed new section 77 sets out the Commissioner's powers to delegate the Commissioner's functions or powers under the Act, and states the required formal aspects of the delegation.

Subsection (2) sets out a number of limitations on the Commissioner's power to delegate certain types of determinations.

77A—Exchange of information between Commissioner and Council

Proposed new section 77A states that the Commissioner and the Council may enter into an arrangement providing for the exchange of information relating to legal practitioners provided that the arrangement is reduced to writing and approved by the Attorney-General.

Subdivision 2—Investigation of unsatisfactory professional conduct and professional misconduct

77B—Investigations by Commissioner

This proposed section sets out the Commissioner's powers to make an investigation into the conduct of a current or former legal practitioner. Section 77B gives the Commissioner power to investigate

current and former practitioners on the Commissioner's own initiative, provided that the Commissioner has reasonable cause to suspect that the practitioner has been guilty of unsatisfactory professional conduct or professional misconduct.

Subsection (2) provides that the Commissioner is required to make an investigation if directed to do so by the Attorney-General or the Society, or if a complaint has been received about the practitioner.

Subsection (3) clarifies that the Attorney-General and the Society cannot make such a direction without reasonable grounds for suspicion.

77C—Closure of whole or part of complaint

This proposed new section sets out the circumstances in which the Commissioner may close the whole or part of a complaint without further investigation or further consideration of its merits, including—

- where the complaint is vexatious, misconceived, frivolous or lacking in substance; or
- where the complainant has not cooperated with the investigation into or conciliation of the complaint; or
- where the subject matter of the complaint has already been investigated, or would be better investigated by the police or other investigatory or law enforcement body; or
- where the subject matter of the complaint is the subject of civil proceedings except insofar as it is a disciplinary matter; or
- where the Commissioner does not have the power to deal with the complaint; or
- where the Commissioner is satisfied that closure of the complaint is otherwise in the public interest.

77D—Notification of complaint to practitioner

Subsection (1) relates to the notification procedures which apply when the Commissioner has received a complaint about a practitioner or former practitioner. Under proposed paragraph (a), on receipt of a complaint the Commissioner may notify the practitioner of the complaint or, alternatively, provide him or her with a summary. If the Commissioner decides to investigate the complaint, the Commissioner must, as soon as practicable, give the practitioner or former practitioner a summary or details of the complaint and a notice informing the practitioner of his or right to make submissions. Paragraph (c) provides that this must occur before the Commissioner makes his or her determination.

Subsection (2) sets out the corresponding procedures applying where the Commissioner has decided to make an investigation into the conduct of a practitioner on the Commissioner's own initiative, or where the Commissioner has been directed to make an inquiry by the Attorney-General or the Society. These procedures are subject to proposed section 77F, which sets out a number of exceptions to the requirement for notification of a complaint. Subsection (3) of the proposed new clause provides that the practitioner has 21 days following the receipt of a notice to provide submissions, or such other length of time that the Commissioner reasonably believes to be warranted in the circumstances.

77E—Submissions by legal practitioner

This proposed new provision sets out the procedures applying to a practitioner's right to make submissions to the Commissioner. The Commissioner has the discretion to extend the period in which submissions may be made and is required to consider the submissions within the period specified in the notice before deciding what action is to be taken. The Commissioner may consider submissions received after this point.

77F—Exceptions to requirement for notification of complaint

The procedures applying to notification of a complaint to a practitioner contained in proposed section 77D are subject to the exceptions outlined in proposed provision 77F.

This section provides that, in certain circumstances, the Commissioner is not required to give a practitioner a summary or details of a complaint or the reasons for an investigation or notice regarding the right to make submissions. For example, the Commissioner is not required to do so if he or she reasonably believes that to provide this information would prejudice the investigation, adversely affect an investigation by another agency, place a complainant at risk of intimidation or harassment or prejudice court proceedings. In these circumstances the Commissioner may postpone giving the information until it is appropriate to do so or may give the practitioner the notice and a statement of the general nature of the complaint or reasons for investigation.

Subdivision 3—Action following investigation

77G—Interpretation

This proposed Subdivision sets out the procedures to be followed after the investigation of a practitioner, whether as a result of a complaint or on the Commissioner's own initiative. This new clause introduces a definition of the term *complainant* as used within the proposed new Subdivision. For the purposes of the Subdivision, the definition includes a person who has made a complaint, and the Attorney-General or Society if one of those bodies has directed that the investigation occur.

77H—Report on investigation

This proposed section, equivalent to current section 77 of the principal Act, states that where the Commissioner is satisfied that there is evidence of professional misconduct by a practitioner, the Commissioner must make a report to the Attorney-General and the Society. It further provides that if the Commissioner comes into possession of information suggesting that a criminal offence may have been committed, that information must be passed to the Crown Solicitor. If the Crown Solicitor or other prosecution authority requests material relevant to such an investigation or prosecution, it must be provided by the Commissioner. The Crown Solicitor or other authority then has the power to take any action appropriate to the commencement of criminal proceedings.

77I—Commissioner to notify persons of suspected loss

This proposed section, equivalent to current section 77AA of the principal Act, provides that if during the course of an investigation the Commissioner has reason to believe that a person has suffered loss as a result of the conduct of a practitioner or former practitioner, the Commissioner may notify the person.

77J—Powers of Commissioner to deal with certain unsatisfactory professional conduct or professional misconduct

Proposed new section 77J deals with the Commissioner's powers following an investigation into a practitioner's unsatisfactory professional conduct or professional misconduct. Pursuant to proposed subsection (1), where the Commissioner is satisfied that there is evidence of unsatisfactory professional conduct, the Commissioner may—

- determine not to lay a charge before the Tribunal, but instead reprimand the practitioner or make various orders (order him or her to redo the work investigated at no costs or reduced fees, or pay the costs of having the work redone), or order him or her to undertake education, training or counselling or be supervised, or order a fine up to $5,000. The Commissioner is also empowered to impose specified conditions on the practitioner's practising certificate;

- with the consent of the practitioner—determine not to lay a charge to the Tribunal, but instead require the practitioner to undergo a medical examination, receive counselling, or participate in supervised treatment or rehabilitation. If the Commissioner believes the legal practitioner may be suffering from an illness, mental impairment, disability, condition or disorder; the practitioner may be required to enter into a professional mentoring agreement or submit to orders with respect to the examination of the practitioner's files and records for a period as specified in the order. The Commissioner may also order a fine not exceeding $10,000, suspend the practitioner's practising certificate for a period not exceeding 3 months, or order a specified payment to a client or other person, or order the practitioner to do or refrain from doing a specified act in connection with legal practice.

Proposed subsection (2) relates to investigations into professional misconduct. The Commissioner is also empowered to make the orders detailed above in connection with a charge of professional misconduct if the practitioner consents to the course of action.

A key difference is that a fine of $20,000 rather than $10,000 may apply, the practising certificate may be suspended for up to 6 months, instead of 3, and the Commissioner also has power, under paragraph (f), to impose conditions on the practising certificate requiring that the practitioner complete further education or training or receive counselling.

Subsection (3) makes it clear that if the Commissioner proposes to exercise a power under subsection (1) or (2), the Commissioner must provide any complainant of the details of the proposal and invite him or her to make submissions. The Commissioner is required to take these submissions into account. Subsection (4) provides that the Commissioner may take into account previous action relating to the practitioner, and any other findings relating to the practitioner by the Tribunal, the Supreme Court or any other corresponding disciplinary body. The remainder of the section sets out the procedural requirements which flow from these provisions

77K—Appeal against determination of Commissioner

Proposed section 77K outlines the procedure by which a practitioner, or, in the case of a complaint, the practitioner or the complainant, may appeal to the Tribunal against a determination of the Commissioner.

77L—Commissioner must lay charge in certain circumstances

This proposed clause states that if the Commissioner is satisfied following an investigation that there is evidence of unsatisfactory professional conduct or professional misconduct, but he or she does not believe that the conduct can be adequately dealt with under proposed section 77J (which sets out the Commissioner's powers), the Commissioner must lay a charge before the Tribunal, unless it would be in the public interest not to do so.

77M—Commissioner to provide reasons

This proposed section makes it clear that where the Commissioner has determined not to investigate a complaint or has decided to close a complaint, or where the investigation has not yielded any

evidence of unsatisfactory professional conduct or professional misconduct, the Commissioner must provide the complainant and practitioner with written reasons for such a determination.

This requirement also applies where there is evidence of unsatisfactory professional conduct or professional misconduct in circumstances where the conduct cannot adequately be dealt with under section 77J (the Commissioner's powers), and yet it would not be in the public interest to lay charges before the Tribunal.

Subdivision 4—Complaints of overcharging

77N—Investigation of allegation of overcharging

Proposed Subdivision 4 relates to complaints and investigations into allegations of overcharging against practitioners.

This proposed provision states that the Commissioner must investigate complaints of overcharging if they are brought within 2 years of a final bill being issued. The Commissioner may require the practitioner to pay a reasonable fee for the investigation. The Commissioner may require the practitioner to make a detailed report in relation to the relevant bill or to produce relevant documents. The Commissioner may also arrange for a costs assessment by a legal practitioner. At the conclusion of the investigation, the Commissioner has a range of powers following a finding that there has been an overcharging. If the amount in dispute is $10,000, the costs have been assessed by a legal practitioner and the Commissioner has given the parties details of the assessment and an opportunity to make submissions (and has had regard to any submissions made), the Commissioner may make a determination as to whether or not there has been overcharging and, if so, the amount overcharged. The determination is binding on (and enforceable by or against) the legal practitioner and the client unless the Supreme Court has adjudicated and settled the bill.

Subdivision 5—Conciliation

77O—Commissioner may conciliate complaints

This section provides for the conciliation of complaints by the Commissioner.

42—Amendment of section 80—Constitution and proceedings of Tribunal

This clause amends section 80 of the principal Act. The section specifies the constitution and proceedings of the Tribunal. A consequential amendment to subsection (1) will change the reference from 'unprofessional conduct' to 'professional misconduct'. Subsection (1a) currently states that where proceedings allege only unsatisfactory professional conduct, the Tribunal may consist of just one of its members, appointed by the presiding member. Proposed new subsection (1a) extends this to circumstances where—

- the proceedings are an appeal against a decision of the Commissioner under new section 77J; or
- the proceedings concern an allegation of professional misconduct, but the Commissioner has indicated to the Tribunal that the alleged misconduct does not warrant an order that the practitioner be struck off, an order that his or her practising certificate be suspended for more than 3 months or an order to pay a fine of more than $10,000; or
- the Tribunal is dealing with a procedural or interlocutory matter.

43—Amendment of section 82—Inquiries

Section 82 of the principal Act is concerned with proceedings before the Tribunal. This clause proposes a number of minor amendments to section 82 that are consequential on the change in terminology from 'unprofessional or unsatisfactory conduct' to 'unsatisfactory professional conduct' or 'professional misconduct', and to reflect the establishment of the position and powers of the Commissioner. The proposed changes also state that charges must be laid before the Tribunal within three years of the alleged conduct unless the charge is laid by the Attorney-General or the Tribunal allows an extension of time.

Subsection (6), which relates to the Tribunal's powers when it is satisfied that a practitioner is guilty of misconduct, is to be amended by an increase in the period for which a practising certificate can be suspended from 6 months to 12 months. The maximum fine that can be ordered if a former legal practitioner is found to have engaged in professional misconduct while he or she was a legal practitioner is to be increased from $10,000 to $50,000. If a former legal practitioner is found to have engaged in unsatisfactory professional conduct while he or she was a legal practitioner, the maximum fine is to be $25,000. If the Tribunal is constituted of only one member because of an indication by the Commissioner under section 80(1a)(a), lower maximum penalties apply.

44—Amendment of section 84—Powers of Tribunal

This clause proposes a minor amendment to subsection (1) by replacing the reference to the Tribunal's power to require the preparation of 'a bill of costs in taxable form' to 'an itemised bill' to reflect the insertion of new Schedule 3, relating to costs disclosure and adjudication.

45—Insertion of section 84C—Stay of proceedings

New section 84C proposes that the Tribunal will have the discretion to stay proceedings if it thinks fit.

46—Amendment of section 85—Costs

Section 85 of the principal Act gives the Tribunal power to make costs orders against any applicant or person whose conduct has been subject to inquiry as it thinks just and reasonable. This clause proposes the insertion of a new subsection (1a), which states that where a practitioner accused of misconduct has refused to consent to the exercise of a power of the Commissioner under section 77J and is found guilty, and the Tribunal considers the refusal to have been unreasonable, the practitioner may be ordered to reimburse the Commissioner for the costs to the extent that they have been unreasonably incurred.

47—Insertion of section 88A—Supreme Court's inherent jurisdiction

This clause proposes the insertion of new section 88A into Division 5 of Part 6, which relates to disciplinary proceedings before the Supreme Court. The proposed provision makes it clear that the Part does not derogate from the Court's inherent jurisdiction to control and discipline legal practitioners. This is currently stated in section 89(3) of the principal Act and is consequentially removed from there.

48—Amendment of section 89—Proceedings before Supreme Court

Currently, under section 89, when the Tribunal has conducted and inquiry and recommended that disciplinary action be commenced in the Supreme Court, those proceedings can be commenced by the Commissioner, the Attorney-General or the Society. The proposed insertion of subsection (1a) provides that where the Commissioner is of the opinion that the name of a legal practitioner should be struck off the role, for example because the practitioner has been found guilty of a serious offence, the Commissioner may commence proceedings in the Supreme Court without first laying a charge before the Tribunal. The proposed new subsection would also provide that where a practitioner is informed that Supreme Court proceedings are intended to be pursued, the legal practitioner may inform the Court that he or she consents to having his or her name struck off the roll of legal practitioners. In that case, the Court may order that the practitioner's name be struck off the role despite the fact that disciplinary proceedings have not been instituted.

49—Amendment of section 89A—Court may order interim suspension of legal practitioner or impose interim conditions

This clause makes a minor consequential amendment. The amendment is necessary because of the establishment of the office of the Commissioner.

50—Substitution of Part 6 Division 6

This clause proposes the deletion of Division 6 of Part 6 of the principal Act, relating to lay observers, and its replacement with a new Division related to the publicising of disciplinary action.

Division 6—Publicising disciplinary action

89B—Definitions

This provision defines the disciplinary action to which the new Division applies, and also establishes the Register of Disciplinary Action.

89C—Register of Disciplinary Action

This proposed new provision provides that the Commissioner is to maintain a Register of Disciplinary Action. The clause sets out what is to be included in the Register, the particulars to be included when information is incorporated into the Register, and the availability of the Register for public inspection.

89D—Other means of publicising disciplinary action

This proposed provision gives the Commissioner the power to publicise disciplinary action in any way the Commissioner sees fit.

89E—Quashing of disciplinary action

This section provides that a reference to disciplinary action that has been quashed by appeal or review must be removed from the Register and the results of the appeal or review published with equal prominence by the Commissioner.

89F—Liability for publicising disciplinary action

This section defines a number of protected persons, including, for example, the Society, the Council, the Commissioner and the Crown, who are protected from liability in respect of anything done in relation to exercising the powers of the Commissioner or publicising disciplinary action, under the proposed new Division.

90—General

This proposed section provides that the new Division is subject to orders of the Supreme Court in relation to disciplinary action, and orders of corresponding disciplinary bodies and other courts and tribunals, so far as those orders prohibit or restrict the disclosure of information.

51—Amendment of section 90AF—Local legal practitioners are subject to interstate regulatory authorities

This clause makes a minor amendment consequential on the change in terminology from 'unprofessional conduct' to 'professional misconduct'.

52—Amendment of section 90A—Annual reports

Minor consequential amendments are made to this provision flowing from the replacement of the Board with the Commissioner.

53—Insertion of Part 6 Division 8

This clause proposes the insertion of a new Division into Part 6 of the principal Act, relating to professional mentoring agreements.

Division 8—Professional mentoring agreements

90B—Professional mentoring agreements

This proposed new section establishes the conditions under which the Society or the Commissioner may enter into a professional mentoring agreement for the appointment of a professional mentor for a practitioner. It sets out the role of the professional mentor and his or her reporting obligations. The section also deals with the form of the agreement and the term, appointment and remuneration of the mentor.

54—Substitution of section 95D

This clause substitutes section 95D, which relates to the service of notices and documents. The provision provides detail about the formal requirements of service of notices and documents.

55—Amendment of section 97—Regulations

Section 97 of the principal Act makes a consequential amendment by removing a reference to companies holding practising certificates under the Act. Subsection (3) currently specifies types of further regulations that could be made under the Act with the concurrence of the Society. The proposed substituted subsection (3) authorises the making of provisions of a saving or transitional nature consequent on the amendment of the principal Act by another Act.

56—Insertion of Schedules 1 to 4

This clause inserts four new Schedules.

Schedule 1—Incorporated legal practices

The provisions of Schedule 1 regulate incorporated legal practices. The Schedule is based on national model legislation concerned with the regulation of such legal practices. However, the Schedule differs from the model provisions in that clause 2 of the Schedule prohibits an incorporated legal practice from providing a service or conducting business that does not involve engaging in legal practice. Contravention of clause 2 is a ground for banning an incorporated legal practice under clause 21.

The Schedule deals with matters such as eligibility to be an incorporated legal practice, requirements for legal practitioner directors, obligations of such directors, professional indemnity insurance and auditing of incorporated legal practices.

Schedule 2—Trust money and trust accounts

Schedule 2 is based on national model provisions dealing with the regulation of trust money and trust accounts.

Trust money is money entrusted to a law practice in the course of or in connection with the provision of legal services by the practice to which the practice is not wholly entitled. Trust money includes—

- money received by a law practice on account of legal costs in advance of providing legal services (other than a retainer); and
- controlled money received by the practice; and
- transit money received by the practice; and
- money received by the practice, that is the subject of a power, exercisable by the practice or an associate of the practice, to deal with the money for or on behalf of another person.

The definition does not include money received by a practitioner in the course of mortgage financing.

The Schedule requires law practices to have their trust records for a particular financial year externally examined as soon as possible after the end of that year. The provisions of the Schedule deal with matters such as investigations of the affairs of law practices, external examinations and approval of authorised deposit-taking institutions.

Schedule 3—Costs disclosure and adjudication

The costs disclosure provisions are based on national model provisions, with some minor variations. Application for an adjudication of costs is to be made to the Supreme Court. Clause 41 provides that the Court's power to adjudicate and settle a bill may be exercised by the Registrar of the Court. The costs of an adjudication are to be determined by the Supreme Court. Consistently with the model provisions, unless the Court orders otherwise, the law practice to which the costs are payable (or were paid) is to pay the costs of the adjudication if—

- on the adjudication the costs are reduced by 15% or more; or
- the Court is satisfied that the practice failed to comply with Part 3 of the Schedule (Costs disclosure).

However, if an application for an adjudication of costs is made after the Commissioner has made a determination in relation to the costs under section 77N, the applicant is required to pay the costs of the adjudication unless the Supreme Court orders otherwise.

Part 3 of the Schedule makes provision for the disclosure of costs to clients by law practices. Disclosure to a client is not required to be made by a person engaged only as a barrister for the purposes of the client's matter. However, if a law practice intends to retain a barrister on behalf of the client, it must disclose to the client the basis on which the barrister's costs will be calculated, including whether a recommendation as to barristers' costs applies to the legal costs.

Schedule 4—Investigatory powers

The provisions of Schedule 4, setting out investigatory powers under the Act, are also based on national model provisions, though there are some variations. For the purposes of the Schedule, an investigator is—

- an investigator or external examiner under Schedule 2 (Trust money and trust accounts); or
- the Commissioner or a person authorised by the Commissioner to investigate a complaint or the conduct of a legal practitioner or former legal practitioner; or
- a person conducting an audit under Schedule 1 clause 19 in relation to an incorporated legal practice.

Schedule 1—Further amendments of *Legal Practitioners Act 1981*

The amendments made by Schedule 1 replace the term 'guarantee fund' with 'Fidelity Fund' throughout the Act, as required.

Schedule 2—Related amendment and transitional provisions

Part 1—Amendment of *Fair Work Act 1994*

1—Amendment of section 152A—Inquiries into conduct of registered agents or other representative

The amendment made by this clause to the *Fair Work Act 1994* is consequential on the replacement of the Board with the Legal Profession Conduct Commissioner.

Part 2—Amendment of *Freedom of Information Act 1991*

2—Amendment of Schedule 2—Exempt agencies

This clause amends Schedule 2 of the *Freedom of Information Act 1991* to add the Legal Profession Conduct Commissioner to the list of exempt agencies under that Act.

Part 3—Amendment of *Legal Services Commission Act 1977*

3—Amendment of section 26—Commission and trust money

4—Amendment of section 31—Discipline of legal practitioner employed by Commission

The amendments made by these clauses to the *Legal Services Commission Act 1977* are consequential on changes to be made to the *Legal Practitioners Act 1981*.

Part 4—Transitional provisions

5—Interpretation

Part 4 includes transitional provisions. This clause defines a number of terms used in the transitional provisions. The *principal Act* is the *Legal Practitioners Act 1981*.

6—Practising certificates

This clause makes it clear that Divisions 2A to 2C of Part 3, inserted into the principal Act by section 17 the amending Act, apply in relation to practising certificates whether issued before, on or after the commencement of section 17.

7—Deficiencies in trust accounts

Clauses 23 and 24 of new Schedule 2 apply to trust money whether the money was received before, on or after the commencement of those clauses.

8—Combined trust account

This clause provides that an ADI that was an approved ADI within the meaning of section 53 of the principal Act before the substitution of that section will be taken to be an approved ADI for the purposes of section 53 as inserted.

9—Costs

New Schedule 3 applies to a matter if the client first instructs the law practice in the matter on or after the commencement of the Schedule. Part 3 Division 8 of the principal Act continues to apply to a matter if the client first instructed the law practice in the matter before the commencement of Schedule 3.

However, if Part 3 Division 8 of the principal Act applies to a matter because of this clause, the Division will cease to apply to the matter on the first anniversary of the commencement of Schedule 3. The Schedule will then apply to the matter.

10—Fidelity Fund

The legal practitioners' guarantee fund continues in existence as the Legal Practitioners Fidelity Fund.

11—Claims against Fidelity Fund

Subsection (1a) of section 60 of the principal Act does not apply in relation to a claim for compensation served on the Society before the commencement of the subsection.

12—Investigations

An investigation may be undertaken under Schedule 2 Part 3 of the principal Act in relation to an aspect of the affairs of a law practice whether the investigation relates to matters that occurred before or after the commencement of the Schedule.

13—Transfer of functions from Board to Commissioner

This clause provides for the transfer of the functions of the Board to the Commissioner. The Commissioner is to assume the conduct of investigations and proceedings commenced by the Board but not completed before the day on which the amendments relating to the establishment of the office of Commissioner come into operation.

14—Application of principal Act as amended to complaints, investigations, disciplinary proceedings and conduct

The principal Act as amended will apply in relation to—

- complaints received by the Commissioner or for which the Commissioner has assumed the conduct; and
- investigations commenced or continued by the Commissioner; and
- disciplinary proceedings commenced by the Commissioner, the Society or another person or for which the Commissioner has assumed the conduct.

The principal Act as amended also applies in relation to conduct that occurred before the commencement of the new definitions of misconduct. However, the Act as amended will apply to such conduct as if—

- 'unsatisfactory professional conduct' were replaced with 'unsatisfactory conduct' wherever occurring; and
- 'professional misconduct' were replaced with 'unprofessional conduct' wherever occurring'; and
- 'unsatisfactory conduct' and 'unprofessional conduct' had the same respective meanings as in the principal Act as in force immediately before that commencement.

15—Transfer of employment

This clause provides for the transfer of the staff of the Board to the office of the Commissioner.

16—Contracts, etc

This clause provides that all assets, rights and liabilities of the Board are transferred to the Commissioner.

17—Continuing obligation of confidentiality

Under this clause, the duty of confidentiality imposed under repealed section 37 and the duty of confidentiality imposed under repealed section 73 of the principal Act will continue to apply.

Debate adjourned on motion of Hon. S.G. Wade.

WORK HEALTH AND SAFETY (SELF-INCRIMINATION) AMENDMENT BILL

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

At 17:53 the council adjourned until Wednesday 1 May 2013 at 14:15.